Minnetonka City Council

Regular Meeting, Monday, January 25, 2016

6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Schneider
4. Approval of Agenda
5. Approval of Minutes: January 4, 2016 regular meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
   A. Twelve-month time extension of site and building plan and conditional use permit approval for Bauer’s Custom Hitches at 13118 Excelsior Blvd
   B. Ordinance regarding dangerous and potentially dangerous animals
   C. Agreement with Intermediate School District #287 for police liaison services for 2016
   D. 2016 Pay Equity Implementation Report
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions
      Recommendation: Introduce the ordinance and refer to the planning commission (4 votes)
   B. Ordinance amending City Code Section 300.37 regarding lot width in the R-1A zoning district
      Recommendation: Introduce the ordinance and refer to the planning commission (4 votes)

13. Public Hearings:
   A. Items related to the granting of a cable communications franchise
      Recommendation: Accept any additional public comment and close the public hearing (majority vote)
   B. Consider Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink
      Recommendation: Hold the public hearing, adopt the resolution and introduce the ordinance (majority vote)

14. Other Business:
   A. Discussion regarding use of city water towers
      Recommendation: For discussion only
   B. Resolution supporting Metro Cities Policy 4-B – Regional Governance Structure
      Recommendation: Adopt the resolution (4 votes)

15. Appointments and Reappointments:
   A. Appointments and reappointments to Minnetonka boards and commissions
      Recommendation: Approve the recommended appointments and reappointments (majority vote)

16. Adjournment
1. **Call to Order**

Schneider called the meeting to order at 6:30

2. **Pledge of Allegiance**

All joined in the Pledge of Allegiance.

City Clerk David Maeda administered the oath of office to recently elected Council Members Bob Ellingson, Tony Wagner, Brad Wiersum and Tim Bergstedt.

3. **Roll Call**

Council Members Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt and Terry Schneider were present.

4. **Approval of Agenda**

Wiersum moved, Bergstedt seconded a motion to accept the agenda, as presented. All voted “yes.” Motion carried.

5. **Approval of Minutes: December 21, 2015**

Wagner moved, Acomb seconded a motion to approve the minutes of the December 21, 2015 regular council meeting, as presented. All voted “yes.” Motion carried.

6. **Special Matters:**

A. **Presentation regarding suburb to suburb service along Highway 169 from Shakopee to Maple Grove**

Jane Kansier, from the Minnesota Valley Transit Authority presented information about its new suburb to suburb bus service.

Allendorf noted one of the city’s largest employers is United Health Group. There will be a stop at United Health Group.

Schneider asked if there was a timeframe for reporting back to the legislature about the route. Kansier said there was not a specific
timeframe but the Minnesota Valley Transit Authority regularly communicates with local legislators.

Schneider noted Minnetonka was an opt-out/opt-in city that has a unique relationship with Metro Transit. For many years the city has tried to encourage cross-suburban and circulation routes that would service employers instead of just providing routes downtown. He said this route will be a huge step in that direction and the city will work with the Minnesota Valley Transit Authority to help ensure the route is successful. As the light rail gets built, he thought there was a natural inter-locking between the bus service and the capacity of the light rail. At some point he thought part of the city’s contribution would go toward circulator buses rather than for the bus routes that go downtown. Kansier said once the light rail was built the Minnesota Valley Transit Authority would be adjusting its service around that. She said there was a lot of opportunity out there but it was all funding dependent.

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming meetings and events.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution designating an Acting Mayor and Alternate Acting Mayor for 2016

Wiersum moved, Wagner seconded a motion to adopt resolution 2016-001 designating Allendorf, as Acting Mayor, and Acomb as Alternate Acting Mayor for 2016. All voted “yes.” Motion carried.

B. Ordinance regarding vacation procedures

Allendorf moved, Bergstedt seconded a motion to adopt ordinance 2016-01 regarding vacation procedures. All voted “yes.” Motion carried.

C. Designation of the city’s official newspaper for 2016

Allendorf moved, Bergstedt seconded a motion to designate Lakeshore Weekly News as the city’s official newspaper for 2016. All voted “yes.” Motion carried.
11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:
   A. Ordinance regarding dangerous and potentially dangerous animals

      Barone gave the staff report.

      Bergstedt noted a couple of the recent dangerous dog situations occurred in his ward. Unfortunately, the situations are going to happen and they are traumatic for all parties involved.

      Bergstedt moved, Allendorf seconded a motion to introduce the ordinance regarding dangerous and potentially dangerous animals. All voted “yes.” Motion carried.

13. Public Hearings: None

14. Other Business:
   A. Items concerning a hotel and day care on the property at 6030 Clearwater Drive:
      
      1) Major amendment to the existing Minnetonka Corporate Center master development plan;
      2) Preliminary and final plats;
      3) Conditional use permit;
      4) Site and building plan review; and
      5) Sign plan amendment.

      Acting City Planner Susan Thomas gave the staff report.

      Allendorf said the building would be visible from I494 as well as the corporate center. He asked if it was the typical home type extended stay building or if the design could be changed to be more interesting.

      Peter Deanovic from Buhl Investors said the building had to remain within the Hilton brand requirements. The proposed design was consistent with the other 120 hotels being rolled out across the country. He said it would be extraordinarily difficult to get any changes either to the interior or exterior designs.

      Schneider said it looked like there was an opportunity to have different coloring on the one side. Jesse Messner, the project architect, said the
rendition Schneider was referencing was to revise the wall to mimic the other sides to carry the façade down to grade. He said he would work with staff to get that incorporated. Schneider said he would like to see white rather than grey used because it would provide something a little more interesting to that side. Allendorf agreed.

Wagner said it would be good if staff would work with the applicant on the exterior look. Looking at pictures of other locations he said there were some variations on the coloring.

Wagner moved, Wiersum seconded a motion to adopt:

- Ordinance 2016-01 approving a major amendment to the existing Minnetonka Corporate Center master development plan;
- Resolution 2016-002 approving preliminary and final plats;
- Resolution 2016-003 approving a conditional use permit for the hotel;
- Resolution 2016-004 approving final site plan for the overall site and final building plans for the proposed hotel; and
- Resolution 2016-005 approving an amendment to the Minnetonka Corporate Center sign plan.

All voted “yes.” Motion carried.

Schneider asked the time frame for the project. Deanovic indicated the plan was to break ground sometime in the spring.

B. Resolution for the 2016 Street Rehabilitation project, Oakland Road area

City Engineer Will Manchester gave the staff report.

Wagner noted Manchester had reported that Oakland Road had limited service connections. He asked how the number compared to other street projects like the recent Indian Road project. For that project would trench open cut have been the only option given the number of service connections? Manchester confirmed that was correct. He estimated there were probably around 15-20 service connections that would have to be dealt with for the Oakland Road project. He estimated for the Indian Road project the number was likely three times that. Wagner said the city had done linings for the sewer system. He asked if this would be the first time it would be used for a water main. Manchester said it was. Wagner asked what the lifespan of the lining was. Manchester said the lifespan would be similar to a PVC pipe if not longer. Wagner asked if a right turn lane was needed for the intersection of Oakland Road/McGinty Road/Essex Road. Manchester said that would be looked during the final design phase.
Ideally enough room would be left for a right turn lane so traffic does not back up. He didn’t think the volume of traffic would require it.

Allendorf said he thought that intersection currently works well. He asked if there was a safety need to take out the current alignment. Manchester said it would be a safety improvement. Reconfiguring the intersection would force drivers to stop. He didn’t think it was 100 percent necessary to reconfigure but he would recommend it as part of the project due to the safety improvement.

Schneider said the intersection was a little awkward for drivers going south because it was easy to forget the traffic from the east could right along. He questioned if there was an issue for drivers going east on Oakland Road turning north, causing traffic to back up who want to proceed south. He suggested studying a right turn lane with a stop sign to avoid the situation of cars turning left causing traffic to back up.

Wiersum said he could see the perception of making a safety improvement to make sense but he questioned if there was an actual safety issue. Were there accidents occurring? He said solving problems that are perceived but not real does not lead to an improvement.

Randy Niewenhuis said he lived off Tudor Road and travels the road south every day. He said he could see a potential conflict but he has not seen any problems.

Wagner moved, Wiersum seconded a motion to adopt resolution 2016-006 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2016 Street Reconstruction, Oakland Road area Project No. 16402. All voted “yes.” Motion carried.

C. Concept Plan for redevelopment of the TCF Bank site at 1801 Plymouth Road

Thomas gave the staff report.

Mike Kraft with Mike Kraft Architects, 1442 98th Lane, Coon Rapids, said after the initial concept plan review, he went back to TCF and gave careful consideration to all the council comments. He acknowledged that some people wanted a larger building on the property but the property was owned by a corporation that uses small buildings. In order to create something large enough to accommodate the parking, it would require bringing together three competing banks. This would be extremely challenging. At the initial review a question was asked how committed
TCF was to the look of the building. He said TCF was pretty committed to the look. It was developed as something that accommodates their new brand and looks to appeal to the next generation of bank customers. After hearing the council comments work was done so the proposed plan hopefully would not only be approved, but would also be well received and accepted. He noted the amount of white and red on the building was dramatically reduced. The revised plan also creates a stronger presence toward Cartway Lane.

Wiersum asked if the look of this building was the one TCF planned to use in other parts of the country or if the plan was to try it out in the area TCF was headquartered before using it in other parts of the country. Was this the template to be used elsewhere or was it something that would be tried and then tweaked before being used in other parts of the country? Kraft said this was the look that would be implemented nationally.

Wagner said staff shared pictures of other projects in the Chicago area. Those buildings had a different look. He said he feared that like in the restaurant industry where companies try out different concepts in certain areas that get tweaked before going national, this was what TCF was doing with this building. Kraft said that was not the intent.

Allendorf asked Kraft to go over the specific changes that were made since the initial concept plan review. Kraft said the changes primarily included the design of the canopy as it comes up and across the building. Instead of being a white metal canopy with a lot of red on it, it now would be three different pieces including the wall facing Cartway Lane. The white was eliminated in favor of a smaller scale surface treatment. The entry tower’s use of white has also been toned down. Another change was from the columns at the end of the canopy to a wall at the end. Allendorf said what he saw was a change in materials but the building was the same height. The tower too had different materials but was of a similar height. The main bank building was less dense. This was inconsistent with the direction the council provided during the initial review, which was for more mass and more density.

Schneider said he previewed the plan before it was included in the council packet. He agreed there were some improvements but it probably didn’t address the concerns the council expressed. The building looked less like a Kentucky Fried Chicken and more like a colorful bank building. Since this was one of the premiere entrances to Ridgedale, and with all the investments being made by Nordstrom and the other mall tenants to make things look first class, it would be nice if this building complemented and matched that versus making a statement for TCF’s brand. He said he understood it would be difficult for the city to prescribe the height of the
building but he thought coming up with a building that had a little more
class to it and looked more compatible was fairly important. He thought
the Chicago area design came fairly close. He said it looked like a
millennial coffee shop that included a bank. He didn’t think the revised
plan was sufficient to have the council think that although it wasn’t what it
wanted, the building still was something the council could be proud of.

Wiersum said there was a unique set of circumstances. He said very few,
if any, of the council members were TCF’s target audience for the new
logo and look. A younger consumer was being targeted with a banking
product that had dramatically changed over time. The issue was given the
location, the council was looking for more substance, a more solid bank
structure that was similar yet different to what currently exists. There was
a density issue and what needs to be in a bank today versus what needed
to be in a bank in the past. He thought the revised concept was improved
but was not meaningfully changed. He said when no variances were
needed the council’s tools were limited. What really needed to happen
was working collaboratively to figure out if the city could get something of
a greater substance for the location that still met the need of TCF. He saw
a really inconsistency between the substance issue and what TCF needs.

Allendorf said much had been said about the TCF building but a
companion problem was the Solomon building in terms of mass and
density and having something substantial on the property. When the
property is broken up into two pieces, it is inconsistent with the city’s vision
for the piece in total. He recognized what went on the property couldn’t be
as substantial as the six story Highland Bank, but he questioned if the two
building concept could be reconsidered.

Bergstedt said he appreciated the revised concept plan. It was marginally
better. He said a formal application could be submitted but as others had
said, he thought some of the existing TCF buildings in the Chicago area
would fit so much better on this site. One of the cornerstones of the
Highland Bank approval was the vision for density. To take one of the
premier quadrants in the city and put two small buildings, no matter what
they looked like, just didn’t feel right. He said TCF could either abandon
the prototype and look at something else to satisfy the council or submit
the prototype in an application to see where things end up.

Wagner said the visioning process for the area included a lot of council
discussion about the goal of wanting to stack the density closer to the mall
and then tier it down going further away. He said there were some
residents who probably would be OK with a one story building on the
property because there would be less traffic. There was going to be traffic
in the area regardless based on the vision. If the council was committed to
the vision then maybe a different approach was needed of creating an overlay district. The owners of the neighboring properties might want to do the same thing as TCF. This might be something the council has to wrestle with given the reality of the size of the properties.

Schneider said the council anticipated it was a 10-20 year vision as opposed to a two year vision. He agreed with not wanting to see tweaks to the concept plan but rather either having the plan submitted formally or having major changes made.

15. Appointments and Reappointments: None

16. Adjournment

Bergstedt moved, Wiersum seconded a motion to adjourn the meeting at 7:55 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #10A  
Meeting of January 25, 2016

Description  Twelve-month time extension of site and building plan and conditional use permit approval for Bauer’s Custom Hitches at 13118 Excelsior Boulevard

Recommendation Approve the extension

Background

In 2014, the city considered a proposal by Margaret and Michael Bauer to make improvements to the Bauer's Custom Hitches building and site. The proposed improvements included: (1) demolition of a portion of the convenience store; (2) construction of a building addition and a new gas canopy; and (3) construction/use of a drive-up window. The city council approved the proposal, adopting resolutions 2014-105 and 2014-106, which approved final site and building plans and a conditional use permit (CUP) respectively. (See pages A1–A21)

As a condition of the site and building plan resolution, construction was to begin by December 31, 2015, unless a time extension was granted.

As a standard of city code, a CUP expires if the normal operation of the approved use is discontinued for 12 or more months.

To date, the new gas canopy has been installed and new branding of building and associated signs has occurred. The building addition, and therefore construction and use of the drive-up window, has not occurred. As such, both the site and building plan approval and associated CUP technically expired on December 31, 2015.

Extension Request

On December 15, 2015 the city received an extension request from Ms. and Mr. Bauer. (See page A22.)

Staff Analysis

In evaluating extension requests, the city has generally considered: (1) whether there have been changes to city code or policy that would affect the previous approvals; and (2) whether such extension would adversely affect the interests of neighboring property owners. Staff finds that the approval of this extension request is reasonable as:

(1) There have been no changes to city code that would affect the previous approvals;
(2) The requested extension would not adversely affect the interests of neighboring property owners; and
(3) The extension request was received prior to the expiration of the plan approvals. However, staff was not able to place the extension on a council agenda prior to December 31, 2015.

**Staff Recommendation**

Approve the twelve-month time extension.

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director

Originated by:
- Susan Thomas, AICP, Principal Planner
Location Map
Project: Bauer's Custom Hitches
Applicants: Margaret & Michael Bauer
Address: 13118 Excelsior Blvd
(89165.14a)
Resolution No. 2014-105

Resolution approving final site and building plans with setback variance for a building addition and gas canopy at 13118 Excelsior Boulevard

Be it resolved by the Planning Commission of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Margaret and Michael Bauer and Bauer Capital Corporation have requested approval of final site and building plans for a building addition and new gas canopy. (Project No. 86165.14a)

1.02 The property is located at 13118 Excelsior Boulevard. It is legally described on Exhibit A and Exhibit B.

1.03 The applicants' proposal requires final site and building plan review for a building addition and new gas canopy.

1.04 The gas canopy requires a setback variance from 20 feet to 10 feet from the property line along Excelsior Boulevard.

1.05 On August 28, 2014, the Planning Commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution.

Section 2. General Standards.

2.01 City Code §300.27, Subd. 5, states that in evaluating a site and building plan, the city will consider its compliance with the following:
1. Consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan;

2. Consistency with the ordinance;

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:
   a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;
   b) the amount and location of open space and landscaping;
   c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
   d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight
buffers, preservation of views, light and air and those aspects of
design not adequately covered by other regulations which may have
substantial effects on neighboring land uses.

2.02 By City Code §300.07 Subd. 1, a variance may be granted from the
requirements of the zoning ordinance when: (1) the variance is in harmony
with the general purposes and intent of this ordinance; (2) when the
variance is consistent with the comprehensive plan; and (3) when the
applicant establishes that there are practical difficulties in complying with
the ordinance. Practical difficulties means: (1) The proposed use is
reasonable; (2) the need for a variance is caused by circumstances unique
to the property, not created by the property owner, and not solely based on
economic considerations; and (3) the proposed use would not alter the
essential character of the surrounding area.

Section 3. Findings.

3.01 The proposal would meet site and building plan standards outlined in the
City Code §300.27, Subd. 5.

3.02 The proposal meets the variance standard outlined in City Code §300.07
Subd. 1(a):

1. PURPOSE AND INTENT OF THE ZONING ORDINANCE: The
proposed setback variance is consistent with the purpose and intent of
the zoning ordinance. The intent of the setback requirement is to
provide adequate space and separation between structures and and
property lines. In this case, there is 50 to 60 feet of right-of-way
between the paved surface of Excelsior Boulevard and the property
line. The right-of-way distance is larger than typical, and provides
significant separation between the canopy and the public street.

2. CONSISTENT WITH COMPREHENSIVE PLAN: The proposed gas
canopy is consistent the the commercial land use designation of the
property in the city’s comprehensive plan, and of the existing
conditional use permit for the automobile service use.

3. PRACTICAL DIFFICULTIES: There are practical difficulties in
complying with the ordinance:

a) REASONABLENESS: The proposed gas canopy would be
set back further from the property line than the existing gas
canopy on the property, and the proposed canopy is located in a better location for site circulation.

b) UNIQUE CIRCUMSTANCE: The setback of the existing gas canopy and the significant distance between the paved edge of Excelsior Boulevard and the property line are circumstances unique to this property.

c) CHARACTER OF LOCATILITY: The proposed gas canopy would not adversely impact the character of the locality. The proposed gas canopy would be set back further from the property line than the existing gas canopy.


4.01 The above-described site and building plans and setback variance are approved, subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

   • Site plan dated July 17, 2014
   • Grading, drainage, and erosion control plan dated July 17, 2014

2. Prior to issuance of a building permit:

   a) Submit the following for review and approval by city staff:

      1) Final site, grading, drainage, utility, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

         a. Final site plan must:

             • The parking stalls constructed on the back of the building must be angled, with a minimum drive aisle width of 24 feet. The new drive aisle and parking stalls must also be set back a minimum of 20 feet from the property line along Baker Road.
- The gas canopy must be reduced in size to a maximum of 40 feet by 48 feet. The canopy must be moved to the west, closer to Baker Road, and must maintain a minimum setback of 10 feet from property line along Excelsior Boulevard, and a minimum drive aisle width of 22 feet on the west side of the canopy. The parking lot edge on the west side cannot extend any closer to the property line along Baker Road than the existing drive aisle.

- The parking stalls on the southwest corner of the site must not be striped unless there is a demonstrated parking need, as determined by the city. If the city requires striping of the parking stalls, a minimum 12-foot drive aisle must be maintained around the gas canopy.

- The parking lot and drive aisles must have curb and gutter along the entire perimeter.

b. Final utility plan:

- All water service leads that are not being used should be removed back to the point of origin. As depicted and documented, the water service comes from the main, crosses the road, and then branches out into two services. The service removal should be made to the main, or to the service branch if the other branch is to continue providing active service.

- Confirm if a new water service needs to be constructed in order to adequately provide water service to the building as well as to provide the fire protection that is proposed. The existing service is 1-inch. If the service is upsized, the work needs to be coordinated with the County.

2) Final landscaping and tree mitigation plan. The plan
must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and topography.

3) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct utility improvements, comply with tree mitigation requirements, and to restore the site. One itemized letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying that the utilities have been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

4) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.

5) A copy of the approved MPCA NPDES permit.

6) Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

7) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other
conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) This resolution must be recorded at Hennepin County.

c) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures indentified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

3. Permits may be required from other outside agencies including, Hennepin County, the Nine Mile Creek Watershed District, and the MPCA. It is the applicant’s and property owner’s responsibility to obtain any necessary permits.

4. The property owner is responsible for replacing any required landscaping that dies.

5. The signs as shown on the plans are not approved as part of the site and building plan review application. Separate sign permits are required that comply with the zoning regulations.

6. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

7. Construction must begin by December 31, 2015, unless the planning commission grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on September 15, 2014.

Tony Wagner, Acting Mayor
Attest:  

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption: Allendorf  
Seconded by: Acomb  
Voted in favor of: Bergstedt, Wagner, Ellingson, Allendorf, Acomb, Wiersum  
Voted against: 
Abstained: Schneider  
Absent: 

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on September 15, 2014.

David E. Maeda, City Clerk
Exhibit A

That part of Tract B, Registered Land Survey No. 937, lying Southwesterly of a line and its Northwesterly extension described as commencing at the Northwest corner of said Tract B; thence South 88 degrees 25 minutes 00 seconds East, assumed bearing along the North line of said Tract B a distance of 90.75 feet to an angle point in said North line; thence South 24 degrees 00 minutes 29 seconds East a distance of 112.47 feet; thence South 48 degrees 12 minutes 23 seconds East a distance of 130.16 feet to the Southeasterly line of said Tract B and there terminating. Except that part thereof lying Southerly of a line drawn from a point in the Westerly line of said Tract B, distant 281.86 feet North from the most Southerly corner thereof to a point in the Southeasterly line of said Tract B, distance 279.10 feet Northeasterly from said most Southerly corner.

Certificate Number: 1111474.5
EXHIBIT B

That part of Tract B lying Southerly of a line drawn from a point in the Westerly line of said Tract B distant 261.86 feet North from the most Southerly corner thereof to a point in the Southeasterly line of said Tract B distant 275.1 feet Northeasterly from said most Southerly corner of said Tract B, Registered Land Survey No. 937 Hennepin County, Minnesota

Certificate Number: 1111475
Resolution No. 2014-106

Resolution approving a conditional use permit for a drive-up window at
13118 Excelsior Boulevard

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Margaret and Michael Bauer and Bauer Capital Corporation have requested a conditional use permit for a drive-up window.

1.02 The property is located at 13118 Excelsior Boulevard. It is legally described on Exhibit A and Exhibit B.

1.03 On August 28, 2014, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permit.

Section 2. General Standards.

2.01 City Code §300.21 Subd. 2 lists the following general standards that must be met for granting a conditional use permit:

1. The use is consistent with the intent of the ordinance;

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city’s water resources management plan;

5. The use is in compliance with the performance standards specified in §300.28 of the ordinance; and

6. The use does not have an undue adverse impact on the public health, safety or welfare.

Section 3. Specific Standards.

3.01 City Code §300.12 Subd. 4(d) lists the following specific standards that must be met for granting a conditional use permit for uses having a drive-up window.

   1. Drive-up windows and stacking areas shall not be located adjacent to any residential parcel;

   2. Stacking areas shall provide for a minimum of six cars per aisle; and

   3. Public address system shall not be audible from any residential parcel.

Section 4. Findings.

4.01 The proposal meets the conditional use permit standards.

   1. The drive-up window would be adjacent to Baker Road and the stacking would wrap around the back of the building. The window would not be adjacent to a residential parcel.

