



City of Grand Island

Tuesday, May 23, 2006

Council Session

Item G4

#2006-156 - Approving Confidentiality Agreement with Charter Communications Regarding Cable Franchise Issues

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Dale M. Shotkoski, Interim City Attorney
Meeting: May 23, 2006
Subject: Cable Franchise Review
Item #'s: G-4
Presenter(s): Dale M. Shotkoski, Interim City Attorney

Background

The City of Grand Island has a cable franchise agreement with CC VI Operating, L.L.C., doing business as Charter Communications which franchise is currently being reviewed and subject to renewal.

Discussion

As part of the cable franchise review process, the city has joined in an interlocal agreement with the City of Kearney, who has the same cable services provider. As part of the interlocal agreement, both cities agreed to use the services of Brian Grogan, of Moss & Barnett, as a consultant to assist in the review process. One of the steps necessary for the review and renewal process is a desk audit. Charter Communications has requested a confidentiality agreement to be entered into between the city and itself to insure that any proprietary numbers or information concerning its business can remain confidential. The confidentiality agreement will protect its business interests from competitors and will not interfere with the need for the financial information that the city requires for the renewal process. It is the recommendation of Brian Grogan of Moss & Barnett, who has prepared the confidentiality agreement for the City of Grand Island that it be approved.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date

4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the confidentiality agreement between the City of Grand Island and CC VI Operating, L.L.C., doing business as Charter Communications be approved.

Sample Motion

Motion to approve the confidentiality agreement between the City of Grand Island and CC VI Operating, L.L.C., doing business as Charter Communications.

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2006 (the "Effective Date"), by and between the **City of Grand Island**, (the "City") and **CC VI Operating LLC, d/b/a Charter Communications** (the "Company" or "Charter").

RECITALS

WHEREAS, Charter currently holds a cable franchise from the City of Grand Island; and

WHEREAS, according to the terms and conditions of the franchise, Charter agrees that the City may review its books and records as is reasonably necessary to monitor compliance with the terms of the franchise. The City and Charter shall establish reasonable procedures to protect the confidentiality of information. Charter shall first be given seven (7) days notice of the audit request, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records and documents it wants to review; and

WHEREAS, the City desires to perform a franchise fee desk review of Charter pursuant to the franchise and applicable law (the "Desk Review"); and

WHEREAS, Charter will be providing certain information that it believes is confidential and proprietary to the City in connection with the Desk Review and Charter desires to protect the confidential and proprietary nature of such information.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definition of Confidential Information.** For purposes of this Agreement, the "Company's Confidential Information" shall mean any documents provided by Charter pursuant to this Agreement that contain information that Charter claims in good faith to be trade secrets, or highly privileged, proprietary or confidential information, that is not generally available to the public, and which Charter desires to protect against unrestricted disclosure or competitive use (hereinafter, "Company's Confidential Information"), Charter shall mark these documents as "**CONFIDENTIAL**". Confidential Information shall not include information disclosed to third parties by Charter without restriction including information previously disclosed by Charter to the City or its Representatives and information publicly available by other than unauthorized disclosures.

2. **Treatment of Confidential Information.** All of the Company's Confidential Information will be kept confidential by the City to the maximum extent permitted by law, and shall not be reproduced, disclosed, distributed or communicated,

directly or indirectly, in whole or in part, to any other Person (as defined below), except that City may disclose the Confidential Information or portions thereof to those persons or entities who, in its judgment, are reasonably required to review the Confidential Information in connection with the Desk Review, including, but not limited to (i) the City and their respective elected officials, directors, officers, attorneys, employees, representatives, agents, and consultants, who have acknowledged an obligation of confidentiality and agreed to be bound by the terms and conditions of this Agreement (the persons to whom such disclosure is permissible being collectively called "Representatives").

3. **Person**. The term "Person" as used in this Agreement will be interpreted broadly to include, without limitation, any corporation, company, partnership, individual or other entity of any kind whatsoever.

