

**CITY OF MARCO ISLAND  
ORDINANCE NO. 98-11**

AN ORDINANCE REGULATING CABLE TELECOMMUNICATIONS SERVICES IN THE CITY OF MARCO ISLAND; PROVIDING FOR NECESSARY REGULATIONS, CONDITIONS AND REQUIREMENTS AND THEIR UNIFORM APPLICATION TO ALL FRANCHISEES; PROVIDING FOR THE GRANTING AND RENEWING OF NON-EXCLUSIVE CABLE TELEVISION FRANCHISES FOR THE INSTALLATION, OPERATION, MAINTENANCE, AND PROVISION OF CABLE TELEVISION SERVICES WITHIN THE CITY OF MARCO ISLAND; PROVIDING FOR THE PROTECTION AND CONTROL OF CITY OWNED EASEMENTS AND PUBLIC RIGHTS-OF-WAY; PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH SAME MAY BE UTILIZED BY CABLE FRANCHISEES; AUTHORIZING THE PROVISION OF CABLE TELEVISION SERVICE BY CABLE OPERATORS POSSESSING A VALID, CURRENT FRANCHISE GRANTED BY COLLIER COUNTY, THAT IS IN GOOD STANDING AS OF THE EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR OTHER APPLICABLE STATE AND FEDERAL LAWS; PROVIDING FOR OTHER PROVISIONS AND REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City of Marco Island has been granted broad home rule powers under Article VIII, §2(b) of the Florida State Constitution and Section 166.021, Florida Statutes;

**WHEREAS**, 47 U.S.C. §521 (Title VII - Cable Communications Policy Act of 1984, as Amended), grants to the City of Marco Island "Franchising Authority" to grant cable franchises to private individuals;

**WHEREAS**, the City Council recognizes the need to regulate the cable television industry in the City of Marco Island to protect the rights of the residents of the City of Marco Island;

**WHEREAS**, Section 1.01(2) of the Charter for the City of Marco Island ("Charter") states that the Council has the power to adopt ordinances "as may be required for the good government of the City";

**WHEREAS**, Section 1.01(10) of the Charter states that the Council has the power "to do all other acts that seem necessary and best adapted to the improvements and general interest of the City...";

**WHEREAS**, Section 4.01 of the Charter states that the "City Manager shall be responsible to the Council for the administration of all City affairs placed in the Manager's charge by or under this Charter", and Section 4.04(a) states that the Manager shall "perform other duties as are specified in this Charter or as may be required by the Council";

**WHEREAS**, Section 4.07 of the Charter states that the City Attorney shall "perform such other duties as the Council may deem necessary";

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE CITY OF MARCO ISLAND, FLORIDA:**

**I. TITLE AND PURPOSE.**

A. Short Title. This ordinance shall be known and may be cited as the " Cable Television Standards Ordinance."

B. Purpose. This Ordinance is enacted under the home rule power of the City for the purpose of providing necessary regulations, conditions and requirements which shall be uniformly applied to:

1. The grant and renewal of non-exclusive cable television franchises for the installation, operation, maintenance and provision of Cable Television Service within the territorial limits of the City; and,
2. Protect and control the use of City owned easements and public rights-of-way by cable television franchisees.
3. Authorize the provision of Cable Television Service by any Cable Operator who possess a valid, current franchise granted by Collier County, that is in good standing as of the effective date of this Ordinance.

**II. DEFINITIONS**

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations will have the meaning given herein, when consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular numbers include each of the other genders. The words "shall" and "may" always are mandatory and not merely directories.

- A. Access. "Access" shall mean any programming or channel designated for use by any person other than the company.
- B. Access Facilities. "Access Facilities" shall mean any channel capacity, facilities, or equipment designated for public educational, or governmental use and facilities and equipment for the use of such channel capacity.
- C. Basic Service. "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast signals and any public educational and governmental programs required to be carried on the basic tier.
- D. Cable Telecommunications. "Cable Telecommunications" shall mean cable television and telecommunications services via a Cable System.
- E. Cable Operator. "Cable Operator" shall mean any person or group of persons:
  - 1. Who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or
  - 2. Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System under a Franchise with the City.
- F. Cable Service. "Cable Service" shall mean:
  - 1. The one-way transmission to Subscribers of (a) video programming, or (b) other programming services, and,
  - 2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.
- G. Cable System. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service and which includes video programming and other lawful communications services and which is provided to multiple Subscribers within a community, but this term does not include:
  - 1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
  - 2. A facility that serves subscribers without using any public right-of-way;

3. A common carrier facility which is subject, in whole or in part, to the provisions of 47 U.S.C. §201-226, except that such facility shall be considered a cable system [other than for purposes of 47 U.S.C. §541(c)] to the extent such facility is used in the transmission of video programming directly to Subscribers; and,
  4. Any facilities of an electric utility used solely for operating its electric utility system.
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- H. Channel. "Channel" shall mean a portion of the electromagnetic frequency spectrum which is capable of delivering both the audio and video portions of a television signal. At the time of enactment of this Franchise, such capability generally requires a 6 MHz capacity. This is subject to changes in technology.
  - I. City. "City" shall mean the City of Marco Island, [a charter city] of the State of Florida and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction. The City Council is authority of the City.
  - J. City Attorney. "City Attorney" means the City attorney of the City of Marco Island, Florida, or his designee, or any successor to the power of the City attorney.
  - K. City Manager. "City Manager" means the City Manager of the City of Marco Island, Florida, or his designee, or any successor to the power of the City Manager.
  - L. City Council. "City Council" shall mean the City Council of Marco Island, Florida, or its designee.
  - M. Construction Completion Date. "Construction Completion Date" shall mean the date, after receiving a request from the Franchisee, on which the City or its designee issues a certificate of completion to a Franchisee. That certificate shall not be unreasonably withheld.
  - N. County. "County" shall mean Collier County, a municipal corporation in the State of Florida.
  - O. Existing Franchisee. "Existing Franchisee" shall mean any Cable Operator who possess a valid, current cable television franchise granted by Collier County, that is in good standing as of the effective date of this Ordinance.