   2. Stacking would be provided for six stalls in the drive-up lane.

   3. The applicant is not proposing to use a public address system. This is included as a condition of approval for any future changes.

Section 5. Council Action.

5.01 The above-described conditional use permit is approved, subject to the following conditions:
1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the site plan dated July 17, 2014, and as amended by the city council Resolution No. 2014-105 approving final site and building plans.

2. Prior to issuance of a building permit, this resolution must be recorded with Hennepin County.

3. Public address system shall not be audible from any residential parcel.

4. The city council may reasonably add or revise conditions to address any future unforeseen problems.

5. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on September 15, 2014.

Tony Wagner, Acting Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption: Allendorf
Seconded by: Acomb
Voted in favor of: Bergstedt, Wagner, Ellingson, Allendorf, Acomb, Wiersum
Voted against:
Abstained: Schneider
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on September 15, 2014.

David E. Maeda, City Clerk
Exhibit A

That part of Tract B, Registered Land Survey No. 937, lying Southwesterly of a line and its Northwesterly extension described as commencing at the Northwest corner of said Tract B; thence South 88 degrees 25 minutes 00 seconds East, assumed bearing along the North line of said Tract B a distance of 90.75 feet to an angle point in said North line; thence South 24 degrees 00 minutes 28 seconds East a distance of 112.47 feet; thence South 48 degrees 12 minutes 23 seconds East a distance of 130.16 feet to the Southeasterly line of said Tract B and there terminating. Except that part thereof lying Southerly of a line drawn from a point in the Westerly line of said Tract B, distant 261.06 feet North from the most Southerly corner thereof to a point in the Southeasterly line of said Tract B, distance 275.10 feet Northeasterly from said most Southerly corner.

Certificate Number: 1111474.5
EXHIBIT B

That part of Tract B lying Southerly of a line drawn from a point in the Westerly line of said Tract B distant 261.86 feet North from the most Southerly corner thereof to a point in the Southeasterly line of said Tract B distant 275.1 feet Northeasterly from said most Southerly corner of said Tract B, Registered Land Survey No. 837 Hennepin County, Minnesota

Certificate Number: 1111475
Hi Susan,

I believe Michael has already spoken to you last Friday 12/11, regarding the need for an extension for our Resolutions No. 2014-105 & 2014-106 into next year.

We would formally like to request that extension. Phase I of our project has had multiple delays in timing and software issues and now winter precludes us from beginning our building construction. We hope to begin Phase II in Summer 2016.

Please confirm receipt.

Regards,

Margaret & Michael Bauer

Minnetonka Minnoco & U-Haul

Bauer’s Custom Hitches

13118 Excelsior Blvd

Minnetonka, MN 55343
City Council Agenda Item #10B  
Meeting of January 25, 2016

**Brief Description:** Ordinance regarding dangerous and potentially dangerous animals

**Recommended Action:** Adopt the ordinance

**Background**

State law establishes basic requirements regarding “dangerous dogs” and “potentially dangerous dogs.” Local governments may adopt additional requirements, provided that they do not conflict with state law. The city has adopted the provisions of state law by reference but has adopted few additional requirements, one of which has been to expand the scope of the regulations to include all animals rather than only dogs.

City staff recommends three additional changes to the city’s ordinance on dangerous and potentially dangerous animals. Two amendments restate what state law already provides; however, staff believes that including the provisions in the city ordinance will improve public understanding of procedures and legal exemptions: (1) amending the code to provide that, when an animal owner requests a hearing on a staff determination that an animal is dangerous or potentially dangerous, the matter will be referred to an independent hearing officer, who will make the city’s final decision; and (2) amending the code to restate an exemption required by state law when the person threatened or injured by an animal was committing a trespass, crime, or other specified acts.

The third proposed amendment sets out particular requirements for the enclosure that must be used to secure a dangerous dog. The ordinance’s specific requirements add clarity to the general statutory requirements for a “proper enclosure.” It should be noted that the specific enclosure requirements only apply to dangerous dogs; the general statutory language continues to apply to other animal species.

The ordinance was introduced on January 4, 2016, and there were no questions.

**Recommendation**

Adopt the ordinance

Submitted through:
  Geralyn Barone, City Manager
  Jeff Sebenaler, Chief of Police

Originated by:
  Corrine Heine, City Attorney
Ordinance No. 2016-__

An Ordinance amending section 925.105 of the Minnetonka City Code, relating to dangerous and potentially dangerous animals; clarifying procedures; adding requirements for proper enclosures of dangerous dogs.

The City of Minnetonka Ordains:

Section 1. Section 925.105 of the Minnetonka City Code, relating to dangerous and potentially dangerous animals, is amended to read as follows:

925.105. Dangerous and Potentially Dangerous Animals.

1. Dangerous animals. The provisions of Minn. Stat. §§ 347.50 through 347.56 are adopted by reference and govern dangerous animals in the city of Minnetonka, except that the word "animal" is substituted for the word "dog" wherever it appears in those statutes. Authorized city personnel will determine whether an animal is dangerous or potentially dangerous. Requests for a hearing regarding a determination will be referred to an independent hearing officer. An aggrieved party may obtain judicial review of the hearing officer's decision by a court of competent decision.

2. Dangerous animals.

   a. An owner of a dangerous animal must keep the animal in a proper enclosure, as defined by statute, while on the owner's property. The enclosure for a dangerous dog must meet the following specifications:

      (1) The sidewall height must be at least five feet;
      (2) The support posts must be buried at least 18 inches into the ground;
      (3) The enclosure must have secure sides and a secure top that is attached to the sides, constructed of 11 gauge or heavier wire with openings that do not exceed two inches;
      (4) The enclosure must have a secure bottom or floor attached to the sides of the enclosure, or the sides must be embedded in the ground no less than 18 inches.
      (5) The enclosure must be locked with a key or combination lock whenever occupied by the dangerous dog.
      (6) The enclosure must comply with all zoning and building regulations of the city.

The stricken language is deleted; the underlined language is inserted.
b. An animal may not be declared dangerous if the threat, injury, or damage was sustained by a person:

(1) who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the animal;
(2) who was provoking, tormenting, abusing, or assaulting the animal or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the animal; or
(3) who was committing or attempting to commit a crime.

23. Potentially dangerous animals.

a. A person who owns, keeps, possesses, or acts as a custodian for a potentially dangerous animal must do the following:

(1) maintain the animal under restraint by use of a leash not exceeding six feet in length at all times when the animal is off the owner's premises;

(2) when the animal is on the owner's premises, confine the animal within a fenced enclosure sufficient to keep the animal from leaving the enclosure, or maintain the animal on a leash or chain not exceeding six feet in length;

(3) have a microchip identification implanted in the animal as required by Minn. Stat. §347.515; and

(4) provide notification of the death, change in ownership, or transfer of the animal in accordance with the requirements in Minn. Stat. §347.52(c) and (f).

b. The notice and hearing requirements provided in Minn. Stat. §347.541 apply to the determination by authorized city personnel that an animal is potentially dangerous.

34. Stopping an attack. If authorized city personnel are witness to an attack by an animal upon a person or another animal, the personnel may take whatever means the personnel deems appropriate to bring the attack to an end and prevent further injury to the victim.
Chapter XIII of the city code.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on __________, 2016.

__________________________
Terry Schneider, Mayor

Attest:

__________________________
David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction: January 4, 2016
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:
I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

David E. Maeda, City Clerk
City Council Agenda Item #10C  
Meeting of January 25, 2016

**Brief Description**
Agreement with Intermediate School District #287 for police liaison services for 2016

**Recommended Action:** Approve agreement

**Background:**
Since September 2005, Intermediate School District #287 has been operating the Explore program at 11140 Bren Road, Minnetonka, MN. In 2012 the name of the program was changed to West High School. The school supports students from twelve different school districts receiving emotional behavior disorder (EBD) services.

In 2005, the city council entered into a service agreement to provide for police liaison services. At that time, approximately 60 students were enrolled at the school. Currently there are 140 students enrolled at the school.

The school district, which takes advantage of the Safe Schools Levy authorized by MN Statute 126C.44, has agreed to pay for ten months of salary and fringe benefits for two police officers. The school district has also agreed to annually adjust the base cost of the officers’ salaries by the amount equal to the yearly percentage increase awarded to police officers pursuant to their union contact. The city is responsible for the officer’s wages during the non-school year months. All costs and revenues required by and under the contract are included within the city’s adopted 2016 general fund budget.

**Recommendation**

Staff recommends City Council approval of the agreement and authorization for the mayor and city manager to enter into an agreement with Intermediate School District #287 for police liaison services.

Submitted through:  
Geralyn Barone, City Manager

Originated by:  
Jeffrey J. Sebenaler, Chief of Police
THIS AGREEMENT is made between the CITY OF MINNETONKA ("Minnetonka"), 14600 Minnetonka Blvd., Minnetonka, MN 55345, and INTERMEDIATE DISTRICT NO. 287 ("School District"), 1820 Xenium Lane North, Plymouth, MN 55441.

The City and the School District believe that the Liaison Officer Program ("the Program"), by which the City provides specialized security services within the school, is needed to improve understanding and promote mutual respect between police, school, staff, counselors, parents and students. This agreement is made under authority of Minn. Stat. Sec. 471.59.

Therefore, in return for the mutual agreement set forth below, the parties agree as follows:

1. **TERM**

   The term of this agreement will commence on January 1, 2016 and will terminate at the end of the day on December 31, 2016.

2. **SERVICES**

   Minnetonka will provide the services of two police officers and related support services and supplies to provide the Intermediate School District 287 with a Liaison Officer Program for the district’s West Education Center facility located at 11140 Bren Road West, Minnetonka, MN. The officers will have primary responsibility in serving as resource people to faculty, classroom members and school administrators in the prevention and diversion of juvenile delinquency behavior. Minnetonka agrees to provide vehicle, fuel, maintenance and other equipment as deemed necessary by the Chief of Police for this program. The School District agrees to provide adequate office space, copier, telephone and other reasonable office support services.

3. **TRAINING**

   As deemed appropriate by the Chief of Police, Minnetonka will provide the Liaison Officers with training according to the needs of the Program described in this agreement. The School District may also provide training, as conditions require. Minnetonka agrees to provide this training without charge unless otherwise mutually agreed upon.
4. **PAYMENT**

The cost of services provided by the City set forth in Section 2 are; $172,584.00. The City shall provide billing to the School District for services and materials provided by this agreement on May 1 and September 1 of 2016.

5. **SUPERVISION**

Minnetonka agrees to provide supervision for the Liaison Officers, who will remain employees of the City of Minnetonka. The Liaison Officers may respond to requests for assistance from building principals and assistant principals.

6. **RECORDS**

Minnetonka agrees to maintain such records as are necessary to document that the services are provided as represented by Minnetonka. The Liaison Officers will only have access to student records to the extent permitted by the Family Education Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act. Minnetonka agrees to ensure that its actions, and the actions of its employees, comply with the Minnesota Government Data Practices Act. The school liaison officers may, in the course of the liaison officers’ law enforcement duties, have occasion to create law enforcement records relating to students at the District’s facility. Such records shall be maintained by the liaison officers and/or Minnetonka, in a separate location from student records.

7. **SCHEDULING**

The duty hours of the Liaison Officers are flexible and will be primarily coordinated with school activities. The officers will make daily contact with the police department for the purpose of keeping abreast of incident reports and other Minnetonka-wide activity. During non-school periods, the officers’ duty hours and duties will be determined by Minnetonka.

8. **DISCRIMINATION**

Minnetonka agrees not to discriminate in providing services under this agreement on the basis of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

9. **INSURANCE**

Minnetonka agrees that it will, at all times during the terms of this agreement, have and keep in force, worker’s compensation benefits and other insurance coverage for the Liaison Officers as provided to other Minnetonka police officer employees.
10. **ENTIRE AGREEMENT**

The entire agreement of the parties is contained in this document. The agreement supersedes the Prior Agreement and all oral agreements and negotiations between parties relating to the Liaison Officer Program and the subject matter of this agreement. Any alterations, amendments, deletions, or waivers of any provisions of this agreement are valid only when placed in writing and signed by the City and School District representatives.

11. **TERMINATION**

This agreement may be terminated with or without cause, by any party. To be effective, the notice of termination must be given in writing at least 30 days in advance.

12. **INDEPENDENT CONTRACTOR**

Nothing in this agreement is intended, nor may be construed to create the relationship of partners or employer/employee relationships between Minnetonka and the School District.

13. **INDEMNIFICATION**

The city and School District agree that each is responsible for its own acts and the result thereof to the extent authorized by law and is not responsible for the acts of the other party and results thereof. Each party’s liability is governed by the provisions established in Minnesota Statute, Chapter 466.

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**CITY OF MINNETONKA**

By: ____________________________  By: ____________________________
   Mayor                           Board President

Dated: __________________________  Dated: __________________________

**INDEPENDENT SCHOOL DISTRICT NO. 287**

By: ____________________________  By: ____________________________
   City Manager                   Superintendent

Dated: __________________________  Dated: __________________________
City Council Agenda Item #10D  
Meeting of January 25, 2016

Brief Description: 2016 Pay Equity Implementation Report

Recommended Action: Approve and authorize the submittal of the 2016 Pay Equity Implementation Report

Background

In 1984, the State of Minnesota adopted pay equity legislation that was intended to correct the historic sex bias in wages paid to female employees. As a result, every city must use a job evaluation system to determine the comparable worth of the work performed by each class of its employees, and ensure that female-dominated jobs are not systematically paid less than male-dominated jobs of comparable worth. The city utilizes the Job Evaluator System through Benjamin Consulting Group. All public jurisdictions are required to submit a report every three years showing the status of their compliance with the law.

The 2016 report for the city of Minnetonka is attached. The analysis of wage data shows we are in compliance with the statute. The report must be approved by council and submitted by January 31, 2016.

Recommendation

Approve the Pay Equity Implementation Report and authorize staff to submit to the Pay Equity Office at Minnesota Management and Budget to comply with Minnesota State Statute.

Submitted through:
Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager

Originated by:
Jessica Nikunen, Human Resources Manager
Part A: Jurisdiction Identification

Jurisdiction: Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Jurisdiction Type: City

Contact: Jessica Nikunen
Phone: 952-939-8214
E-Mail: jnikunen@eminnetonka.com

Part B: Official Verification

1. The job evaluation system used measured skill, effort responsibility and working conditions and the same system was used for all classes of employees.
   The system used was: Consultant’s system
   Description: “Job Evaluator” tool by Benjamin Consulting Group. State required factors matched to factors with a clearly defined set of levels along and a present number of points assigned to each level.

2. Health Insurance benefits for male and female classes of comparable value have been evaluated and:
   There is no difference

3. An official notice has been posted at:
   Employee Bulletin Boards
   (prominent location)
   informing employees that the Pay Equity Implementation Report has been filed and is available to employees upon request. A copy of the notice has been sent to each exclusive representative, if any, and also to the public library.

The report was approved by:
   City Council
   (governing body)
   Terry Schneider
   (chief elected official)
   Mayor
   (title)

☐ Checking this box indicates the following:
   - signature of chief elected official
   - approval by governing body
   - all information is complete and accurate, and
   - all employees over which the jurisdiction has final budgetary authority are included

Date Submitted: 

Part C: Total Payroll

$22,976,342

is the annual payroll for the calendar year just ended December 31.
The statistical analysis, salary range and exceptional service pay test results are shown below. Part I is general information from your pay equity report data. Parts II, III and IV give you the test results.

For more detail on each test, refer to the Guide to Pay Equity Compliance and Computer Reports.

I. GENERAL JOB CLASS INFORMATION

<table>
<thead>
<tr>
<th>Male Classes</th>
<th>Female Classes</th>
<th>Balanced Classes</th>
<th>All Job Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td># Job Classes</td>
<td>48</td>
<td>61</td>
<td>2</td>
</tr>
<tr>
<td># Employees</td>
<td>156</td>
<td>76</td>
<td>6</td>
</tr>
<tr>
<td>Avg. Max Monthly Pay per employee</td>
<td>5,986.31</td>
<td>5,673.78</td>
<td>5,922.03</td>
</tr>
</tbody>
</table>

II. STATISTICAL ANALYSIS TEST

A. Underpayment Ratio = 98.20 *

<table>
<thead>
<tr>
<th>Male Classes</th>
<th>Female Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. # At or above Predicted Pay</td>
<td>31</td>
</tr>
<tr>
<td>b. # Below Predicted Pay</td>
<td>17</td>
</tr>
<tr>
<td>c. TOTAL</td>
<td>48</td>
</tr>
<tr>
<td>d. % Below Predicted Pay (b divided by c = d)</td>
<td>35.42</td>
</tr>
<tr>
<td>*(Result is % of male classes below predicted pay divided by % of female classes below predicted pay.)</td>
<td></td>
</tr>
</tbody>
</table>

B. T-test Results

<table>
<thead>
<tr>
<th>Degrees of Freedom (DF)</th>
<th>Value of T</th>
</tr>
</thead>
<tbody>
<tr>
<td>230</td>
<td>-2.851</td>
</tr>
</tbody>
</table>

a. Avg. diff. in pay from predicted pay for male jobs = ($32)
b. Avg. diff. in pay from predicted pay for female jobs = $156

III. SALARY RANGE TEST = 93.59 (Result is A divided by B)

A. Avg. # of years to max salary for male jobs = 2.82
B. Avg. # of years to max salary for female jobs = 3.02

IV. EXCEPTIONAL SERVICE PAY TEST = 100.00 (Result is B divided by A)

A. % of male classes receiving ESP | 100.00*
B. % of female classes receiving ESP | 100.00

*(If 20% or less, test result will be 0.00)
Brief Description: Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions.

Recommendation: Introduce the ordinance and refer it to the planning commission.

Proposed Ordinance:

The definition section of the zoning ordinance was originally drafted in 1986. Over the last 30 years, definitions have been periodically added to the definition section in conjunction with other ordinance revisions. The section currently contains 168 definitions, defining everything from “lot” to “electromagnetic field.”

Staff is proposing a full scale amendment to the definition section. The amendment would:

- Establish consistency between the definitions in the zoning ordinance and those in state statute, the comprehensive guide plan, and the subdivision ordinance;
- Clarify and simplify definitions; and
- Remove words that do not exist in the remainder of the ordinance.

The ordinance amendment would not change any code requirements or standards.

Staff Recommendation:

The purpose of introducing an ordinance is to give the city council the opportunity to review the ordinance before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposed ordinance is tentatively set for February 4, 2016.

Introduce the ordinance and refer it to the planning commission. (See pages A1–A24.)

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director

Originated by:
- Susan Thomas, AICP, Principal Planner
Ordinance No. 2015-

An ordinance amending city code section 300.02, regarding zoning ordinance definitions

The City Of Minnetonka Ordains:

Section 1. Section 300.02, under Zoning Regulations is amended as follows:

For the purpose of this ordinance, certain terms and words are defined as follows:

1. “Abandon” - the cessation of a specific use of a property for a period of 12 or more months.

2. “Abut” - to border upon a parcel of land which shares all or part of a common property line with another parcel of land, to make direct contact with or immediately border.

3. “Access aisle or aisle” - the traveled way by which vehicles enter and depart parking spaces.

4. “Accessory apartment” - a self-contained unit of housing located within the confines of an existing single-family house and used as a separate housekeeping unit. The term shall also include instances in which one of the units lacks complete kitchen or bathroom facilities or in which there is internal physical access between the units or in which the units share common space or facilities, unless the persons residing in both portions of the building live as a single housekeeping unit, a smaller secondary dwelling unit, located within a principal dwelling unit, that includes provisions for sleeping, cooking, and sanitation independent of the principal dwelling unit. This definition includes secondary dwelling units that have exterior entrances separate from the principal dwelling unit and secondary dwelling units that are accessed only through the principal dwelling unit.

The stricken language is deleted; the single-underlined language is inserted.
5. “Accessory structure” - an uninhabited subordinate building or other subordinate structure, including garages, sheds or storage buildings over 120 square feet except as modified in section 300.24, swimming pools, spas, sport courts, and tennis courts located on the same lot as a principal building, the use of which is clearly subordinate to the use of the principal building.

6. “Accessory use” - a subordinate use which is subordinate to and associated with a principal building or use and which is located on the same lot as the principal building or use.

7. “Alteration, structural” - any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or rooflines, or any enlargement of a building or structure whether horizontal or vertical.

8. “Alteration, use” - changing the any change to the use or occupancy of a building or parcel from one type of land use to another. Changes in use or occupancy include office to retail, warehouse to assembly, retail to restaurant or similar changes which result in a different intensity of use.

9. “Apartment” - one or more rooms with private bath and kitchen facilities designed, intended or used as a residence for an individual or family. a dwelling unit, generally rented, located within a larger building.

10. “Basement” - an area of a building structure, having its floor or base below ground level on all four sides, regardless of the depth of excavation below ground level.

11. “Basement floor elevation (minimum)” - the lowest floor of a building.

12. “Berm” - a landscaped mound of earth used for aesthetic or buffer purposes.

13. “Bluff” - a steep slope as defined in this ordinance.

14. “Bluff impact zone” - land within a bluff and land within 20 feet from the top of a bluff.

15. “Boarding or lodging house” - a dwelling unit or part of a dwelling unit in which meals, sleeping accommodations, or meals and sleeping accommodations are provided for compensation to no more than five persons who do not function as a single housekeeping unit.

16. “Boathouse” - an uninhabited accessory structure built and occupied solely for the storage of marine vehicles and equipment.

The stricken language is deleted; the single-underlined language is inserted.
1714. “Buffer” - the use of land, topography, open space or landscaping to visibly separate and filter a use of property from another adjacent or nearby use.

1815. “Buildable area” - a contiguous portion of a lot that is suitable for the location of the primary structure and that excludes all existing and proposed easements, setback areas for principal structures, wetlands, floodplains, the neck portion of any neck or flag lot, steep slopes that are unbuildable under this ordinance, and other unbuildable areas. Certain easements may be included in the buildable area at the discretion of the city if their inclusion is consistent with the intent of this code.

1916. “Building” - any structure having a roof supported by columns, walls or other means of support for the shelter or enclosure of persons or property.

2017. “Building height” - the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater building height:

a) the elevation of the highest adjoining sidewalk or ground surface within a five foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade.

b) an elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in item 1 above is more than 10 feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

The vertical distance between the ground elevation abutting a building and the midpoint elevation of the highest gable of a pitched or hipped roof, the deck line of mansard roof, or the highest point of a flat roof or a parapet wall. The ground elevation used to measure building height will be selected from one of the following, whichever results in the greater height:

a) When the change in grade within the footprint of the building is equal to or less than 10 feet, the highest ground elevation abutting the building will be used.

b) When the change in grade within the footprint of the building is greater than 10 feet, an elevation 10 feet higher than the lowest ground elevation abutting the building will be used.

The stricken language is deleted; the single-underlined language is inserted.
21. “Caliper” - the diameter of a tree trunk measured at 4.5 feet above finished-grade level.

22. “City” - the city of Minnetonka, a municipal corporation, along with its duly authorized boards, commissions or representatives.

20. “City Planner” - for purposes of this ordinance, the person holding said position or their designee.

23. “Commercial use” - activity carried out for financial gain.

24. “Common area, residential” - land, structures, or both, that are owned and maintained by a homeowners' association or similar organization and used for the mutual benefit of the residents or tenants of the association or organization.