4. **Representatives Bound**. The City agrees that it will inform each of its Representatives who have, or will have, access to any or all of the Confidential Information, of the existence and content of this Agreement and will require all such Representatives to be bound by and observe the confidentiality requirements of this Agreement by such Representative's signature on a document substantially in the form attached as Exhibit A.

5. **Legally Required Disclosure**. If the City is compelled to disclose any of the Company's Confidential Information pursuant to applicable federal or state laws, rules, regulations, or court orders or subpoenas (each a "Requirement"), the City shall provide the Company with prompt notice of any such Requirement and shall cooperate with the Company, at the Company's sole expense, in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the Company's Confidential Information is preserved. If such an order or arrangement is not obtained, the City shall disclose only that portion of the Company's Confidential Information as is required pursuant to such Requirement. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as the Company's Confidential Information under the terms of this Agreement.

6. **Permitted Disclosure**. Notwithstanding any other provisions herein, Charter understands that the City or its agents must report the results of its findings, which may in part be based on review of Confidential Information, to the City. Consequently, the City or its agents may make reports to the City that will summarize its review of Confidential Information and which will be presented in aggregate fashion, without disclosing the specifics of such information.

7. **No Assignment**. The City may not assign any of its rights or delegate any of its obligations under this Agreement, except upon the prior written consent of the Company, which may be withheld in the Company's sole and absolute discretion.

8. **Non-Waiver**. This Agreement in no way waives any right any person or persons may have to contend that any documents or information are or are not

discoverable, confidential, proprietary, privileged or in the nature of a trade secret outside of the exchange of information pursuant to this Agreement. No failure or delay by either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof.

9. **Equitable Relief.** The City acknowledges that the Company may be irreparably injured by a breach of this Agreement by the City and that the Company, in addition to any other remedies available at law or in equity, shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by the City.

10. **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any provision be held to be illegal, invalid or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such provisions shall be automatically modified to reflect the maximum duration, scope or subject matter allowable by law.

11. **Notices.** Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, fax or overnight courier, or via U.S. Certified Mail, Return Receipt Requested, at the following addresses:

If to the Company: Charter Communications
Attn.: Mr. Arne (Tucker) Carlson
7570 208th Street North
Forest Lake, MN 55025

If to the City: City of Grand Island
100 East First Street
Grand Island, NE 68802

or at such or at such other addresses as a party may designate by notice to the other parties. Such notices or other communications shall be deemed received when actually delivered (where given via personal delivery, fax or overnight courier) or three (3) business days after mailing (where given via U.S. Certified Mail).

14. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

15. **Amendment.** This Agreement may be amended only in writing signed by both parties.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which, shall for all purposes be deemed an original and all of which, taken together, shall collectively constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first above written.

**CC VI Operating LLC
d/b/a Charter Communications**

City of Grand Island, Nebraska

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

JMS 5-15-06

Exhibit A
CONFIDENTIALITY AGREEMENT

In connection with the work that I am performing in connection with the franchise fee desk review of Charter Communications for the City of Grand Island, I am to be given access to certain material of Charter Communications provided under a Confidentiality Agreement. An executed copy of the Confidentiality Agreement has been delivered to me. I have read that Agreement and I agree to comply with and be bound by its terms.

Signed: _____

Name: _____

Title: _____

Date: _____, 2006

RESOLUTION 2006-156

WHEREAS, the City of Grand Island has a cable franchise agreement with CC VI Operating LLC, doing business as Charter Communications; and

WHEREAS, a cable franchise review is currently being performed in accordance with the franchise agreement which requires the City to have access to various documents of Charter Communications, including financial records; and

WHEREAS, in order to protect and secure the proprietary information provided, it is recommended that a confidentiality agreement be entered into between the parties; and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Confidentiality Agreement between the City and CC VI Operating LLC, doing business as Charter Communications for the performance of a cable franchise review is hereby approved; and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 23, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
May 17, 2006	☐ City Attorney