- P. Franchise. "Franchise" shall mean and include any authorization granted pursuant to Federal and State law and this Ordinance in terms of a franchise privilege, permit, license or otherwise to construct, or have constructed, operate and maintain a Cable System. Any such authorization, in whatever term granted, and the fees charged thereunder shall neither supersede nor take the place of any license, license fee or permit authorization which might otherwise be required for the privilege of transacting and carrying on Cable Service under any other City Ordinance licensing or regulating business within such areas.
- Q. FCC. "FCC" shall mean the Federal Communications Commission or any successor agency.
- R. Gross Revenues. "Gross Revenues" shall mean all revenue received by Grantee, arising from or attributable to the sale of cable television video or audio program services, videotext services and video games provided by Grantee within the City or derived from the operation within the City of its System, including, but not limited to, fees charged to subscribers for Basic Cable Service; fees charged to subscribers for an optional video or audio service; fees charged to subscribers for any tier of video or audio program service other than Basic Cable Service, installation, disconnection and reconnection fees for the provision of video or audio program services; leased channel fees, video or audio program service; equipment rentals; revenues received by Grantee from home shopping channels, marketing, launch and carriage revenues from advertising sold by Grantee or its agents. This sum shall be the basis for computing the fee imposed pursuant to Section IX herein. This term, gross revenues, does not include: converter or other equipment deposits; bad debts; any sales, excise or any other taxes collected by Grantee on behalf of any state, city, county or other governmental unit; refunds to subscribers by Grantee; reimbursement for expenses (including returned check fees, copy expenses and similar items); or items excluded by local, state or federal law. Notwithstanding the foregoing, revenues received for the provision of data transmission, point-to-point telecommunications, telephone or telephone services shall be included in gross revenues only to the extent permitted by law.
- S. Grantee or Franchisee or Company. "Grantee" or "Franchisee" or "Company" shall mean the person, firm, or a corporation to whom a franchise, as herein above defined, is granted by the City Council under this Ordinance, and the lawful successor, transferee or assignee of said person, firm, or a corporation.
- T. Institutional Network or I-Net. "Institutional Network" or "I-Net" shall mean a communication network which is constructed and/or operated by the cable operator and which is generally available only to local governments.

- U. Marco Island. "Marco Island" shall mean Marco Island, Florida, or the area within the present and future territorial City limits and such territory outside of the City over which the City has jurisdiction or control by virtue of any law.
- V. Public, Educational or Governmental Access (PEG). "Public, Educational or Governmental Access (PEG)" shall mean channel capacity designated for public, educational, or governmental use.
- W. Person. "Person" shall mean any person, firm, partnership, association, corporation, or organization of any kind.
- X. Street or Rights-of-Way. "Street" or "Rights-of-Way" shall mean the surface of and the space above and below any publicly owned or maintained property or right of way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or drive, now or hereafter constructed, opened, laid out or extended within the present limits of the City as defined by Section 2.01 of the Charter for the City of Marco Island or may hereafter be added to, consolidated or annexed to the City.
- Y. Subscriber or Customer. "Subscriber" or "Customer" shall mean any person or entity lawfully receiving any portion of the Cable Service provided by a Grantee pursuant to a franchise granted in accordance with this Ordinance.

### III. CABLE TELEVISION FRANCHISE

- A. Cable Television Franchise: No person may operate a Cable System in the City without first obtaining a Franchise as provided in this Ordinance, except as provided by Section III (I).
- B. Franchise Application: Any person that desires a cable television franchise shall file an application, in a format provided by the City, which shall include not less than:
  1. The identity of the franchise applicant, including all affiliates of the applicant.
  2. A description of the cable service that will be offered or provided by the franchise applicant over its existing or proposed facilities.
  3. A description of the transmission media that will be used by the Franchisee to offer or provide such cable service.
  4. A proposed construction plan (two (2) copies) with sufficient detail to identify:

- a. The location and area the applicant's proposed Cable Telecommunications system shall serve; and,
  - b. The route(s), if any, for interconnection with Cable Telecommunications system of other providers and to PEG access origination facilities.
  - c. Subject to plan approval and following construction, the construction drawings shall accurately depict the constructed configuration of the cable system. A computer aided design (CAD) disk of record construction shall be provided to the City in an approved format and layering system.
5. A preliminary construction schedule, Construction Completion Date and anticipated system activation date.
  6. Acknowledgment that the applicant's traffic control plan shall conform with FL-DOT's uniform traffic control procedures as related to public safety issues regarding lane closures and construction in the public way.
  7. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
  8. Information in sufficient detail to establish the applicant's technical qualifications, experience and ability to provide the cable television services described in its application.
  9. Information to establish that the applicant has obtained all other governmental approvals and permits to construct, operate and offer cable television services.
  10. An accurate map showing the location of any existing cable television and/or telecommunication facilities in the City that the applicant intends to lease.
  11. A description of the services or facilities that the applicant will offer the City and other public, educational and governmental institutions.
  12. A description of the applicant's commercial customer and residential subscriber line extension policies.

13. All fees, deposits or charges required pursuant to Section IV herein.
  14. Such other and further information as may be requested by the City Administrator.
- C. Determination by the City: Within one hundred fifty (150) days following receipt of a completed application, the City shall, upon application of the standards herein, issue written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.
1. The legal, character, financial and technical qualifications of the applicant.
  2. The construction arrangements proposed by the applicant.
  3. The services that the applicant proposes to offer do not satisfy the community's need for cable television services.
  4. The deleterious effect, if any, on public health, safety and welfare if the franchise requested is granted.
  5. Whether the applicant is providing adequate public, educational and governmental access channel capacity, facilities and financial support.
  6. Applicable federal and state telecommunications laws, regulations and policies.
  7. Such other factors as may demonstrate that the grant to use the public ways may or may not serve the community's interest.