25. “Common space, commercial” - enclosed areas located within a commercial structure that are utilized for the mutual benefit of building tenants. Hallways and entrance vestibules do not constitute common space under this definition.

26. “Community based residential care facility” - any facility similar to but not included within the definition of licensed residential care facility. These may include public or private facilities which provide one or more persons with up to 24 hour care, training, education, rehabilitation, treatment or other support services.

27. “Comprehensive plan” - the document entitled comprehensive guide plan for the city of Minnetonka with associated guide plan map, adopted May 10, 1999, as amended, or as hereafter revised or superseded by new comprehensive plans, the comprehensive municipal plan, as defined in Minnesota Statutes section 462.352, in effect at the time of the final action on an application, except as otherwise required by Minnesota Statutes section 462.357.

28. “Conditional use” - a use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all standards of this ordinance for the location or operation of such use. The city may impose additional conditions in specific instances to protect the public health, safety or welfare.

29. “Conditional use permit” - a permit to allow a conditional use duly authorized by the appropriate authority as described in sections 300.16 or 300.21 of this ordinance. A conditional use permit may be subject to periodic review upon determination by the city.

30. “Conservation easement” - a recordable document in recordable form acceptable to the city attorney, which prohibits construction, grading, vegetation removal, or other

The stricken language is deleted; the single-underlined language is inserted.
alteration of property except in accordance with city-approved environmental management practices, but which does not grant the public the right to use the property.

3427. “Crawl space” - enclosure designed to internally flood which is completely above grade on at least one side and usable solely for building access or storage.

32.28 “Cul-de-sac” - a street with a single means of ingress/egress and having a turnaround at the end. A turnaround may be in the form of a circular “bubble” of pavement or an internal “looped” street - a street with a single means of ingress and egress and having a turnaround at its end for safe and convenient reversal of traffic.

29. “Cul-de-sac bulb” - the turnaround at the end of a cul-de-sac.

3330. “Deck” - a structure without a roof and with flooring, an unenclosed, platform structure composed of boards made of synthetic or natural materials. A deck is considered attached if any part of it is within ten feet of the principal structure; a deck is considered detached if no part of it is within ten feet of the principal structure. A detached deck is considered an accessory structure in the wetlands, floodplain, and shoreland districts.

3431. “Density” - the number of dwelling units per acre of land, excluding areas zoned as wetland, floodplain, or below the ordinary high water level of a public water, as regulated by the comprehensive plan. All property zoned as wetlands or floodplain and all property below the ordinary high water level of a public water must be excluded from the calculations, and no density credit will be given.

35. “Director of planning” - for the purpose of this ordinance, director of planning shall refer to the individual holding said position or a designated representative.

36.32. “Distribution line” - an overhead or underground facility consisting of utility poles, lines, underground conduit, and related devices used to carry electricity from a substation to the ultimate user, with a nominal voltage equal to or less than 35 kilovolts, or to carry communications.

3733. “Dock” - a structure that extends past the ordinary high water level of a water body and is intended to provide access to the water. A platform that provides access to a water resource.

3834. “Dwelling” - a building or portion thereof designed or used exclusively for residential occupancy.

The stricken language is deleted; the single-underlined language is inserted.
3935. “Dwelling, attached” - a dwelling attached to one or more dwellings by common walls or floors.

4036. “Dwelling, detached” - a building designed or intended for occupancy exclusively by one family dwelling that is not attached to any other dwelling.

41. “Dwelling, single-family detached housing (within the planned unit development district)” - housing located on individual lots, physically unconnected with any adjacent homes and built in compliance with ordinance mandated setback and lot area requirements.

42. “Dwelling, single-family detached cluster housing” - housing located on individual lots which is designed as an element of an overall site plan and where the subdivision permits a reduction in lot area and other ordinance requirements as defined in section 300.22, subd. 4A of this ordinance.

37. “Dwelling, single-family” - a building designed or intended for occupancy by one family.

43. “Dwelling, two-family” - a building designed with two separate dwelling units or intended for occupancy by two families. Each dwelling unit to be totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units. This definition includes duplex and double bungalow terms. A principal dwelling unit that contains an accessory apartment is not considered a two-family dwelling.

44. “Dwelling, multiple family” - a building designed with three or more dwelling units or intended for occupancy by three or more families.

45. “Dwelling, single-family detached housing (within the planned unit development district)” - housing located on individual lots, physically unconnected with any adjacent homes and built in compliance with ordinance mandated setback and lot area requirements.

46. “Dwelling unit” - one or more rooms with facilities for sleeping, cooking, and sanitation designed or intended for residential occupancy, as a single living unit, with sanitary, culinary and sleeping facilities separate from those of other living units and intended for the exclusive use of a single family.

The stricken language is deleted; the single-underlined language is inserted.
4741. “Educational institution or facility” - a public or private elementary, middle, secondary, post-secondary or vocational school having a course of instruction meeting the compulsory education requirements of the Minnesota board of education.

48. “Electromagnetic field (EMF)” - a field with two components, one electrical and the other magnetic, arising from the conduction of electricity through a medium of transmission.

4942. “Excavation” - removal, relocation or recovery by any means of soil, rock, minerals, debris or organic substances other than vegetation from a parcel of land.

5043. “Expansion” - an increase in the floor or land area or volume of an existing building, any increase in dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operation to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of a non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city. Expansion is synonymous with “enlargement” and “intensification.”

5144. “Family” - any number of individuals living together on the premises as a single housekeeping unit as distinguished from a group occupying a boarding or lodging house, licensed residential care facility, licensed day care facility or community based residential facility.

5245. “FEMA” - the United States federal emergency management agency or its successor.

5346. “Filling” - sand, gravel, earth or other materials of any composition placed on a parcel of land.

5447. “Flood” - a temporary increase in the flow or stage of a stream or in the stage of a wetland, pond, water course, or lake that results in the inundation of normally dry areas.

5548. “Flood elevation” - the water level achieved by a 100-year flood as defined by the city water resources management plan, the federal emergency management agency, or other studies accepted by the city, whichever is more restrictive. A 100-year flood is synonymous with the terms one-percent chance flood, base flood, and regional flood.
5649. “Flood obstruction” - a dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation (except for creation of compensatory flood storage), channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

5750. “Flood proofing” - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

5851. “Flood way” - the bed of a wetland, pond, or lake, or the channel of a watercourse, and those portions of the adjoining floodplain that are reasonably required to carry, store or discharge the 100-year flood event.

5952. “Floodplain” - the area adjoining a wetland, pond, lake or water course including the floodway, subject to periodic inundation by a 100-year flood as designated on the official city floodplain district map.

6053. “Floor area” - the sum of the gross horizontal areas of the several floors of a building measured from the exterior walls excluding interior parking spaces, vehicular circulation, loading areas, accessory parking decks or ramps, basements, and one-half the floor area of any partially exposed level, such as a walk-out or look-out level. However, attached garage area must be included in the floor area when used to calculate floor area ratios for lots behind lots. In any structure having a floor with a height in excess of 15 feet, an additional floor will be assumed for every full 15 feet of interior building height. For single-family and two-family dwellings, the sum of the following as measured from exterior walls: the fully exposed gross horizontal area of a building including attached garage space and enclosed porch areas and one-half the gross horizontal areas of any partially exposed level such as a walkout or lookout level. For multiple family dwellings and non-residential buildings, the sum of the following as measured from exterior walls: the fully exposed gross horizontal area of a building and one-half of the gross horizontal areas of any partially exposed level such as a walkout or lookout level, excluding interior parking spaces and vehicular circulation areas. For all buildings, if a floor has a height in excess of 15 feet, an additional floor will be assumed for every full 15 feet of interior building height.

6454. “Floor area ratio (FAR)” - the gross floor area of all buildings on a lot divided by the lot area. The floodplain or wetland area, or both within a lot shall be the floor area of a buildings as defined by ordinance, divided by lot area. Area zoned as wetland, floodplain, or below the ordinary high water level of a public water is excluded from the floor area.
ratio calculation unless it can be demonstrated that there will be minimal hydrologic, aesthetic and ecological impacts to the relevant area as determined by the city.

“Garage” - a detached or attached accessory structure designed or used for the parking and storage of vehicles owned and operated by residents of a principal structure on the same lot.

“Grade” - the elevation of the ground.

“Grading” - excavating, filling or other land-disturbing activity.

“Heliport” - any area on the ground or on a structure approved by the city for the landing and takeoff of helicopters.

“Home occupation” - an occupation that is clearly secondary to the principal residential use and does not change the nature of the principal residential use.

“Housekeeping unit” - all persons residing within a dwelling unit whose relationship includes a substantial amount of social interaction, including the sharing of housekeeping responsibilities or expenses and the taking of meals together.

“Impervious surface” - a material providing a hardsurface which prevents normal absorption infiltration of water into the ground.

“Intensity of development” - a measure of the magnitude and impact of a land use on the environment and neighboring land uses. Variables include, but are not limited to, the levels of traffic that are generated, degree of lot coverage, volume of noise or odor emitted and similar factors.

“Intensive vegetative clearing” - the complete removal of trees and shrubs, or grasses and forbs, in a contiguous patch, strip, row, or block except the removal of invasive species as approved by the city.

“Level of service” - the traffic capacity of level at which an intersection operates based upon criteria established by the institute of traffic engineers, as amended periodically.

“Licensed day care facility” - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. Licensed day care facilities include, but are not limited to,
family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, developmental achievement centers, day treatment programs, adult day care centers and day services.

7366. “Licensed residential care facility” - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with a 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation and treatment they need, but which for any reason cannot be furnished in the person’s own home. Residential facilities include, but are not limited to, state institutions under the control of the commissioner of human services, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, supportive living residences for functionally impaired adults or schools for handicapped children.

7467. “Loading space” - that portion of a property lot or parcel of land designed to serve the purpose of loading or unloading all types of vehicles.

7568. “Lot” - a designated parcel of land established by plat or subdivision adequate for occupancy by a use permitted in this ordinance and providing sufficient area required for minimum open space and appurtenant facilities as required by this ordinance. For the purpose of determining lot area, setbacks, lot coverage, and floor area, a lot must not include any land below the ordinary high water level of a lake or creek, a tract or parcel of land that is part or all of a block as identified on a plat or that was established by subdivision.

7669. “Lot area” - total area within the bounded by lot lines excluding dedicated public road rights-of-way and any area located below the ordinary high water level of a public water lakes and creeks.

7770. “Lot, behind-a-lot”

   a) a lot with substandard or no frontage on a public right-of-way, where access to public right-of-way is over the substandard lot frontage or by a private easement, commonly called a “flag” or “neck” lot, or

   b) a lot with standard frontage on a public street, where the only buildable area is directly behind an existing or potential house pad that fronts on a public street.

7871. “Lot, corner” - a lot situated at the junction of and fronting on two or more intersecting streets, a lot abutting, and located at the intersection of, two or more public rights-of-way.
7972. “Lot coverage” - that portion of a lot, excluding any area located below the ordinary high water level of a public water, that is covered by buildings, driveways, parking areas and any other impervious surface.

8073. “Lot depth” - the mean-average horizontal distance between the front and rear lot lines. In the case of a lot-behind-lot, the greatest distance between opposite lot lines. In order to allow flexibility in determining lot depth for parcels of unusual configuration, lot depth can be measured by averaging side property lines or by measuring a straight line extending from the front lot line to the rear lot line and passing through the building buildable area or existing principal structure, subject to determination by the director of planning the city planner.

8474. “Lot, double frontage” - a lot having frontage on two non-intersecting streets abutting two, non-intersecting public rights-of-way.

75. “Lot, riparian” - a lot abutting a public water, excluding wetlands.

8276. “Lot line” - a line established by plat or subdivision that defines the legal boundary of a lot of record bounding a lot which divides one lot from another lot, a public or private street or any other public or private space.

8377. “Lot line, front” - a lot line abutting a dedicated public right-of-way.

8478. “Lot line, rear” - the lot line opposite and most distant from the front lot line. In the case of corner lots, the rear lot line shall be determined by the director of planning city planner based upon characteristics of the surrounding neighborhood.

8579. “Lot line, side” - any lot line other than a front or rear lot line.

8680. “Lot of record” - a parcel of land whose legal description was established in the Hennepin county property records by plat, subdivision or as otherwise permitted by law prior to February 12, 1966, and which contains identical lot lines as were present on February 12, 1966.

8781. “Lot width at right-of-way” - the width of a lot between side lot lines at the front lot line adjacent to the public street, the horizontal distance between side lot lines measured at the public right-of-way.

8882. “Lot width at setback” - the width of a lot between side lot lines at the setback line, measured at right angles to lot depth, the horizontal distance between side lot lines measured at the required front yard setback established by this ordinance. In the case of a lot-behind-lot, the shortest distance between opposite lot lines.

The stricken language is deleted; the single-underlined language is inserted.
“Lowest floor” - the lowest floor of the lowest enclosed area of a building, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

“Manufactured or mobile home” - a structure, transportable in one or more sections, that is built on a permanent chassis, and is designed for use with or without a permanent foundation, and may be used as a dwelling unit when attached to the required utilities. The term does not include a recreational vehicle.

“Marina” - a facility for storing, servicing, fueling, berthing and securing of pleasure boats and which may include eating, sleeping and retail facilities for owners, crews, and guests.

“Master development plan" - description or illustration of development usually comprised of a series of plans that generally show: location of streets, utilities, stormwater improvements, buildings, and parking areas, trees and water resources; site grading and tree removal; building elevations and signs; and landscaping.

“Medical clinic” - a freestanding structure or, in the case of multiple tenant buildings, a total occupied space of 2,000 square feet or greater used for patient examination and treatment by physicians, dentists, optometrists, psychologists or other health care professionals and where patients are not lodged overnight.

“Microbrewery” - a facility that manufactures and distributes malt liquor or wine in total quantity not to exceed 250,000 barrels per year, which may include space dedicated as a taproom to distribute on-sale and off-sale alcohol.

“Mixed use development” - the development of a parcel of land with two or more different uses such as residential, commercial, or manufacturing or with residential uses of different densities as permitted by this ordinance.

“Non-PUD development” - a development that is not a PUD and which complies with all applicable subdivision and zoning regulations.

“Occupancy” - the purpose for which a building or part thereof is used or intended to be used.

“Ordinary high water level or OHWL” - the boundary of public waters at an elevation delineating the highest water level as defined by the department of natural resources which has been maintained for a sufficient period of time to leave evidence upon the landscape; commonly that point where the vegetation changes from predominantly

The stricken language is deleted; the single-underlined language is inserted.
aquatic to predominately terrestrial. For tributary rivers, the ordinary high water level is
the elevation of the top of the bank of the channel as approved by the city’s engineer.

9993. “Original zoning classification” - the zoning classification a property had
immediately prior to being rezoned.

10094. “Outdoor entertainment” - any type of entertainment or recreation activity that does
not occur within an enclosed building.

101. “Parking access” - the area of a parking lot that allows motor vehicle ingress and
egress from the street.

10295. “Parking deck or ramp” - a structure built for the temporary storage of motor
vehicles.

10396. “Parking lot” - an off-street, unenclosed, ground level area surfaced and improved
for the temporary storage of motor vehicles.

10497. “Parking space” —an improved temporary motor vehicle storage area of
dimensions specified in the parking and loading standards contained in section 300.28 of
this ordinance and directly accessible to an access aisle an area within a parking deck,
ramp or lot intended for the storage of an individual motor vehicle and that complies with
the standards outlined in section 300.28 of this ordinance. This term is identical to the
term parking stall.

10598. “Patio” - a horizontal, unenclosed structure—structure without a roof and with
flooring composed of any material other than boards, such as concrete, flagstones, bricks
or pavers. A patio is considered attached if any part of it is within ten feet of the principal
structure; a patio is considered detached if no part of it is within ten feet of the principal
structure. A detached patio is considered an accessory structure in the wetlands,
floodplain, and shoreland districts.

10699. “Performance standards” - specified criteria and limitations provided in section
300.28 which are intended to protect the public health, safety or welfare.

107100. “Person(s)” - an individual, firm, partnership, corporation, company, association,
society, joint stock association or body politic including any trustee, receiver, assignee or
other representative thereof.

108101. “Planned unit development (PUD)” - a zoning classification and development
type in which the city grants flexibility from certain subdivision and zoning regulations to

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achieve a public benefit that would not otherwise be achieved through a non-PUD development.

409.102. “Porch” - a structure that is designed for home residential occupancy that includes a floor and roof, and may include walls, but is not designed for winter use. A porch may be attached to, or detached from, a principal structure. A porch is considered attached if any part of it is within ten feet of the principal structure; a porch is considered detached if no part of it is within ten feet of the principal structure.

410.103. “Premises” - a lot together with all buildings and structures located on it.

411.104. “Public building” - a structure sheltering or enclosing a government activity or use a building owned and occupied by municipal, school district, council, state or other governmental unit.

412.105. “Public water” - any water defined in Minnesota statutes, section 103G.005, or as amended. These waters include lakes, wetlands and watercourses.

413.106. “Recreational vehicle” - a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towed by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. A travel trailer including those that telescope or fold down, chassis-mounted campers, motor homes, tent trailers and converted buses that provide temporary dwelling units. Recreational vehicles are vehicles that are: (1) not used as the residence of the owner or occupant; (2) used while engaged in recreational or vacation activities, and (3) either self-propelled or towed on highways incidental to the recreational or vacation activity.

414.107. “Restaurant” - an establishment in which food and drink is offered or prepared and served for public consumption and is served to customers at tables by employees. Restaurants may include incidental take-out service.

415.108. “Restaurant, fast food” - a restaurant whose business is the sale of rapidly prepared, or pre-prepared or take-out food or drink directly to customers without table service and which may include drive-up order and delivery systems. This definition does not include establishments within community or neighborhood shopping centers that do not have a customer dining area and offer food only as take-out or by delivery.

416.109. “Restoration” - a reestablishment of previously existing conditions or uses or reconstruction of previously existing building features.

The stricken language is deleted; the single-underlined language is inserted.
117. **Retaining wall** - a wall that separates two areas of earth that have different elevations.

118. **Right-of-way** - a strip of land intended to be used for streets, highways, crosswalks, sidewalks, trails, railroad or utility purposes.

119. **Riparian** - of, on, or relating to the banks of a natural water body excluding wetlands.

120. **Roof** - the outside top covering of a building, the exterior surface forming the upper covering of a building.

121. **Roof line** - for buildings with a flat roof, the roof line is the horizontal plane at the top of the roof. For other buildings with any type of pitched or sloping roof, the roof line is the lowest point of the roof.

122. **Screen** - a visual shield between uses accomplished by the use of berms, landscaping, walls or other aesthetic means.

123. **Setback** - the minimum distance from any lot line that an improvement may be placed, measured perpendicularly from the lot line to the closest point of the improvement the minimum horizontal distance that must be maintained between property lines, delineated wetland edge, floodplain elevations, ordinary high water levels, or top of bluff and buildings or structures. A setback is measured perpendicularly from the lot line, delineated wetland edge, floodplain elevation, ordinary high water level, or top of bluff and to the closest point of the building or structure, excluding eaves.

124. **Setback line** - a line which is the specified setback distance from and parallel to any lot line, or other specified line, such as the ordinary high water level, edge of wetland, floodplain, or top of bluff, a line located at the required setback from property lines, delineated wetland edge, floodplain elevation, ordinary high water level, or top of bluff.

125. **Shopping center** - a group of retail and other commercial establishments that is planned, developed, owned, or managed as a single property.

126. **Shopping center, community** - a business center intended to provide a wide range of goods or services primarily to residents of the city, a general merchandise and convenience-oriented shopping center, generally including a large tenant such as a discount store or supermarket, providing goods and services to residents of the larger community. Examples of community shopping centers in the city include Ridgehaven Mall and the Seven-Hi commercial area.
125118. “Shopping center, neighborhood” - a business center of limited commercial nature which provides convenience goods or services to nearby neighborhoods. a convenience-oriented shopping center primarily providing goods and services to residents of the adjacent area. Generally, the smallest type of shopping center. Examples of neighborhood shopping centers in the city include retail buildings in the Glen Lake and Cedar Lake Road areas.

126119. “Shopping center, regional” - a business center intended to provide a comprehensive array of goods or services to residents of the metropolitan area. a shopping center providing a wide range of goods and services to residents of the metropolitan region. Ridgedale Mall is the only regional shopping center in the city.

127120. “Shore impact zone” - land located between the ordinary high water level of a public water including a tributary creek, and a line parallel to it at a setback of 25 feet for general development lakes and tributary creeks, and 37.5 feet for recreational development lakes.

128121. “Shorelands” - land located within the shoreland district as defined in section 300.25.

129.  “Sign” - a name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public, and which directs attention to a product, place, activity, person, institution or business.

130.   “Sign, advertising” - a sign which directs attention to a business, commodity, service, activity or entertainment not necessarily conducted, sold or offered upon the premises where such sign is located.

131.   “Sign, business” - a sign which directs attention to a business or profession or to a commodity, service or entertainment sold or offered upon the premises where such a sign is located.

132.   “Sign, flashing” - any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use.

The stricken language is deleted; the single-underlined language is inserted.
133. “Sign, illuminated” — any sign which has characters, letters, figures, designs or outlines illuminated by electric lights or luminous tubes as part of the sign.

134. “Sign, name plate” — any sign which states the name or address of the business or occupant of the lot where the sign is placed.

135. “Sign, projecting” — a sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

136. “Sign, pylon” — a free standing sign erected upon a single pylon or post which is in excess of 10 feet in height with a sign mounted on top thereof.

137. “Sign, rotating” — a sign which revolves or rotates on its axis by mechanical means.

138. “Sign, surface area of” — the entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside the limits of such sign and not forming an integral part of the display.

139. “Sign, wall—flat” — a sign affixed directly to an exterior wall and confined within the limits thereof of any building and which projects from that surface less than 18 inches at all points.

140. “Site and building plan” — a development plan for a lot or lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, floodplain, wetlands, open spaces, means of ingress/egress, parking, grading, drainage, utilities, landscaping, structures, signs, lighting, screening, building elevations and other information which reasonably may be required in order that an informed decision can be made by the city.

142. “Site and building plans” — plans that specifically illustrate: location of streets, utilities, stormwater improvements, buildings, and parking areas, trees and water resources; site grading and tree removal; building elevations and signs; and landscaping, and other information as may be reasonable required by the city.

143. “Slope” — the inclination of the natural surface of the land from the horizontal, commonly described as a percentage derived from the height divided by the length.

144. “Slope, toe of” — the lower point of a 50-foot segment with an average slope of at least 20 percent.

144. “Slope, top of” — the higher point of a 50-foot segment with an average slope of at least 20 percent.

The stricken language is deleted; the single-underlined language is inserted.
145127. “Steep slope” - a slope that has an average grade of 20 percent or more, that covers an area at least 100 feet in width (side to side), except that the 100 feet width does not apply in the shoreland zoning district, and that rises at least 25 feet above the toe of the slope. The average grade of a steep slope will be measured between the toe and the top of the slope.

146128. “Storage” - goods, materials or equipment placed or left in a location on a premises.

147129. “Story” - the portion of a building included between the upper surface of any floor and the upper surface of the next floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused under-floor space shall be considered as a story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the top most story, from the top of the floor finish to the top of the ceiling joist or, where there is not a ceiling, to the top of the finished rafters. If the finished floor level directly above an usable or unused space is more than six feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused space will be considered a story.

