



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
JUNE 13, 2023
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Pledge of Allegiance

Approval of Minutes

Approval of the Minutes of the (1) City Council Work Session of May 23, 2023; and (2) City Council Meeting of May 23, 2023.

PRESENTATIONS

1. Minnesota Parks and Recreation Association (MRPA) presentation to Richfield Recreation
2. Proclamation celebrating LGBTQ+ Pride Month
3. Proclamation celebrating Juneteenth
4. Proclamation celebrating Elsen Brothers Garage

AGENDA APPROVAL

5. Approval of the Agenda

Open forum

Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2632 301 8006 and password: 1234.

Please refer to the Council Agenda & Minutes web page for additional ways to submit comments.

6. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consider approval of an extension to the temporary easement granted to Hennepin County for the County State Aid Highway No. 52/Nicollet Avenue Safety Improvement Project at 70th Street.
Staff Report No. 67
 - B. Consider the approval of setting a public hearing to be held on June 27, 2023, to consider the issuance of new On-Sale Wine and 3.2 Percent Malt Liquor licenses for Toma Richfield, LLC dba Toma

Mojo Grill, located at 1700 66th Street East.

Staff Report No. 68

- C. Consider the approval of an agreement for Prosecution Services with the City of Richfield and H/J Law.

Staff Report No. 69

- D. Consider a two-part request: site plan review and a two-stall parking variance for Afghan Halal Supermarket at 6626 Penn Avenue South.

Staff Report No. 70

- E. Consider adoption of a resolution authorizing the City of Richfield to accept grant funds in the amount of \$2,962.40 and enter into a Source Water Protection Grant Agreement with the Minnesota Department of Health (MDH) to develop, distribute, and make available a packet of information specific to the City's Wellhead Protection Plan.

Staff Report No. 71

- F. Consider approval of a resolution updating the Public Purpose Expenditure Policy.

Staff Report No. 72

- G. Consider a resolution authorizing submittal of a grant application by Beacon Interfaith Housing Collaborative to Minnesota Brownfields for environmental investigation at 6613-25 Portland Avenue.

Staff Report No. 73

- H. Approve the first reading of an ordinance approving renewal of a cable television franchise with Comcast of Minnesota, Inc., and schedule a public hearing and second reading for June 27, 2023.

Staff Report No. 74

- I. Consider adoption of a resolution authorizing the City to affirm the monetary limits on statutory municipal tort liability.

Staff Report No. 75

- J. First reading of a transitory ordinance providing funding for certain capital improvements from the Liquor Contribution Special Revenue Fund.

Staff Report No. 76

7. Consideration of items, if any, removed from Consent Calendar

RESOLUTIONS

8. Consider a request to modify (2024) and then terminate (2025) Best Buy's Minimum Assessment Agreement.

OTHER BUSINESS

9. Consider the approval of recommended Climate Action Plan (CAP), prioritized actions for implementation from 2023-2026 and the related amendment in the City's Strategic Plan.

Staff Report No. 77

CITY MANAGER'S REPORT

10. City Manager's Report

CLAIMS AND PAYROLLS

11. Claims and Payroll

COUNCIL DISCUSSION

12. Hats Off to Hometown Hits

CLOSED EXECUTIVE SESSION

13. Closed Executive Session regarding the City Manager's annual performance evaluation. Council will move to the Babcock Room for the closed session portion of the meeting

14. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

City Council Work Session

May 23, 2023

CALL TO ORDER

Mayor Supple called the work session to order at 5:45 p.m. in the Bartholomew Room.

Council Members Present: Mary Supple, Mayor; Sharon Christensen; Simon Trautmann; and Ben Whalen

Council Members Absent: Sean Hayford Oleary

Staff Present: Katie Rodriguez, City Manager; Dustin Leslie, City Clerk; Chris Swanson, Management Analyst; Rachel Lindholm, Sustainability Specialist; Amy Markle, Recreation Services Director; Kristin Asher, Public Works Director; and Melissa Poehlman, Community Development Director

Guests: Ted Redmond, Consultant

ITEM #1

CONSIDER RECOMMENDED CLIMATE ACTION PLAN (CAP) PRIORITIZED ACTIONS FOR IMPLEMENTATION IN 2023-2025

Director Markle introduced the topic and gave a brief overview of the recommended actions as well as the proposed next steps.

Ted Redmond spoke about his company, Pale Blue Dot, and the work they perform. He then explained the Greenhouse Gas Inventory (GHG) and Climate Action Plan (CAP). This explanation included processes, goals, metrics, and where Richfield compares to other similar communities.

Council Member Whalen asked if the climate bill passed by the legislature would make a big impact on greenhouse gas emissions. Redmond replied that it will help but would not make a significant difference without help from local governments.

Mayor Supple stated that it looked as if natural gas was the biggest culprit for greenhouse gas emissions. Redmond stated that was correct along with transportation emissions.

Redmond continued the presentation and spoke about goal suggestions within the CAP. Council Member Whalen asked if the goals would get the city where they need to be or if they were just chosen because they were achievable. Redmond stated that the goals would do both.

Redmond further spoke about goals and how to prioritize their importance. Mayor Supple stated that Electric Vehicles (EVs) are heavier vehicles and that they may do more damage to roads.

She asked if this was something that could be studied. Redmond stated that issue could be included in the assessments but that there were not many EV choices for the heaviest city vehicles.

Council Member Trautmann asked if electric sources were studied and if some sources of electricity were better than others. Redmond stated new studies have shown that while there are better sources of electricity, all sources are better than using fossil fuels.

Council Member Whalen asked about costs associated with the goals. Sustainability Specialist Lindholm stated goal costs would be within the budget and would line up with the strategic plan. Council Member Whalen also asked if, and how many, trees could be planted to help with greenhouse gas emissions. Redmond stated that it would not make a difference with emissions, but planting trees would help with other sustainability goals.

Council Member Trautmann spoke about his knowledge gap regarding how much of a crisis climate change is and that more education would be helpful to him and the community. Sustainability Specialist Lindholm spoke about the planned education campaign for the public and that outreach would be one of the main focus areas.

Council Member Christensen spoke about how residents should learn that changes need to be made by everyone and not just big businesses.

Redmond spoke about the top four focus areas within the CAP for 2023-2025.

Mayor Supple asked what was needed from Council. Director Markle stated this plan would be up for approval at the first meeting in June. Staff stated this would be an opportunity for Council to send feedback about the plan before then.

Council Member Whalen spoke about the focus areas and agreed that they were important and supported the staff recommendations. He and Specialist Lindholm also discussed federal funding opportunities and what the city could use to help with implementation.

Mayor Supple stated there seemed to be consensus that Council was supportive of these actions and asked Redmond to discuss what climate change would look like in Richfield. Redmond spoke about what Richfield would look like with a 2-degree increase as well as a 1.5-degree increase. He further stated that if nothing was done, there would likely be a 3.8 degree increase and that Richfield would feel like North Texas by the year 2100.

ADJOURNMENT

Mayor Supple adjourned the work session at 6:50 pm

Date Approved: May 23, 2023

Mary B. Supple
Mayor

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

May 23, 2023

CALL TO ORDER

The meeting was called to order by Mayor Supple at 7:00 p.m. in the Council Chambers.

Council Members Present: Mary Supple, Mayor; Sharon Christensen; Simon Trautmann; and Ben Whalen

Council Members Absent: Sean Hayford Oleary

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Melissa Poehلمان, Community Development Director; Chris Swanson, Management Analyst; Dustin Leslie, City Clerk; Julie Eddington; HRA Attorney; and Jennifer Anderson; Health Administrator

PLEDGE OF ALLEGIANCE

Mayor Supple led the Pledge of Allegiance.

OPEN FORUM

Mayor Supple reviewed the options to participate:

- Participate live by calling 1-415-655-0001 during the open forum portion
- Call prior to meeting 612-861-9711
- Email prior to meeting kwynn@richfieldmn.gov

Randy Olson, 1210 Urbandale Lane in Plymouth, spoke about the upcoming June concert.

Kathleen Balaban, 6526 Stevens Avenue South, spoke about the level of detail in Commission minutes and training for Commissioners. The resident also spoke about legal notices in the Sun Current and the need for more community feedback. The resident finally spoke about HR policies and how terminations occur at the city.

Ruane Onesirosan 2421 West 65th Street, spoke about Council salary and remarked about the relationship between staff and Council regarding voting practices.

APPROVAL OF MINUTES

M/Whalen, S/Christensen to approve the minutes of the: (1) City Council Work Session of May 9, 2023; (2) City Council Meeting of May 9, 2023.

Motion carried: 4-0

ITEM #1	FOOD SAFETY AWARDS
----------------	---------------------------

Jennifer Anderson stated the Richfield Advisory of Health had acknowledged excellence in food safety by giving out awards in two different categories since 2006. The categories were for the full-service restaurant, and the fast food, pizza, and carry-out. She noted due to the pandemic the awards have not been given out since 2019.

Ms. Anderson stated the nominees in the full-service restaurant category were: Davanni's and Giordano's with Giordano's winning the award. She presented Mr. Holland with the award.

Eric Holland, Giordano's, 3000 West 66th Street, stated the Richfield food service industry was one of the best in the cities.

Ms. Anderson stated the nominees in the fast food, pizza, and carry-out category were Five Guys and Panda Express with Panda Express winning the award.

ITEM #2	APPROVAL OF THE AGENDA
----------------	-------------------------------

M/Whalen, S/Trautmann to approve the agenda.

Motion carried: 4-0

ITEM #3	CONSENT CALENDAR
----------------	-------------------------

City Manager Rodriguez presented the consent calendar.

- A. Consider approval of a Temporary On Sale Intoxicating Liquor license for an event scheduled to take place June 10, 2023, at Fred Babcock VFW #5555, located at 6715 Lakeshore Drive (Staff Report No.61)
- B. Consider the approval of a Temporary On Sale Intoxicating Liquor license for events scheduled to take place July 3rd and 4th, 2023 at Fred Babcock VFW #5555, located at 6715 Lakeshore Drive (Staff Report No. 62)
- C. Consider the approval of a Temporary On Sale intoxicating Liquor license for the Academy of Holy Angels, located at 6600 Nicollet Avenue S., for their annual Rock The Lawn event scheduled to take place June 24, 2023 (Staff Report No. 63)

M/Christensen, S/Whalen to approve the consent calendar.

Motion carried: 4-0

ITEM #4	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
----------------	--

None.

ITEM #5	CONSIDER CONFIRMATION OF THE APPOINTMENT OF KUMUD VERMA TO BE FINANCIAL DIRECTOR FOR THE CITY OF RICHFIELD (STAFF REPORT NO. 65)
----------------	---

Council Member Whalen presented Staff Report 65.

City Manager Rodriguez stated she was impressed with Ms. Verma's first year and she was excited to see what Ms. Verma could do once she had a full staff.

M/Whalen, S/Trautmann to approve the appointment of Kumud Verma to be the Financial Director for the City of Richfield.

Council Member Trautmann congratulated Ms. Verma on her new position.

Mayor Supple also congratulated Ms. Verma.

Motion carried: 4-0

ITEM #6	CONSIDER A REQUEST TO MODIFY (2024) AND THEN TERMINATE (2025) BEST BUY'S MINIMUM ASSESSMENT AGREEMENT (STAFF REPORT NO. 66)
----------------	--

Council Member Trautmann presented Staff Report 66.

Director Poehlman reiterated that HRA staff and City staff felt that Best Buy had been an important member of the community for the past 23 years. She noted due to the pandemic the landscape of office developments had changed and everyone would like to find a beneficial solution for Best Buy, without harming the HRA. She indicated there were representatives from Best Buy as well as the HRA attorney and Jean Vogt from Ehlers were in attendance to answer any questions.

M/Trautmann, S/Whalen to deny a request to modify (2024) and/or terminate (2025) Best Buy's Minimum Assessment Agreement for Best Buy at 7601 Penn Avenue South.

Council Member Whalen stated he was open to some level of negotiating in good faith, but this did not feel like a meeting halfway offer. He indicated for the City to put in the extra effort to do a big audit and find out they are owed \$851,000, but to be offered in return a 20% of an unknown figure felt as if this wasn't a mutually beneficial offer. He hoped they could continue the conversation though. He did not doubt Best Buy's analysis that their property was not worth the minimum value that it was legally kept at due to the pandemic, but to find a path forward would have to be something that came closer to addressing what the original agreement would say the City was receiving. He indicated his views had not changed since the Council Work Session and he was open to removing the minimum assessment agreement, but any deal would need to address the overpayment as well.

Council Member Trautmann stated what he meant by global settlement during the Work Session was that he was persuaded by the City's analysis that they are owed \$851,000. However, he was also delighted to learn there was the opportunity for the City to recoup that money, particularly since

Best Buy had the opportunity to receive some tax savings. He stated anything less than that was not a proposal that he received in good faith. He believed they had an opportunity to get this done, but this was not it and it was not hard to deny this proposal.

Mayor Supple stated she appreciated that Best Buy had done many things for the community in which she was grateful for, but her first priority was to her fiduciary duty to the residents. She indicated the Council had made it clear at the March Work Session that there should be no financial loss to the HRA through any agreement. She noted the current proposal did not meet that criterion to do no harm, so she could not support this request at this point as she believed it would be doing harm and this was something she had to do as a fiduciary to the HRA and to the City. She stated she would be in favor of denying the request at this point. She noted if the Council was voting yes to this motion, they would be voting to deny the request.