If the City Council finds the application is in compliance with this Ordinance and is satisfied with the ability of the applicant to perform and that the community's interests shall be served, the City shall grant the applicant a franchise.

- D. Other Applicable Regulations: Any cable television franchise granted pursuant to this Ordinance, is subject to the Cable Communications Policy Act of 1984, as amended, Section 166.046 of Florida Statutes, and other applicable State and Federal laws.
- E. Nonexclusive Grant: No franchise granted under this Section shall confer any exclusive right, privilege, or franchise.

- F. Term of Grant: The term of a franchise granted pursuant to this Ordinance shall not be valid for more than twenty (20) years.
- G. Rights Granted: No franchise granted under this Section shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.
- H. Additional Franchises: The Grantor specifically reserves the right to grant such additional Franchises as it deems appropriate, subject to applicable state and federal law.
- I. Existing Franchise: Any Cable Television Operator who possesses a valid, current franchise granted by Collier County that is in good standing, as of the effective date of this ordinance shall not be required to secure a new franchise until such time as its current franchise a) expires, or b) is transferred or c) is renewed. Existing franchisees shall be subject to all the provisions of this Ordinance unless otherwise exempted herein. All Existing Franchisees shall provide copies of all existing agreements between the Existing Franchisee and the County within thirty (30) days of the effective date of this ordinance. Any franchise or agreement not so provided shall not be recognized as valid by the City.

#### IV. APPLICATION FEE

Applicants for a franchise hereunder shall pay an "Application Fee" to the City of three thousand dollars (\$3,000) which shall be due and payable to the City upon submission to the City of an application for a franchise. The City Council may waive the fee for an incumbent operator seeking a franchise renewal pursuant to the informal rules provided in Section 626 of the Cable Communications Policy Act of 1984.

#### V. BONDING REQUIREMENTS.

##### A. Construction Bond.

1. Simultaneously with the execution of the franchise agreement, the franchisee shall post either a construction bond or an irrevocable letter of credit with the City. Said instruments shall be issued by a state bank or a federally insured lending institution in an amount equal to one hundred-ten (110) percent of the projected cost of construction and installation of the system. Existing Grantees shall post a bond or irrevocable letter of credit with the City as required by the City Manager

at the same time as and in conjunction with submission of a construction plan or reconstruction plan, and in any event at least 30 days prior to the start of construction or reconstruction. Said bond or letter of credit will be returned to the franchisee at the end of six years or at such prior time as the system has been completed and approved by the City, provided:

- a. That the franchisee has met or exceeded the construction schedule required by the Grantee's franchise agreement; and,
  - b. That the franchisee has in good faith complied with all terms and conditions of the franchise agreement and all provisions of this Ordinance as well as the rules and regulations herein required and permitted.
2. If the franchisee shall fail to perform the obligations heretofore set out in this Section, the franchisee shall forfeit in total to the City the hereinabove referenced construction bonds.
  3. Said construction bonds shall not be in lieu of any other guarantee or indemnification required by this Ordinance and shall be in addition to the performance bond or irrevocable letter of credit required herein.
  4. An individual construction bond will not be required for projects that fall under the "Blanket Permit" condition, as outlined in the Collier County Right-of-Way Ordinance (Collier County Ordinance 98-64, Section I.D.), or as may be amended or superceded by an applicable City of Marco Island Ordinance.

**B Permanent performance and payment bond.**

1. Simultaneously with the execution of the franchise agreement or assignment of the franchise in the case of a transfer, the franchise shall, furnish a performance bond or an irrevocable letter of credit to the City. Said instruments shall be issued by a state bank or a federally insured lending institution in the amount of ten thousand dollars (\$10,000). The performance bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the City under this Ordinance and/or under any franchise agreement entered into by the City and the franchisee. The performance bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise and for one year after the franchise expires or is terminated, without

reduction or allowances for any amounts which are withdrawn or paid pursuant to this Ordinance.

2. Any Cable Operator who possess a valid, current franchise granted by Collier County that is in good standing, as of the effective date of this ordinance shall not be required to furnish a performance bond until such time as its current franchise a) expires, or b) is transferred or c) renewed.
3. The rights reserved to the City with respect to the bond or the letter of credit are in addition to all other rights of the City.

## VI. VIOLATIONS AND PENALTIES.

- A. A violation of this Ordinance or a franchise issued pursuant to this Ordinance shall result in the imposition of a penalty. A penalty may be imposed for up to \$500 per day for the specific offenses set out below. Any penalty imposed hereunder may be recovered from the performance bond or letter of credit required in Section V of this Ordinance.
- B. Upon notice to cure specified deficiencies, the Grantee shall have thirty (30) days in which to cure said deficiencies. Failure to cure any deficiency shall constitute a violation of this Ordinance. If during the thirty (30) day notice period, the deficiencies are satisfied, the City shall declare the notice to cure null and void. However, should the Grantee fail to cure any deficiency, the City Manager shall issue a notice of intention to impose a penalty for one or more violation.
- C. Notice of intention to impose. If the City Manager concludes that a Grantee has committed a violation pursuant to this Section, the Manager shall issue a notice of intention to impose a penalty by certified mail to the Grantee. The notice shall set forth the basis for the penalty, and shall inform the Grantee that the penalty will be imposed from the date of the notice unless the notice of penalty is appealed for hearing before the City Council and the City Council rules:
  1. That the violation has been corrected; or
  2. That an extension of time or other relief should be granted.