148130. “Street” - a vehicular way further defined as local, collector, minor arterial, intermediate arterial or principal arterial in the comprehensive plan and lying within a dedicated public right-of-way or road easement, a vehicular way located within right-of-way, as defined and designated in the subdivision ordinance and comprehensive guide plan.

149131. “Structure” - anything placed, poured, constructed, or erected, the use of which requires location on the ground or attachment to something having a location on the ground. Examples include, but are not limited to: buildings, parking ramp, sport courts, patios, and pools.

132. “Structure, accessory” - On non-riparian lots, an uninhabited structure over 200 square feet in area, located on the same lot, subordinate to, and associated with the principal structure. On riparian lots and lots within the floodplain and wetland zoning districts, the same definition, but including structures over 120 square feet in area and as modified by sections 300.23, 300.24, and 300.25 of this ordinance.

The stricken language is deleted; the single-underlined language is inserted.
133. “Structure, enclosed” – a structure that is surrounded by a roof and walls composed of any type material.

134. “Structure, unenclosed” – a structure that is not surrounded by a roof and walls of any material.

135. “Structure, principal” – the building in which is conducted the primary use of the lot on which the building is located, the structure in which the primary use of the lot occurs.

136. “Substantial compliance” - relative to an approved master development plan, approved final site and building plans, or approved preliminary plat:

   a) streets, utilities, stormwater improvements, buildings, and parking areas, and landscaping are in generally the same location;

   b) the number of residential units has not changed by more than 5 percent;

   c) the gross floor area of non-residential buildings has not been changed by more than 5 percent or the gross floor area of any individual building has not been changed by more than 10 percent;

   d) The number of stories of any building has not increased;

   e) The square-foot-age of grading on any individual lot has not increased by more than 1,000 square feet;

   f) the amount of open space has not decreased by more than 5 percent or been altered in such a way as to change its original design or intended use;

   g) all special conditions attached to the approval are met.

137. “Substantial damage” - damage of any origin sustained by a structure when the cost of restoring the structure to its undamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

138. “Substantial improvement” - reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, within a consecutive 365-day period, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes an improvement to a structure that has incurred substantial damage, regardless of the actual repair work performed. The term does not include either:
a) improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or

b) an alteration of an historic structure as defined in 44 code of federal regulations, part 59.1, provided that the alteration will not preclude the structure's continued designation as an historic structure.

154139. "Transient sales" - use of a structure or lot for the temporary sale of goods, wares or merchandise. Transient sales shall not include the sale of food products of a farm or garden occupied and cultivated by the seller.

155140. “Transitional area” - an area in the process of changing from one use to another or an area which functions as a buffer between land uses of different types or intensity.

156141. “Transmission line” - an overhead or underground facility consisting of utility poles, lines, underground conduit, and related devices used to carry electricity generally to a location other than the ultimate user, with a nominal voltage greater than 35 kilovolts.

157142. “Tributary creek” - a water course mapped on the public water inventory including the Minnehaha Creek, Nine Mile Creek, and Purgatory Creek (including both branches), and the public water course that flows out of Glen Lake. These waters include those defined as tributary rivers by the Minnesota department of natural resources.

158143. “Use” - the purpose or activity for which a premises is designed, arranged or intended or for which it is or may be occupied or maintained.

144. Use, Accessory – a use that is subordinate to, associated with, and located on the same primary as the principal use.

145. Use, Commercial – a use that involves the sale of goods or services.

146. Use, Conditional – a use permitted in a particular zoning district when certain and specific standards and conditions outlined in the ordinance are met. The city may impose conditions beyond those outlined in ordinance when necessary to protect public health, safety, and welfare.

147. Use, Permitted – a use that is allowed by right when ordinance standards are met.
148. Use, Primary – a use for which a premises is designed, arranged, or intended or for which it is or may be occupied.

149. “Utility pole” - a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

150. “Variance” - a modification from the literal requirements of this ordinance as specified in section 300.07 of this ordinance.

151. “Water oriented accessory structure” - a detached, above ground small building or structure that does not exceed 120 square feet in size or 10 feet in height, exclusive of safety rails, that's use is directly related to the surface water. Examples include sheds, gazebos, screen porches and detached decks. Stairways, fences, retaining walls and docks are not considered water oriented accessory structures. Boat houses are not water oriented accessory structures.

152. Water Resource – for purposes of this ordinance, a lake, creek, wetland, stormwater pond, ditch, or other similar natural feature.


154. “Wetlands” - poorly-drained environmentally sensitive lands classified by type in section 300.23 of this ordinance and designated on official city floodplain and wetland maps. Land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or land is covered by shallow water. Wetlands must: (1) have hydric soils; (2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation; and (3) under normal support a prevalence of hydrophytic vegetation.

155. “Wind energy conversion system (WECS) or windmill” - an apparatus capable of converting wind energy into electricity.

156. “Yard” - an open space unobstructed from the ground upward with the exception of landscape materials and minor fixtures of a non-structural nature commonly found in a yard - an open space on the same lot as a principal structure, which is obstructed only accessory structures and landscape materials.

157. “Yard, front” - the area between the front lot line and the front setback line principal structure.

The stricken language is deleted; the single-underlined language is inserted.
167157. “Yard, rear” - the area between the rear lot line and the rear setback line, principal structure.

168158. “Yard, side” - a space the area between front and rear yards extending from the front yard to the rear yard along a side lot line to the principal structure, measured perpendicularly from the side lot line to the closest point of a structure.

Section 2. The city clerk is directed to revise Section 300 of the Minnetonka City Code by substituting the term “city planner” for “director of planning” wherever the latter term appears.

Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on February 29, 2016.

Terry Schneider, Mayor
Attest:

David E. Maeda, City Clerk

**Action on this ordinance:**

Date of introduction: January 25, 2016
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.

Date of publication:

The stricken language is deleted; the single-underlined language is inserted.
I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on February 29, 2016.

David E. Maeda, City Clerk
City Council Agenda Item #12B  
Meeting of January 25, 2016

**Brief Description**  
Ordinance amending City Code 300.37, regarding lot width in the R-1A zoning district

**Recommendation**  
Introduce the ordinance and refer it to the planning commission

**Background**

In 2014, the city adopted the R-1A zoning ordinance. The intent of the R-1A ordinance is to provide a smaller lot single-family development option.

In 2015, the city reviewed its first R-1A development, Saville West. During that review, staff noted an error in the R-1A development standards. As written, the R-1A ordinance includes just one lot width standard: 75 feet. The R-1 zoning classification includes different lot width standards at setback, at right-of-way, and at cul-de-sac right-of-way. It was staff's intention that the same ratios be applied in the R-1A district, as follows:

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**Proposed Ordinance**

Staff is proposing an ordinance amendment outlining the varying lot width requirements within the R-1A district.

**Staff Recommendation**

The purpose of introducing an ordinance is to give the city council the opportunity to review the ordinance before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposed ordinances is tentatively set for February 4, 2016.

Introduce the ordinance and refer it to the planning commission. (See pages A1–A2.)

Submitted through:  
Geralyn Barone, City Manager  
Julie Wischnack, AICP, Community Development Director

Originated by:  
Susan Thomas, AICP, Principal Planner
Ordinance No. 2016-
An ordinance amending city code section 300.37, regarding lot width in the R-1A zoning district

The City Of Minnetonka Ordains:

Section 1. Section 300.37 Subdivision 6(a) under R-1A, Residential Alternative, District is amended as follows:

a) Lots must meet all of the following minimum standards:

1) Lot area: 15,000 square feet

2) Lot width at front yard setback: 75 feet

3) Lot width at right-of-way: 75-55 feet, except that lots abutting a cul-de-sac bulb may have a lot width at right-of-way of 45 feet.

4) Lot depth: 125 feet

5) Buildable area: 2,400 square feet

6) Buildable area dimensions: minimum of four sides with 30 feet per side

Section 2. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on February 29, 2016.

Terry Schneider, Mayor
Attest:

David E. Maeda, City Clerk

**Action on this ordinance:**

Date of introduction: January 25, 2016
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on February 29, 2015.

David E. Maeda, City Clerk

The stricken language is deleted; the single-underlined language is inserted.
City Council Agenda Item #13A
Meeting of January 25, 2016

**Brief Description:** Items related to the granting of a cable communications franchise

**Recommended Action:** Accept any additional public comment and close the public hearing

**Background**

The city of Minnetonka is a member of the Southwest Suburban Cable Commission ("Commission") along with the cities of Eden Prairie, Hopkins, Edina and Richfield. Each member city has authorized a non-exclusive cable television service franchise to Comcast Corporation within their city.

CenturyLink has requested that the cities of the Commission consider the grant of a cable communications franchise so CenturyLink can provide cable television services in Minnetonka. Pursuant to this request, staff initiated the necessary process for the city’s consideration of the grant of a competitive cable communications franchise. At the March 23, 2015 meeting the council authorized a Notice of Intent to Franchise, a Request for Proposal and scheduled a public hearing for May 18, 2015.

**Summary**

On May 18, 2015 the city of Minnetonka opened a public hearing and accepted comment on the granting of a cable communications franchise. The city as part of the Commission has assessed the legal, technical and financial qualifications of CenturyLink’s application. Since that date staff has received a phone call from one Minnetonka resident in support of competition in the cable marketplace. This public hearing is one of many necessary procedural steps in the franchise process.

**Recommendation**

Accept any additional comment during the public hearing on the granting of a cable communications franchise and close the public hearing.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Perry Vetter, Assistant City Manager
D. Appointment of hearing officers for administrative citation hearing program

Allendorf moved, Wagner seconded a motion to approve the list of hearing officers. All voted “yes.” Motion carried.

E. Resolution approving a conditional use permit for an accessory structure at 1721 Oakland Road

Allendorf moved, Wagner seconded a motion to adopt resolution 2015-038 approving the request. All voted “yes.” Motion carried.

F. Twelve month extension of preliminary and final plat approval for a two-lot subdivision at 11806 Cedar Lake Road

Allendorf moved, Wagner seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Items related to the granting of a cable communications franchise

Assistant City Manager Perry Vetter gave the staff report.

Brian Grogan, legal counsel for the Southwest Suburban Cable Commission, provided information about CenturyLink’s legal, technical, and financial qualifications and the process for approving a franchise.

Wiersum asked if there was any way a lawsuit could be avoided when the council made its decision given the difference in opinions between CenturyLink and Comcast about the relationship between federal and state law. Grogan said one of the reasons the commission decided not to be the first of the municipalities in the state to consider the franchise was to get some guidance on how other cities were addressing the issue. The commission can see how the situation in Minneapolis plays out. Other cities will make decisions before Minnetonka is asked to consider the issue. Attorneys from the cities have been working with the League of Minnesota Cities to make sure all the proper steps are followed and put the council in the position where its decision could be upheld.
Wagner asked what would happen if the cities in the Southwest Suburban Cable Commission did not agree on the decision to grant the franchise. Grogan said the commission has typically issued one recommendation and it's likely to happen in this case. The city was not bound by decisions made by the other four cities.

Schneider said the greatest risk for a lawsuit was if the city did not follow proper procedures and did something arbitrarily and without factual basis. If the city did its best in following the rules in making its decision then if the matter ended up in court, the court would likely rule on the validity of the council's decision but not award damages. Grogan agreed. He noted CenturyLink had in the initial negotiations put on the table an indemnification agreement. If the city were to grant a franchise and was challenged, CenturyLink would defend potential litigation. He said this would be considered and looked at but would not impact the determination of whether a franchise could be legally issued.

Schneider asked if other states had dealt with a similar situation with Comcast and CenturyLink. Grogan said the situation had occurred in many other states and noted he represented the city of Omaha in negotiations with CenturyLink where an incumbent operator out of Colorado was located. He said each state was different because of the different state statutes. Minnesota has unique statutes in regards to build up and this truly was a case of first impression in terms of if the state law becomes preempted by the FCC order.

Schneider opened the public hearing at 7:21 p.m.

Tyler Middleton, the vice president of operations for CenturyLink in Minnesota, said Comcast and its subsidiaries had a monopoly on cable television service in the area for well over 35 years. CenturyLink was excited to bring competition into the market and choice to the residents of the city. He provided information about the company's product, Prism TV. He said CenturyLink is trying to leverage its existing assets as much as possible for both its fiber and copper assets. Typically fiber goes from the central office out to a neighborhood to a metal box in the neighborhood. From there it travels over the copper network. It's the same network voice and internet services are provided on today. In addition the Twin Cities have been designated as a one gigabyte city. Investments have been made to bring gigabyte speeds to various areas. CenturyLink is the third largest telecommunications company in the country with about $18 billion in revenue. Internet and voice services are provided to businesses here and abroad and that represents about 50 percent of the company's revenues. He said around 3,000 people are employed in Minnesota. The
city of Minneapolis recently became the first city in the Twin Cities area to approve the franchise. Service could begin in June if the franchise were approved.

Patrick Haggerty said he oversees government affairs in the Midwest region for CenturyLink. He said cable franchising in Minnesota is procedurally statutory. CenturyLink has no concerns in its efforts to holistically comply with most of the state statutes. The two areas of the current statute the company believes are unreasonable and are preempted by the 621 order are the level playing field and build out mandates. The Minnesota Cable Act was originally codified in the 1970s and has changed very little. In 1992 Congress passed the 1992 Cable Act and one of the intents of the act was to compel competition in the video marketplace. Exclusive franchising was prohibited under the act. Local franchising authorities were put in the position of being able to consider second entrants into the market. In 2005 the FCC issued proposed rulemaking and in 2007 issued the 621 order. Two of the things included in the findings to the prohibition of flourishing competition were level playing field mandates and build mandates. These were explicitly prohibited in the order indicating those were truly unreasonable reasons to not approve a franchise for a second entrant into the marketplace.

Schneider asked for a staff recommendation about re-opening the public hearing when the item comes back as opposed to leaving the public hearing open and collecting feedback between now and when a recommendation comes forward. Vetter said the staff recommendation was to leave the public hearing open to collect feedback. Grogan said the purpose of this public hearing was for the legal, technical, and financial qualification review. Ultimately there had to be another public hearing for the granting of a franchise. Schneider said that even if the issue of whether the state statute trumped the federal order was decided likely by a court, the city could still apply the state statute to determine what was a reasonable level playing field and a reasonable build out provision. He asked if that occurred, could the city's decision still be challenged. Grogan said anything the city did could be challenged. The council had the ability to decide if it wanted every house to be built within a certain time period, or if it wanted a staggered build out, or if it would permit a partial area build. The council had that discretion. The FCC said the city had to act within a reasonable manner and provided some guidance how that could be accomplished. In terms of if the city could find a way to stay within the guidance of the state statute and still develop a build out schedule that would fit the policy directives of the council, he said the answer was yes and there was no limit to how creative the parties could be to try to accomplish this.
Barone said the staff recommendation was based on not wanting to publish a notice twice for the public hearings. She asked Grogan if he was recommending closing this public hearing because the next public hearing was different and a notice would have to be published anyway. Grogan said the statute states action cannot be taken on the franchise until a minimum of seven days from the close of the initial public hearing has passed. Ultimately the council would have to close this public hearing and then reopen the process for granting the franchise. He said most of the cities he represents have closed the public hearing at this phase.

Schneider said because the city had a website capable of accepting public comments, he was inclined to leave the public hearing open and accept those comments into the record. He did not see any downside to leaving the public hearing open.

B. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for LTF Minnetonka Restaurant Company, LLC dba Life Cafe, 3310 Co Rd 101

Barone said the recommendation was to close the public hearing. The applicant indicated they would prefer to wait until changes to the ordinances were completed.

Wiersum moved, Bergstedt seconded a motion to close the public hearing. All voted "yes." Motion carried.

C. Off-sale liquor license for Target Corporation, 4848 Co Rd 101

Wischnack gave the staff report.

Schneider noted there had been a couple of changes since the policy was adopted. First was the makeup of the council. The bigger change however were the changes in the industry and the makeup of what is offered to the general public. The standard free standing liquor store was no longer the only option. Now there are microbreweries, tap rooms, stores that sell only spirits, distilleries, and other things coming up that are changing the landscape.

Wagner said he re-read the minutes from the 2010 meetings where the policy was discussed. There were firm views from different council members. Council members with some of the firm views no longer are on the council. He said his views had not changed much from 2010.
City Council Agenda Item #13B  
Meeting of January 25, 2016

Brief Description:  Consider Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink

Recommended Action:  Hold the public hearing, adopt the resolution and introduce the ordinance

Background

The city of Minnetonka is a member of the Southwest Suburban Cable Commission (“SWCC”) along with the cities of Eden Prairie, Hopkins, Edina and Richfield. Each member city has authorized a non-exclusive cable television service franchise to Comcast Corporation within their city.

Qwest Broadband Services, Inc., d/b/a CenturyLink (“CenturyLink”) has requested that the cities of the SWCC consider the grant of a cable communications franchise so CenturyLink can provide cable television services in Minnetonka. Pursuant to this request, staff initiated the necessary process for the city’s consideration of the grant of a competitive cable communications franchise.

The SWCC voted unanimously to recommend that its member city councils approve the CenturyLink Request. On December 15, 2015 the city of Edina adopted an ordinance granting a franchise agreement to CenturyLink. The remaining SWCC cities are currently scheduling their individual reviews of this matter.

The SWCC adopted Resolution No. 2015-1, enclosed, finding CenturyLink to be legally, technically, and financially qualified to provide cable communications services to residents of the City. In connection with that finding, the SWCC authorized City staff, assisted by the commission’s legal counsel, to negotiate with CenturyLink to determine if mutually agreeable terms for such a franchise could be reached.

Those negotiations are now complete and have resulted in the proposed CenturyLink Franchise enclosed. The proposed franchise is similar in nature to the one held by Comcast. Some important aspects of the agreement is that the holder must:
   a) Construct, operate and maintain its system in compliance with city code;
   b) Carry public, education and governmental access;
   c) Respond to customers in cooperation with the city to resolve complaints;
   d) Deliver cable service to public buildings, and;
   e) Provide franchise fees to utilize the city’s rights-of-way.
The proposed franchise does cover subscriber practices, but does not regulate rates or other bundled services, such as phone or internet services.

Mr. Brian Grogan, legal counsel of the Commission, has provided two technical memo's, enclosed, covering 1) Competition in Cable Communications Franchising and 2) Free Service to Public Buildings – CenturyLink Franchise. Mr. Grogan will attend the January 25, 2016 council meeting to review this matter with the city council. The public hearing should be held and comment received.

**Recommendation**

Hold the public hearing, adopt the resolution and introduce the ordinance granting a cable television franchise to CenturyLink.

Submitted through:
  Geralyn R. Barone, City Manager
  Perry Vetter, Assistant City Manager

Originated by:
  Patty Latham, Information Technology Manager
MEMORANDUM

To: City Council of the City of Minnetonka, Minnesota
From: Brian Grogan
Date: December 4, 2015
Re: Competition in Cable Communications Franchising

Executive Summary

The City of Minnetonka, Minnesota (“City”) is considering granting a competitive cable franchise to Qwest Broadband Services, Inc., d/b/a CenturyLink (“CenturyLink”) in a service area for which Comcast holds an existing franchise. This memorandum is intended to assist the City Council (“Council”) in its consideration of the proposed Ordinance Granting a Competitive Cable Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink (“CenturyLink Franchise”) by summarizing the legal issues surrounding its terms that relate to competition in the cable communications industry.

Details

The Southwest Suburban Cable Commission (“Commission”) adopted Resolution No. 2015-1 enclosed as Exhibit 1 finding CenturyLink to be legally, technically, and financially qualified to provide cable communications services to residents of the City. In connection with that finding, the Commission authorized City staff to negotiate with CenturyLink to determine if mutually agreeable terms for such a franchise could be reached. Those negotiations are now complete and have resulted in the proposed CenturyLink Franchise enclosed as Exhibit 2. City staff has also prepared for the Council’s review and consideration, written “findings of fact,” enclosed as Exhibit 3, setting forth the factual and legal basis for the grant of the CenturyLink franchise.
Franchise and the impact of relevant State and federal competitive cable franchise laws and regulations.

**Build-out**

To help promote competition in and minimize unnecessary regulatory burdens on the cable communications industry, the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and Telecommunications Act of 1996 (the “Cable Act”) prohibits local franchising authorities from granting exclusive cable communications franchises or unreasonably refusing to award an additional franchise to a qualified applicant.1 The Federal Communications Commission (“FCC”), which administers the Cable Act, addressed competitive cable franchising in its 2007 Report and Order and Further Notice of Rulemaking (generally referred to as the “621 Order” after its subject, Section 621 of the legislation that became the Cable Act). The 621 Order explained that an unreasonable refusal in contravention of the Cable Act could occur not only by outright denial of a franchise application, but also by creating conditions that operate as de facto denials.

One variety of de facto denial addressed by the 621 Order is the imposition of unreasonable build out requirements that act as a barrier for an additional cable provider to enter a market with an existing franchise:

Build-out requirements deter market entry because a new entrant generally must take customers from the incumbent cable operator . . . . Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent’s share, the second entrant cannot justify a large initial deployment. Rather, a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.2

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2 621 Order at ¶ 35.
The 621 Order did not prohibit all build out requirements, but instead provided examples of unreasonable build out requirements—and of reasonable ones, such as a small initial deployment and required expansion triggered by market success.3

Minnesota Statutes Chapter 238, which establishes statewide cable communications requirements, also addresses build out by requiring “a provision in initial franchises identifying . . . a schedule showing: . . . that construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise.”4 CenturyLink takes the position that Minnesota’s five-year build out requirement is unreasonable under the 621 Order and is therefore preempted by the federal law. Comcast disagrees and points to the FCC’s recent reaffirmation that the 621 Order’s rulings “were intended to apply only to the local franchising process and not to franchising laws and decisions at the state level.”5

The CenturyLink Franchise addresses this issue by requiring a modest initial deployment (at least 15% of the service area within two years) and linking build out requirements to market-success benchmarks that CenturyLink must use its best efforts to meet, but granting the City sole discretion to determine, at the end of five years, whether CenturyLink has fulfilled its build out obligations to qualify for renewal of the franchise.6

**Competitive Equity**

The Minnesota cable communications statutes also contain a general level-playing-field (i.e., “competitive equity”) provision that requires that an additional franchise include no terms or conditions “more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or

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3 Id. at ¶ 89-90.
4 Minn. Stat. § 238.084, subd. 1(m).
5 621 Order at ¶ 7, cited in letter dated May 4, 2015
6 CenturyLink Franchise §2.6.
(3) franchise fees.”7 Minnesota courts have interpreted this provision as requiring “substantially similar”—rather than identical—terms.8 Several attempts have been made to ensure that the CenturyLink Franchise is substantially similar to Comcast’s existing franchise: first, the Comcast franchise served as the base document for negotiation of the CenturyLink Franchise; second, the franchise fees required by the CenturyLink Franchise are identical to those required by Comcast’s franchise; third, the geographic area (after complete build-out) of the CenturyLink Franchise matches the area specified in Comcast’s franchise; and fourth, the CenturyLink Franchise requires CenturyLink to require substantially similar—if not greater—public, educational, and governmental access.

Findings of Fact

As previously indicated, whether the Council ultimately grants or denies the proposed CenturyLink Franchise, it must examine all of the evidence presented to it, weigh the facts, and apply the correct legal standards. Enclosed as Exhibit 3 are draft findings of fact generally supporting a decision to approve the CenturyLink Franchise. With the caveat that best practices dictate that the final findings of fact should respond to any evidence or argument against approval, the attached findings of fact may serve as a useful starting point if the Council elects to grant CenturyLink the franchise it seeks.