Tracy Smith, BestBuy, reminded the Council that from the start of the development and construction of the Best Buy campus, Best Buy and the City have partnered for their mutual benefit. She noted Best Buy had built a vibrant corporate campus which served Best Buy, its vendors, and the Richfield community well for over two decades. She noted Best Buy wanted to highlight the public benefit from the Best Buy portion of the TIF district, which included almost 12 million in the payment of bonds issued to finance public improvements, and almost 11 million to the HRA to fund its housing initiatives. She indicated Best Buy had made significant charitable contributions to the City, nonprofits, schools, and community activities.

Ms. Smith indicated today the unprecedented reordering of the Twin Cities office market demanded swift action to keep the City's largest commercial office building competitive. She believed the City and the Best Buy office building needed to attract new business tenants. She stated they needed to make changes now to the agreement to reflect market competitive property taxes, instead of the arbitrary value that was set over two decades ago, which far exceeded today's market value. She noted that by waiting 2.5 years from now until the end of the TIF district to pay property taxes on a fair market value base, they would have missed their opportunity to attract tenants looking for space right now.

Ms. Smith noted she was in attendance at the Council Work Meeting in which it appeared the Council agreed the benefits of Best Buy's request to modify and ultimately terminate the Agreement was a benefit as long as the HRA was made whole. She indicated Best Buy agreed to make the HRA whole with respect to the consequences of the agreement and she believed Director Poehlman also acknowledged that, so there was no dispute about making the City whole. She stated since the Council Work Meeting, Best Buy had made two offers to resolve all issues globally. She noted in each of those offers Best Buy had compromised its position by offering to accept significantly less than it believed it was entitled to. However, she indicated the HRA had made no offers and stands firm that it was entitled to 100 percent of its assertions. She stated the parties had been unable to reach a global resolution of all legal issues.

Ms. Smith addressed the concept of overpayment in which the HRA had asserted there was an \$851,000 overpayment arising from errors and calculations from 10 years ago, but Best Buy did not agree the overpayment was made. She stated the HRA currently had withheld 29 percent of the tax increment (which was not disputed). She indicated at the end of the 2.5 years, the HRA was allowed to use/spend 25 percent of the tax increment. She noted withholding additional funds now (\$851,000) would only increase the 29 percent currently withheld. She indicated the solution was not for the HRA to withhold additional money increasing the withholdings that were already in excess of what they were able to spend in the next 2.5 years. She stated the solution was to make additional payments pursuant to the note to reduce the HRA's withholding to the 25 percent by the end of the district. She asked the Council to question if they end up with a 29 percent, and they can only spend 25 percent, 75 percent was required to be paid on the bonds and to the Best Buy note. She noted they would have a problem in 2.5 years and they were worsening that problem by claiming there is an overpayment right now.

Ms. Smith indicated they had invested over 10 months in discussions on how to make the orderly wind down of this TIF district. She was not sure they appeared closer to a global resolution and they might ultimately agree to disagree on some of those things, but the question was whether or not they can get a done within the time necessitated to meet the deadlines so they could all benefit from the reduction in property taxes.

Ms. Smith stated right now they had a corporate campus with an assessed value that might be as much as twice its fair market value, which was a significant impediment to attracting new businesses to the Best Buy's corporate campus and to Richfield.

Ms. Smith explained they had one proposal for the City which was that 20 percent was set because they were talking about mutual benefits, and the fact that they should share in some of this benefit. She noted the 20 percent was somewhere in between and that was where they were saying there was a compromise.

Ms. Smith also stated litigation hazards are always set at 20 percent also and that was another generic boundary and in this case it worked for both. She indicated even though they do not agree there was an overpayment, it gave them more than that and that there was a middle ground. She indicated that was where they were trying in good faith to negotiate. She indicated if both parties stand their ground at 100 percent, they will never find the middle.

Ms. Smith requested the Council approve their request to modify the agreement, either on a 20 percent basis or on a standalone basis. She noted on the standalone basis, Best Buy would reconfirm that they would make the HRA whole by ensuring no loss of revenue to the HRA, or affordable housing as a result of any assessed valuation changes. She indicated there was no downside to the HRA to approving the standalone request. She stated there was also a substantial upside to the City by helping to make the cost structure competitive for businesses they hope to attract to Richfield and the Best Buy campus.

Council Member Whalen asked staff if Council were to approve the eventual removal of the minimum assessment agreement and this overpayment, it was his understanding that if they were to approve the eventual removal of the minimum assessment agreement and the make it whole provision, that they are offering that they would lose their ability to recoup the overpayment amount if they were to resolve just the MIAA portion.

Director Poehlman stated as discussed in the memo, the HRA believed they had the ability to recoup the money regardless they are actually obligated by law to do so because it is an improper use of TIF funds. She noted the Council and HRA could consider discussing the minimum assessment on their own and then go ahead and move to recoup through the outstanding TIF payments over the next couple of years. She indicated the idea behind a global solution was that they would like everyone to acknowledge that this had happened, so they can take care of everything and not try to recoup that money and have the parties end up in possible litigation.

Council Member Trautmann expressed appreciation for the comments. He appreciated Best Buy's participation in the community and if they were to mention all of them, they would be in the meeting for a while. He believed the Best Buy building stood as a strategic error by isolating itself from the Richfield community in very concrete structural ways. He noted it had been a vision to hermetically seal the corporate campus away from the community and now that had revealed itself to be an strategic move, both financially and communally. He believed they had an opportunity to turn the page, which he recognized, but noted it was not as significant as how they show up as neighbors in the next generation or two. He indicated they had asked for a forensic audit and there was nothing in the audit where he believed they should move and he did not feel he would be voting in a good corporate consciousness if they did move. He acknowledged Best Buy was offering the 20 percent to the City to mitigate their litigation risk and he hoped in the next several weeks, they could come to an agreement. However, it did nothing at this time to change his analysis.

Mayor Supple asked HRA attorney Eddington about why it was not fair to say the City had paid 29 percent to Best Buy. Attorney Eddington stated she had reviewed all of the contract changes and amendments and indicated the contract changed the way TIF was paid to Best Buy and the HRA, which was four times over the life of the contract. She noted in the early years the HRA received a lot of TIF that they saved and kept as they were guessing what the TIF would be like. She indicated there were numerous changes in the way TIF was paid overtime in the contract, and that was how the HRA had funds in their possession. TIF funds that were legally theirs under the contract for many years. She stated it would be helpful to know if Best Buy looked closely at the original contract and amendments, which clearly showed how TIF was parsed out between the two parties over the last 23 years. She noted the contract they had followed exactly what the contract provided each time the division of TIF was changed and that was rock solid.

Mayor Supple stated the Best Buy representative had stated the City had taken in over 29 percent, but it was her understanding that the 29 percent referred to all three parts of the TIF district and not just to the Best Buy portion and that has a bearing on the matters. Attorney Eddington responded in development contracts, they could split out the TIF anyway they wanted. She noted the contract provided the path as to who gets TIF, when, and in what amount. She indicated the 25 percent was a rule where the HRA could only expand 25 percent, but it did not mean they cannot collect more than that. She stated the HRA could collect as much as they wanted. She indicated some of the money they received in the early days was used to put into the Affordable Housing Trust Fund through some legislation. She indicated that was completely legal and it was their money pursuant to the contract and that money went to the Affordable Housing Trust Fund. She stated the 25 percent currently for the entire district had been met and the HRA had not expended more than 25 percent of their TIF, unless it was pursuant to the legislation that they received.

Council Member Trautmann stated he was hesitant to have too many legal conversations, even though nothing they were saying was privileged. He stated he was comfortable with Attorney Eddington's analysis and he appreciated it and he hoped they still had an opportunity to keep the conversation going and reach a resolution with Best Buy.

Mayor Supple stated her point in asking the question was that both sides of the argument were in the staff packet, but only one side was presented to Council and she wanted to make sure both sides were presented. Director Poehlman stated the 29 percent that was being referenced in terms of statute was actually irrelevant. She noted the 29 percent being referred to was strictly related to the Best Buy portion of this district. She noted this was a scattered site district with three projects and that 25 percent applies to the entirety of the District and the 29 percent related to Best Buy was irrelevant.

Council Member Whalen asked if the projected potential tax savings if the minimum assessment agreement removed and they were successful by the June deadline, would Best Buy stand to save up to \$2 million in tax savings. Director Poehlman responded there was a range of values provided, but at the maximum where the anticipated value would drop by nearly 50%, the two-year tax savings to Best Buy was estimated to be about 2.4 million.

Council Member Whalen stated he did not disagree with Best Buy's claim that they were currently valued at higher than market value because of this agreement and that everything they said about bringing people to the office space made sense. He believed this came down to the dispute over an overpayment, but Best Buy would still have potentially up to \$1.4 million in 2 years. He indicated to him this felt like a negotiation.

Motion carried: 4-0

ITEM #7	CITY MANAGER'S REPORT
----------------	------------------------------

City Manager Rodriguez shared information regarding the new AV equipment in the Council Chambers starting tomorrow.

City Manager Rodriguez responded to an Open Forum comment by Ms. Balaban who wanted Commissioner contract information and pictures to be put on the City's website. She noted they were putting on the website a fillable form, which should be out later this week for the Chairs of the Commissions. She indicated the names of the Commissions were already out there and they would provide further contract information if asked. She stated this was similar to other cities. She indicated they would also add pictures, group photos of the Commissions as staff had time to upgrade the website.

City Manager Rodriguez thanked staff and Council for their advocacy on their legislative platform items for the top three legislative asks. She indicated they had received full funding for Wood Lake Nature Center's new building at \$12 million. She stated they also had the ability to bring a local sales tax ask to the voters, and they made progress on local flexibility or EMS. He thanked Representative Howard and Senator Wicklund.

Council Member Whalen asked for staff to make a summary of the legislative bills that had been passed. City Manager Rodriguez responded they were collecting reports from various entities and staff would start summarizing those and also putting together some estimates for some of the other bills that would impact the City.

ITEM #8	CLAIMS AND PAYROLL
----------------	---------------------------

M/Trautmann, S/Whalen that the following claims and payrolls be approved:

<u>U.S. BANK</u>	<u>05/23/2023</u>
A/P Checks: 314285 - 314568	\$1,672,123.72
Payroll: 178425 – 178725 43644	<u>\$760,871.28</u>
TOTAL	\$2,432,995.00

Motion carried: 4-0

ITEM #9	HATS OFF TO HOMETOWN HITS
----------------	----------------------------------

Council Member Whalen lifted up the strong legislative work and the Work Session that focused on prioritizing actions within the climate action plan. He highlighted some wins on the sustainability front including after years of the transit system operating at very low funding and there was a new plan to raise revenue. He also indicated there was a billion dollars of climate investment across a variety of things.

Council Member Christensen gave hats off to the Richfield Leadership Network. She indicated there was an event this past week at the Community Center that brought together a wide variety of community members, leaders, and business owners who all got together.

Council Member Trautmann gave hats off to Team Richfield and all of the City volunteers and community members that showed up. He lifted up Senator Wicklund and Representative Howard as well as City staff and the Mayor who had spent a lot of time advocating and getting the Richfield story

out to the Legislature. He stated he appreciated Congress member Omar, who visited on multiple occasions to Wood Lake.

Mayor Supple echoed Council Member Trautmann’s comments and gave kudos to Chief Henthorn for representing the City at the Legislative session. She also thanked the staff. She thanked the legislators, Representative Howard, and Senator Wicklund. She highlighted some of the things coming up including the City participating in the flags for Fort Snelling; the honoring of all veterans on Memorial Day at the Veterans’ Memorial.

ITEM #10	ADJOURNMENT
-----------------	--------------------

M/Trautmann, S/Whalen to adjourn the meeting at 8:17 p.m.

Motion carried: 4-0

Date Approved: June 13, 2023

Mary Supple
Mayor

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



Proclamation of the City of Richfield

WHEREAS, Pride month is a positive stance against discrimination and violence toward individuals who identify as lesbian, gay, bisexual, transgender, queer, intersex and asexual (LGBTQIA) and celebrates sexual and gender identities; and

WHEREAS, the Richfield City Council and staff identified celebrating diversity and being equitable as core values, recognizing that our diverse culture is one of our greatest strengths and assets; and

WHEREAS, the month of June was chosen for Pride Month to commemorate the Stonewall riots, which occurred in June 1969 and became a catalyst for the LGBTQIA movement; and

WHEREAS, LGBTQIA people have made, and continue to make, great and lasting contributions to the City of Richfield and to the greater community; and

WHEREAS, while the LGBTQIA civil rights movement has achieved great progress, there remains a great deal more progress to be had; and

WHEREAS, the Richfield Human Rights Commission supported this proclamation at its May 2nd, 2023 meeting and recommended The Richfield City Council do the same; and

Now, THEREFORE, I Mary Supple, mayor of Richfield, on behalf of the Richfield City Council, do hereby proclaim the month of June 2023 as Pride Month in the City of Richfield and call on the people of Richfield to observe this month with appropriate programs, activities, and ceremonies, and continue to honor the contributions of LGBTQIA residents throughout the year.