A Grantee desiring a hearing before the City Council shall send a written notice of appeal of the fine by certified mail to the City Manager within ten (10) days following the date on which the City sent the notice of intention to impose a penalty. The hearing on the grantee's appeal shall be within thirty (30) days

following the date on which the City receives the written notice of appeal. After the hearing, should the City Council sustains in whole or in part the City Manager's imposition of a penalty, the City Manager may thereafter draw upon the performance bond or the letter of credit required by this Ordinance at any time. Unless the City Council indicates to the contrary, said penalty shall be imposed beginning with the date on which the City sent the notice of the intention to impose a penalty and continuing thereafter until such time as the violation ceases, as determined by the City Manager. The penalty shall be paid thirty (30) days after the notice of intention to impose the penalty, if not appealed, or thirty (30) days following the decision of the City Council to sustain the penalty in whole or in part.

The City Council shall stay or waive the imposition of penalty set forth herein upon a finding that any failure or delay is the result of an act of God or due to circumstances beyond the reasonable control of Grantee.

- D. The following conditions constitute violations for which penalties may be levied pursuant to this Ordinance
1. Failure to complete construction in accordance with the Franchise: up to five hundred dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;
  2. Failure to provide, upon written request, data, documents, reports, and/or information, a franchisee shall pay \$100.00 per day for each day, or part thereof, that each violation occurs or continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;
  3. Failure to test, analyze and report on the performance of the system following a written request to do so, a franchisee shall pay \$250.00 per day for each day, or part thereof, that such noncompliance continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;
  4. Failure to provide in a continuing manner the types of services proposed in the accepted application or renewal proposal, unless the City Council specifically approves a delay or change or the franchisee has obtained modification of its obligation pursuant to 47 U.S.C. Section 545 of the Cable Communications Policy Act of 1984, as amended, a franchisee shall pay \$500.00 per day for each day, or part thereof, that each noncompliance continues. A separate and distinct offense shall

be deemed committed each calendar day on which a violation occurs or continues;

5. Failure of a franchisee to comply with operational, maintenance, technical standards or consumer protection standards, the franchisee shall pay \$500.00 for each day, or part thereof, that such noncompliance continues. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;
6. Failure to comply with any material provision herein for which a penalty is not otherwise specifically provided: up to one hundred dollars (\$100.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues; and,
7. For any other action or inaction by the franchisee, as agreed upon between the City and the franchisee, and set forth in the franchise agreement. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues.

## VII. TERMINATION AND EXPIRATION OF FRANCHISE

- A. Right of termination. The City reserves the right to suspend, terminate and cancel a franchise and all rights and privileges of a franchisee thereunder after due process as specified by paragraph C of this Section for just and reasonable cause or in the event that any one of the following occurs:
  1. The franchisee, after 30 days' notice by certified mail by the City, violates any provision of this Ordinance or any rule, order or determination of the City made pursuant to this Ordinance, except that if such violation by the franchisee is without fault or through excusable negligence.
  2. The franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
  3. The franchisee attempts to evade any of the provisions of this Ordinance or of the franchise agreement or practices any fraud or deceit upon the City.
  4. The franchisee fails to commence construction within one year from the effective date of this Ordinance.

5. The franchisee fails to complete construction pursuant to the requirements of this Ordinance within the time required by its franchise.
  6. The franchisee fails to provide service to its subscribers as required by the terms of this Ordinance, the franchise agreement, or the Cable Communications Policy Act of 1984, as amended, whichever is stricter.
- B. Right of suspension. The City reserves the right to suspend any or all of the rights of a franchisee upon a finding that the franchisee is failing to provide efficient service to its subscribers within the City or for any grounds specified in paragraph A of this Section. This shall include the right of the City to prohibit further expansion of service areas until service in the areas being served is brought up to minimum acceptable standards.
- C. Procedures for termination. The franchise may be terminated in accordance with the following procedures:
1. The City Manager shall notify the franchisee in writing of the exact nature of the alleged violation constituting a ground for termination and give the franchisee thirty (30) days, or other greater amount of time as the City Manager may specify, to correct such violation or to present facts and argument in refutation of the alleged violation.
  2. If within the designated time the franchisee does not remedy and/or put an end to the alleged violation, the City Council, after a public hearing, may direct the termination of the franchise if it determines that such action is warranted.
- D. In the event that the City shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee sixty (60) days written notice of its intention to terminate and stipulate the cause. If during the sixty (60) day period the cause shall be cured to the satisfaction of the City, the City shall declare the notice to be null and void. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the City Council in accordance with due process procedures. If a Grantee's franchise is terminated, the decision shall be subject to judicial review as provided by law.
- E. In the event that operation of the Cable System is discontinued for any reason for a continuous period of thirty (30) days or the Franchise held by a Grantee to construct, operate, or maintain a Cable System is terminated by the City Council, pursuant to the terms of this Ordinance, and all negotiations to settle the differences between the parties have failed (provided, however, that such negotiations shall not be required), the City Council may advertise and seek

another to operate the system. If a Franchise is granted to another person, the terminated Franchisee may be required to sell the Cable System to the new Franchisee at a price to be determined by three (3) competent, independent appraisers, one each appointed by the terminated Franchisee, the new Franchisee, and the City Council. The appraisers to be appointed shall use the then-best methods of appraising to determine this value. The appraisers' fees shall be shared equally by the terminated Franchisee and the new Franchisee. The terminated Franchisee shall execute such deeds, bills of sale and other documents as may be necessary to effectuate this sale. The terminated Franchisee shall fully cooperate with these appraisers.