7 Minn. Stat. § 238.08, subd. 1(b).
MEMORANDUM

To: Minnetonka City Staff

From: Brian T. Grogan

Date: December 4, 2015

Re: Free Service to Public Buildings - CenturyLink Franchise

We provided CenturyLink with the free service to public buildings list from the Comcast franchise. Pursuant to Section 5.2 of the CenturyLink Franchise (see below), CenturyLink is obligated to provide free service to this same list of public buildings as long as they are a Qualified Living Unit and not currently receiving service from another provider. Please note that the City Hall will receive a free drop pursuant to Section 7.9 of the CenturyLink Franchise so that the City can monitor its government access programming feed.

5.2 Free Cable Service to Public Buildings.

(a) As part of its support for PEG use of the System, the Grantee shall provide a free drop to the Subscriber network and free Basic Cable Service and Expanded Basic Cable Service to all of the sites listed on Exhibit A attached hereto, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City's sole discretion.

(b) The Grantee is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic and Expanded Basic Cable Service at each outlet so long as such extension does not result in any violations of applicable leakage standards which the Grantee is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Grantee to do so. Grantee shall provide up to three (3) additional Set Top Boxes to each new location free of charge so that the services can be received and individually tuned by each receiver connected to the drop at a location. If an institution physically moves locations, such institution may move existing Set Top Boxes to the new locations with a free drop, and the moved Set Top Box will not count against the three (3) additional Set Top Boxes. Grantee will replace and maintain Set Top Boxes it provides or that it had provided as necessary so that locations may continue to view the free services Grantee is required to provide. Provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City's sole discretion.

(c) Outlets of Basic and Expanded Basic Cable Service provided in accordance with this section may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System
disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Grantee agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision of free Cable Service required by this section. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to connections or services to public facilities.

Emphasis added

Attached hereto is CenturyLink's response as to which public buildings are Qualified Living Units. Please let me know if you have any questions.

Enclosure

BTG/tlh

~ END OF MEMO ~
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QLU = Qualified Living Unit  
N = No  
Y = Yes

3012078v1
EXHIBIT 1

Southwest Suburban Cable Commission Resolution 2015-1
SOUTHWEST SUBURBAN CABLE COMMISSION

Resolution No. 2015-1

Regarding Recommendations with Respect to
CenturyLink's Proposal for a Cable Communications Franchise

Recitals

1. The Southwest Suburban Cable Commission ("Commission") consists of the cities of Edina, Eden Prairie, Hopkins, Minnetonka and Richfield, Minnesota ("Member Cities").

2. The Commission administers and enforces cable communications franchises on behalf of its Member Cities.

3. Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. ("CenturyLink") has approached each of the Member Cities seeking a cable communications franchise.

4. Minnesota Statutes § 238.08(a) mandates that the Member Cities require a franchise for any cable communications system providing service within the City.

5. Federal law at 47 U.S.C. § 541(a) provides that a city "may not unreasonably refuse to award an additional competitive franchise."

6. The Commission has advised each of the Member Cities to carefully follow the franchise procedure required by Minnesota Statutes § 238.081 by publishing once each week for two successive weeks in the official newspaper of the Member City a Notice of Intent to Franchise a Cable Communications System.

7. The Commission's proposed Notice stated all eight (8) criteria outlined in Minnesota Statutes § 238.081 Subd. 2.

8. In addition to the published Notice, the Commission advised each Member City to mail copies of the Notice of Intent and the Official Application Form to CenturyLink, as well as other interested parties.

9. Each Member Cities' Official Application Form required that proposals for a cable communications franchise contain responses to each of the items identified in Minnesota Statutes § 238.081 Subd. 4.

10. On behalf of the Member Cities, the Commission has carefully reviewed all information and documentation presented to each of the Member Cities regarding CenturyLink's proposal and qualifications to construct, own and operate a cable communications system within the Member Cities.
11. The Commission retained the law firm of Moss & Barnett, a Professional Association to assist the Commission and Member Cities in conducting the procedure required under Minnesota Statutes §238.081 and reviewing the application submitted by CenturyLink as well as comments and information from interested parties.

12. The Member Cities directed the Commission and Commission staff to meet with CenturyLink to negotiate mutually acceptable terms and conditions for a competitive cable franchise.

13. The Commission and CenturyLink have reached tentative agreement on a draft cable franchise ("Model CenturyLink Franchise") which is attached hereto and incorporated by reference.

14. Based on information and documentation made available to the Commission and Member Cities and the report dated June 1, 2015 prepared by Moss & Barnett with respect to CenturyLink’s application, each of which hereby is incorporated in this Resolution by reference, the Commission has reached recommendations regarding CenturyLink’s legal, technical and financial qualifications and the award of a Model CenturyLink Franchise.

NOW THEREFORE, the Commission hereby resolves as follows:

1. The Commission hereby finds that CenturyLink’s application to each of the Member Cities complies with the requirements of Minnesota Statutes § 238.081.

2. The Commission finds that CenturyLink possesses the requisite legal, technical and financial qualifications to construct, own and operate a cable communications system within the Member Cities.

3. The Commission finds that the Model CenturyLink Franchise is reasonable and acceptable and the Commission recommends adoption of the Model CenturyLink Franchise by the Member Cities.

4. The Commission directs staff to finalize the Model CenturyLink Franchise and customize the Model CenturyLink Franchise for each Member City.

5. The Commission directs staff to prepare a memorandum and detailed proposed findings of fact for each Member City regarding CenturyLink’s qualifications and the terms of the Model CenturyLink Franchise.

6. The Commission directs staff to undertake all other necessary action to accomplish the directives set forth in this Resolution.
7. The Commission finds that its actions are appropriate and reasonable in light of the mandates contained in Chapter 238 of Minnesota Statutes and applicable provisions of federal law including 47 U.S.C. § 541(a).

PASSED AND ADOPTED this 28th day of October, 2015.

SOUTHWEST SUBURBAN CABLE COMMISSION

By: Scott Neal, Chairman

ATTEST: }

By: Brian T. Kuykendall
EXHIBIT 2

CenturyLink Franchise
City of Minnetonka, Minnesota

Ordinance Granting a Cable Television Franchise

to

Qwest Broadband Services, Inc. d/b/a CenturyLink

January 25, 2016

Prepared by:

BRIAN T. GROGAN, ESQ.
Moss & Barnett
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340
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ORDINANCE NO. ______
AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK TO OPERATE AND MAINTAIN A CABLE SYSTEM AND PROVIDE CABLE SERVICES IN THE CITY OF MINNETONKA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM AND CABLE SERVICES.

RECITALS

The City of Minnetonka, Minnesota ("City") pursuant to applicable federal and state law is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Qwest Broadband Services, Inc., d/b/a CenturyLink ("Grantee") seeks a competitive cable television franchise with the City.

Negotiations between Grantee and the City have been completed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. Section 546).

The City reviewed the legal, technical and financial qualifications of Grantee and, after a properly noticed public hearing, determined that it is in the best interest of the City and its residents to grant this competitive cable television franchise to Grantee.

NOW, THEREFORE, THE CITY OF MINNETONKA DOES ORDAIN that a franchise is hereby granted to Qwest Broadband Services, Inc. to operate and maintain a Cable System and provide Cable Services in the City upon the following terms and conditions:

SECTION 1
DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, State or Federal law shall apply.

“Access Channels” means any channel or portion of a channel utilized for public, educational or governmental programming.

“Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.
“Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to Grantee by any governmental authority of competent jurisdiction.

“Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast and shall include the public, educational and governmental access channels. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

“Cable Service” shall mean (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, “other programming service” is information that a cable operator makes available to all Subscribers generally.

“Cable System” or “System” shall have the meaning specified for “Cable System” in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation.

“City” shall mean the City of Minnetonka, a municipal corporation in the State of Minnesota.

“City Code” means the Municipal Code of the City of Minnetonka, Minnesota, as may be amended from time to time.

“Commission” means the Southwest Suburban Cable Communications Commission consisting of the cities of Edina, Eden Prairie, Hopkins, Minnetonka and Richfield, Minnesota.

“Connection” means the attachment of the Drop to the television set or Set Top Box of the Subscriber.

“Council” shall mean the governing body of the City.
“Day” unless otherwise specified shall mean a calendar day.

“Drop” shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

“Effective Date” shall mean January 25, 2016.

“Expanded Basic Service” means all Subscriber services other than Basic Cable Service provided by the Grantee covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis.

“FCC” means the Federal Communications Commission, or a designated representative.

“Franchise” shall mean the right granted by this Ordinance and conditioned as set forth herein.

“Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

“Franchise Fee” shall mean the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets and rights of way, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

“GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

“Grantee” means Qwest Broadband Services, Inc., d/b/a CenturyLink.

“Gross Revenues” means any and all compensation in whatever form, from any source, directly or indirectly earned by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Service within the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Cable Service, any expanded tiers of Cable Service, optional premium or digital services; pay-per-view services; Pay Services, installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law;
revenue from the sale or carriage of other Cable Services, revenues from home shopping and other revenue-sharing arrangements. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

Gross Revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, state or other governmental unit, and collected by Grantee for such entity. The Franchise Fee is not such a tax. Gross Revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected. Gross Revenues shall not include payments for PEG Access capital support. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

“Interactive Services” are those services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

“Living Unit” means a distinct address as tracked in the QC network inventory, used by CenturyLink to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

“Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.

“Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular group of Channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single Channel screen and also provides for easy navigation to a chosen Access Channel.

“Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

“Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate
increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Pay Service” means programming (such as certain on-demand movie channels or pay-per-view programs) offered individually to Subscribers on a per-channel, per-program or per-event basis.

“PEG” means public, educational and governmental.

“Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

“QC” means Qwest Corporation, wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.

“Qualified Living Unit” means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service. A Living Unit receiving a minimum of 25Mbps downstream will generally be capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.

“Set Top Box” means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Basic Cable Service tier delivered at designated converter dial locations.

“Street” shall mean the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.

“Subscriber” means a Person who lawfully receives Cable Service from Grantee.

“Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.
SECTION 2
FRANCHISE

2.1 Grant of Franchise.

(a) The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

(b) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC’s installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC’s or any other Affiliate’s compliance with Applicable Laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

2.2 Reservation of Authority. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City’s police power. Grantee acknowledges that the City may modify its
regulatory policies by lawful exercise of the City’s police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

2.3 Franchise Term. This Franchise shall be in effect for a term of five (5) years from the date of acceptance by Grantee, unless terminated sooner as hereinafter provided. Six (6) months prior to the expiration of the initial five (5) year term, if City determines that Grantee is in compliance with all other material terms of this Franchise including the build out obligations set forth in this Franchise as required by Applicable Law, the City shall have the unilateral right to extend the Franchise for an additional term of no less than five (5) years and no more than ten (10) years.

2.4 Franchise Area. The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise. The parties acknowledge that Grantee is not the first entrant into the wireline video market in the City. The Grantee acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Grantee aspires to provide Cable Service to all households within the City by the end of the five year (5) term of this Franchise. Grantee agrees that its deployment of Cable Service in the City will be geographically dispersed throughout the City, and shall be made available to diverse residential neighborhoods of the City without discrimination.

2.5 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.17. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. Section 238.08 and any other applicable federal level playing field requirements.

2.6 Build Out.

(a) Initial build out. No later than the second anniversary of the Effective Date of this Franchise, Grantee shall be capable of serving a minimum of fifteen percent (15%) of the City’s households with Cable Service; provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time. Grantee agrees that this initial minimum build-out commitment shall include a significant number of households below the median income in the City. City shall, upon written request of Grantee, provide detailed maps of such areas. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with Cable Service.
(b) **Quarterly Meetings.** In order to permit the Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, upon demand, promptly make available to the Commission maps and other documentation showing exactly where within the City the Grantee is currently providing Cable Service. Grantee shall meet with the Commission, not less than once quarterly, to demonstrate Grantee’s compliance with the provisions of this section concerning the deployment of Cable Services in the City including, by way of example, the provision of this section in which Grantee commits that a significant portion of its initial investment will be targeted to areas below the median income within the City, and the provisions of this section that prohibit discrimination in the deployment of Cable Services. In order to permit the Commission and the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing April 15, 2016, and continuing throughout the term of this Franchise, meet quarterly with the Commission and make available to the Commission the following information:

(i) The total number of Living Units throughout the City;

(ii) The geographic area within the City where the Grantee is capable of delivering Cable Service through either a FTTH or FTTN method of service delivery which shall include sufficient detail to allow the City to determine the availability of Cable Services at commercially-zoned parcels;

(iii) The actual number of Qualified Living Units capable of receiving Cable Service from Grantee through FTTH and FTTN; and

(iv) A list of the public buildings and educational institutions capable of receiving Cable Service from the Grantee (see list attached hereto as Exhibit A).

(c) **Additional build out based on Market Success.** If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section 2.6(a) herein, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service, then Grantee agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.
(d) **Nondiscrimination.** Grantee shall provide Cable Service under nondiscriminatory rates and reasonable terms and conditions to all Subscribers who reside in Living Units in any location where the Grantee is capable of providing Cable Service. Grantee shall not arbitrarily refuse to provide Cable Services to any Person or in any location where the Grantee is capable of providing Cable Service. Any Qualified Living Unit should also include Commercially-Zoned Parcels. “Commercially-Zoned Parcels” mean any Street address or municipally identified lot or parcel of real estate with a building. Grantee shall not deny Cable Services to any group of Subscribers or potential residential Subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or facilities based upon the income level of residents of the local area in which such group resides. Grantee shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Grantee shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.

(e) **Standard Installation.** Grantee shall provide Cable Services at its standard installation within seven (7) days of a request by any Person in a Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

(f) **Multiple Dwelling Units.** The Grantee shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Dwelling Units in the City. Grantee shall, upon request, individually wire units upon request of the property owner or renter who has been given written authorization by the owner. Such offering is conditioned upon the Grantee having legal access to said unit and any payment (for Grantee’s reasonable costs of internal wiring) as applicable. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

2.7 **Periodic Public Review of Franchise.** Within sixty (60) Days of the third anniversary of the Effective Date of this Franchise or third annual anniversary of any extension of the Franchise term, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.6 of this Franchise.
2.8 Transfer of Ownership.

(a) No sale, transfer, assignment or “fundamental corporate change”, as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) City shall have thirty (30) Days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee’s Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed in writing within thirty (30) Days of receipt of said request, or the request shall be deemed approved as a matter of law.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Within thirty (30) Days after the closing of the public hearing, City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.8. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(h) In the event of any proposed sale or assignment pursuant to paragraph (a) of this section, City shall have the right of first refusal of any bona fide offer to purchase only the Cable System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept subject to City’s rights under this section. This written offer must be conveyed to City along with the Grantee’s written acceptance of the
offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this paragraph (h) in the following circumstances:

(i) If it does not indicate to Grantee in writing, within thirty (30) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(ii) It approves the assignment or sale of the Franchise as provided within this section

(i) A transfer of the Franchise shall not include a transfer of ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. Nothing in this Section 2.8 (i) shall be read to serve as a waiver of Grantee’s obligation to obtain the City’s advance written consent to any proposed transfer that constitutes a change in the “controlling interest” of the Grantee as set forth in 2.8 (f) herein and Minn. Stat. Section 238.083.

2.9 Expiration. Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

(a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

(b) renew the Franchise, in accordance with Applicable Laws;

(c) invite additional franchise applications or proposals;

(d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or

(e) take such other action as the City deems appropriate.

2.10 Right to Require Removal of Property. At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System, used exclusively to provide Cable Service, from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee.

2.11 Continuity of Service Mandatory. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, during the
lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

SECTION 3
OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Streets.

(a) Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing and subject to Section 2.1(b) herein, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee’s Cable System; and with other applicable City Codes, and will obtain and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of, the Streets of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3.2 Construction or Alteration. Subject to Section 2.1(b) herein, Grantee shall in all cases comply with the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

3.3 Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the
case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

3.4 **Consistency with Designated Use.** Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

3.5 **Undergrounding.** Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

   (a) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;

   (b) Grantee is unable to get pole clearance;

   (c) underground easements are obtained from developers of new residential areas; or

   (d) utilities are overhead but residents prefer underground (service provided at cost).

If an ordinance is passed which involves placing underground certain utilities including Grantee’s cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers’ homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 **Maintenance and Restoration.**

   (a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement by Grantee, Grantee shall, at its own cost and expense and in accordance with the requirements of Applicable Law, restore such Street, public way,
paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All restoration occurring in private easements or on other private property shall be performed in accordance with the City Code. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City right-of-way pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City’s ability to maintain the right-of-way, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision and by its failure property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Public Works and consistent with the City Code and any permit issued by the City.

3.7 Work on Private Property. Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

3.8 Relocation.

(a) City Property. If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or
relocate such facilities to accommodate the construction, maintenance or repair of the
requesting party’s facilities, or their more efficient use, or to “make ready” the requesting
party’s facilities for use by others, or because Grantee is using a facility which the
requesting party has a right or duty to remove, Grantee shall do so. The companies
involved may decide among themselves who is to bear the cost of removal or relocation,
pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove
or relocate its facilities shall give Grantee no less than forty-five (45) Days’ advance
written notice to Grantee advising Grantee of the date or dates removal or relocation is to
be undertaken; provided, that no advance written notice shall be required in emergencies
or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or
refuses to remove or relocate its facilities as directed by the City; or in emergencies or
where public health and safety or property is endangered, the City may do such work or
cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee
fails, neglects or refuses to remove or relocate its facilities as directed by another
franchisee or utility, that franchisee or utility may do such work or cause it to be done,
and if Grantee would have been liable for the cost of performing such work, the cost
thereof to the party performing the work or having the work performed shall be paid by
Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any
underground cable or conduit which requires trenching or other opening of the Streets
along the extension of cable to be removed, except as hereinafter provided. Grantee may
remove any underground cable from the Streets which has been installed in such a
manner that it can be removed without trenching or other opening of the Streets along the
extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at
its sole cost and expense, any underground cable or conduit by trenching or opening of
the Streets along the extension thereof or otherwise which is ordered to be removed by
the City based upon a determination, in the sole discretion of the City, that removal is
required in order to eliminate or prevent a hazardous condition. Underground cable and
conduit in the Streets which is not removed shall be deemed abandoned and title thereto
shall be vested in the City.

(f) Movement of Buildings. Grantee shall, upon request by any Person
holding a building moving permit, franchise or other approval issued by the City,
temporarily remove, raise or lower its wire to permit the movement of buildings. The
expense of such removal, raising or lowering shall be paid by the Person requesting same,
and Grantee shall be authorized to require such payment in advance. The City shall
require all building movers to provide not less than fifteen (15) Days’ notice to the cable
company to arrange for such temporary wire changes.
SECTION 4
REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (l) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System, used only to provide Cable Service, other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore to a condition as nearly as possible to its prior condition the Street or other public places in the City from which the System has been removed.

4.2 Abandonment of Cable System. In the event of Grantee’s abandonment of the Cable System, used only to provide Cable Service, City shall have the right to require Grantee to conform to the state right-of-way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, used only to provide Cable Service, or such part thereof as was designated by City, within thirty (30) days after written notice of City’s demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given, City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the Cable System to be in City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

4.4 City Options for Failure to Remove Cable System. If Grantee has failed to complete such removal within the time given after written notice of the City’s demand for removal is given, the City shall have the right to exercise one of the following options:

(a) Declare all right, title and interest to the System, used only to provide Cable Service, to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

(b) Declare the System abandoned and cause the System, if used only to provide Cable Service, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.

(c) Upon termination of service to any Subscriber, Grantee shall promptly remove all its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable
Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

4.5 **System Construction and Equipment Standards.** The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC’s Rules and Regulations.

4.6 **System Maps and Layout.** To the extent not otherwise provided for in Section 2.6(b), Grantee, or an affiliate, shall maintain complete and accurate records, maps and diagrams of the location of all its facilities used to provide Cable Services and the Cable System maintained by QC in the Streets and make them available to the City upon request.

### SECTION 5
**SYSTEM DESIGN AND CAPACITY**

5.1 **Availability of Signals and Equipment.**

(a) The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). Generally speaking, when Grantee deploys FTTN, households located within four thousand (4,000) cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

(b) The Grantee shall comply with all FCC regulations regarding carriage of digital and HDTV transmissions.

(c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

5.2 **Free Cable Service to Public Buildings.**

(a) As part of its support for PEG use of the System, the Grantee shall provide a free drop to the Subscriber network and free Basic Cable Service and Expanded Basic
Cable Service to all of the sites listed on Exhibit A attached hereto, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City’s sole discretion.

(b) The Grantee is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic and Expanded Basic Cable Service at each outlet so long as such extension does not result in any violations of applicable leakage standards which the Grantee is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Grantee to do so. Grantee shall provide up to three (3) additional Set Top Boxes to each new location free of charge so that the services can be received and individually tuned by each receiver connected to the drop at a location. If an institution physically moves locations, such institution may move existing Set Top Boxes to the new locations with a free drop, and the moved Set Top Box will not count against the three (3) additional Set Top Boxes. Grantee will replace and maintain Set Top Boxes it provides or that it had provided as necessary so that locations may continue to view the free services Grantee is required to provide. Provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City’s sole discretion.

(c) Outlets of Basic and Expanded Basic Cable Service provided in accordance with this section may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Grantee agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision of free Cable Service required by this section. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to connections or services to public facilities.

5.3 System Specifications.

(a) System Maintenance. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify
authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan (‘EAS Plan’). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee’s obligations beyond that which is required by the EAS Plan and Applicable Law.

(c) Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center. Grantee shall maintain standby power system supplies, rated at least at two (2) hours’ duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

5.4 Performance Testing. Grantee shall perform all applicable system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests shall include, at a minimum:

(a) Initial proof of performance for any construction;

(b) Semi-annual compliance tests;

(c) Tests in response to Subscriber complaints;

(d) Tests requested by the City to demonstrate franchise compliance; and

(e) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

5.5 Special Testing.

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall
endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee’s expense by Grantee’s qualified engineer. The City shall have a right to participate in such testing by having an engineer of City’s choosing, and at City’s expense, observe and monitor said testing.

SECTION 6
PROGRAMMING AND SERVICES

6.1 Categories of Programming Service. Grantee shall provide video programming services in at least the following broad categories:

   Local Broadcast (subject to federal carriage requirements)
   Public Broadcast
   News and Information
   Sports
   General Entertainment
   Arts/Performance/Humanities
   Science/Technology
   Children/Family/Seniors
   Foreign Language/Ethnic Programming
   Public, Educational and Governmental Access Programming (to the extent required by the Franchise)
   Movies
   Leased Access

6.2 Changes in Programming Services. Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the City’s consent. Further, Grantee shall provide at least thirty (30) Days’ prior written notice to Subscribers and to the City of Grantee’s request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

6.3 Parental Control Device. Upon request by any Subscriber, Grantee shall make available for sale or lease a parental control or lockout device that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall
inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

6.4  **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the tests.

6.5  **Annexation.** Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchised to provide multichannel video programming.

6.6  **Line Extension.** Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

6.7  **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

**SECTION 7**

**PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

7.1  **Number of PEG Access Channels.** Within one hundred eighty (180) days of the Effective Date, Grantee will make available three (3) PEG Access Channels.