Proclaimed on this 13th day of June 2023

Mary Supple, Mayor



Proclamation of the City of Richfield

WHEREAS, President Abraham Lincoln signed the Emancipation Proclamation on January 1, 1863, declaring “that all persons held as slaves” within the rebellious states “are, and henceforward shall be free”; and

WHEREAS, this freedom was deferred for many Black Americans as slaveholders seeking to maintain their wealth and power kept word of this proclamation from their newly freed slaves, even going so far as to forcefully relocate over 150,000 enslaved Black persons into Texas; and

WHEREAS, on June 19th, 1865, Union troops marched to Galveston, Texas to enforce the Emancipation Proclamation and free the last enslaved Black Americans in Texas – over two years after they were declared legally free; and

WHEREAS, on that day, June 19th, 1865, over 250,000 Black Americans embraced freedom by executive decree in what became known as Juneteenth, or Freedom Day; and

WHEREAS, Juneteenth marks our country’s second Independence Day, celebrating freedom and justice, and emphasizing the achievements of Black Americans after gaining their freedom; and

WHEREAS, the generations to follow saw continued oppression of these now free people, barring countless Black Americans from enjoying the same privileges and successes as their white counterparts; and

WHEREAS, the City of Richfield is committed to doing the work required to deconstruct systemic racism and secure an equitable future for all citizens, and

WHEREAS, our community unites on this Juneteenth for the first time in celebration of these shared goals, with the first annual Richfield Juneteenth Celebration.

NOW, THEREFORE, I, MARY SUPPLE, Mayor of the City of Richfield, do acknowledge the relevance of June 19, 1865 and celebrate every June 19 as Juneteenth Freedom Day in the City of Richfield and call on the people of Richfield to observe this day with appropriate programs, activities, and ceremonies, and continue to honor the contributions of African Americans throughout the year.

PROCLAIMED this 13th day of June 2023.

Mary Supple, Mayor



Proclamation of the City of Richfield

WHEREAS, John Elsen, born in Luxembourg in 1860, and his wife Barbara, moved to Richfield and started a blacksmith shop in the same location as Elsen' Brother's Garage today, 7730 Portland Avenue. The exact date the shop opened is unknown, but the best guess is 1893; and

WHEREAS, Eugene John Elsen, born in 1892, joined his father in the blacksmith trade, working alongside him in the shop and ultimately taking over ownership of the company. Eugene also constructed a home at the property; and

WHEREAS, the main focus of the shop was blacksmith work. They provided shoes and farrier services for the surrounding farmers horses, did plow mending, disc sharpening, and general welding and repair. They also did general maintenance and repair of a new mechanical contraption called the automobile; and

WHEREAS, due to the increase popularity of personal vehicles, they built truck bodies for farmers and malt haulers in the shop. The trucks brought malt to the Schmidt Brewery on West 7th Street in St. Paul and hauled the spent grain to the area to be used as animal feed; and

WHEREAS, Eugene's had 4 sons Richard, Donald, Gerald, and Eugene Jr. In 1956, Donald and Richard took over the business, renaming their company Elsen Service Garage. The business focused on automotive repair and welding, as well as providing gasoline to the young community, they had a pump for regular and tractor gas for the farmers who still lived in the area; and

WHEREAS, in 1993, Richard's sons, Bob and Joe, took over, renamed the business Elsen Brother's Garage. They have continued to provide exceptional service to the community; and

WHEREAS, not only has their business been in the community for over 130 years and five generations. The Elsens have been an important family in Richfield during that time; and

WHEREAS, they have proudly supported youth sports leagues including hockey and baseball, as well as being involved with schools, churches, and the Richfield business community.

NOW, THEREFORE, I, MARY SUPPLE, Mayor of the City of Richfield, and its citizens celebrate Elsen Brother's Garage and the Elsen family as they have watched the community change, from farmland and horses, to homes and highways, from hand forged horseshoes, to electronic sensors and detectors.

PROCLAIMED this 13th day of June 2023.

Mary Supple, Mayor



STAFF REPORT NO. 67
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Jake Whipple, Civil Engineer

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director
6/6/2023

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of an extension to the temporary easement granted to Hennepin County for the County State Aid Highway No. 52/Nicollet Avenue Safety Improvement Project at 70th Street.

EXECUTIVE SUMMARY:

A temporary easement was originally approved by the City Council on March 22, 2022. The temporary easement went into effect April 1, 2022 and is set to expire June 30, 2023. Due to high bid prices in 2022, Hennepin County elected to rebid and construct the project in 2023. An extension of the temporary easement until November 30, 2023 is required to complete construction of the project.

The portions of the project in Richfield include transportation infrastructure upgrades at the intersections of 70th St/Nicollet Ave and 76th St/Nicollet Ave. The upgrades include rehabilitation and/or replacement of traffic signals (including pedestrian signal upgrades), reconstruction of pedestrian sidewalk ramps and crosswalks, miscellaneous curb and gutter replacements, and minor utility adjustments.

RECOMMENDED ACTION:

By Motion: Approve the extension to the temporary easement granted to Hennepin County for the County State Aid Highway No. 52/Nicollet Avenue Safety Improvement Project at 70th Street.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The County is leading a safety improvement project along County State Aid Highway No. 52/Nicollet Avenue at 70th and 76th streets within the City, which includes upgrading pedestrian ramps to current Americans with Disabilities Act (ADA) standards, including installation of Accessible Pedestrian Signals (APS) and traffic signal systems at the intersections.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The County State Aid Highway No. 52/Nicollet Ave Safety Improvement Project is consistent with the following approved plans:

- Comprehensive Plan (Chapter 7 - Transportation)
- Pedestrian Master Plan
- Bicycle Master Plan
- Complete Streets Policy

C. **CRITICAL TIMING ISSUES:**

The temporary easement extension needs to be approved in order for Hennepin County to continue construction beyond June 30, 2023.

D. **FINANCIAL IMPACT:**

None

E. **LEGAL CONSIDERATION:**

The City Attorney has reviewed the temporary easement extension and will be available to answer questions.

ALTERNATIVE RECOMMENDATION(S):

None

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ Temporary Easement Extension	Contract/Agreement

EXTENSION OF TEMPORARY EASEMENTS

THIS INSTRUMENT is made this _____ day of _____, 2023, by the City of Richfield, a municipal corporation under the laws of the State of Minnesota, Grantor, in favor of the County of Hennepin, a body politic and corporate under the laws of the State of Minnesota, Grantee.

RECITALS

- A. Grantor is the fee owner of certain real property located in Hennepin County, Minnesota (PID No. 34-028-24-21-0001) and legally described on Exhibit A attached hereto (the “Property”).
- B. By an instrument dated March 22, 2022, Grantor conveyed to Grantee temporary construction easements (the “Temporary Easement”) over portions of the Property as legally described on the Temporary Easement instrument.
- C. Grantor and Grantee agree to modify the Temporary Easement as follows.

TERMS

- 1. Extension of Term. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys the following extension of the Temporary Easement:

The term of the Temporary Easement as described in Paragraph 7 of the Temporary Easement shall be extended and the easement granted therein will now expire on November 30, 2023.

- 2. No Other Modifications. This Instrument does not modify the Temporary Easement except for those express terms herein.

GRANTOR

CITY OF RICHFIELD

By: _____
Mary Supple, Mayor

By: _____
Katie Rodriguez, City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Mary Supple and Katie Rodriguez, the Mayor and City Manager, respectively, of the City of Richfield, a municipal corporation, on behalf of the City as Grantor.

Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:
Kennedy & Graven, Chartered (SCZ)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

That part of Government Lot 4, Section 34, Township 28, Range 24 which lies East of a line drawn parallel with the East line of the Minneapolis, Northfield & Southern Railroad right of way from a point in the South line of said Lot 4 distant 415 feet East of the East line of said right of way as measured along the South lines of Government Lots 4 and 5, said Section 34, except that part thereof described as follows:

Beginning at the Southeast corner of said Government Lot 4; thence North along the East line of said Government Lot 4 a distance of 599.74 feet; thence West, at a right angle, a distance of 120.00 feet; thence Southwesterly, deflecting to the left 45 degrees 00 minutes 00 seconds, a distance of 185.00 feet; thence South, deflecting to the left 45 degrees 00 minutes 00 seconds a distance of 135.00 feet; thence Southwesterly, deflecting to the right 45 degrees 00 minutes 00 seconds, a distance of 111.97 feet, more or less, to the intersection with a line drawn parallel with the East line of said Government Lot from a point on the South line of said Government Lot distant 330.00 feet West from the Southeast corner of said Government Lot; thence South, along said parallel line, a distance of 257.36 feet, more or less, to said South line; thence East, along said South line a distance of 330.00 feet to the point of beginning.



STAFF REPORT NO. 68
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
6/5/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/8/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of setting a public hearing to be held on June 27, 2023, to consider the issuance of new On-Sale Wine and 3.2 Percent Malt Liquor licenses for Toma Richfield, LLC dba Toma Mojo Grill, located at 1700 66th Street East.

EXECUTIVE SUMMARY:

On April 13, 2023, the City received the application materials for new On-Sale Wine and 3.2 Percent Malt Liquor licenses for Toma Richfield, LLC, dba Toma Mojo Grill, located at 1700 66th Street East.

All required information and documents have been received. All licensing fees have been paid.

RECOMMENDED ACTION:

By motion: Approve the setting of a public hearing to be held on June 27, 2023, to consider the issuance of new On-Sale Wine and 3.2 Percent Malt Liquor licenses for Toma Richfield, LLC, dba Toma Mojo Grill, located at 1700 66th Street East.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

This is a notice to set the public hearing. Staff will provide a more detailed historical context in the report submitted for the public hearing on June 27, 2023.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- City ordinance requires the City Council to conduct a public hearing to consider all On-Sale Wine and 3.2 Percent Malt Liquor license applications and set a date for the public hearing.
- The hearing must be scheduled and held before a new license may be considered.
- The new process has been initiated.

C. CRITICAL TIMING ISSUES:

Holding the public hearing on June 27, 2023 will provide ample time to complete the licensing process.

D. FINANCIAL IMPACT:

All licensing fees have been received.

E. LEGAL CONSIDERATION:

There are no legal considerations.

ALTERNATIVE RECOMMENDATION(S):

- Reject the applications for new On-Sale Wine and 3.2 Percent Malt Liquor licenses for Toma Richfield, LLC, dba Toma Mojo Grill.
- Schedule the public hearing for another date; however, this will delay the licensing process.

PRINCIPAL PARTIES EXPECTED AT MEETING:

There are no parties expected at this meeting.



STAFF REPORT NO. 69
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Jay Henthorne, Director of Public Safety/Chief of Police

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
6/5/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of an agreement for Prosecution Services with the City of Richfield and H/J Law.

EXECUTIVE SUMMARY:

The City of Richfield Department of Public Safety is required to have a attorney licensed to practice law in Minnesota, to advise and represent the City in municipal prosecutions relating to criminal and civil statutes and ordinances.

RECOMMENDED ACTION:

By motion: Approve the contract agreement for Prosecution Services with H/J Law for the City of Richfield Department of Public Safety.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- For the last 33 years City Prosecutor Martin Costello had been the prosecuting attorney for the City of Richfield Department of Public Safety.
- H/J Law has represented the City of Richfield Department of Public Safety for municipal prosecution since July 1, 2022.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City of Richfield Department of Public Safety is required by law to have a municipal prosecutor to handle state statute, and local ordinance violations; along with expungements, and diversions.

C. CRITICAL TIMING ISSUES:

The City of Richfield Department of Public Safety is required to have a prosecuting attorney. The current contract with H/J Law expires on June 30, 2023.

D. FINANCIAL IMPACT:

For all prosecution services, the City of Richfield shall pay a monthly retainer fee of \$15,000.00, with an annual limit of \$180,000.00, plus out of pocket expenses.

E. LEGAL CONSIDERATION:

The contract agreement for a municipal prosecutor is to process those violations that are within the scope of city ordinance and non felony level under state statute. The prosecutor also guides and educates city staff on appropriate action and helps the city manage risk in those situations which are legal in nature.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not approve the agreement, however the Department of Public Safety would then need to find another law firm to handle the department's municipal prosecutions.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
□ Contract	Contract/Agreement

AGREEMENT FOR PROSECUTION SERVICES
BETWEEN
CITY OF RICHFIELD
AND
H|J LAW

This Agreement for Prosecution Services (Agreement) is effective as of July 1, 2023, by and between the City of Richfield, 6700 Portland Avenue South, Richfield, Minnesota 55423 (City), and H|J Law, 900 American Boulevard East, Suite 24, Bloomington, MN. 55420 (Prosecutor).

WHEREAS, the City desires (or requires) attorneys licensed to practice law in Minnesota to advise and represent the City in municipal prosecutions; and

WHEREAS, the attorneys working with the Prosecutor are licensed to practice law in Minnesota and are experienced in and familiar with all phases of municipal prosecution and desire to provide the prosecution services required by the City; and

WHEREAS, the parties hereto want to enter into a written agreement to set forth the terms, conditions, compensation, duties, responsibilities and other matters relating to the Prosecutor providing said services to the City.