- F. In the event of the early termination of the Franchise as herein provided, the City shall have the option of purchasing the cable business for the fair market value of said capital improvements. The City may also require the Grantee to sell any capital improvements as provided in this Section to any successor Grantee as set forth in paragraph (C) herein. In any event, the City may require the Grantee to continue to provide service for a reasonable period not to exceed six (6) months in order to assure uninterrupted service to subscribers.
- G. Should the Grantee's franchise be terminated or expire, and not purchased as above provided, and at such times as the successor is ready to provide service, but no later than six (6) months from termination or expiration, the Grantee shall begin removal of its property within the public way, unless permitted by the City to abandon said property in place. In so removing such plants, structures, and equipment, the Grantee shall refill, at its own expense, any excavations made by it and shall leave such public and private places in as good condition as that prevailing prior to the company's installation of its equipment and appliances without affecting, altering, or disturbing in any way the electric distribution or telephone cable, wire, or attachments or any poles. The City Council or other officer or his appointee, shall inspect and approve the condition of such public ways and public places and cables, wire attachments, and poles after removal. Liability insurance and indemnity provided for herein shall continue in full force and effect during the entire period of removal.

In the event of any such removal, the Grantee shall restore the public right-of-way to a condition satisfactory to the City. Upon abandonment, which shall only be done as the City directs, the Grantee shall transfer ownership of all such abandoned property to the City and submit to the City an instrument in writing, subject to the approval of the City Attorney, affecting such transfer.

If the City or the State is forced to remove the system, the work shall be performed at the expense of the terminated Grantee.

## VIII. TRANSFER OR ASSIGNMENT OF CABLE SYSTEM

- A. No transfer of control of a Franchise or assignment of a Franchise to operate a Cable System other than a pro forma transfer or assignment to a parent or wholly owned subsidiary corporation or other form of organization shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, foreclosure, attachment, merger, or other form of disposition, without prior notice to and approval by the City Council. The notice shall include filing particulars of the proposed transaction. The City Council shall act by resolution. The City Council shall have one hundred twenty (120) days after the receipt of the notice and all supporting documents within which to approve or disapprove a transfer of control or assignment of the franchise; if the proposed transfer or assignment is not acted upon within one hundred twenty (120) days, approval shall be deemed to have been given.
- B. Notice of any such proposed transfer or assignment, together with copies of all documents pertaining thereto shall be in writing filed with the City Clerk. The proposed transferee or assignee shall agree in writing to comply with all provisions of this Ordinance and other provisions and requirements as the City Council might order.
- C. For the purpose of this Section the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A transfer of control shall be deemed to have occurred upon the acquisition or accumulation by any person or group of persons of ten (10) percent of the voting shares of the company.
- D. In the absence of extraordinary circumstances, the City Council will not approve any transfer or assignment of the franchise before completion of  
  
initial construction of the Cable System or within the first three (3) years of operation thereafter.

## IX. FRANCHISE AND OTHER FEES

- A. Within sixty (60) days after each quarter of its fiscal year, after acceptance of a franchise, the Grantee shall pay to the City for constructing, operating, and maintaining the Cable System as defined herein, and for the privilege of providing the Cable Service as defined herein during the ensuing fiscal year, a sum equal to five (5) percent of its gross revenue for the preceding quarter.

An Existing Franchisee shall have thirty (30) days, following the effective date of this Ordinance, in which to commence payment to the City, for the privilege of constructing, operating, and maintaining a Cable System as defined herein, and providing the Cable Service as defined herein during the ensuing fiscal year. A sum equal to five (5) percent of its gross revenue, as defined herein, for the preceding quarter or portion thereof, commencing with the effective date of this Ordinance, shall be paid to the City.

The payment of this fee is in addition to any privilege or use tax or ad valorem taxes which the City may levy. At any time the City Council, its employees or other designated representative, shall have the right to inspect all financial documents. Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance or for the performance of any other obligations hereunder. In the event of holding over after expiration or other termination of any franchise granted hereunder, without the consent of the City, the Grantee shall pay to the City reasonable compensation and damages, of not less than one hundred (100) percent of its total gross profits during said period.

- B. The five (5) percent franchise fee provided for herein shall be reviewed every five (5) years during the term of this franchise, and the franchise fee, at the sole option of the City Council, shall be adjusted upward if the City Council determines that an upward adjustment is necessary in order to maintain the franchise fee consistent with:
1. Franchise fees being paid by cable telecommunications companies operating under similar conditions;
  2. The costs incurred by the City to administer this franchise;
  3. The value of the Company's right to use City public ground, highways, roads, streets, alleys, sidewalks, public ways, and utility easements as may be available; and,
  4. Any applicable statutes, laws, rules and regulations.

If the franchise fee is adjusted, such adjustment shall be effective at the beginning of the next immediate file quarter of the Company's fiscal year during which such adjustment is made. The City may unilaterally adjust the franchise fee upward only after giving notice to the Company and holding a hearing.

- C. The Grantee shall provide the City an annual financial statement within sixty (60) days of the close of the calendar year, certified by an official of the Franchisee responsible for the System's financial statements, reflecting the total amounts of Gross Revenues as defined herein, and all payments, and computations for the previous calendar year. Upon ten (10) days prior written notice, the City shall have the right to conduct an independent audit of the Franchisee's records. If, after resolving any dispute arising from such audits, Franchisee has made a franchise fee underpayment of three (3) percent or more, the Franchisee shall assume all reasonable costs of such audits. In other events, the City shall bare all costs associated with such audits.
- D. Unless otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Ordinance or any franchise agreement ordinance for the performance of any other franchise obligation by the Grantee.

X. LIMITATIONS OF FRANCHISE

- A. In addition to the limitations otherwise herein appearing, the franchise is subject to the following limitations: Grantees shall at all times during the life of a franchise hereunder be subject to all lawful exercise of the police power by the City and other duly authorized regulatory state and federal bodies and shall comply with any and all Ordinances which the City has adopted or shall adopt applying to the public generally, and shall be subject to all laws of the State of Florida, and the United States.
- B. Time shall be of the essence of any franchise granted hereunder. A Grantee shall not be relieved of its obligation to comply promptly with a provision of this Ordinance by the failure of the City to enforce prompt compliance. Failure of the City to enforce any breach by the Franchisee shall not constitute a waiver by the City.
- C. Any franchise hereunder shall not relieve a Franchisee of any obligations under any preexisting pole or conduit use agreements it may have with the City, a utility company, or others maintaining poles or conduits in the streets of the City.
- D. Any poles, cable, electronic equipment or other appurtenances of a Franchisee to be installed in, under, over, along, across or upon a street shall be so located so as to cause minimum interference with the public use of the street and to cause minimum interference with the rights of other users of the

streets or of property owners who adjoin any of the streets. All such installments in or upon property owned or controlled by the City shall be subject to the prior approval of the City.