7.2  **Digital and High Definition PEG Carriage Requirements.** While the parties recognize that while the primary signals of local broadcast stations are simulcast in standard definition (“SD”) and high definition (“HD”) formats, the Grantee’s obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

(a)  Grantee agrees to carry all PEG Access Channels in HD provided the entity originating the signal provides the Grantee an HD signal. Further, Grantee will downconvert any such signal to an SD format so that Subscribers who choose not to subscribe to an HD package may receive said signal in an SD format.

(b)  Grantee is not required to convert a signal delivered in a lower quality format to a higher quality format. The City shall have no obligation to provide a signal to the Grantee in a HD format.

(c)  All PEG Access Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the
Subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the Cable System at a receiver shall also be able to view the HD Access Channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Grantee is not agreeing to provide free HD equipment to Subscribers including complimentary municipal and educational accounts, or to modify its equipment or pricing policies in any manner. City acknowledges that not every Subscriber may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Grantee or other equipment provider) or on every television in the home.

(d) The Grantee, upon request of the City, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG signals is the result of matters for which the Grantee is responsible, and if so the Grantee will take prompt corrective actions.

(e) The Grantee will provide any PEG Access Channels on the Basic Cable Service tier throughout the life of the Franchise, or if there is no Basic Cable Service tier, shall provide the PEG Access Channels to any Person who subscribes to any level of cable video programming service, and otherwise in accordance with Applicable Laws. To the extent technically feasible, Grantee shall, upon request from the City, provide City with quarterly viewership numbers for each of the PEG Access Channels carried on Grantee’s Cable System.

(f) Grantee shall facilitate carriage of PEG Access Channel program listings on its interactive programming guide, at no cost to the City provided that the City shall hold Grantee harmless should the City or PEG providers fail to provide correct or timely information to the interactive guide programmers.

(g) If Channels are selected through menu systems, the PEG Access Channels shall be displayed in the same manner as other Channels, and with equivalent information regarding the programming on the Channel. To the extent that any menu system is controlled by a third party, Grantee shall ensure that the Grantee will provide PEG listings on that menu system, if it is provided with the programming information by the City.

7.3 **Control of PEG Channels.** The control and administration of the Access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City’s sole discretion.

7.4 **Transmission of Access Channels.** Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.
7.5 Access Channel Locations.

(a) Grantee shall provide the City’s government access channel in both HD and SD. The government access channel will be located on Channel 238 and shall at all times be located in the Channel neighborhood offering news/public affairs programming on Grantee’s Cable System channel lineup. The government access channel shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite Channels carried by the Grantee on its Cable System.

(i) Grantee shall carry the remaining public and educational Channels (PE Channels) on Channel 26 in its Channel lineup as a means to provide ease of access by Subscribers to the group of PE Channels placed consecutively on Channel numbers significantly higher in the Channel lineup. This use of one (1) Channel to access the group of PE Channels required under this Franchise shall be referred to as a “Mosaic Channel.” The Mosaic Channel shall display the group of PE Channels on a single Channel screen and serve as a navigation tool for Subscribers. The Mosaic Channel shall allow Subscribers to navigate directly from Channel 26 to any of the PE Channels requested in a single operation without any intermediate steps to a chosen PE Channel in the group.

(ii) Grantee shall use Channel 26 as a Mosaic Channel to access the PE Channels required under this Franchise. The group of consecutive PE channels residing at higher Channel numbers will retain Channel names and identity for marketing purposes, unless approved by the City. Grantee shall not include any other programming or Channels on the Commission’s PE Mosaic Channel unless the City provides advance written consent.

(iii) When using the Mosaic Channel, Subscribers shall be directed to the requested PE Channel in an HD format if appropriate to the Subscriber’s level of service; otherwise, the Subscriber shall be directed to the SD PE Channel. The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 26 to the requested Commission Access Channels which shall be located on Channel numbers 8110 (educational access) and 8111 (public access).

(iv) Grantee shall consult with the City (or City’s designee) to determine the PE Channel information displayed on the Mosaic Channel. However, the information shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite channels carried by the Grantee on its Cable System in a Mosaic format.

(v) The Mosaic Channel assigned for use by the City shall be used to navigate to the group of City PE Channels and will be placed near other PEG Mosaic Channels.
(vi) If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations, then Grantee shall provide the PE Channels to Subscribers at equivalent visual and audio quality and equivalent functionality as Grantee delivers the highest quality broadcast stations and highest quality commercial cable/satellite channels on its Cable System with no degradation.

(b) The Grantee shall not charge for use of the PEG Access Channels, equipment, facilities or services.

(c) In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee’s reasonable control. The Access Channels will be located within reasonable proximity to other commercial video or broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.

(d) Grantee agrees not to encrypt the Access Channels differently than other commercial Channels available on the Cable System.

(e) In conjunction with any occurrence of any Access Channel(s) relocation, as may be permitted by this Franchise, Grantee shall provide a minimum of Nine Thousand Dollars ($9,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City’s, or its designees’, pre-produced thirty (30) second announcement explaining the change in location, or if Grantee does not have air time capabilities a mutually agreed equivalent shall be provided.

7.6 Navigation to Access Channels. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

7.7 Ownership of Access Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 Noncommercial Use of PEG. Permitted noncommercial uses of the Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited,
non-profit, educational institutions which may, for example, offer telecourses over a Access Channel.

7.9 **Dedicated Fiber Return Lines.**

(a) Grantee shall provide and maintain, free of charge with no transport costs or other fees or costs imposed, a direct fiber connection and necessary equipment to transmit PEG programming from the City Hall control room racks to the Grantee headend (“PEG Origination Connection”).

(b) In addition to the PEG Origination Connection, the Grantee shall, free of charge, construct a direct connection and necessary equipment to the programming origination site located at Edina City Hall where PEG programming is originated by the Commission.

(c) Grantee shall at all times provide and maintain, free of charge, a drop to the Cable System, required Set-Top Box and free Basic Cable Service and Expanded Basic Service to the City Hall and the location from which PEG programming is originated (currently the playback facility at the Edina City Hall), to allow these facilities to view (live) the downstream PEG programming Channels on Grantee’s Cable System so they can monitor the PEG signals and make certain that PEG programming is being properly received (picture and sound) by Subscribers.

7.10 **Interconnection.** To the extent technically feasible and permitted under Applicable Laws, Grantee will allow necessary interconnection with any newly constructed City and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the demarcation point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review Grantee may condition the interconnection on the reasonable reimbursement of Grantee’s incremental costs, with no markup for profit, to recoup Grantee’s construction costs only. In no event will Grantee impose any type of recurring fee for said interconnection.

7.11 **Ancillary Equipment.** Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee’s fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the demarcation point and the City or school is responsible for all other production/playback equipment.

7.12 **Future Fiber Return Lines for PEG.** At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 10); or
(b) that the City desires to establish or change a location from which PEG programming is originated; or

(c) that the City desires to upgrade the Connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City’s plan within a reasonable period of time but not later than September 1st in the year preceding the request for any costs exceeding Twenty-five Thousand and No/100 Dollars ($25,000). The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for Grantee’s out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber.

7.13 Access Channel Carriage.

(a) Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City’s designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional Access Channel when the cumulative time on all the existing Access Channels combined meets the following standard: whenever one of the Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, Access Channel for the same purpose; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

(c) The VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated Access Channels.

(d) Subject to the terms of this Franchise, the City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

(e) The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not
limited to, closed captioning, stereo audio and other elements associated with the programming.

7.14 **Access Channel Support.**

(a) Upon the Effective Date of this Franchise, Grantee shall collect and remit to the City Sixty cents (60¢) per Subscriber per month in support of PEG capital (“PEG Fee”).

(b) On August 1, 2017, the City, at its discretion, and upon ninety (90) Days advance written notice to Grantee, may require Grantee to increase the PEG Fee to Sixty-five cents (65¢) per Subscriber per month for the remaining term of the Franchise. The PEG Fee shall be used by City in its sole discretion to fund PEG access capital expenditures. In no event shall the PEG Fee be assessed in an amount different from that imposed upon the incumbent cable provider. In the event the incumbent cable provider agrees to a higher or lower PEG Fee, Grantee will increase or decrease its PEG Fee upon ninety (90) Days written notice from the City.

(c) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 16.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

7.15 **PEG Technical Quality.**

(a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.
Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

7.16 **Access Channel Promotion.** Grantee shall allow the City to print and mail a post card for promoting a designated entity’s service or generally promoting community programming to households in the City subscribing to Grantee’s Cable Service at a cost to the City not to exceed Grantee’s out of pocket cost, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee’s standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted. The City agrees to pay Grantee in advance for the actual cost of such post card.

7.17 **Change in Technology.** In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

7.18 **Relocation of Grantee’s Headend.** In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee’s cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

7.19 **Regional Channel Six.** Grantee shall make available Regional Channel Six as long as it is required to do so by the State of Minnesota.

7.20 **Government Access Channel Functionality.** Grantee agrees to provide the capability such that the City, from its City Hall, can switch its government Access Channel in the following ways:

(a) Insert live Council meetings from City Hall;

(b) Replay government access programming from City Hall; and

(c) Transmit character generated programming.

(d) Schedule for Grantee to replay City-provided tapes in pre-arranged time slot on the government Access Channel; and
(e) Switch to other available programming where the City has legal authority.

7.21 **Compliance with Minnesota Statutes Chapter 238.** In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. 238.084.

**SECTION 8**

**REGULATORY PROVISIONS.**

8.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

8.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. This may include but shall not be limited to the Commission or other entity as City may determine in its sole discretion. Any existing delegation in place at the time of the grant of this Franchise shall remain intact unless expressly modified by City.

8.3 **Areas of Administrative Authority.** In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

(a) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordinating the operation of Access Channels.

(c) Formulating and recommending long-range cable communications policy for the Franchise Area.

(d) Disbursing and utilizing Franchise revenues paid to the City.

(e) Administering the regulation of rates, to the extent permitted by Applicable Law.

(f) All other regulatory authority permitted under Applicable Law.

The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operations under the Franchise to the extent allowed by Applicable Law.

8.4 **Regulation of Rates and Charges.**

(a) Right to Regulate. The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.
(b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days’ notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, handicapped, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

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**SECTION 9**

**BOND.**

9.1 **Performance Bond.** Upon the Effective Date of this Franchise and at all times thereafter Grantee shall maintain with City a bond in the sum of One Hundred Thousand Dollars ($100,000.00) in such form and with such sureties as shall be acceptable to City, conditioned upon the faithful performance by Grantee of this Franchise and the acceptance hereof given by City and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys’ fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond, and which bond shall further guarantee payment by Grantee of all claims and liens against City or any, public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System. The City shall provide Grantee reasonable advanced notice of not less than ten (10) Days prior to any draw by the City on the performance bond required under this Section 9.

9.2 **Rights.** The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the bond.

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**SECTION 10**

**SECURITY FUND**

10.1 **Security Fund.** If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then
Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty Thousand and No/100 Dollars ($20,000.00). In no event shall Grantee fail to post a Twenty Thousand and No/100 Dollar ($20,000.00) letter of credit within thirty (30) days receipt of a notice of franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance, and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys’ fees, and an additional penalty of Two Thousand Dollars ($2,000) in that action.

10.2 Withdrawal of Funds. Provision shall be made to permit the City to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

10.3 Restoration of Funds. Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to 10.4 of this section, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.

10.4 Liquidated Damages. In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the security fund the following liquidated damages:

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process or System review, the liquidated damage shall be One Hundred Dollars ($100.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Paragraph 10.4, the liquidated damage shall be One Hundred Fifty Dollars ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure to test, analyze and report on the performance of the System following a request by City, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.
(d) Forty-five Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Two Hundred Dollars ($200.00) per Day for each Day, or part thereof, such failure occurs or continues.

(e) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the Access Channels the liquidated damage shall be One Hundred Fifty ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

10.5 Each Violation a Separate Violation. Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.

10.6 Maximum 120 Days. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

10.7 Withdrawal of Funds to Pay Taxes. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the security fund. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

10.8 Procedure for Draw on Security Fund. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(a) City shall hear Grantee’s dispute at the next regularly scheduled or specially scheduled Council meeting. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may require payment of all liquidated damages due it.
10.9 **Time for Correction of Violation.** The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to collect the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

10.10 **Grantee’s Right to Pay Prior to Security Fund Draw.** Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the security fund in accordance with the terms of this Section 10 of the Franchise.

10.11 **Failure to so Replenish Security Fund.** If any security fund is not so replaced, City may draw on said security fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys’ fees incurred by the City in so performing and paying. The failure to so replace any security fund may also, at the option of City, be deemed a default by Grantee under this Franchise. The drawing on the security fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

10.12 **Collection of Funds Not Exclusive Remedy.** The collection by City of any damages or monies from the security fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the security fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages that remedy shall remain the City’s exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.6.

**SECTION 11**

**DEFAULT**

11.1 **Basis for Default.** City shall give written notice of default to Grantee if City, in its sole discretion, determines that Grantee has:

(a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;

(b) Attempted to evade any provision of this Franchise or the acceptance hereof;

(c) Practiced any fraud or deceit upon City or Subscribers; or

(d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.
11.2 **Default Procedure.** If Grantee fails to cure such default within thirty (30) Days after the giving of such notice (or if such default is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City’s sole opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and City may elect to terminate the Franchise. The City may place the issue of revocation and termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

(a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.

(b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.

(c) If, after notice is given and an opportunity to cure, at Grantee’s option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

11.3 **Mediation.** If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Unless the Grantee and City mutually agree otherwise, such mediation shall be in accordance with the rules of the American Arbitration Association currently in effect at the time of the mediation. A party seeking mediation shall file a request for mediation with the other party to the Franchise and with the American Arbitration Association. The request may be made simultaneously with the filing of a complaint, but, in such event, mediation shall proceed in advance of legal proceedings only if the other party agrees to participate in mediation. Mutually agreed upon Mediation shall stay other enforcement remedies of the parties for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator’s fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

11.4 **Failure to Enforce.** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City’s failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee’s conduct.
11.5 Compliance with the Laws.

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

SECTION 12
FORECLOSURE AND RECEIVERSHIP

12.1 Foreclosure. Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

12.2 Receivership. The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the
SECTION 13
REPORTING REQUIREMENTS

13.1 Quarterly Reports. Within forty-five (45) calendar days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment a report showing the basis for computation of such fees prepared by an officer, or designee of Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit B attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of “Gross Revenues” at Section 1 of this Franchise.

13.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Grantee shall provide a written report of any and all applicable FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, Grantee shall provide City with copies of reports of the semi-annual test and compliance procedures applicable to Grantee and established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 Reports. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City, at the times and in the form prescribed that Grantee is technically capable of producing, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee’s need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.4 Communications with Regulatory Agencies.

(a) Upon written request, Grantee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee’s Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City’s request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee’s Cable System within the Franchise Area, Grantee shall make such documents available to City upon City’s written request.

(b) In addition, Grantee and its Affiliates shall within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or
actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the City a copy of the communication, whether specifically requested by the City to do so or not.

SECTION 14
CUSTOMER SERVICE POLICIES

14.1 **Response to Customers and Cooperation with City.** Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City’s interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

14.2 **Definition of “Complaint.”** For the purposes of Section 14, with the exception of Subsection 14.5, a “complaint” shall mean any communication to Grantee or to the City by a Subscriber or a Person who has requested Cable Service; a Person expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

14.3 **Customer Service Agreement and Written Information.** Grantee shall provide to Subscribers a comprehensive service agreement and information in writing for use in establishing Subscriber service. Written information shall, at a minimum, contain the following information:

(a) Services to be provided and rates for such services.

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Liability specifications.

(f) Set Top Boxes/Subscriber terminal equipment policy.

(g) How complaints are handled including Grantee’s procedure for investigation and resolution of Subscriber complaints.

(h) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements.

(i) A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.
14.4 Reporting Complaints.

(a) The requirements of this Section 14.4 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, telephone number of Subscriber complaints as well as the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

(b) Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, provide City with such Subscriber data for its review.

14.5 Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. Grantee shall, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee’s compliance with each and every term and provision of this Section 14.5. Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. To the extent that this Franchise imposes requirements greater than those established by the FCC, Grantee reserves whatever rights it may have to recover the costs associated with compliance in any manner consistent with Applicable Law.

14.6 Local Office. During the term of the Franchise the Grantee shall comply with one of the following requirements:

(a) Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(b) Grantee shall maintain convenient local Subscriber service and bill payment locations for the purpose of receiving Subscriber payments or equipment returns. Unless otherwise requested by the Subscriber, Grantee shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee’s agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Grantee shall also provide the following:

(i) Subscribers can remit payments at multiple third party commercial locations within the City (such as grocery stores or the Western Union).
(ii) Grantee will provide a service technician to any Qualified Living Unit in the City, free of charge to the Subscriber, where necessary to install, replace or troubleshoot equipment issues.

(iii) Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as Fed Ex or UPS) if a service technician is not required to visit the Subscriber’s Qualified Living Unit.

(iv) In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers in the City served by cable operators franchised by the City, the Grantee shall then be required to also comply with the requirements of Section 14.6 (a) above.

14.7 Cable System office hours and telephone availability.

(a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

(i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

14.8 Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
(a) Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those to a Qualified Living Unit.

(b) Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem.

(c) The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(d) Grantee may not cancel an appointment with a customer after the close of business on the business Day prior to the scheduled appointment.

(e) If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

14.9 Communications between Grantee and Subscribers.

(a) Refunds. Refund checks will be issued promptly, but no later than either:

   (i) The customer’s next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

   (ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

14.10 Billing.

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.
14.11 **Subscriber Information.** Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming services and conditions of subscription to programming and other services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City’s cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.11.

14.12 **Notice or Rate Programming Change.** In addition to the requirement of this Section 14.12 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. If required by Applicable Law, such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

14.13 **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee’s current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

14.14 **Refund Policy.** If a Subscriber’s Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by
the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

14.15 Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee’s compliance with all Applicable Laws to the maximum extent legally permissible.

14.16 Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee’s Service or performance to the chief administrative officer of the City or the chief administrative officer’s designee, which may be a board or Commission of the City.

14.17 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 14.10, above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

14.18 Failure to Resolve Complaints. Grantee must investigate and act upon any service complaint promptly and in no event later than twenty-four (24) hours after the problem becomes known. Grantee must address, and if feasible, resolve service complaints within three (3) calendar days.

14.19 Maintain a Complaint Phone Line. Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its Subscribers twenty-four (24) hours per Day, seven (7) Days a week.

14.20 Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.3, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, where possible Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.21 Subscriber Privacy.

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed
one (1) year which may be renewed at the option of the Subscriber. No penalty shall be
invoked for a Subscriber’s failure to provide or renew such permission. The permission
shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal
from a Subscriber terminal, including but not limited to lists of the names and addresses
of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or
otherwise made available to any party other than to Grantee or its agents for Grantee’s
business use, and also to the Subscriber subject of that information, unless Grantee has
received specific written permission from the Subscriber to make such data available.
The request for permission must be contained in a separate document with a prominent
statement that the Subscriber is authorizing the permission in full knowledge of its
provisions. Such written permission shall be for a limited period of time not to exceed
one (1) year which may be renewed at the option of the Subscriber. No penalty shall be
invoked for a Subscriber’s failure to provide or renew such permission. The permission
shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(c) Written permission from the Subscriber shall not be required for the
conducting of system wide or individually addressed electronic sweeps for the purpose of
verifying System integrity or monitoring for the purpose of billing. Confidentiality of
such information shall be subject to the provision set forth in subparagraph (b) of this
section.

14.22 Grantee Identification. Grantee shall provide all customer service technicians and
all other Grantee employees entering private property with appropriate picture identification so
that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15
SUBSCRIBER PRACTICES

15.1 Subscriber Rates. There shall be no charge for disconnection of any installation
or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other
properly due fee or charge, Grantee may disconnect the Subscriber’s service outlet, provided,
however, that such disconnection shall not be effected until after the later of: (i) forty-five (45)
Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after
delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before
expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon
payment in full of the delinquent fee or charge and the payment of a reconnection charge,
Grantee shall promptly reinstate the Subscriber’s Cable Service.

15.2 Refunds to Subscribers shall be made or determined in the following manner:

(a) If Grantee fails, upon request by a Subscriber, to provide any service then
being offered, Grantee shall promptly refund all deposits or advance charges paid for the
service in question by said Subscriber. This provision does not alter Grantee’s
responsibility to Subscribers under any separate contractual agreement or relieve Grantee
of any other liability.
(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

(c) If any Subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Grantee.

SECTION 16
COMPENSATION AND FINANCIAL PROVISIONS.

16.1 Franchise Fees. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter. In accordance with Section 16 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as Exhibit B, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

(d) In no event shall the Grantee be required to pay a Franchise Fee percentage in excess of that paid by incumbent cable provider.
16.2 **Auditing and Financial Records.** Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of not less than twenty (20) Days to the Grantee, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee’s compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days after the notice unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to any of the Grantee’s records on the basis that the Grantee’s records are under the control of any parent corporation, Affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee’s local offices or at one of Grantee’s offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

16.3 **Review of Record Keeping Methodology.** Grantee agrees to meet with representative of the City upon request to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records related to the Franchise.

16.4 **Audit of Records.** The City or its authorized agent may at any time and at the City’s own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee shall cooperate fully in the conduct of such audit and shall produce all necessary records related to the provision of Cable Services regardless of which corporate entity controls such records. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire reasonable cost of the audit within thirty (30) days of the completion and acceptance of the audit by the City.

16.5 **Records to be reviewed.** The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the Franchise.
16.6 **Indemnification by Grantee.**

(a) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee’s or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee’s invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee’s failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the City, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties’ expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the City, its officers, or its employees.

(b) Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City attached hereto as Exhibit C, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys’ fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of Applicable Law(s).

16.7 **Grantee Insurance.** Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than “A-” that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars ($3,000,000). The liability policy shall include:

(a) The policy shall provide coverage on an “occurrence” basis.
(b) The policy shall cover personal injury as well as bodily injury.

(c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

(d) Broad form property damage liability shall be afforded.

(e) City shall be named as an additional insured on the policy.

(f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee’s operations under this Franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.

(g) Standard form of cross-liability shall be afforded.

(h) An endorsement stating that the policy shall not be canceled without thirty (30) Days notice of such cancellation given to City.

(i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

(j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City’s right to enforce the terms of Grantee’s obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee’s insurance coverage.

SECTION 17
MISCELLANEOUS PROVISIONS.

17.1 Posting and Publication. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee’s filing of acceptance of this Franchise.

17.2 Guarantee of Performance. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a five (5) year
17.3 **Entire Agreement.** This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and is intended to comply with all requirements set forth therein.

17.4 **Consent.** Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

17.5 **Franchise Acceptance.** No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, and evidence of insurance, all as provided in this Franchise. The City’s “Notice of Intent to Consider an Application for a Franchise” (“Notice”) provided, consistent with Minn. Stat. 238.081 subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Minnetonka, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council. In the event Grantee fails to accept this Franchise, or fails to provide the required documents and payments, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.6 **Amendment of Franchise.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 2.7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City’s exercise of its police powers.

17.7 **Notice.** Any notification that requires a response or action from a party to this Franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties’ rights under this Franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:
To the City:  City Manager, City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Courtesy Copy to:  Southwest Suburban Cable Commission
c/o Moss & Barnett (BTG)
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

To the Grantee:  CenturyLink
Attn: Public Policy
1801 California Street, 10th Floor
Denver, Colorado 80202

Courtesy Copy to:  Qwest Broadband Services, Inc.
Attn: Public Policy
200 South Fifth Street, 21st Floor
Minneapolis, MN 55402

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the Person of record as specified above.