NOW, THEREFORE, it is agreed by and between the City and the Prosecutor that the City does hereby retain and designate the Prosecutor as the Richfield City Prosecutor, effective July 1, 2023, and the Prosecutor does hereby accept the position of Richfield City Prosecutor and agrees to perform the requirements of that position, all on the terms and conditions hereinafter set forth.

A. Services.

1. The Prosecutor hereby agrees to perform and furnish these legal services to the City:
 - a. Appearing at all required court hearings, including arraignments, pretrial and omnibus hearings, court trials, jury trials, sentencing hearings, probation violation hearings, and other appearances for non-felony cases;
 - b. Assembling all required case files and providing timely discovery to criminal defense attorneys and/or defendants;
 - c. Charging non-felony cases;
 - d. Prosecuting forfeitures related to non-felony cases;
 - e. Prosecuting all City ordinance violations;
 - f. Working collaboratively with the City's domestic abuse victim advocates;

- g. Advising the City Council and staff on ordinance drafting, code enforcement, and related matters;
- h. Providing police training on a mutually-agreed upon basis with the Department of Public Safety, but at least annually;
- i. Consulting with and advising the Department of Public Safety command staff, investigators, patrol officers, and administrative staff on all matters relating to non-felony prosecutions. This includes being available by telephone to consult with officers after business hours and on the weekends, as needed;
- j. Attending all necessary meetings with City and Department of Public Safety staff;
- k. Making reports, as requested, to the City Council regarding non-felony prosecutions;
- l. Speaking at City-related functions on criminal law-related topics;
- m. Maintaining an office presence at the Police Department, to include at least 3 half-days per week at the Department of Public Safety; and
- n. Completing any other duties and responsibilities necessary to effectively prosecute the City's criminal, traffic, and ordinance violations.

B. Fees and Costs.

- 1. For all prosecution services, the City shall pay the Prosecutor a monthly retainer fee of \$15,000.00, with an annual limit of \$180,000.00, plus out-of-pocket expenses.
- 2. Monthly bills will be for the above monthly retainer fee, plus identify and itemize any and all out-of-pocket expenses, e.g., certified documents or witness subpoena fees.
- 3. Additional costs of \$250 per hour when representing the City in appeals arising from non-felony prosecutions;

C. Conflicts of Interest.

- 1. The Prosecutor will not represent any clients in legal actions involving Richfield or with interests adverse to those of Richfield, including any units of government having jurisdiction within or contiguous to Richfield. The Prosecutor shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety.
- 2. In the event that a conflict of interest arises in any cases, the Prosecutor, with the consent of the City, agrees to refer those matters to outside counsel for prosecution at the City's expense.

D. Insurance.

1. The Prosecutor will maintain malpractice insurance coverage for all attorneys providing prosecution services to the City.

E. Term of Contract - Termination.

1. The term of this Agreement shall be one year unless amended in writing by the mutual agreement of the parties hereto or terminated in accordance with the conditions hereinafter contained. The last day of the one-year term is June 30, 2024.
2. This Agreement may be terminated by the City at any time or by the Prosecutor upon sixty (60) days' written notice to the City. In either event, on the termination of this Agreement, all finished and unfinished documents and work papers prepared by the Prosecutor pursuant to this Agreement shall become the property of the City and the Prosecutor will be paid for services satisfactorily performed up to the date of termination.

F. Miscellaneous.

1. All services provided by the Prosecutor pursuant to this Agreement are provided by the Prosecutor as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
2. Except as provided in Section C(2) of this Agreement relating to conflicts of interest, the rights and obligations created by this Agreement may not be assigned by either party.
3. Data provided to the Prosecutor under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
4. Nothing in this Agreement shall preclude the City from retaining legal counsel other than the Prosecutor in any legal matters including, but not limited to, litigation and other specialized areas of law.
5. The Prosecutor agrees not to discriminate in providing services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion.
6. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all

parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

- 7. In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
- 8. This Agreement, including any addenda or amendments subsequently signed by both parties, shall constitute the entire agreement between the City and the Prosecutor, and supersedes any other written or oral agreements between the City and the Prosecutor. This Agreement can only be modified in writing signed by both the City and the Prosecutor.

Executed this _____ day of June, 2023.

H|J LAW

CITY OF RICHFIELD

Gregory P. Holly
Attorney at Law

Mary Supple
Mayor

Katrina E. Joseph
Attorney at Law

Katie Rodriguez
City Manager



STAFF REPORT NO. 70
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Sam Crosby, Planner II

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director
6/1/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a two-part request: site plan review and a two-stall parking variance for Afghan Halal Supermarket at 6626 Penn Avenue South.

EXECUTIVE SUMMARY:

Afghan Halal Supermarket (Applicant) is proposing to locate at 6626 Penn Avenue South. The property is zoned Mixed Use – Community (MU-C) within the Penn Avenue Corridor (PAC) overlay. The proposed use is permitted in this zoning district; site plan approval is required because the use of the property is changing.

The on-street parking on Penn Avenue begins in front of the subject site and continues southward. Two on-street stalls are located directly in front of the property. The request includes a Council determination to allow the use of on-street parking towards off-street parking requirements, as further outlined in the Policies section, below.

The parking variance is somewhat of a technicality, as the City's Zoning Code does not permit tandem spaces. The drive aisle along the north side of the building is not required for vehicular circulation or emergency vehicle access. The drive aisle can accommodate four cars, but three of them do not "count" because they are tandem. The Applicant anticipates four employees. Staff finds that allowing the drive aisle to be designated as "employee parking only" is appropriate justification for the two-stall variance. Staff recommends that it be signed as such and be striped with arrows indicating one-way east bound traffic flow.

The requested use includes a takeout area toward the back of the store; most grocery stores have a deli counter with pre-made foods. No seating is proposed and will be included as a condition of approval.

RECOMMENDED ACTION:

By motion: Approve the proposed site plan and parking variance for 6626 Penn Avenue South.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The 5,905 square foot parcel is almost entirely impervious; it has been so since developed in 1947 according to Hennepin County aerial records. The building currently contains two tenant spaces: the south half of the building is Northland Staffing Solutions (office), the north half of the building is vacant, but was previously Beta World (retail). Retail requires only slightly more parking per

square foot than office. Health clubs, coffee shops, veterinary and medical clinics, and restaurants all require more parking than retail. So the proposed use is one of the less intensive change of uses possible. It stifles business if there isn't a little flexibility in the potential use of available space. The Applicant has the property under contract for purchase contingent upon zoning approval.

- At the Planning Commission's public hearing, only the Applicant and their representatives were in attendance. The Commission voted 6-0 to recommend approval of the request.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Zoning Code Section 547.13 establishes requirements for site plan review. The Applicant is improving the property by restriping the parking stalls, adding bicycle parking and repairing the failing retaining wall. The attached findings of fact provide further support for staff's recommendation for approval.
- Zoning Code Section 544.13, "Vehicle parking and loading requirements" Subd.6, establishes requirements for parking minimums based on the use of the property. A total of eleven parking stalls are required for the proposed use (2,700 sq. ft. of retail at four stalls per 1,000 sq. ft.). With the 10% (one stall) reduction for proximity to transit (any parcel which is located within 1/4 mile of a frequently operating transit line) and the 5% (one stall) reduction in exchange for excess bike parking (four bicycle spaces is equivalent to one car parking space), the minimum number of required off-street parking spaces is reduced to nine.
- Subd.9.d of the same Code Section, "Parking for retail and service uses may be reduced if on-street parking is adjacent to the parcel and where all of the following conditions exist:
 - i. The principal building is located within 20 feet of the front property line [complies];
 - ii. No parking exists between the front face of the principal building and the street [complies];
 - iii. A sidewalk exists along all sides of the lot that abut a public street [complies];
 - iv. A primary building entrance must face the street with parking [complies]; and
 - v. If the Council finds that such parking will not be detrimental to the surrounding neighborhood."With this provision applied, the on-site parking requirement decreases from nine to seven.
- Per Code, only five of the on-site stalls may be counted, hence the two stall variance.
- Zoning Code Section 547.11 establishes the requirements for Variances. As mentioned in the executive summary, staff supports the requested variance based on the presence of three tandem stalls. The attached findings of fact provide further support staff's recommendation for approval.
- Zoning Code Section 544.27 Subd.1 - All new uses that contain cooking apparatus which necessitates the installation of a Type 1 Ventilation Hood and which abut (or are located within 150 feet even if not abutting) existing residential property shall install professionally-designed odor control remedies. If triggered, details must be included on the building plans prior to the issuance of a building permit.
- Zoning Code Section 544.05. – Refuse collection, recycling and utilitarian elements shall be designed into the interior space of buildings or adequately screened from view. How the Applicant plans to comply must be detailed on the building plans prior to the issuance of a building permit.

C. CRITICAL TIMING ISSUES:

The statutory 60 day review period started when a complete application was received on May 5, 2023. Therefore, the 60-day clock ends on July 3, 2023.

D. FINANCIAL IMPACT:

None; required application fees have been paid.

E. LEGAL CONSIDERATION:

- Notice of the public hearing was published in the Sun Current newspaper on May 11, 2023, and was mailed to properties within 350 feet of the subject site.
- The Planning Commission held a public hearing on May 22, 2023 and unanimously recommended approval of the request as presented.

ALTERNATIVE RECOMMENDATION(S):

- Approve the request with additional and/or modified stipulations.
- Denial the request with a finding that the proposal does not meet City requirements.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None.

ATTACHMENTS:

Description	Type
▣ Resolution of Approval - Site Plan & Variances	Resolution Letter
▣ Required Findings Statement	Backup Material
▣ Zoning/Location Map	Exhibit
▣ Applicant's Request Letter	Backup Material
▣ Architect's Written Narrative	Backup Material
▣ Site Plan	Backup Material
▣ Floor Plans	Backup Material
▣ Grocery Store Half Mile Walkshed Map	Backup Material

RESOLUTION NO. _____

**RESOLUTION APPROVING A SITE PLAN AND
A TWO STALL PARKING VARIANCE
AT 6626 PENN AVENUE SOUTH**

WHEREAS, an application has been filed by Afghan Halal Supermarket with the City of Richfield which requests approval of a two stall off-street parking variance, and a proposed site plan for a partial change of use from office to retail at 6626 Penn Avenue South, property legally described as:

LOT 8, BLOCK 1, TINGDALE BROS., LINCOLN HILLS, HENNEPIN COUNTY,
MINNESOTA

WHEREAS, the Planning Commission of the City of Richfield held a public hearing at its May 22, 2023 meeting and recommended approval of the requested site plan and variance; and

WHEREAS, the property is currently half retail, half office; and

WHEREAS, Zoning Code Section 544.13, Subdivision 6, establishes the minimum number of required off-street parking spaces, which totals eleven spaces for the property to be entirely retail; and

WHEREAS, Zoning Code Section 544.13, Subdivision 8, allows a reduction of five percent of the number of required off-street parking spaces for excess bike parking (four bicycle spaces is equivalent to one parking space) and ten percent for proximity to transit (any parcel which is located within a quarter mile of a frequently operating transit line), bringing the total required off-street parking spaces down to nine; and

WHEREAS, Zoning Code Section 544.13, Subdivision 9.d, allows the City Council to approve adjacent on-street parking to count towards off-street requirements for retail and service uses, and there are two on-street spaces directly in front of the subject site, bringing the total requirement for off-street parking spaces down to seven; and

WHEREAS, there are five parking stalls available on site, and the applicant has agreed to reserve the drive aisle along the north side of the building for tandem parking by employees only, creating space for three additional cars; and

WHEREAS, notice of the public hearing was mailed to properties within 350 feet of the subject property and published in the Sun Current newspaper on May 11, 2023; and,

WHEREAS, the City has fully considered the request;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. The City Council adopts as its Findings of Fact the **WHEREAS** clauses set forth above.
2. The City Council further adopts as its Findings of Fact the findings listed in the Required Findings Statement.
3. The request to count two on-street parking stalls towards off-street parking requirements, site plan approval, and a two-stall parking variance are all hereby approved subject to the following conditions:
 - a. No seating is proposed or approved.
 - b. All required parking spaces shall remain available year-round and shall not be used for snow storage.
 - c. The north side drive aisle shall be used as employee parking only and shall be signed as such.
 - d. Odor control, and if necessary associated screening, shall be provided per code.
 - e. Trash and recycling shall be fully enclosed or stored inside the building per code.
 - f. Separate sign permits are required for any new or relocated sign greater than six square feet in size.
 - g. The applicant is responsible for obtaining all required permits, and compliance with all other City, County and State regulations.
 - h. No lighting changes are proposed or approved.

Prior to the issuance of a building permit, the applicant shall:

- i. Provide a SAC determination from the Met Council.
- j. Provide proof of having recorded a copy of this resolution of approval.
- k. Provide bike rack specs and a close-up dimensioned diagram of the installation area for staff review and approval.
- l. Indicate how trash and recycling will be handled.