- E. In the event of disturbance of any public or private property by a Franchisee, it shall at its own expense and in a manner approved by the City, replace and restore public and private property in no less than the same condition as before the work caused such disturbance was done.
- F. Grantees shall construct, maintain and operate their Cable Telecommunications systems so as to cause minimum inconvenience to the general public. All excavations shall be properly guarded and protected. At Franchisee's sole cost and expense, the street shall be restored immediately upon completion of all work.
- G. Grantees shall, upon reasonable notice from any person holding a building moving permit issued by the City, County or State of Florida, temporarily alter their facilities to permit the moving of such building. The actual cost of such altering shall be borne by the person requesting the altering and Grantees shall have the right to request payment in advance. For the purposes of this Ordinance, reasonable notice shall be construed to mean written notice received by the Franchisee at least five (5) business days prior to the move.
- H. If at any time in case of fire or disaster in the City it shall become necessary in the judgment of the City Manager or the Chief of the Fire Department or their designee to cut or move any of the wires, cables, amplifiers, appliances, or appurtenances thereto of a Franchise, such cutting or moving may be done and any repairs rendered necessarily thereby shall be made by Franchisee at no expense to the City.

#### XI. LOCATION OF FACILITIES

All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement.

- A. Without cost to the City, the Grantee may be required by the City to locate and identify its cable television facilities within the public rights-of-way.
- B. The City reserves the right, upon ninety (90) days notice, to require the Grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the City's street any property of the Grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grades, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or

improvements by governmental agencies or any structures of public improvement. In emergencies, no specific notice period shall be required. The City shall endeavor to notify and seek comment from the Grantee, with respect to minimizing disruption to the Cable System, where public projects may affect the Grantee's cable system.

- C. Cable Television facilities shall be installed within existing underground duct banks or conduit whenever excess capacity exists.
- D. A Franchisee with permission to install overhead facilities shall attach its Cable Telecommunications facilities on utility poles only when pole space is available and comply with the provisions of the National Electric Safety Code.
- E. Whenever any existing electric utilities, cable facilities or telecommunications systems are located underground within a public way of the City, a Grantee with permission to occupy the same public way must also locate its cable television facilities underground at no cost to the City.
- F. Whenever any new or existing electric utilities, cable or telecommunications systems are located or relocated underground within a public way, a Grantee that currently occupies the same public way shall relocate its facilities, without cost to the State or City, underground within a reasonable period of time, which shall not be later than one (1) year from the date of notification. Absent extraordinary circumstances or undue hardship as determined by the Cable Television Administrator, such relocation shall be made concurrently to minimize the disruption of the public ways.
- G. Whenever a public way exists to accommodate the Grantee's system, the Grantee shall not locate its facilities off the public of way, unless to serve customers, and shall make every effort to locate its Cable Telecommunications facilities within the public way before seeking private easements within the City. The Grantee shall, at no cost to the City, relocate its facilities and appliances which are in conflict with City projects to upgrade or construct roadways.
- H. The Grantee shall locate, place and construct its Cable Telecommunications facilities so as not to interfere with the construction, location and maintenance of sewer or water mains, lines or connections. The Grantee shall implement preventive measures to protect existing facilities within the public rights-of-way.
- I. The Grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged by the Grantee or its contractors with like material to their former condition at the

Grantee's expense, and shall thereafter, from time to time, but no longer than one (1) year from the completion of the job, readjust, fill and finish the same as may be necessary due to settling of the earth associated with the Grantee's disruption of the public way.

- J. Whenever new Cable System will exhaust the capacity of a public street or utility easement to reasonably accommodate future Cable Telecommunications carriers or facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.
- K. The Grantee shall adhere to all Federal, State and local regulations regarding the location, construction, and maintenance of its Cable Telecommunications facilities within the public rights-of-way.
- L. Construction Permits: All Grantees are required to obtain construction permits for the erection of a Cable Telecommunications system. Nothing in this Section shall prohibit the City and a Franchisee from agreeing to an alternative plan review process, alternate permit and construction procedures. Such alternative procedures must be stated in the franchise agreement.

## XII. RIGHTS TO USE PUBLIC RIGHTS-OF-WAY NOT WARRANTED

It is understood that the City does not have the unqualified right to authorize a Grantee the use of all public rights-of-way. Some rights-of-way may not be under the Grantor's control, because of reservations in favor of the dedicators or because of other legal impediments; therefore, in granting a franchise, the City does not warrant or represent as to any particular public right of way that it has the right to authorize the Grantee to install or maintain portions of its Cable System therein, the burden and responsibility for making such determination shall be upon the Franchisee.

## XIII. ADDITIONAL CITY RIGHTS IN FRANCHISE

- A. The City may add to or modify or delete provisions of this Ordinance as it shall deem necessary in the exercise of its regulatory powers provided that such additions or revisions are reasonable and in keeping with the public interest and welfare. Such additions or revisions shall be made only after a public hearing for which Grantees shall have received written notice at least fifteen (15) days prior to such hearing. In the event of a conflict between any provision of this Ordinance (or amendment to it) and a Franchise granted pursuant hereto, the provisions of the Franchise shall control.