17.8  **Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

17.9  **Work of Contractors and Subcontractors.** Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee’s responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee’s behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.
17.10 Abandonment of System. Grantee may not abandon the System or any portion thereof used exclusively for Cable Services, without having first given three (3) months written notice to City and conforming to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. To the extent required by Minn. Stat. §238.084 Subd. 1 (w), Grantee shall compensate City for damages resulting from the abandonment.

17.11 Removal After Abandonment. In the event of Grantee’s abandonment of the System used exclusively for Cable Services, City shall have the right to require Grantee to conform to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City’s demand for removal consistent with City Code and Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

17.12 Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.13 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

17.14 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

17.15 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

17.16 Survival of Terms. Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However, Grantee’s obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

17.17 Competitive Equity. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers
in the City under the same agreement as applicable to the new MVPD. Within one hundred
twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the
City shall enter into an agreement or other appropriate authorization (if necessary) containing the
same terms and conditions as are applicable to the new Wireline MVPD.

Passed and adopted this ____ day of ________________ 201__.  

ATTEST  

CITY OF MINNETONKA, MINNESOTA

By: ___________________________  
Its: City Clerk

By: ___________________________  
Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

QWEST BROADBAND SERVICES, INC.,  
D/B/A CENTURYLINK

Date: ___________________________  

By: ___________________________  

Its: ___________________________  

SWORN TO BEFORE ME this  
___ day of ____________, 201__.

______________________________  

NOTARY PUBLIC
## Exhibit A
### Free Cable Service to Public Buildings

<table>
<thead>
<tr>
<th>No.</th>
<th>Public Building</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>WORKS, PUBLIC</td>
<td>11522 MINNETONKA BLVD</td>
</tr>
<tr>
<td>2.</td>
<td>MIDDLE SCHOOL, WAYZATA EAST</td>
<td>12001 RIDGEMOUNT AVE W</td>
</tr>
<tr>
<td>3.</td>
<td>LIBRARY, RIDGEDALE</td>
<td>12601 RIDGEDALE DR</td>
</tr>
<tr>
<td>4.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>1815 HOPKINS XRD</td>
</tr>
<tr>
<td>5.</td>
<td>SCHOOL, OMEGON</td>
<td>2000 HOPKINS XRD</td>
</tr>
<tr>
<td>6.</td>
<td>ELEM SCHOOL, TANGLEN</td>
<td>10901 HILLSIDE LN W</td>
</tr>
<tr>
<td>7.</td>
<td>SENIOR HIGH, HOPKINS</td>
<td>2400 LINDBERGH DR</td>
</tr>
<tr>
<td>8.</td>
<td>JUNIOR HIGH, HOPKINS</td>
<td>10700 CEDAR LAKE RD</td>
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<tr>
<td>9.</td>
<td>JUNIOR HIGH, HOPKINS WEST</td>
<td>3830 BAKER RD</td>
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<tr>
<td>10.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>5700 ROWLAND RD</td>
</tr>
<tr>
<td>11.</td>
<td>WAREHOUSE, MINNETONKA</td>
<td>5700 HANUS RD</td>
</tr>
<tr>
<td>12.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>14550 MINNETONKA BLVD</td>
</tr>
<tr>
<td>13.</td>
<td>CITY HALL, MINNETONKA</td>
<td>14600 MINNETONKA BLVD</td>
</tr>
<tr>
<td>14.</td>
<td>POLICE DEPT, MINNETONKA</td>
<td>14600 MINNETONKA BLVD</td>
</tr>
<tr>
<td>15.</td>
<td>JUNIOR HIGH, MINNETONKA</td>
<td>17000 LAKE STREET EXT</td>
</tr>
<tr>
<td>16.</td>
<td>ELEM, GLEN LAKE</td>
<td>4801 WOODRIDGE RD</td>
</tr>
<tr>
<td>17.</td>
<td>HIGH SCHOOL, MINNETONKA</td>
<td>18301 HIGHWAY 7</td>
</tr>
<tr>
<td>18.</td>
<td>IMMACULATE OF, MARY</td>
<td>13505 EXCELSIOR BLVD</td>
</tr>
<tr>
<td>19.</td>
<td>ACTIVITY CENTER, GLEN L</td>
<td>14350 EXCELSIOR BLVD</td>
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<tr>
<td>20.</td>
<td>ELEM, CLEAR SPRINGS</td>
<td>5701 COUNTY RD 101</td>
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<tr>
<td>21.</td>
<td>FIRE STATION, MINNETONKA</td>
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<td>22.</td>
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<td>23.</td>
<td>ELEM SCHOOL, SCENIC HEIGHTS</td>
<td>5650 SCENIC HEIGHTS DR</td>
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<td>24.</td>
<td>SCHOOL, EPSILON</td>
<td>14300 COUNTY ROAD 62</td>
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<td>25.</td>
<td>ELEMENTARY, GATEWOOD</td>
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<td>26.</td>
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<td>27.</td>
<td>MARINA, GRAY’S BAY</td>
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<td>28.</td>
<td>CENTER, WILLISTON</td>
<td>14509 MINNETONKA DR</td>
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<td>29.</td>
<td>SCHOOL, OMEGON INC</td>
<td>2000 HOPKINS XRD STE CMCL</td>
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<tr>
<td>30.</td>
<td>CENTER, COMMUNITY</td>
<td>14600 MINNETONKA BLVD</td>
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<td>31.</td>
<td>CENTER, PAGEL</td>
<td>18313 HIGHWAY 7</td>
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<td>32.</td>
<td>SERVICE CENTER, DISTRICT</td>
<td>5621 COUNTY RD 101</td>
</tr>
<tr>
<td>33.</td>
<td>CENTER, TECHNOLOGY</td>
<td>5700 COUNTY RD 101</td>
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## Exhibit B
Franchise Fee Payment Worksheet

*TRADE SECRET – CONFIDENTIAL*

<table>
<thead>
<tr>
<th>Service</th>
<th>Month/Year</th>
<th>Month/Year</th>
<th>Month/Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A la Carte Video Services</td>
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<td></td>
</tr>
<tr>
<td>Audio Services</td>
<td></td>
<td></td>
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<tr>
<td>Basic Cable Service</td>
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<td></td>
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</tr>
<tr>
<td>Installation Charge</td>
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<tr>
<td>Bulk Revenue</td>
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<tr>
<td>Expanded Basic Cable Service</td>
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<tr>
<td>Pay Service</td>
<td></td>
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<tr>
<td>Pay-per-view</td>
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<tr>
<td>Guide Revenue</td>
<td></td>
<td></td>
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<tr>
<td>Franchise Fee Revenue</td>
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<tr>
<td>Advertising Revenue</td>
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<tr>
<td>Home Shopping Revenue</td>
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<tr>
<td>Digital Services</td>
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<tr>
<td>Inside Wiring</td>
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<td>Other Revenue</td>
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<tr>
<td>Equipment Rental</td>
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<td>Processing Fees</td>
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<td>PEG Fee</td>
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<td>REVENUE</td>
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<tr>
<td>Fee Calculated</td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

Fee Factor: 5%
INDEMNITY AGREEMENT made this ___ day of _____________________, 20__, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called “CenturyLink,” and the City of Minnetonka, a Minnesota Municipal Corporation, party of the second part, hereinafter called “City.”

WITNESSETH:

WHEREAS, the City of Minnetonka has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Minnetonka; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys’ fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink’s expense then CenturyLink shall not be liable for any attorneys’ fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary,
and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink’s consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: ____________, ___________ 20__

By: _________________________________

Its: _________________________________

STATE OF LOUISIANA          )
) SS
)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__,

by ________________________________, the__________________________ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

________________________________________
Notary Public
Commission Expires ____________________

CITY OF MINNETONKA, MINNESOTA

By ________________________________

Its ________________________________
EXHIBIT 3

Findings of Fact
Resolution No. 2016-

Regarding an Ordinance Granting a Competitive Cable Franchise
for Qwest Broadband Services, Inc., d/b/a CenturyLink

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Findings of Fact.

1.01. In October 2014, Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. ("CenturyLink") requested that the City of Minnetonka, Minnesota ("City") initiate proceedings to consider awarding it a franchise to provide cable communications services in the City ("Service Territory").

1.02. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. ("Comcast") holds a non-exclusive cable communications franchise for the Service Territory ("Comcast Franchise").

1.03. The Comcast Franchise, which the City last renewed in August 2012, is currently the only cable communications franchise for the Service Territory.

1.04. The monopoly held by a sole cable communication provider in a particular market is a barrier to entry for additional providers, which does not have a captive market but must instead “win” every subscriber.¹

1.05. The presence of a second cable operator in a market improves the quality of service offerings and drives down prices by approximately 15%.²

1.06. On March 31 and April 7, 2015, the City published a Notice of Intent to Franchise a Cable Communications System ("Notice") in the Lakeshore Weekly, a newspaper of general circulation in the Service Territory.

1.07. The Notice indicated that the City was soliciting franchise applications and provided information regarding the application process, including that applications were required to be submitted on or before April 21, 2015 and that a public hearing to hear proposals from applicants would be held May 18, 2015 at 6:30 PM.

1.08. The City also mailed copies of the Notice and application materials to CenturyLink and Comcast.³

1.09. On April 21, 2015, the City received an application from CenturyLink (the "CenturyLink Application"). The City did not receive any other
1.10. As provided by the Notice, on May 18, 2015 the City held a public hearing that was continued to and closed on January 25, 2015 during the City Council’s regularly scheduled meeting to consider CenturyLink’s application and qualifications.

1.11. On May 4, 2015, Comcast submitted a letter to the City setting forth its position regarding the CenturyLink Application (“Comcast Letter”).

1.12. The Comcast Letter expresses concern about how CenturyLink’s proposal compared to particular provisions of the existing Comcast Franchise.

1.13. The Comcast Letter also summarizes Comcast’s position regarding build-out requirements and other proposed terms related to competition in the cable industry.

1.14. During the hearing, CenturyLink presented its proposal and all other interested parties were provided an opportunity to speak and present information to the City Council regarding the CenturyLink Application.

1.15. Following the hearing, the law firm of Moss & Barnett, a Professional Association prepared a report, dated June 1, 2015 (“Franchise Report”), reviewing and analyzing the City’s franchising procedures, the CenturyLink Application and other information provided by CenturyLink in connection with the May 18, 2015 public hearing.

1.16. The Franchise Report identifies and discusses federal and state legal requirements relevant to the City’s consideration of the CenturyLink Application, including laws pertaining to franchising procedures and competition between providers.

1.17. The Franchise Report also analyzes information provided by CenturyLink to establish its qualifications to operate a cable communications franchise in the Service Territory.

1.18. At its meeting on October 28, 2015, the Southwest Suburban Cable Commission (“Commission”) considered the Franchise Report along with the information and documentation it had received regarding the CenturyLink Application, and adopted Resolution 2015-1 finding and concluding that the CenturyLink Application complied with the requirements of Minn. Stat. § 238.081 and that CenturyLink is legally, technically, and financially qualified to operate a cable communications system within the Service Territory.

1.19. In Minnesota, both State and federal law govern the terms and conditions of an additional cable communications franchise in an already-franchised
The franchising authority may not grant an exclusive franchise or unreasonably refuse to award an additional competitive franchise.\(^{11}\)

The franchising authority must allow an applicant reasonable time to become capable of providing cable service to all households in the service area.\(^{12}\)

The franchising authority may grant an additional franchise in an already-franchised service area if the terms and conditions of the additional franchise are not “more favorable or less burdensome than those in the existing franchise” regarding the area served, the PEG access requirements, and franchise fees.\(^{13}\)

The additional franchise must also include, among other things, “a schedule showing . . . that the construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise.”\(^{14}\)

In order to ensure that any additional franchise granted to CenturyLink would contain substantially similar service area, PEG access requirements, and franchise fees to the Comcast Franchise, the City used the Comcast Franchise as the base document for its negotiations.

The City Council gave notice to the public that it intended to introduce an ordinance granting a cable communications franchise to CenturyLink.

On January 25, 2016, the City Council introduced an Ordinance of the City of Minnetonka Granting a Cable Communications Franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink Franchise”).

Copies of the CenturyLink Franchise were made available to the public.

The CenturyLink Franchise encompasses the same Service Territory encompassed by the Comcast Franchise.\(^{15}\)

The franchise fees required by the CenturyLink Franchise are identical to those required by the Comcast Franchise.\(^{16}\)

The PEG access requirements in the CenturyLink Franchise mandate certain obligations, such as HD channel capacity for all PEG channels that go beyond the commitments made in the Comcast franchise.\(^{17}\)

The City recognizes that CenturyLink, which currently offers no cable communications services in the Service Territory, cannot justify a large initial deployment because it “realistically cannot count on acquiring a
share of the market similar to Comcast’s share . . . [and] must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.” 18

1.32. The CenturyLink Franchise therefore requires CenturyLink’s initial deployment to be capable of serving at least 15% of the living units in the Service Territory within two years.

1.33. The CenturyLink Franchise permits the City to monitor CenturyLink’s progress and compliance with build-out requirements via quarterly meeting and accelerates the build-out schedule if CenturyLink has market success, with the goal and expectation that build-out will be substantially complete before the CenturyLink Franchise’s five-year term expires. 19

1.34. During its regularly scheduled meeting on January 25, 2016, the City Council held a public hearing at which all interested parties were provided an opportunity to speak and present information regarding the proposed CenturyLink Franchise.

1.35. The City has considered these facts and the cable-related needs and interests of the community.

Section 2. Council Action.

2.01. The foregoing findings are adopted as the official findings of the City Council and made a part of the official record.

2.02 The City has authority to adopt an ordinance granting a cable communications franchise to CenturyLink for the Service Territory.

2.03 The City may not unreasonably refuse to award a competitive cable communications franchise to CenturyLink.

2.04 The City and its residents will benefit from adoption of the CenturyLink Franchise, which will introduce facilities-based competition into the cable communications market in the Service Territory and thereby reduce costs to consumers and increase the quality and availability of services.

2.05 CenturyLink is legally, technically, and financially qualified to operate a cable communications system in the Service Territory and has complied with all application requirements.

2.06 The City has complied with all franchise application requirements imposed by State and federal law, including those identified herein or in the Franchise Report.
2.07 The terms and conditions of the CenturyLink Franchise pertaining to service area, a PEG access requirement, and franchise fees are not more favorable or less burdensome than the corollary terms of the Comcast Franchise.

2.08 The CenturyLink Franchise's initial deployment requirement of 15% within two years and 5-year timeline for substantially completing build-out provides a reasonable period of time for CenturyLink to become capable of reaching full deployment and is therefore consistent with both State and federal law.

2.09 The Ordinance Granting a Cable Communications Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink is formally and finally adopted.

2.10 The City finds and concludes that its actions are appropriate, reasonable, and consistent in all respects with the mandates set forth in Chapter 238 of Minnesota Statutes and applicable provisions of federal law, including 47 U.S.C. § 541(a).

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 25, 2016.

_____________________________________________________________________

Terry Schneider, Mayor

Attest:

_____________________________________________________________________

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on January 25, 2016.

_____________________________________________________
David E. Maeda, City Clerk

2 Id. at ¶¶ 2, 50.
3 Notice by the City of Minnetonka, Minnesota of Its Intent to Consider An Application for a Franchise and Request for Proposals - Official Application Form
4 See May 4, 2015 letter from Emmett Coleman to Brian Grogan, Franchise Administrator of the Southwest Suburban Cable Commission regarding CenturyLink Video Franchise Application.
5 Id. at 2.
6 Id. at 1-2.
7 Report to the Southwest Suburban Cable Commission Regarding Qwest Broadband Services, Inc. D/b/a CentruyLink – Proposal for a Cable Communication Franchise, June 1, 2015.
8 Franchise Report at 2-9
9 Id. at 11-12
10 See 47 U.S.C. § 541 (a)(1); Minn. Stat. §§ 238.08, .084; see also Franchise Report at 2-8.
13 Minn. Stat. § 238.08, Subd. 1(b).
14 Minn. Stat. § 238.84, Subd. 1(m).
15 CenturyLink Franchise § 2.4; Comcast Franchise § 2.4.
16 CenturyLink Franchise § 16.1; Comcast Franchise § 16.1.
17 CenturyLink Franchise § 7; Comcast Franchise § 7.
18 621 Order at ¶ 35
19 CenturyLink Franchise § 2.6.
Brief Description  Discussion regarding use of city water towers

Background

In 1988, the city council adopted a written policy regarding location of antennas on city water towers. (See pages A1–A3.) Under the policy, only certain entities are allowed on water towers and only in the following order of descending priority:

1. City of Minnetonka.
2. Public safety agencies that are not part of the city of Minnetonka.
3. Other governmental agencies not related to public safety.
4. Governmental-regulated entities whose antennas offer a service to the general public for a fee.

Additionally, under the policy, the city may require removal of antennas for a variety of reasons, including:

1. A potential user with a higher priority cannot find another adequate location and the potential user would be incompatible with an existing use; and
2. A user’s antennas unreasonably interfere with other users with higher priority, regardless of whether or not this was adequately predicted in a technical analysis.

While there have been minor changes to the policy over the last 30 years, the user priority and revocation/removal clauses have remained virtually the same. (See pages A4–A8.)

Many public and private antenna systems rely on “line of sight” technology. Essentially, this means antennas must have an uninterrupted sight line to other nearby antennas that are part of the same system. Given this, the higher antennas can be located, the better the “line of sight.” As water towers are typically the tallest structures in an area, they are generally considered a good location for antennas; the top of the water tower is considered the best location.

Historically, it has been the practice of the city to use or reserve for use the top of water towers for public entities, such as the city of Minnetonka, other public safety organizations, and other governmental organizations. In addition to placing a variety of technologies on top, reserving remaining space for existing or potential public users ensures that the city does not have to utilize the revocation/removal clauses of the policy. Depending on the user who is forced to relocate, revocation could be costly, time
The city regularly receives requests from private telecommunication providers to locate on top of city water towers. Just as regularly, city staff outlines the city’s written policy and its practice of reserving the top of the water towers for public uses.

As a property owner, the city is not required to allow telecommunication facilities on its water towers. However, by federal law the city must allow such facilities within the community, and the city has allowed private antennas to be located on the flutes of water towers throughout the community.

The city received a request from Verizon to locate wireless technology on top of the Williston water tower last year, and the company provided documentation stating that placing an antenna on top would meet its current needs (whereas placement on the flute or on nearby Xcel Energy transmission towers is insufficient).

The city’s telecommunication consultant specifically analyzed Verizon’s engineering information and confirmed that location of antennas on Xcel towers would not cover the existing gap; location on top of the tower would cover the gap and overcome the ridge along the southern edge of the property; and location on top of the tower would not interfere with existing or future public installations. A letter from the attorney representing Verizon is attached on pages A9–A13.

This request is not consistent with the city’s policy and practice, and it raises security concerns for public telecommunications facilities. Also note that in the past, similar requests at the Williston water tower have been received from ATT, Sprint, and T-Mobile. The tower is particularly desirable, both to public entities and private, as it is at one of the highest points in Hennepin County. All requests were denied and the providers ultimately located on the flute of the water tower.

Verizon may pursue the option to locate a tall monopole in the lower elevation commercial area nearby to match the water tower height. Staff suggests an alternative that would allow construction of a monopole on city land in proximity to the water tower. As this is on higher land, the overall height of the pole may be shorter in this vicinity. Should the city council agree with this general approach, staff would study specific locations, costs, and ownership and present details for further consideration by the council at a future meeting,
Recommendation

Direct staff to explore the feasibility of placing a monopole for telecommunications facilities near the Williston water tower.

Through:
- Geralyn Barone, City Manager
- Brian Wagstrom, Public Works Director
- Corrine Heine, City Attorney
- Julie Wischnack, Community Development Director
COUNCIL POLICY 1 - 135
POLICY REGARDING THE USE OF CITY WATER TOWERS FOR THE LOCATION OF ANTENNAE

EFFECTIVE DATE:

The City has received requests for the location of various antennae on its water towers. The Council has determined that a uniform policy for reviewing these requests is desirable.

STATEMENT OF POLICY

1. Permitted Locations.

Antennae not owned by the City of Minnetonka shall be permitted only on water towers which can physically accommodate them, in the opinion of the Director of Operations and Maintenance. If any modifications to the water tower are needed, as approved by the Director, they shall be done at the expense of the user.

2. Permitted Users.

Only the following entities may place antennae on City water towers, in order of descending priority:

   a. City of Minnetonka.

   b. Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the City of Minnetonka.

   c. Other governmental agencies, for uses which are not related to public safety.

   d. Government-regulated entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone. This does not include radio or television broadcasters.

   If there is a conflict in use between potential and existing users, permission for use shall be granted in the order of priority listed above.


All applicants who wish to locate antennae on City water towers must submit to the Director of Operations and Maintenance a completed application form and a detailed plan of the proposed installation. The application must be accompanied by a non-refundable application fee which will be used to pay for a
technical analysis of potential interference with other users conducted by a professional communications engineer. The application fee shall be established from time to time by the City Council. The technical analysis and other relevant data will be submitted to the City Council for its review. Upon approval by the City Council, the successful applicant must sign an agreement with the City, in a form acceptable to the City Attorney, which requires the applicant to pay a periodic fee, to obtain adequate liability insurance, and to comply with other appropriate requirements. The fees shall be established by the City Council after considering comparable rates in other cities, potential expenses and risks to the City, and other appropriate factors.

4. Standards.

No application will be granted unless the following standards are met:

a. The potential use must not interfere with other users who have a higher priority.

b. The user must comply with minimum equipment and site standards prepared by the City.

c. The user must locate its ground equipment in a structure which is separate from the tower and provided by the City. The structure shall have its own sources of electrical power and telephone service. The cost of the structure and utility service shall be recovered through the user fees.

d. The user's equipment and personnel must not interfere with normal operation of the water tower.

e. The user must reimburse the City for any costs which it incurs because of the user's existence on City property.

f. The user must agree to pay a fee to reimburse the City for its expenses for each time the user wants admittance into the tower structure.

g. The user must be responsible for the security of its own equipment.

h. The user must have obtained all necessary land use approvals.
5. Revocation.

The City Council may revoke permission to use a City water tower if it determines that any one of the following situations exist:

a. a potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with an existing use,

b. a user's antennae unreasonably interfere with other users with higher priority, regardless of whether or not this was adequately predicted in the technical analysis,

c. a user violates any of the standards in this policy or the conditions attached to the City's permission,

d. the City's use of the water tower is discontinued,

e. for any other reason, the City is not physically or technically able to provide the water tower as a location for the antennae and related equipment, or

f. the City Council determines that continued use of the tower for the user's antennae would not be in the best interests of the public health, safety, or welfare.

Before taking action, the City will provide notice to the user of the intended revocation and the reasons for it, and provide an opportunity for the user to address the City Council regarding the proposed action. This procedure need not be followed in emergency situations. If the proposed revocation is because of inadequate space, the Council will consider allowing the user to make or pay for reasonable changes to the water tower, which do not impede normal water tower operations, to accommodate the additional antennae.

6. Reservation of Right.

Notwithstanding the above, the City Council reserves the right to deny, for any reason, the use of any or all City water towers by any one or all applicants.
Policy Number 12.5
Use of City Water Towers for the Location of Antennas

Purpose of Policy: This policy establishes a uniform policy for reviewing requests for the location of antennas on city water towers.