Prior to the issuance of a Certificate of Occupancy, the applicant shall:

- m. Either provide a surety equal to 125% of the value of any improvements not yet complete, or:
 - n. All parking areas must restriped,
 - o. The retaining wall shall be repaired,
 - p. Bike racks shall be installed according to manufacturer's specifications,
 - q. Odor control shall be installed,
 - r. All required screening shall be installed, and
 - s. All directional signage shall be installed.
4. This approval shall expire one year from issuance unless the use for which the permit was granted has commenced, substantial work has been completed or upon written request by the applicant, the Council extends the expiration date for an additional period, as required by the Zoning Ordinance, Section 547.13, Subd. 9.

Adopted by the City Council of the City of Richfield, Minnesota this 13th day of June, 2023.

Mary B. Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

Required Findings

Afghan Halal Supermarket / 6626 Penn Avenue South

Part 1 - Site Plan Approval (Subsection 547.13) In evaluating a site plan, the Planning Commission and Council shall consider its compliance with the following:

- a) *Consistency with the various elements and objectives of the City's long range plans including, but not limited to, the Comprehensive Plan.*

While the Penn Avenue Corridor is intended for redevelopment, redevelopment is not eminent. The proposed changes improve the property as much as possible given existing conditions and will help span the gap between current day and future redevelopment.

Objective 2.4 of Goal 6 of the Climate Action Plan is: "Measure proximity of grocery stores to residential areas, specifically pedestrian access within a half-mile radius of grocery stores. Use this information in program development to focus on increasing equity." Staff created the attached Grocery Store Half Mile Walkshed Map and found that the proposed supermarket would help to fill a gap near the "equator" of the City. The City's 2040 Comprehensive Plan has both social equity and health equity as foundational principles. Ethnic grocery stores increase equity because people are able to recognize healthy food choices through their own food traditions. Consequently, the proposed use is consistent with long range plans and objectives.

- b) *Consistency with the purposes of the Zoning Code.*

The proposed grocery store is allowed in the MU-C zoning district and is otherwise consistent with purpose and intent of the Zoning Code. Mixed use is desired but not required for sites less than 2 acres in size.

- c) *Preservation of the site in its natural state, insofar as practicable, by minimizing tree and soil removal, and designing any grade changes so as to be in keeping with the general appearance of neighboring developed or developing areas.*

N/A - The site is not being developed or redeveloped; the building is simply being remodeled.

- d) *Creation of a harmonious relationship of buildings and open spaces with the terrain and with existing and future buildings having a visual relationship to the proposed development.*

N/A – No exterior changes are proposed beyond maintenance.

- e) *Creation of a functional and harmonious design for structures and site features including:*

- i. *Creation of an internal sense of order for the various functions and buildings on the site and provision of a desirable environment for occupants, visitors, and the general community;*

N/A - No external changes proposed.

- ii. *Appropriateness of the amount and arrangement of open space and landscaping to the design and function of the development;*

N/A – The property does not contain open space and no changes are proposed.

- iii. *Appropriateness of the materials, textures, colors and details of construction as an expression of the design concept of the project and the compatibility of the same with the adjacent and neighboring structures and functions;*

N/A – no exterior changes are proposed, any rooftop mechanical equipment will be located away from view or screened.

- iv. *Adequacy of vehicular, cycling 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, cycling and vehicular traffic and arrangement and amount of parking so as to be safe, convenient and, insofar as practicable, compatible with the design of*

proposed buildings, structures and neighboring properties.

The proposal improves bike parking - both required and extra exterior bicycle parking will be installed.

- f) *Creation of an energy-conserving design 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.*

N/A – No changes are proposed.

- g) *Protection of adjacent and neighboring properties through reasonable provisions for such matters as 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.*

There are no exterior changes and no negative aspects of the design are expected to affect neighboring properties.

Part 2 – Parking Variance: (Subsection 547.11) In evaluating a variance, the Planning Commission and Council shall consider the following:

- a) *There are “practical difficulties” that prevent the property owner from using the property in a reasonable manner.*

In the continuum of parking demand, an office use is the mid to low end of the spectrum. The size of the building relative to the lot is an existing condition which creates a difficulty if the owner desires to convert the building use to anything more parking-intensive than office. The Applicant proposes to use the property in a reasonable manner and the considerations are not economic in nature.

- b) *There are unusual or unique circumstances that apply to the property which were not created by the applicant and do not apply generally to other properties in the same zone or vicinity.*

The existing conditions may be similar to other properties in the immediately surrounding area, however, they were not created by the Applicant.

- c) *The variance would not alter the character of the neighborhood or the locality.*

Being that the drive aisle along the north side of the building will be used for employee parking in an amount equivalent to, or in excess of, the size of the variance being requested, the variance is not anticipated to alter the character of the neighborhood.

- d) *The variance is the minimum necessary to alleviate the practical difficulty.*

To the extent possible, the Applicant has tried to maximize the amount of parking on site to ensure that the requested variance is the minimum variance necessary to alleviate the difficulty.

- e) *The variance is in harmony with the general purpose and intent of the ordinance and consistent with the Comprehensive Plan.*

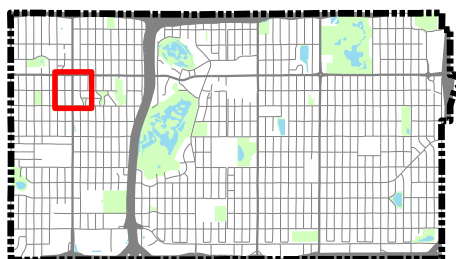
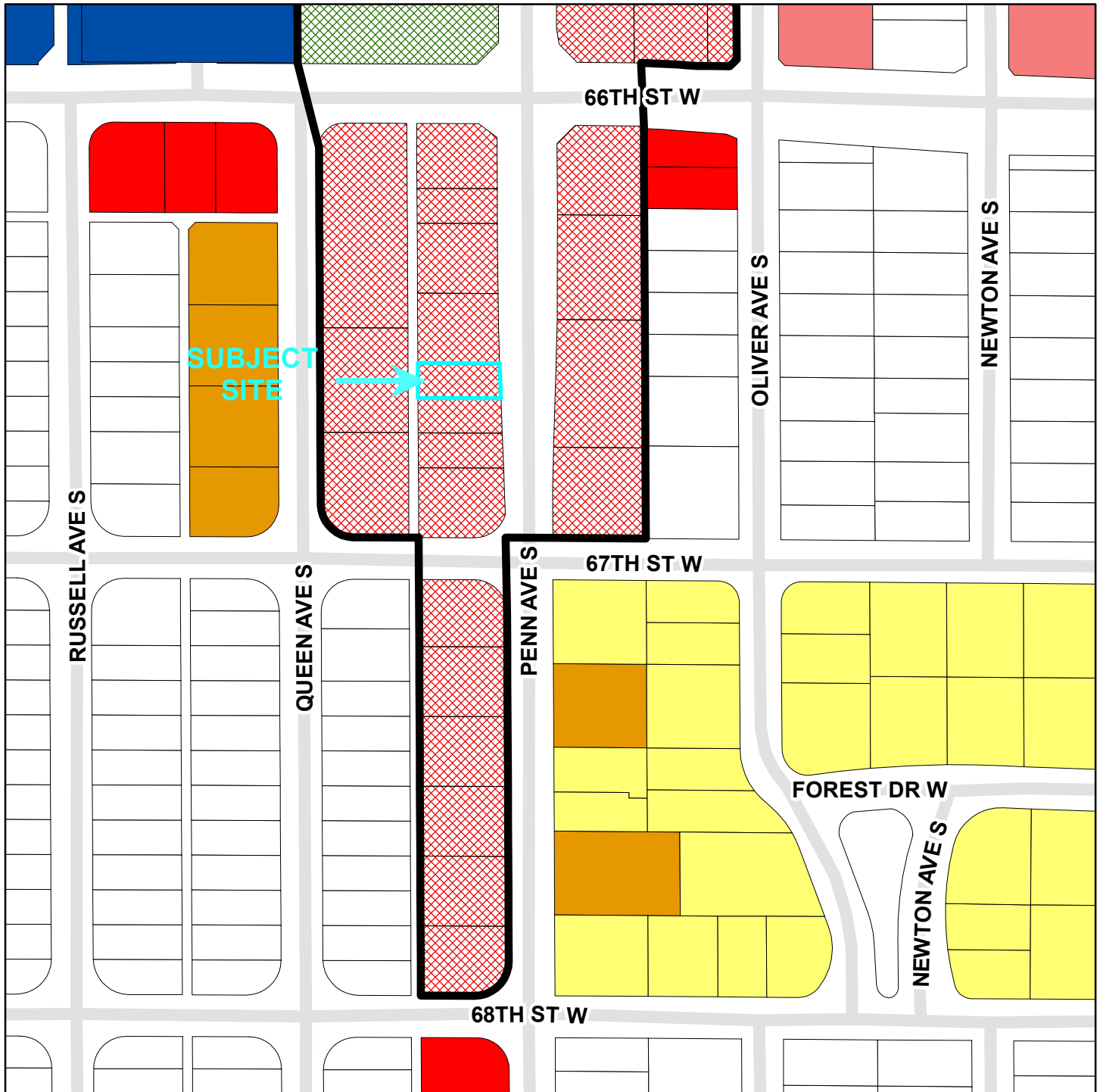
In relation to the zoning ordinance, the purpose and intent of the Penn Avenue Corridor District is to “provide for a balanced mix of commercial, office and residential uses that together create a cohesive and pedestrian-friendly area.” The creation of a grocery store further south on Penn Avenue helps to serve an area not currently within a half mile walk of another grocery store, improving the “pedestrian friendliness” of the area. In relation to the Comprehensive Plan, while the Penn Avenue Corridor is intended for redevelopment, redevelopment is not eminent. The subject use will help span the gap between current day and future redevelopment.



6626 Penn Avenue South

Location and Zoning Map

Afghan Halal Supermarket



Legend

- Penn Ave Corridor Overlay
- R Single-Family
- PMR Planned Multi-Family
- MR-2 Multi-Family
- MR-3 High-Density Multi-Family

- C-1 Community Commercial
- C-2 General Commercial
- PMU Planned Mixed Use
- MU-C Mixed Use-Community

0 105 210 420 ft



To the Distinguished Members of Planning Commission and Richfield City Council:

I am writing to express the importance of establishing an Afghan ethnic grocery store for the Afghan community in the city of Richfield. As a member of the Afghan community living in Minnesota, I understand the challenges that our community is facing, especially with the recent collapse of the republic government of Afghanistan.

The state of Minnesota has announced that it will welcome 2000 immigrants and refugees from Afghanistan, and so far, around 1700 individuals have resided in Minnesota, with the majority of these families living around the twin cities. As per our estimate, around 200 families are living from south Minneapolis to Burnsville, Minnesota.

One of the major challenges that this newly established community is facing is accessing culturally oriented groceries. While some stores that have similar groceries are located on Central Ave in North Minneapolis, the majority of these families don't have reliable transportation and have to spend hours on public transportation to obtain their cultural food. This affects their ability to work full-time jobs and support their families.

To address this issue, we plan to help the community and open a store in Richfield. The store will not only serve the Afghan community in Richfield but also serve community members from Bloomington, Edina, Burnsville, and south of Minneapolis. This opportunity will enable the Afghan community to have access to all kinds of cultural food and products, save them time, and mitigate transportation issues.

An Afghan ethnic grocery store would not only provide access to unique and delicious foods, but it would also be a place where people can come together and share their love of food and culture.

Therefore, I urge you to consider the benefits of establishing an Afghan ethnic grocery store in our community and to support our efforts to make it a reality.

Thank you for your attention to this matter.

Best regards,

Masehullah Sahil



Land Use Application Narrative

Date: 05/04/2023 (REVISED)

Re: Proposed Grocery Store
6626 Penn Ave S,
Richfield, MN 55423

The project applicant wishes to purchase the property located at 6626 Penn Ave S, Richfield, MN 55423.

In the existing building, the approximate retail / office area is 2,700 SF. The retail half is currently vacant and the southern half of the space is currently occupied by an office tenant. The Applicant's plan is to combine both halves and open a small grocery store (retail use) with a takeout Halal meat area. The grocery store is new to the area and will not only serve the Afghan community in Richfield but also serve community members from Bloomington, Edina, Burnsville, and south of Minneapolis.

At approximately 2,700 SF it appears 11 parking spaces would be required (4/1000 for retail) per zoning. There are 4 spaces available at the back and 2 on-street spaces available at the front. There is a drive aisle on the north that could serve as another 1-3 parking space bringing the total up to a minimum of 7 available spaces.

The Richfield zoning code section, 544.13. sub 9 a) – d). Modification of number of required parking spaces, provides provisions for reducing the number of required parking spaces including reductions based on adding bicycle spaces, availability of nearby transit lines and use of on-street parking. Looking at the Penn / W 66th St intersection to the north it appears that there is bus service available. The Applicant is proposing to add the required bike spaces along the front of the building. Using these permitted modifications, 2 parking spaces will be able to be substituted resulting in the need for a Variance for 2 parking space.

From our perspective the Applicant's proposed grocery store will be a great asset to the community, is consistent with the City of Richfield's Zoning Map's Mixed Use of the property, and will not negatively impact the surrounding area.

Sincerely,

A handwritten signature in black ink that reads "Raphael Lister". The signature is fluid and cursive, with a long horizontal stroke at the end.