- B. In the event of the failure by the Grantee to complete any work required in Section X or any work required by City law or Ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within fifteen (15) days after receipt of an itemized list of such cost.
- C. The City reserves the right, in the event of an emergency or disaster, to require the Grantee to make available to the City Manager, or his appointee, at his request, Grantee's facilities at no cost, for emergency use during such emergencies or disaster period.
- D. The City reserves the right during the life of any franchise granted hereunder to have access at all reasonable hours to the Grantee's plans, contracts and engineering, accounting, financial, statistical, customer, and service records relating to the property and the operations of the Grantee and to all other records required to be kept hereunder upon reasonable request.
- E. The City reserves the right during the life of any franchise granted hereunder, to install and maintain free from charge upon the poles and conduits of the Grantee any wire and pole fixture necessary for municipal networks such as police and fire, on the condition that such installations and maintenance thereof do not interfere with the operations of the Grantee.
- F. The City reserves the right during the life of any franchise granted hereunder, to reasonably inspect and supervise at the Grantee's cost, all construction or installation work performed subject to the provisions of the Ordinance to insure compliance with the terms of the Ordinance. The City may also perform measurements upon and randomly inspect any portion of a Grantee's system to ensure compliance with the technical standards under which the Grantee is authorized to operate. Upon the City's request, the Grantee will perform the tests, submitting the results to the City.
- G. The City reserves the right during the life of any franchise granted hereunder, upon thirty (30) days notice, to hold a public hearing for the express purpose of reviewing the general and specific performance of the Grantee with regard to all franchise provisions contained herein or in the future adopted by the City.
- H. Neither the granting of any franchise nor any governing provision of any franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- I. Nothing in this Ordinance shall in any way or to any extent be construed to waive, modify or abridge the City's right of eminent domain in respect to a Franchisee.

- J. Any right or power in, or duty impressed upon any officer, employee, department or board of the City shall be subject to transfer by the City Council by law to any other officer, employee, department or board. The City reserves the rights not specifically granted herein, and the enumeration of the rights herein shall not be construed to be a limitation of any right or power the City may otherwise have.
- K. The City shall have the authority to order a hearing no less than every three (3) years on the provision of additional channel capacity. If after a hearing, the City determines that:
  - 1. A requirement for additional capacity exists; and
  - 2. Consideration has been made or will be made for adequate rates to allow the Company a fair rate of return on its additional investment.
- L. Any expanding or hybrid fiber and coaxial cable upgrade of the Cable System shall use fiber optic cable to the greatest extent possible to provide the highest quality of service and reduce the number of cascaded amplifiers.
- M. With respect to institutional network capacity, a minimum of two (2) six (6) MHz data channels, two forward and two (2) reverse data paths shall be reserved by the Grantee on its Cable System for use by the City, unless otherwise provided in the franchise agreement. The Grantee shall provide these data channels without charge to the City. These data channel circuits shall be coordinated so as to provide error free data transmission within and between all fiber optic and coaxial cable segments.
- N. As a condition of the Franchise, Grantee shall provide television and I-Net service to all local governmental facilities, and all public school facilities without charge.
- O. No Franchisee or other multichannel video programming distributor shall enter into or enforce an exclusive contract for the provision of Cable Service or other multichannel video programming with any Person, or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.
- P. No Franchisee or other multichannel video programming distributor shall engage in acts that have the purpose or effect of limiting compensation for the provision of Cable Service or services similar to Cable Service in the City, except for such actions as are expressly authorized by law.

#### XIV. SERVICE AREA

The Franchisee of any Franchise hereunder is empowered to provide service to all potential subscribers now or in the future who are located within any portion of the City as provided by the Franchise Agreement.

#### XV. EMERGENCY ALERT OVERRIDE SYSTEM

The Grantee shall install and maintain an emergency alert system pursuant to the FCC's rules and the State of Florida's Emergency Alert System Plan. The emergency alert system shall be activated by the Grantee pursuant to the Florida Emergency Alert System Plan.

#### XVI. PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS

- A. The City shall have the right to establish an authority or commission to administer for the City all community media (access) activities. The City may establish, consistent with federal and state law, requirements in Franchises with respect to the designation and use of channel capacity on a Franchisee's Cable System for public, education and government access television program telecasts on the basic tier.
- B. The City shall have the right to direct the Grantee to collect fees from customers to support the annual operating and capital requirements of a community media (access) operation and related access facilities. The fee shall be collected and remitted to the City for deposit in a special revenue fund, designated for this purpose, each month.

#### XVII. CHANNELS, NEW DEVELOPMENTS AND ACCESS UTILIZATION

The City shall have the authority to order a public hearing from time to time on the provision of channel capacity for public bandwidth on the network. If after a hearing the City determines that:

- A. Provisions have been made to allow the Company a fair rate of return on its investments, the City shall order the Company to provide such additional capacity within a reasonable amount of time. If the City finds that additional public channel bandwidth is necessary, the Company shall within three (3) months from receipt of written notice from the City make additional channel bandwidth available.
- B. Interconnection required. A Grantee shall interconnect PEG access channels and I-Net with any or all other cable systems in contiguous adjacent areas, upon the directive of the City. Interconnection of cable systems may be accomplished by direct cable connection, microwave, satellite, or other

appropriate method.

- C. Interconnection procedure. Upon receiving the directive of the City to interconnect, a Franchisee shall immediately initiate negotiations with the other affected cable system or systems in order that all costs may be shared equally among cable systems for both construction and operation of the interconnection link.
- D. Relief. A Grantee may be granted reasonable extensions of time to interconnect or the City may rescind its order to interconnect upon the submission of a petition by the Grantee to the City. The City shall grant said request if it finds that a Grantee has negotiated in good faith and has failed to obtain an approval from the cable system or systems of the proposed interconnection or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.
- E. Cooperation required. A Grantee shall cooperate with any interconnection corporation, regional interconnection authority, city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, otherwise providing for the interconnection of cable systems within the boundaries of the City.

#### XIX. RATE REGULATION.

The City may, in its sole discretion, regulate cable television rates pursuant to the provisions of the Federal Cable Act then in effect and the rules, regulations, and orders of the Federal Communications Commission as they may be amended or superseded from time to time.