Introduction
The city has received requests for the location of various antennae on its water towers. The council has determined that a uniform policy for reviewing these requests is desirable.

Permitted Locations
Antennae not owned by the city of Minnetonka will be permitted only on water towers that have been sufficiently modified, in the opinion of the public works director to adequately accommodate those antennae. The modification must be done at the user’s expense.

Permitted Users
Only the following entities may place antennae on city water towers, in order of descending priority:

1. City of Minnetonka
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the city of Minnetonka.
3. Other governmental agencies, for uses that are not related to public safety.
4. Government-regulated entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone. This does not include radio or television broadcasters.

If there is a conflict in use between potential and existing users, permission for use will be granted in order of priority listed above.

Application Process
All applicants who wish to locate antennae on city water towers must submit to the public works director a completed application form and a detailed plan of the proposed installation. Staff will review the application to determine the appropriateness of the request, including the aesthetic impact and the structural integrity of the tower. Staff may retain the services of a structural engineer to analyze the structural capacity. The applicant must reimburse the city for the cost of this analysis.

The technical analysis and other relevant data will be submitted to the city council for its review. City council approval is conditioned on a finding by a professional communications engineer that there will be no interference with other users. The applicant must reimburse the city for the cost of this analysis before installation of the
antennas. After approval by the city council, the successful applicant must sign an agreement with the city, in a form acceptable to the city attorney, that requires the application to pay a periodic fee, to obtain adequate liability insurance, and to comply with other appropriate requirements. The fees will be established by the city council after considering comparable rates in other cities, potential expenses and risks to the city, and other appropriate factors.

Standards
No application will be granted unless the following standards are met:

- The potential use must not interfere with other users who have a higher priority.
- The user must comply with minimum equipment and site standards prepared by the city.
- The user must have its own sources of electrical power and telephone service.
- The user's equipment and personnel must not interfere with normal operation of the water tower.
- The user must reimburse the city for any costs that it incurs because of the user's existence on city property.
- The user must agree to pay a fee for each time it wants admittance into the tower structure, if required by the city.
- The user must be responsible for the security of its own equipment.
- The user must have obtained all necessary land use approvals.
- The user must comply with the attached Guidelines for Antennas on City Water Towers.

Revocation
The city council may revoke permission to use a city water tower if it determines that any one of the following situations exist:

- A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with an existing use;
- A user's antennae unreasonably interfere with other users with higher priority, regardless of whether or not this was adequately predicted in the technical analysis; or
- A user violates any of the standards in this policy or the conditions attached to the city's permission.
The city council decides to dismantle the water tower.

Before taking action, the city will provide notice to the user of the intended revocation and the reasons for it, and provide an opportunity for the user to address the city council regarding the proposed action. This procedure need not be followed in emergency situations.

Reservation of Right
Notwithstanding the above, the city council reserves the right to deny, for any reason, the use of any or all city water towers by any one or all applicants.

Adopted by Resolution No. 88-8767
Council Meeting of November 7, 1988

Amended by Resolution No. 97-043
Council Meeting of March 31, 1997

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003

Amended by Resolution No. 2006-026
Council Meeting of March 27, 2006
Guidelines for Antennas on City Water Towers

1. **Design plans.** Drawings and specifications detailing equipment installation, cable runs, supports, penetrations, fastening methods, foundations, panels, electrical power connections, grounding, and all other required details for a complete installation must be submitted for review and approval. A drawing depicting the final appearance of the tank must also be included. A certified professional engineer in the utility's state must stamp all drawings and specifications.

2. **Operation.** Either by design, function, or installation, proposed equipment must not interfere with the facility's operation and its ability to deliver safe, potable water at sufficient pressure to customers.

3. **Appearance.** The equipment must have minimal detrimental effect on the facility's aesthetic appearance. The design must not significantly alter the appearance of the tank. The use of permanently installed false overflow pipes as cable conduits is not allowed. Wherever possible, tank cable runs must be internal to the tank's structure. No exposed exterior cable runs will be allowed without the written approval of the utility. Color for cables, antennas, and any other visible appurtenances must match the tank colors and be submitted for approval.

4. **Coatings.** Existing rank interior and exterior coating systems must be protected or repaired with new equivalent coating systems during the work of antenna company equipment installation. Coating repairs must be subject to approval. Existing tank coating specifications are available on request.

5. **Enclosures.** Proposed communication equipment to be installed at ground level outside a tank's structure must be enclosed in approved, aesthetically pleasing enclosures. All ground structures must be contained within the city owned parcel subject to planning approval. Unsupervised access into the water storage facility is not permitted. Supervised access shall be granted based on the Lease agreement. Wherever possible, a private access to the antenna company's designated area must be provided by the antenna company. The antenna company will have unlimited access to its designated area through this access point.

6. **Exclusion zone.** An exclusion perimeter zone of 10 ft (minimum) beyond the outermost tank component (i.e., catwalk or widest tank diameter) must exist (outermost structure from the tank center plus 10 ft). No aboveground appurtenance is permitted within the exclusion zone without the utility's written approval.

7. **Installation.** All cable runs between the antenna company's designated area and the tank must be buried. No ice bridges or other exposed (above grade) cable support systems may be installed without written approval. All cable tank penetrations must be sealed. The penetration sealing method and/or detail must be submitted for approval. The utility may request a structural analysis be performed, at antenna company expense, if the number of wall penetrations is a structural concern. No proposed
appurtenance may interfere with the periodic maintenance of the site grounds. The antenna company must maintain the grounds inside its designated equipment area.

8. **Maintenance.** Presence and operation of proposed equipment must have minimal impact on the tank's periodic maintenance work (e.g., tank inspections and painting). Antennas may be required to be out of service for a period of time during periodic tank maintenance work.

9. **Safety.** Any and all proposed equipment, installation work, maintenance work, or any other work performed on the premises by the antenna company, or agents of the antenna company, must not result in any safety hazards or OSHA violations. Such hazards and violations may include, but are not limited to, ladder cage/riser clearance, toe-rung clearance, hatch interference, and vent interference.

10. **Security.** No antenna company property or activities, including the operation and maintenance of antenna company equipment and appurtenances, may, in any way, impinge on the ability of the utility to provide security for its facility.

11. **Regulations.** The proposed communication system design must comply with all federal, state, and local standards regulations, whether identified by the utility in its review or not. antenna company must correct any design deficiencies discovered subsequent to approval of the installation at its expense and with the approval of the utility. Communication equipment must not interfere with any utility communication or control signals. If interference between the antenna company and other communication equipment is discovered, it must be corrected at the antenna company's expense.
January 18, 2016

**SENT VIA E-MAIL AND US MAIL**

The Hon. Mayor and City Council Members  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

Re: Proposed Verizon Wireless Installation in City of Minnetonka  
Williston Road Water Tower  
Verizon Wireless Site Name: MIN Aladdin

Dear Mr. Mayor and Members of the Council:

**Introduction.** Our law firm represents Verizon Wireless in its zoning and real estate activities in Minnesota. As the City of Minnetonka considers whether to allow Verizon Wireless to install even a single antenna on the top of one water tower in the City, we ask that you bear in mind that the most recent statistics that show more than 45% of all people in the nation have only a wireless telephone, with no traditional, landline telephone service at all:

**Wireless-Only Households, 2003-2015**

![Wireless-Only Households, 2003-2015](chart)

NOTE: Adults are aged 18 and over; children are under age 18.  
DATA SOURCE: CDC/NCHS, National Health Interview Survey.

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In the Midwest, 51.9% of adults live in households with no wired phone. (*Id.* at Table 2, p.7.)

In fact, the FCC considers enhanced reliability and resiliency of the wireless communications network a “major public safety priority” of the FCC due to the growing number of U.S. households that rely solely on wireless phones and because the great majority of 911 calls originate on wireless networks. *See In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks; Reliability and Continuity of Communications Network, Including Broadband Technologies*, FCC 13-125 at ¶18 (September 27, 2013) (“With an increasing percentage of 911 calls – already measured at 75 percent within the State of California – originating on wireless networks, the need for reliable wireless service during emergencies is a major public safety priority.”)

Recognizing this, many local authorities now view their association with wireless infrastructure much differently from the way they did 10 or 20 years ago. For example, where cities once may have adopted policies that discouraged (or prohibited) wireless facilities from being built in residential areas, forward-thinking communities now recognize that it would be irresponsible to do so. Where cities once thought of siting wireless facilities on public property as only a way to increase non-tax revenue, those same cities realize that public property has an important role to play in making wireless networks in their communities reliable, robust and readily available to their residents. Cellphones have become so commonplace that it is crucial for cities like Minnetonka to adopt ordinances and policies that encourage well-developed networks, so that these devices will work properly when they are needed most. This is especially important when someone must use their cellphone to call 9-1-1 from inside their own home or workplace.

After all, these devices only work when there are operational cell sites with antennas in relatively close proximity to the wireless caller. This need for proximity is even more important when someone needs to use their phone from inside of a building – perhaps even the basement of their own home. Because these systems operate at relatively low power, it is very difficult for the signals to penetrate the walls of buildings where callers may be. We all know this to be true; as we go into our basements and lower levels of our homes, it is more difficult to make a call, or to keep a call connected once it is made.

Although common when this service was new, cellphone use is no longer limited to our cars. Certainly, police, fire and public safety personnel still use their devices when on the scene or traveling to it. But smartphones are just as likely to be used by the average citizen – to check for storms while fishing or boating, to read e-mail between innings during a little league game or even to get directions to the next youth hockey game. The antennas need to be wherever the people are, and the City’s policy should allow this to be possible, even if the top of a water tower is necessary to do so.

**Minnetonka other policies already preserve the City’s priority for antenna space.** As you know, when Verizon Wireless asked the City to approve its application for an installation on
the Williston Road Water Tower, City staff required extensive information to demonstrate the need for a single antenna on the top of the water tower. When that information was supplied, the City’s own consultant, Owl Engineering confirmed that Verizon Wireless will need at least one antenna on the top of the water tower to meet the service needs of customers in Minnetonka. Ultimately, this request was denied, and our client was advised that the Public Works department reserves the top of the water tower for its own use. This policy seems contrary to the City’s planning objective to avoid construction of monopoles and other towers where possible.

This is not to say the Minnetonka should not give up the priority for its own use, when that use conflicts with other wireless infrastructure. In fact, the City already has adopted an official policy\(^2\) that conclusively establishes the following priority of users:

**Permitted Users**

Only the following entities may place antennae on city water towers, in order of descending priority:

1. City of Minnetonka

2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the city of Minnetonka.

3. Other governmental agencies, for uses that are not related to public safety.

4. Government-regulated entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone. This does not include radio or television broadcasters.

If there is a conflict in use between potential and existing users, permission for use will be granted in order of priority listed above.

That same policy is embodied in the City’s current water tower lease for wireless providers like Verizon Wireless. That Policy already provides that, even after the City leases space on a water tower for wireless use, the City has the right to terminate that lease:

**Revocation**

The city council may revoke permission to use a city water tower if it determines that

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any one of the following situations exist:

- A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with an existing use;

- A user’s antennae unreasonably interfere with other users with higher priority, regardless of whether or not this was adequately predicted in the technical analysis; or

- A user violates any of the standards in this policy or the conditions attached to the city’s permission.

- The city council decides to dismantle the water tower.

Before taking action, the city will provide notice to the user of the intended revocation and the reasons for it, and provide an opportunity for the user to address the city council regarding the proposed action. This procedure need not be followed in emergency situations.  

As a result of this existing policy, there should be no reason that the City would arbitrarily reserve space at the top of all of its water towers, so that companies like Verizon Wireless are required to build monopoles or other types of towers, especially when such a structure may only be needed to support a single antenna.

The wireless companies themselves have come a long way since the Telecommunications Act of 1996 was first adopted. Rather than refusing to allow competitors on each other’s structures, or even wasting time and resources negotiating one-off deals to allow such collocation, the companies have national, reciprocal, master agreements in place to make collocation on each other’s facilities both fair and uncomplicated. The companies have well-established procedures to (1) apply for collocation and (2) evaluate and approve each other’s applications. Like the Cities, these companies routinely retain the right to relocate antennas of their tenants in the event that space is needed for the facilities of the tower owner.

This is certainly nothing new for any of these companies. Indeed, Minnetonka’s policy is strikingly similar to the lease terms that the companies themselves have included in their own collocation agreements. Rather than prevent these installations – or effectively require the construction of additional monopoles or other types of towers – Minnetonka should make every effort to ensure that the facilities can be responsibly sited throughout their geographic area.

Of course it still makes perfect sense for Cities to require – and to enable – these installations on existing structures, whenever such a structure is in a location that will allow the networks to work properly. Where a City owns such a structure that is in the right place (like a water tower, public safety antenna tower, civil defense siren standard, parking lot lighting, etc.), both the

\[3 (Id. at pp. 2-3. )\]
policy and the regulations should be adopted to encourage that use of existing structure. Where no such structure is available, something may have to be built in order to install the antennas where they are needed most – but there is no reason to encourage the companies to build these structures before they are needed.

Conclusion. Verizon Wireless understands the City's concerns about preserving water tower space for the City's own use. However, the City already has policies in place to protect that priority. For this reason, we ask that the Council direct its staff to work with Verizon Wireless to allow the proposed installation on the Williston Road Water Tower, including a single antenna at the top of the water tower. By doing so, the City of Minnetonka will continue to recognize the importance of this service to everyone who lives and works there, while preserving the priority of users for the City and other governmental authorities if the day should come that those governmental needs come into conflict with the need for wireless service in Minnetonka.

We will be in attendance at the upcoming City Council meeting to answer any questions that you may have. If any reader of this letter has questions in the meantime, please do not hesitate to contact me.

We look forward to working with the City to maintain – and improve – Verizon Wireless service.

Sincerely,

Jaymes D. Littlejohn
Attorney at Law
P: (612) 877-5274   F: (612) 877-5047
Jay.Littlejohn@lawmoss.com

cc:   Cynthia Shuck, Verizon Wireless (via e-mail)
City Council Agenda Item #14B  
Meeting of January 25, 2016

**Brief Description:** Resolution supporting Metro Cities Policy 4-B – Regional Governance Structure

**Recommended Action:** Adopt the resolution

**Background**

The Metropolitan Council (Met Council) has been the regional policy-making body, planning agency, and provider of essential services for the seven-county Twin Cities region for nearly 50 years. Under state law, the council is charged with establishing regional growth policies and long-range plans for transportation, aviation, water resources and regional parks. Its services and infrastructure that support communities and businesses to ensure a high quality of life include regional transit, wastewater treatment services, regional parks, planning, and affordable housing.

A 17-member board appointed by the governor guides the strategic growth of the metro area, adhering to the council’s mission of fostering efficient growth for a prosperous region. Elected officials and citizens share their expertise with the council by serving on key advisory committees.

From time to time throughout the Met Council’s history, the board’s governance structure has been debated and a variety of alternative methodologies have been suggested. In recent years, state legislation has been introduced to change from appointed to elected officials or to have appointed members eligible only if they are currently elected officials.

The city of Minnetonka is a member of Metro Cities, an organization serving as a voice for metropolitan cities at the legislature and Met Council. Elected and appointed city officials from the area annually develop and adopt legislative policies. Metro Cities Policy 4-B addresses the Met Council’s regional governance structure as follows:

*Metro Cities supports the appointment of Metropolitan Council members by the Governor with four year, staggered terms for members. The appointment of the Metropolitan Council Chair should coincide with the term of the Governor.*

*Metro Cities supports a nominating committee process that maximizes participation and input by local officials. Consideration should be given to the creation of four separate nominating committees, with committee representation from each quadrant of the region. Members of each committee should include three city officials, appointed by Metro Cities, one county commissioner appointed by the Association of MN Counties or a comparable entity, and three*
citizens appointed by the Governor. At least three of the local officials should be elected officials.

Metro Cities supports the appointment of Metropolitan Council members who have demonstrated the ability to work with cities in a collaborative manner and commit to meet with local government officials regularly, and who understand the diversity and the commonalities of the region, and the long-term implications of regional decision-making.

At the city council’s January 11 study session, the city manager reported on renewed efforts by certain interests to adopt legislation changing the governance structure of the Met Council. Council Member Wiersum provided a brief background on the Metro Cities’ position, and Mayor Schneider suggested the city council consider supporting Metro Cities’ policy on the issue. Attached for council review and discussion is a resolution to do so.

Recommendation

Adopt a resolution supporting the Metro Cities Policy 4-B – Regional Governance Structure.

Originated by:
   Geralyn Barone, City Manager
Resolution No. 2016-

Resolution Supporting Metro Cities Policy 4-B – Regional Governance Structure

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. The Metropolitan Council (Met Council) has been the regional policy-making body, planning agency, and provider of essential services for the seven-county Twin Cities region for nearly 50 years.

1.02. A 17-member board appointed by the Governor guides the strategic growth of the metro area, adhering to the council’s mission of fostering efficient growth for a prosperous region. Elected officials and citizens share their expertise with the council by serving on key advisory committees.

1.03. The city of Minnetonka is a member of Metro Cities, an organization serving as a voice for metropolitan cities at the legislature and Met Council.

1.04. Metro Cities has adopted Policy 4-B – Regional Governance Structure as follows:

Metro Cities supports the appointment of Metropolitan Council members by the Governor with four year, staggered terms for members. The appointment of the Metropolitan Council Chair should coincide with the term of the Governor.

Metro Cities supports a nominating committee process that maximizes participation and input by local officials. Consideration should be given to the creation of four separate nominating committees, with committee representation from each quadrant of the region. Members of each committee should include three city officials, appointed by Metro Cities, one county commissioner appointed by the Association of MN Counties or a comparable entity, and three citizens appointed by the Governor. At least three of the local officials should be elected officials.

Metro Cities supports the appointment of Metropolitan Council members who have demonstrated the ability to work with cities in a collaborative manner and commit to meet with local government officials regularly, and who understand the diversity and the commonalities of the region, and the long-term implications of regional decision-making.

1.05. The Minnetonka City Council discussed and concurred with the policy at its January 25, 2016 meeting.
Section 2. Council Action.

2.01. The Minnetonka City Council hereby supports Metro Cities Policy 4-B – Regional Governance Structure.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 25, 2016.

______________________________
Terry Schneider, Mayor

Attest:

______________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on .

______________________________
David E. Maeda, City Clerk
City Council Agenda Item #15A
Meeting of January 25, 2016

Brief Description: Appointments and reappointments to Minnetonka boards and commissions

Recommended Action: Approve the recommended appointments and reappointments

Background
On January 11th, the city council interviewed a number of applicants for the open positions on the EDAC and planning commission. After reviewing the comments from each council member and my notes, I am recommending appointing Charlie Yunker to fill the vacancy on the EDAC and Kevan Hanson to fill the vacancy on the planning commission. I have spoken with both applicants and they both expressed the willingness to dedicate the time and energy necessary to be contributing members.

In addition, on January 31, 2016, the terms of office will expire for some members of the EDAC, park board and planning commission. Each member has indicated an interest in continuing to serve an additional term. Reappointments for the Senior Citizen Advisory Board members would be retroactive effective June 1, 2015, and all actions taken by the reappointed members since June 1, 2015 are ratified.

The updated membership rosters showing the composition of the above boards and commissions following these reappointments are attached.

Recommendation
To approve the following appointments and reappointments to the Minnetonka Boards, Commissions and Committees:

- Cynthia Kist, to the park board, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- Marvin Puspoki, to the park board, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- Madeline Seveland, to the park board, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- Kevan Hanson, to the planning commission, to serve a two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- David Knight, to the planning commission, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- Sean O'Connell, to the planning commission, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- John Powers, to the planning commission, to serve a two-year term, effective February 1, 2016 and expiring on January 31, 2018.
- Charlie Yunker, to the EDAC, to serve a two-year term, effective February 1, 2016 and expiring on January 31, 2018.
• Michael Happe, to the EDAC, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
• Jacob Johnson, to the EDAC, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
• Jerry Knickerbocker, to the EDAC, to serve another two-year term, effective February 1, 2016 and expiring on January 31, 2018.
• Frances Dranginis, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Dewey Hassig, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Allan Kind, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Richard King, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Jeanne Lutgen, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Christopher Meyer, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Loy O’Boyle, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Thomas Scott, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• Bonnie Sussman, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.
• HS Tim Temple, to the Senior Citizen Advisory Board, to serve another two-year term, effective June 1, 2016 and expiring on May 31, 2018.

Also I recommend Kathryn Aanenson as chair and Ken Isaacson as vice chair for the EDAC for 2016.

Respectfully submitted,

Terry Schneider
Mayor
This board is comprised of seven members plus one student representative. This board consults with the city council and staff in matters relating to parkland, park facilities, programs, and finances. The board's functions include long and short range planning related to capital improvement projects, acquisition, development and use of parklands, park facilities, recreational and leisure time facilities, and recreational programs. Park board members also represent the city on a joint recreation board, directing primary attention to recreation programs and activities developed and offered through the joint board; and making recommendations to the city council through the joint board concerning policies on recreational programs and activities. This board meets the first Wednesday of each month at 7:00 p.m. Members serve two-year terms.

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Staff Liaisons:
Perry Vetter, Assistant City Manager Ph# 952-939-8216
Dave Johnson, Recreation Services Director, Ph# 952-939-8360
Planning Commission

Current Members

The planning commission assists and advises the city council in administration of the City Zoning Ordinance; conducts public hearings on matters as required by provisions of the zoning ordinance, subdivision ordinance, and any other matters referred by the council or by ordinance. Following the required public hearings, the planning commission makes its reports and recommendations to the city council and city manager. This commission is comprised of seven members who serve two-year terms. The meetings are generally held Thursday nights, twice a month at 6:30 p.m.

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Other Commission Members:

Loren Gordon - City of Minnetonka Staff Liaison Ph# 939-8296
# Economic Development Advisory Commission

## Current Members

The Economic Development Advisory Commission (EDAC) advises the city council regarding redevelopment, development/finance, housing and transportation. This board is comprised of seven members who reside in the city, work in the city or own a business in the city. Members serve a two-year terms. Meetings are held as needed.

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**Staff Liaisons:**

Julie Wischnack, Community Development Director, Ph# 952-939-8282
# Senior Citizen Advisory Board

## Current Members

This board is comprised of 15 members whose duties include advising the city council on the needs and status of seniors in the city, recommending ways in which those needs may be met; determining and assessing existing resources in the city which may be utilized by seniors to meet their needs; evaluating and assessing proposed programs, grants and other governmental activities which may impact seniors; recommending policies, goals and objectives for the operation of the Senior Center, and working with staff and the senior director. Members serve two-year terms, and meet the second Tuesday of each month at 10:00 a.m.

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Comments:
- Reappointed:
- Vice President
- Secretary
- Staff Liaison:
  Steve Pieh, Senior Services Director, Ph # 939-5366

Tuesday, January 19, 2016
Page 2 of 2
Addendum
Minnetonka City Council
January 25, 2016 Regular Meeting

Item 15A – Appointments and reappointments to Minnetonka boards and commissions

Attached is a memo from the assistant city manager listing two additional appointments recommended by the mayor.
item 15A – Appointments and reappointments to Minnetonka boards and commissions

The mayor has recommended the following additional appointments:

Edward Herzog, to the Senior Citizen Advisory Board, to complete the remainder of a two-year term, effective February 1, 2016 and expiring on May 31, 2017.

Sue Shuff, to the Lake Minnetonka Conservation District Board of Directors, to serve another term, effective February 1, 2016 and expiring January 31, 2019.