Raphael Lister, AIA, LEED AP
Pope Design Group
Project Manager

Enclosure: Letter from Masehullah Sahil

767 N. Eustis St., Ste 190
St. Paul, Minnesota 55114
651.642.9200

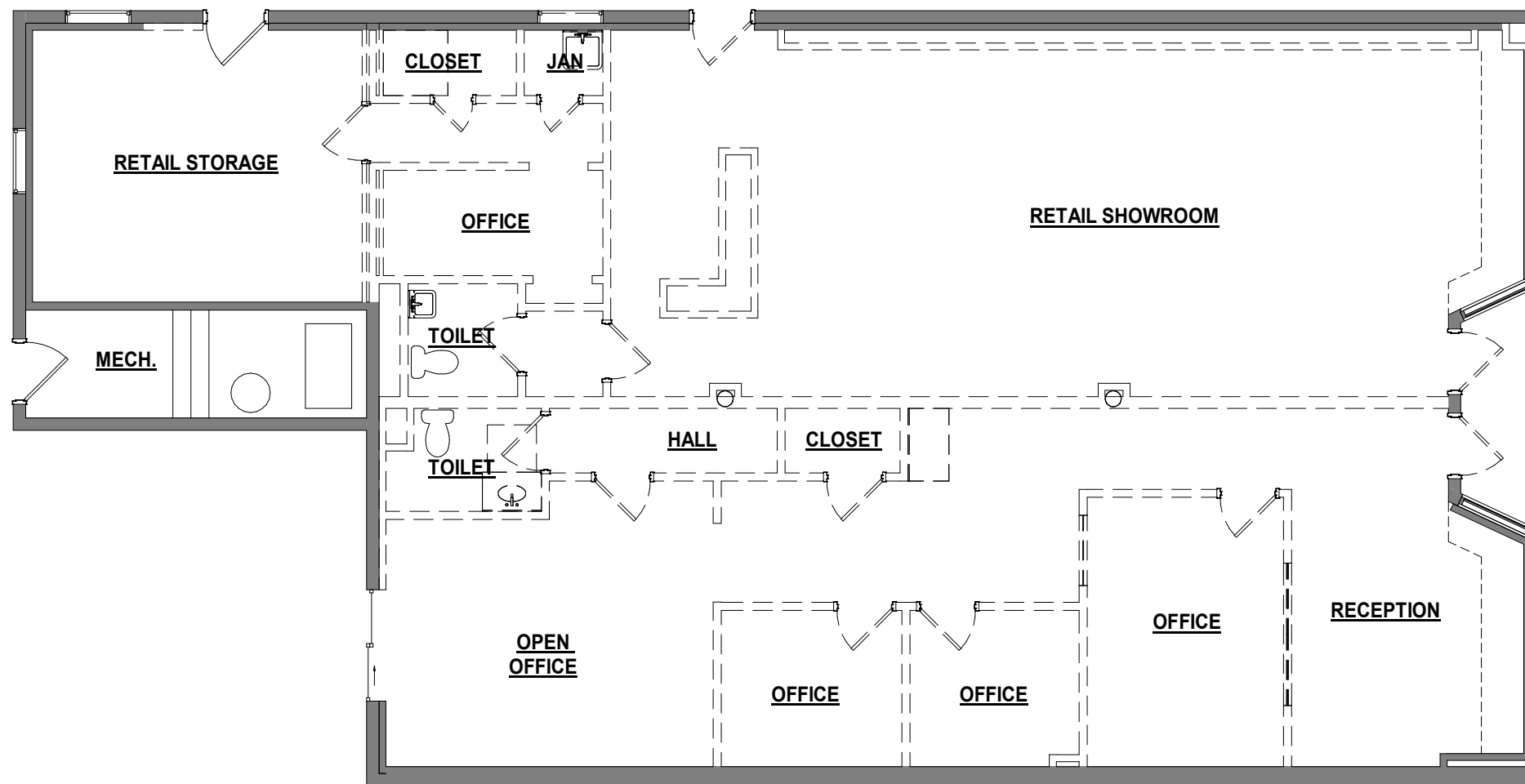
popedesign.com



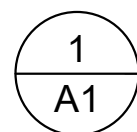
1
A0

PROPOSED SITE PLAN

1" = 10'-0"



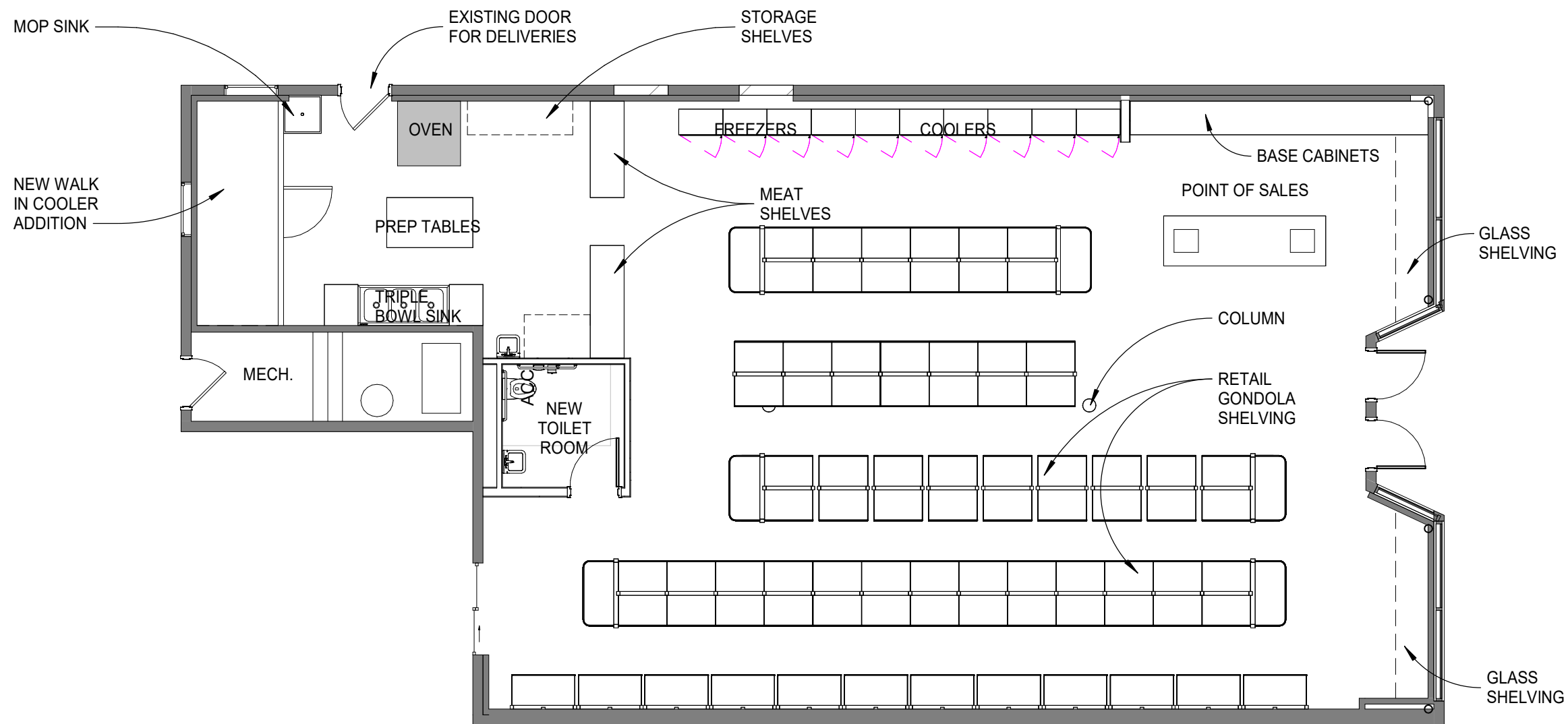
NOTE: ALL WALLS AND ELEMENTS
SHOWN DASHED TO BE DEMOLISHED



FIRST LEVEL DEMO PLAN

1/8" = 1'-0"





1
A2

FIRST LEVEL NEW WORK PLAN

1/8" = 1'-0"





Grocery Store Half Mile Walkshed Map

Legend

Existing Grocery Store

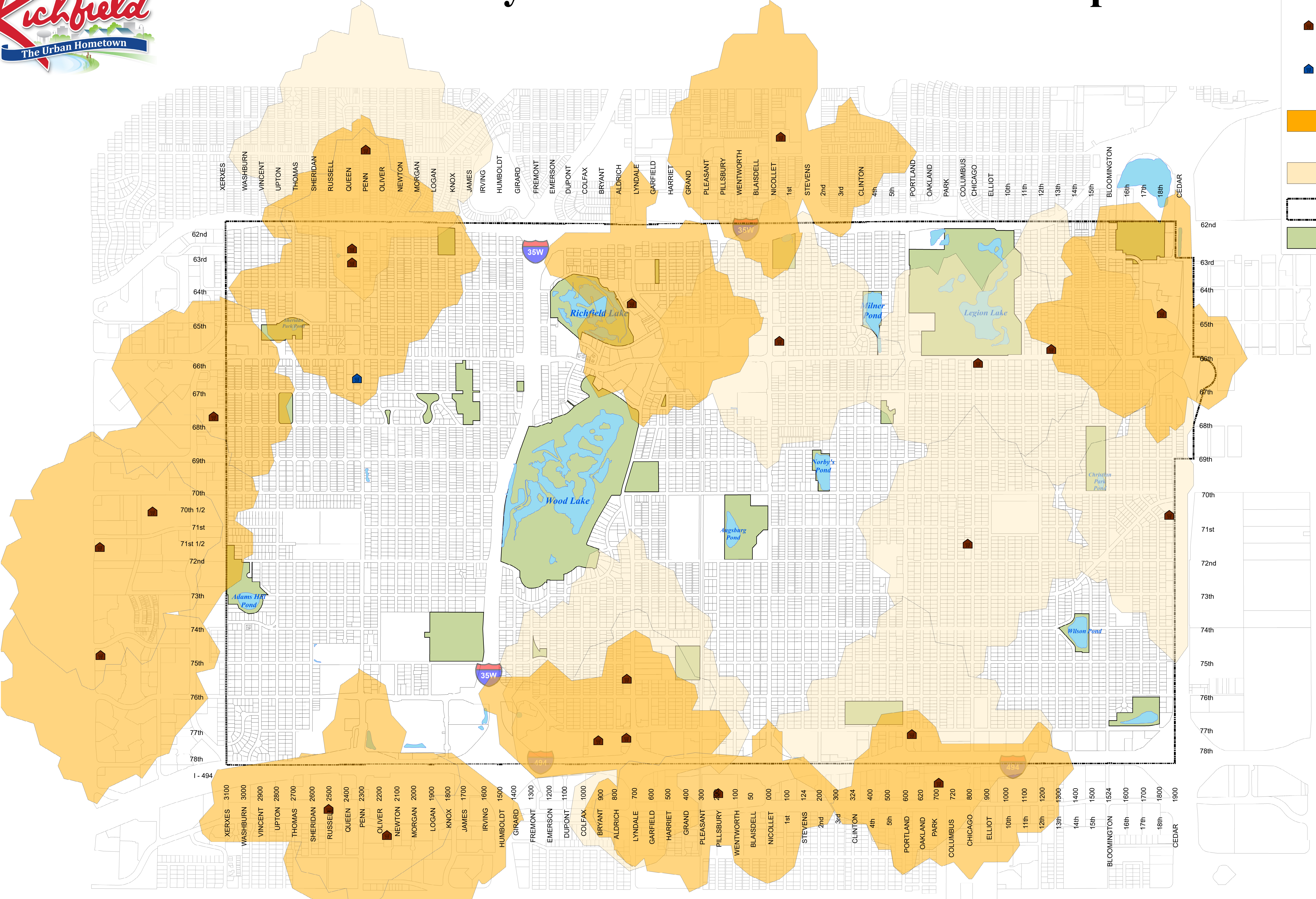
Proposed Grocery Store

Regional Store Half Mile Walkshed

Local Store Half Mile Walkshed

City Limits

Parks





STAFF REPORT NO. 71
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Mattias Oddsson, Water Resources Engineer

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director
6/6/2023

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider adoption of a resolution authorizing the City of Richfield to accept grant funds in the amount of \$2,962.40 and enter into a Source Water Protection Grant Agreement with the Minnesota Department of Health (MDH) to develop, distribute, and make available a packet of information specific to the City's Wellhead Protection Plan.

EXECUTIVE SUMMARY:

In April 2023, the city of Richfield applied for and was awarded a Source Water Protection Grant from MDH in the amount of \$2,962.40 to assist the City with the development and distribution of source water protection information associated with the City's Wellhead Protection Plan. The development and distribution of these materials are an obligation that the City has taken on as the owner of a municipal well-field and administrator of an MDH approved Wellhead Protection Plan.

RECOMMENDED ACTION:

By motion: Approve the resolution authorizing the city of Richfield to accept grant funds in the amount of \$2,962.40 and enter into a Source Water Protection Grant Agreement with MDH.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

See executive summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Minnesota Statute 465.03 requires every acceptance of a grant or devise of real or personal property on terms prescribed by donor be made by resolution and adopted by two-thirds majority of the City Council.