#### XX. RIGHTS OF INDIVIDUALS

- A. Grantees shall not deny service, or otherwise discriminate against subscribers or citizens, on the basis of race, color, religion, national origin, age, gender, disability, family status, marital status, veteran status, or sexual orientation.
- B. Grantees shall not exclude any high-cost area, any rural location or anyone based on that person's income.
- C. Grantees shall comply at all times with all other applicable federal, state and local laws relating to nondiscrimination with respect to the provision of goods and services.
- D. Grantees shall adhere to applicable equal employment opportunity requirements of federal and state law.

- E. In the course of providing their services, Grantees shall take reasonable steps to prevent the invasion of a subscriber's right of privacy as such right is defined by applicable federal and state law

## XXI. UNLAWFUL CONNECTIONS AND THEFT OF SERVICE

It shall be unlawful for any person, firm or corporation to attach or maintain an electronic, mechanical or other connection to any cable, wire, decoder, converter, descrambler, device or equipment of a Cable System or to remove, tamper with, modify or alter any cable, wire, decoder, converter, descrambler, device or equipment of a Cable System for the purpose of intercepting or receiving any programming or service transmitted by such Cable System for which such person, firm or corporation has not been authorized by the Cable System to receive.

## XXII. LIABILITY AND INDEMNIFICATION

- A. It shall be expressly understood and agreed by and between the City, employees and officials and any Grantee hereunder that the Grantee shall save the City, its employees and officials harmless and indemnify it and them from all loss sustained by the City, its employees and officials on account of any suit, judgment, execution, claim or demand whatsoever including but not limited to copyright infringement and all other damages arising out of the award of a franchise on the installation or operation or maintenance of the Cable System authorized herein, whether or not any act of omission complained of is authority, allowed or prohibited by this Ordinance and any franchise granted hereunder.
- B. By its acceptance of a franchise granted hereunder, the Grantee agrees to pay all expenses incurred by the City, employees and officials in defending itself with regard to all damages and penalties mentioned in paragraph (A) herein. These expenses shall include all reasonable out of pocket expenses, such as consultant or attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his staff or any other employees of the City.

The Grantee shall simultaneously file and maintain with the City Council copies of all petitions, applications and communications, relative to any franchise granted pursuant to this Ordinance, transmitted by the Grantee to, or received by the Grantee from all federal and state regulatory commissions or agencies having competent jurisdiction to regulate the operations of any broad band telecommunications network authorized hereunder.

Any person aggrieved by any non-legislative order or decision of the City Council shall have the right to petition the City Council for a rehearing and reconsideration of any order, regulation or decision. Such a petition must be filed within ten (10) days following the

rendition of such order, regulation or decision. The effect of the filing of a petition for rehearing shall operate to stay the order or decision sought to be reviewed until the petition is disposed of. If a petition for rehearing has been denied, such aggrieved party may have such order or decision reviewed by certiorari to the county circuit court or by other proceedings as may be prescribed by court rules, within thirty (30) days after the disposition of their petition for rehearing. The proceedings before the City Council shall be deemed quasi judicial in nature, and such review shall be limited to the record made before the City Council.

This Ordinance will govern all activities of Cable Operators within the territorial limits of the City to the extent that such activities may be regulated. Franchise agreement provisions will govern any activities of the parties not specifically regulated by this Ordinance.

This Ordinance may be amended at any time by a majority vote of the properly constituted City Council, provided that the City Council shall hold a public hearing for such purposes and afford all interested persons an opportunity to be heard with respect to such amendment. The City Manager shall submit notice of the public hearing and proposed amendments to each Franchisee in writing at least thirty (30) days prior to said public hearing. This reservation of authority includes the right to impose rate regulation at such future dates as it may be deemed necessary by the City Council if current federal laws allow such regulation.

## XXVII. MISCELLANEOUS PROVISIONS

- A. Compliance with Laws. A Grantee shall comply fully with local ordinances, state and federal laws, and with all rules issued by regulatory agencies now or hereafter in existence.
- B. Severability. If any Section, sentence, clause or phrase of the Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remainder of this Ordinance, and any portions in conflict are hereby repealed.
- C. Captions. The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of the Ordinance.
- D. No Recourse Against the City. The Grantee shall have no recourse whatsoever against the City or its officers, boards, commissioners, agents, or employees for any loss, cost, expense or damage arising out of any provision or requirement of this Ordinance or because of its enforcement.
- E. Non-Enforcement. The Grantee shall not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the City to enforce prompt compliance.

- F. This Ordinance and any disputes arising from its adoption, or from any franchise granted pursuant thereto shall be governed by the laws of the State of Florida and the City consistent with applicable FCC Rules and Regulations required to be observed in the enforcement of this Ordinance.
- G. Conflict. This Ordinance shall not be deemed conclusive as to the terms and conditions of any Franchise hereinafter issued hereunder. The final terms and conditions of such Franchise shall be determined by the Grantee's franchise agreement with the City.
- H. Franchise Required. It shall be unlawful for any person, firm or corporation to construct, operate or maintain a Cable System in the City as defined without a Franchise.

XXIII. EFFECTIVE DATE

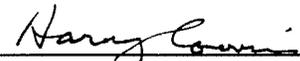
This Ordinance shall become effective immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 14th day of September, 1998.

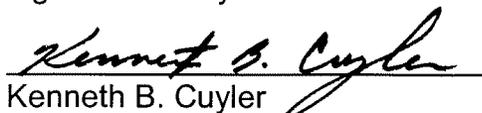
ATTEST:

CITY OF MARCO ISLAND, FLORIDA

  
 A. William Moss, City Manager/Clerk

BY:   
 Harry Cowin, Chairman

Approved as to form and legal sufficiency:

  
 Kenneth B. Cuyler  
 City Attorney