C. CRITICAL TIMING ISSUES:

- The effective date of the grant agreement is the date all signatures are authorized and obtained by MDH.
- The expiration date of the grant agreement is August 31, 2024, or once all obligations have been fulfilled to the satisfaction of MDH, whichever occurs first.

D. FINANCIAL IMPACT:

The grant covers the full anticipated cost of the project, and no cost-share is required.

E. LEGAL CONSIDERATION:

The City attorney has reviewed the grant agreement and will be available to answer questions.

ALTERNATIVE RECOMMENDATION(S):

None

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	Resolution	Resolution Letter
<input type="checkbox"/>	SWPPP Grant Agreement 229726	Contract/Agreement

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF RICHFIELD TO ACCEPT GRANT FUNDS IN THE AMOUNT OF \$2,962.40 AND ENTER INTO A SOURCE WATER PROTECTION GRANT AGREEMENT (SWIFT CONTRACT NUMBER 229726) WITH MINNESOTA DEPARTMENT OF HEALTH TO DEVELOP, DISTRIBUTE, AND MAKE AVAILABLE A PACKET OF INFORMATION SPECIFIC TO THE CITY'S WELLHEAD PROTECTION PLAN

WHEREAS, the Richfield Public Works Department has applied for and been awarded a Source Water Protection Grant in the amount of \$2,962.40; and

WHEREAS, the City intends to use these funds to develop, distribute, and make available a packet of information specific to the City's Wellhead Protection Plan; and

WHEREAS, Minnesota Statutes section 465.03 requires every acceptance of a grant or devise of real or personal property on terms prescribed by the donor be made by resolution adopted by a two-thirds majority of the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. That the City Council of the City of Richfield hereby authorizes the Mayor and City Manager to enter into the Source Water Protection Grant Agreement (SWIFT Contract Number 229726) with Minnesota Department of Health in the amount of \$2,962.40.
2. Appropriate City personnel are authorized to administer the funds in accordance with the grant agreement and terms described by the Minnesota Department of Health.

Adopted by the City Council of the City of Richfield, Minnesota this 13th day of June, 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

Minnesota Department of Health

Grant Agreement Cover Sheet

You have received a grant agreement from the Minnesota Department of Health (MDH). Information about the grant agreement, including funding details, are included below. Contact your MDH Grant Manager if you have questions about this cover sheet.

ATTACHMENT: Grant Agreement

CONTACT FOR MDH: Eddie Wojski, 651-201-4576, eddie.wojski@state.mn.us

Grantee SWIFT Information	Grant Agreement Information	Program & Funding Information
Name of MDH Grantee (as it appears in SWIFT): City of Richfield	SWIFT Contract Number: 229726	MDH Program Name: Drinking Water Protection
Grantee SWIFT Vendor Number: 0000197711 SWIFT Vendor Location Code: 001	Effective Date: 6/15/2023, OR the date all signatures are collected and the agreement is fully executed, whichever is later. Expiration Date: 8/30/2024	Total State Grant Funds: \$2,962.40 Total Federal Grant Funds: \$0.00 Total Grant Funds (<i>all funds</i>): \$2,962.40

Minnesota Department of Health

Grant Agreement

This grant agreement is between the State of Minnesota, acting through its Commissioner of the Department of Health (“MDH”) and City of Richfield (“Grantee”). Grantee’s address is 6700 Portland Avenue S., Richfield, Minnesota 55423.

Recitals

1. MDH is empowered to enter into this grant agreement under Minn. Stat. §§ [144.05](#) and [144.0742](#) along with §[114D.50](#) Clean Water Fund.
2. MDH is in need of assisting public water suppliers to protect the source of drinking water.
3. The vision of MDH is for health equity in Minnesota, where all communities are thriving and all people have what they need to be healthy. Health equity is achieved when every person has the opportunity to attain their health potential. Grantee agrees, where applicable, to perform its work with advancing health equity as a goal.
4. Grantee represents that it is duly qualified and will perform all the activities according to the terms of this grant agreement. Grantee agrees to minimize administrative costs as a condition of this grant agreement pursuant to [Minn. Stat. § 16B.98](#), subd 1.

Grant Agreement

1. Term of Agreement

1.1. *Effective Date*

June 15, 2023, or the date MDH obtains all required signatures under [Minn. Stat. § 16B.98](#), subd. 5, whichever is later. Per [Minn. Stat. § 16B.98](#), subd 7, no payments will be made to the Grantee until this grant agreement is fully executed. Grantee must not begin work until this grant agreement is fully executed and MDH’s Authorized Representative has notified Grantee that work may commence.

1.2. *Expiration Date*

August 30, 2024, or until all obligations have been fulfilled to the satisfaction of MDH, whichever occurs first.

1.3. *Survival of Terms*

The following clauses survive the expiration or cancellation of this grant agreement: Liability; Financial Examinations; Government Data Practices and Data Disclosure; Ownership of Equipment and Supplies; Intellectual Property; Publicity and Endorsement; and Governing Law, Jurisdiction, and Venue.

2. Activities

2.1. *MDH’s Activities*

MDH activities, in accordance with the Minnesota Department of Administration's Office of Grants Management's policies and federal regulations, may include but are not limited to financial reconciliations, site visits, programmatic monitoring of activities performed, and grant activity evaluation.

2.2. Grantee's Activities

Grantee, who is not a state employee, shall conduct the activities specified in Exhibit A, which is attached and incorporated into this grant agreement.

3. Time

Grantee is required to perform all of the activities stated in this grant agreement, and any incorporated exhibits, within the grant agreement period. MDH is not obligated to extend the grant agreement period. Failure to meet a deadline may be a basis for a determination by MDH's Authorized Representative that Grantee has not complied with the terms of the grant agreement.

4. Award and Payment

MDH will award funds to Grantee for all activities performed in accordance with this grant agreement.

4.1. Grant Award

Reimbursement will be in accordance with the agreed upon budget contained in Exhibit B, which is attached and incorporated into this grant agreement

4.2. Travel Expenses

Grantee will be reimbursed for mileage at the current IRS rate in effect at the time the travel occurred; meals and lodging expenses will be reimbursed in the same manner and in no greater amount than provided in the current "[Commissioner's Plan](#)" promulgated by the Commissioner of Minnesota Management and Budget ("MMB"); or, at the Grantee's established rate (for all travel related costs), whichever is lower, at the time travel occurred. Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless Grantee has received MDH's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out-of-state.

4.3. Budget Modifications

Grantee may modify any line item in the most recently agreed-upon budget by up to 10 percent without prior written approval from MDH. Grantee must notify MDH of any modifications up to 10 percent in writing no later than the next invoice. Grantee must obtain prior written approval from MDH for line-item modifications greater than 10 percent. Grantee's failure to obtain MDH's prior approval may result in denial of modification request, loss of funds, or both. The total obligation of MDH for all compensation and reimbursements to Grantee shall not exceed the total obligation listed under "Total Obligation."

4.4. Total Obligation

The total obligation of MDH for all compensation and reimbursements to Grantee under this grant agreement will not exceed \$2,962.40.

4.5. Terms of Payment

4.5.1. Invoices

MDH will promptly pay Grantee after Grantee presents an itemized invoice for the activities actually performed and MDH's Authorized Representative accepts the invoiced activities. Invoices must be submitted at least quarterly or according to a schedule agreed upon by the Parties. The final invoice is due 30 calendar days after the expiration date of the grant agreement.

Grantee shall email invoice to: health.swpgrants@state.mn.us

Or mail to:

Eddie Wojski
SWP Grant Coordinator
Minnesota Department of Health
PO Box 64975
St. Paul, MN 55164-0975

4.6. Contracting and Bidding Requirements

4.6.1. Municipalities

A grantee that is a municipality, as defined in [Minn. Stat. § 471.345](#), subd. 1, is subject to the contracting requirements set forth under [Minn. Stat. § 471.345](#). Projects that involve construction work are subject to the applicable prevailing wage laws, including those under [Minn. Stat. § 177.41](#), et. seq.

4.6.2. Non-municipalities

Grantees that are not municipalities must adhere to the following standards in the event that activities assigned to Grantee are to be subcontracted out to a third party:

- i. Any services or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process consistent with the standards set forth under [Minn. Stat. ch. 16B](#).
- ii. Services or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three verbal quotes or bids.
- iii. Services or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two verbal quotes or bids or awarded to a targeted vendor.
- iv. Grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through the following entities are used when possible:
 - 1) Minnesota Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List (<http://www.mmd.admin.state.mn.us/process/search/>);
 - 2) Metropolitan Council's Targeted Vendor list: Minnesota Unified Certification Program (<https://mnucp.metc.state.mn.us/>); or
 - 3) Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: Central Certification Program

<https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development/central>.

- v. Grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, awarding and administration of contracts.
- vi. Grantee must maintain support documentation of the purchasing or bidding process utilized to contract services in their financial records, including support documentation justifying a single/sole source bid, if applicable.
- vii. Notwithstanding parts (i) through (iv) above, MDH may waive the formal bidding process requirements when:
 - Vendors included in response to a competitive grant request for proposal process were approved and incorporated as an approved work plan for the grant agreement or
 - There is only one legitimate or practical source for such materials or services and Grantee has established that the vendor is charging a fair and reasonable price.
- viii. Projects that involve construction work of \$25,000 or more, are subject to applicable prevailing wage laws, including those under [Minn. Stat. §§ 177.41 through 177.44](#).
- ix. Grantee must not contract with vendors who are suspended or debarred in Minnesota. The list of debarred vendors is available at: <http://www.mmd.admin.state.mn.us/debarredreport.asp>.

5. Conditions of Payment

All activities performed by Grantee pursuant to this grant agreement must be performed in accordance with the terms of this grant agreement, as determined in the sole discretion of MDH's Authorized Representative. Furthermore, all activities performed by Grantee must be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. MDH will not pay Grantee for work that MDH determines is noncompliant with the terms and conditions of this grant agreement or performed in violation of federal, state, or local law, ordinance, rule, or regulation.

6. Authorized Representatives

6.1. *MDH's Authorized Representative*

MDH's Authorized Representative for purposes of administering this grant agreement is Eddie Wojski, SWP Grant Coordinator, 625 Robert Street N., PO Box 64975, St. Paul, MN 55164-0975, 651-201-4576, and eddie.wojski@state.mn.us, or their successor, and has the responsibility to monitor Grantee's performance and the final authority to accept the activities performed under this grant agreement. If the activities performed are satisfactory, MDH's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2. *Grantee's Authorized Representative*

Grantee's Authorized Representative is Chad Donnelly, Utilities Superintendent, 6700 Portland Avenue S., Richfield, MN 55423, 612-861-9797, and moddsson@richfieldmn.gov, or their successor. Grantee's Authorized Representative has full authority to represent Grantee in fulfillment of the terms, conditions, and requirements of this grant agreement. If

Grantee selects a new Authorized Representative at any time during this grant agreement, Grantee must immediately notify MDH's Authorized Representative in writing, via e-mail or letter.

7. Assignment, Amendments, Waiver, and Grant Agreement Complete

7.1. Assignment

Grantee shall neither assign nor transfer any rights or obligations under this grant agreement.

7.2. Amendments

If there are any amendments to this grant agreement, they must be in writing. Amendments will not be effective until they have been executed and approved by MDH and Grantee.

7.3. Waiver

If MDH fails to enforce any provision of this grant agreement, that failure does not waive the provision or MDH's right to enforce it.

7.4. Grant Agreement Complete

This grant agreement, and any incorporated exhibits, contains all the negotiations and agreements between MDH and Grantee. No other understanding regarding this grant agreement, whether written or oral, may be used to bind either party.

8. Liability

Grantee must indemnify and hold harmless MDH, its agents, and employees from all claims or causes of action, including attorneys' fees incurred by MDH, arising from the performance of this grant agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for MDH's failure to fulfill its obligations under this grant agreement. Nothing in this clause may be construed as a waiver by Grantee of any immunities or limitations of liability to which Grantee may be entitled pursuant to [Minn. Stat. ch. 466](#), or any other statute or law.

9. Financial Examinations

The relevant books, records, documents, and accounting procedures and practices of Grantee and any other party are subject to examination under [Minn. Stat. § 16B.98](#), subd. 8, by MDH and the Minnesota State Auditor or the Minnesota Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10. Government Data Practices and Data Disclosure

10.1. Government Data Practices

Grantee and MDH must comply with the Minnesota Government Data Practices Act, [Minn. Stat. ch. 13](#), as it applies to all data provided by MDH under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Grantee under this grant agreement pursuant to [Minn. Stat. § 13.05](#), subd. 11(a). The civil remedies of [Minn. Stat. § 13.08](#) apply to the release of the data referred to in this clause by either Grantee or MDH. If Grantee receives a request to release the data referred to in this clause, Grantee must immediately notify MDH. MDH will give Grantee instructions

concerning the release of the data to the requesting party before any data is released. Grantee's response to the request must comply with the applicable law.

10.2. Data Disclosure

Grantee consents to disclosure of its social security number, federal employee tax identification number, or Minnesota tax identification number--which may have already been provided to MDH--to federal and state tax agencies and state personnel involved in the payment of state obligations pursuant to [Minn. Stat. § 270C.65](#), subd. 3, and all other applicable laws. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

11. Ownership of Equipment and Supplies

11.1. Equipment. "Equipment" is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000. MDH shall have the right to require transfer of all Equipment purchased with grant funds (including title) to MDH or to an eligible non-State party named by MDH. MDH may require the transfer of Equipment if the grant program is transferred to another grantee. At the end of this grant agreement, grantee must contact MDH's Authorized Representative for further instruction regarding the disposition of Equipment.

11.2. Supplies. "Supplies" is defined as all tangible personal property other than those described in the definition of Equipment. Grantee must notify MDH's Authorized Representative regarding any remaining Supplies with an aggregate market value of \$5,000 or more for further instruction regarding the disposition of those Supplies. For the purpose of this section, Supplies includes but is not limited to computers and incentives.

12. Ownership of Materials and Intellectual Property Rights

12.1. Ownership of Materials

"Materials" is defined as any inventions, reports, studies, designs, drawings, specifications, notes, documents, software, computer-based training modules, and other recorded materials in whatever form. Grantee shall own all rights, title, and interest in all of the materials conceived, created, or otherwise arising out of the performance of this grant agreement by it, its employees, or subgrantees, either individually or jointly with others.

Grantee hereby grants to MDH a perpetual, irrevocable, no-fee license and right to reproduce, modify, distribute, perform, make, have made, and otherwise use the Materials for any and all purposes, in all forms and manners that MDH, in its sole discretion, deems appropriate. Grantee shall, upon the request of MDH, execute all papers and perform all other acts necessary to document and secure this right and license to the Materials by MDH. At the request of MDH, Grantee shall permit MDH to inspect the original Materials and provide a copy of any of the Materials to MDH, without cost, for use by MDH in any manner MDH, in its sole discretion, deems appropriate.

12.2. Intellectual Property Rights

Grantee represents and warrants that Materials produced or used under this grant agreement do not and will not infringe upon any intellectual property rights of another

including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Grantee shall indemnify and defend MDH, at Grantee's expense, from any action or claim brought against MDH to the extent that it is based on a claim that all or parts of the materials infringe upon the intellectual property rights of another. Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this grant agreement, amendments and supplements thereto, which are attributable to such claims or actions. If such a claim or action arises or in Grantee's or MDH's opinion is likely to arise, Grantee shall at MDH's discretion either procure for MDH the right or license to continue using the materials at issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive of other remedies provided by law.

13. Workers' Compensation

Grantee certifies that it is in compliance with [Minn. Stat. § 176.181](#), subd. 2, which pertains to workers' compensation insurance coverage. Grantee's employees and agents, and any contractor hired by Grantee to perform the work required by this grant agreement and its employees, will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees, and any claims made by any third party as a consequence of any act or omission on the part of these employees, are in no way MDH's obligation or responsibility.

14. Publicity and Endorsement

14.1. *Publicity*

Any publicity given to the program, publications, or activities performed resulting from this grant agreement, including but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Grantee or its employees individually or jointly with others, or any subgrantees, must identify MDH as the sponsoring agency. If publicity is not specifically authorized under this grant agreement, Grantee must obtain prior written approval from MDH's Authorized Representative. If federal funding is being used for this grant agreement, the federal program must also be recognized.

14.2. *Endorsement*

Grantee must not claim that MDH endorses its products, services, or activities.

15. Termination

15.1. *Termination by MDH or Grantee*

MDH or Grantee may cancel this grant agreement at any time, with or without cause, upon 30 days written notice (e.g., by mail, email, or both) to the other party.

15.2. *Termination for Cause*

If Grantee fails to comply with the provisions of this grant agreement, MDH may terminate this grant agreement without prejudice to the right of MDH to recover any money previously paid. The termination shall be effective five business days after written notice (e.g., mail, email, or both) of termination to Grantee.

15.3. Termination for Insufficient Funding

MDH may immediately terminate this grant agreement if it does not obtain funding from the Minnesota Legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the work scope covered in this grant agreement. Termination must be by written notice to Grantee; e.g., mail, email, or both. MDH is not obligated to pay for any work performed after notice and effective date of the termination. However, Grantee will be entitled to payment, determined on a pro rata basis, for activities satisfactorily performed to the extent that funds are available. MDH will not be assessed any penalty if this grant agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MDH must provide Grantee notice of the lack of funding within a reasonable time of MDH receiving notice of the same.

16. Governing Law, Jurisdiction, and Venue

This grant agreement, amendments and supplements to it, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this grant agreement, or for breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

17. Clerical Error

Notwithstanding Clause "Assignment, Amendments, Waiver, and Grant Agreement Complete" of this grant agreement, MDH reserves the right to unilaterally fix clerical errors, defined as misspellings, minor grammatical or typographical mistakes or omissions, that do not have a substantive impact on the terms of the Grant Agreement without executing an amendment. MDH must inform Grantee of clerical errors that have been fixed pursuant to this paragraph within a reasonable period of time.

18. Lobbying

- 18.1.** Grantee must ensure that grant funds are not used for lobbying, which includes paying or compensating any person for influencing or attempting to influence legislators or other public officials on behalf or against proposed legislation, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 18.2.** In accordance with the provisions of [31 USC § 1352](#), if Grantee uses any funds other than federal funds from MDH to conduct any of the aforementioned activities, Grantee must complete and submit to MDH the disclosure form specified by MDH. Further, Grantee must include the language of this section in all contracts and subcontracts, and all contractors and subcontractors must comply accordingly.
- 18.3.** Providing education about the importance of policies as a public health strategy, however, is allowed. Education includes providing facts, assessment of data, reports, program descriptions, and information about budget issues and population impacts, but stopping short of making a recommendation on a specific piece of legislation. Education may be provided to legislators, public policy makers, other decision makers, specific stakeholders, and the general community.
- 18.4.** By signing this grant agreement, Grantee certifies that it will not use any funds received from MDH to employ, contract with, or otherwise coordinate the efforts of a lobbyist, as defined in [Minn. Stat. § 10A.01](#), subd. 21. This requirement also applies to any

subcontractors or subgrantees that Grantee may engage for any activities pertinent to this grant agreement.

19. Other Provisions

19.1. *Voter Registration Services Requirement*

If this grant agreement will disburse any state funds (as indicated on the Award Cover Sheet); AND Grantee is a local unit of government, city, county, township or non-profit organization, then Grantee is required to comply with [Minn. Stat. § 201.162](#) by providing voter registration services for its employees and for the public served by the grantee.

[Signatures on following page]



APPROVED:

1. State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

Signature: Christina Mish

Digitally signed by Christina Mish
Date: 2023.05.25 10:27:09 -05'00'

SWIFT Contract & Initial PO: 229726/3-103054 REQ 8454

2. Grantee

Grantee certifies that the appropriate persons(s) have executed the grant agreement on behalf of Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

Signature: _____	Signature: _____
Title: _____	Title: _____
Date: _____	Date: _____
Signature: _____	Signature: _____
Title: _____	Title: _____
Date: _____	Date: _____

3. Minnesota Department of Health

Grant agreement approval and certification that State funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

Signature: _____
(with delegated authority)

Title: _____

Date: _____

Distribution:

All parties on the DocuSign envelope will receive a copy of the fully executed grant agreement.

Exhibit A

1. Grantee's Duties

Grantee, who is not a state employee, shall:

- 1.1.** Development, printing, and distribution of an information packet to properties with potential Class V injection wells.
- 1.2.** Development, printing, and distribution of a notification letter to properties with registered storage tanks (RST's).
- 1.3.** Grantee agrees that work shall take place only in the MDH approved Drinking Water Supply Management Area (DWSMA). Grantee will be reimbursed only for work that takes place in the DWSMA.
- 1.4.** Grantee shall use the Clean Water Land and Legacy Amendment logo provided by MDH on all materials purchased or produced under this Grant Agreement (equipment, reports to the public, publications, displays, videos). Failure to display the logo may render the Grantee ineligible for reimbursement.
- 1.5.** Grantee shall pay in full any licensed contractor or consultant hired for the purpose of completing any work under this Grant Agreement.
- 1.6.** Upon completion of the project, Grantee shall complete and submit an itemized Grant Invoice and a Grant Narrative Report to MDH SWP Grant Coordinator. The Grant Narrative Report and the Grant Invoice shall be due no later than the expiration day of this Grant Agreement.
- 1.7.** On or before the end date of this Agreement, the Grantee shall provide MDH with one electronic copy of all final products produced under this Grant Agreement, including reports, publications, software and videos. If required by the nature of the project, data collected during the project shall be reported in a format acceptable to MDH.
- 1.8.** In the event the Grantee is unable to satisfactorily complete all the duties specified in this grant agreement, the Grantee will forfeit payment. A Grantee who has not satisfactorily fulfilled the grant obligations, including but not limited to paying the contractor in full for all work performed by the contractor, will be denied participation in the next grant cycle.

Exhibit B – Summary Budget

Activity Summary	Grant Amount
Development, printing, and distribution of an information packet to properties with potential Class V injection wells	\$1,473.70
Development, printing, and distribution of a notification letter to properties with registered storage tanks (RST's)	\$1,488.70
Total	\$2,962.40

Permitting fees payable to MDH (i.e. well construction fee; well sealing fee) are not eligible and will be deducted from the final invoice, before reimbursement.

Pressure tanks are grant eligible, as part of a new well construction and pump system project. The pressure tank must be appropriately sized for the pump being proposed for the new well and not sized for additional water storage. Pressure tank designed to serve the purpose of water storage, as well as the replacement or maintenance of pressure tanks, remains ineligible for grant reimbursement.

Water lines may be reimbursed only from the well to the pressure tank or to the building, whichever comes first.

Certificate Of Completion

Envelope Id: 003E6D68A67F4F76B5446DD1439E5FCD

Status: Sent

Subject: Complete with DocuSign: Richfield_GA.pdf

Source Envelope:

Document Pages: 13

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

Eddie Wojski

AutoNav: Enabled

625 Robert St. N

Enveloped Stamping: Enabled

PO Box 64975

Time Zone: (UTC-06:00) Central Time (US & Canada)

St. Paul, MN 55164

eddie.wojski@state.mn.us

IP Address: 156.98.136.27

Record Tracking

Status: Original

Holder: Eddie Wojski

Location: DocuSign

6/6/2023 2:40:47 PM

eddie.wojski@state.mn.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Department of Health

Location: DocuSign

Signer Events**Signature****Timestamp**

Mattias Oddson

Sent: 6/6/2023 2:45:15 PM

moddsson@richfieldmn.gov

Viewed: 6/6/2023 2:56:42 PM

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

MDH FiM with Delegated Authority to Execute
Grants/ContractsSigning Group: MDH FiM with Delegated Authority to
Execute Grants/ContractsSecurity Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Carbon Copy Events	Status	Timestamp
Seth Rasmussen Seth.Rasmussen@state.mn.us Sarah Jane Martin sarah.martin@state.mn.us Char Paulson char.paulson@state.mn.us Christina Mish Christina.Mish@state.mn.us Signing Group: MDH Encumbrance Officers Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Mattias Oddson moddsson@richfieldmn.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/6/2023 2:45:15 PM
Payment Events	Status	Timestamps



STAFF REPORT NO. 72
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Katie Rodriguez, City Manager

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/6/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of a resolution updating the Public Purpose Expenditure Policy.

EXECUTIVE SUMMARY:

The City's Public Purpose Expenditure Policy establishes a clear set of guidelines to assist elected officials, employees and representatives of the City when approving the expenditure of public funds. A periodic review and consideration of this policy ensures that the City's expenditures have been carefully considered and determined by the governing body to be for a public purpose.

The recommended updates include edits to improve clarity and to reference the most recent legal guidance on appropriate public expenditures. Staff is also recommending edits to allow retirees to be recognized with a clock or a restaurant gift certificate of equal value (\$100) and defines eligibility for retirement recognition. The recommended policy also provides recognition for employees who have worked for 45 years for the city since we have some employees who have exceeded 40 years.

RECOMMENDED ACTION:

By motion: Adopt a resolution approving the City's Public Purpose Expenditure Policy.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- In July 2003, the Richfield City Council adopted a Public Purpose Expenditure Policy, which defines when, and for what purposes, public funds may be spent.
- In 2016 and 2018, the City Council adopted updated versions of this policy.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Periodic review and approval of the policy ensures the fullest compliance with all applicable provisions of law in making public expenditures.

C. CRITICAL TIMING ISSUES:

D. FINANCIAL IMPACT:

The recommended policy changes are not expected to have a significant financial impact.

E. LEGAL CONSIDERATION:

The Public Purpose Expenditure Policy ensures compliance with all applicable laws governing the expenditure of public funds.

ALTERNATIVE RECOMMENDATION(S):

- Adopt a modified policy.
- Defer consideration of this matter to a future meeting.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description		Type
▢	Resolution	Cover Memo
▢	Public Purpose Expenditure Policy (Clean)	Cover Memo
▢	Public Purpose Expenditure Policy (Redline)	Cover Memo

RESOLUTION NO. _____

**RESOLUTION APPROVING THE
PUBLIC PURPOSE EXPENDITURE POLICY**

WHEREAS, the City Council finds it necessary to review and approve a policy to clearly determine the public purpose for expenditures; and

WHEREAS, the City Council has determined that in order to attract, recruit, retain and motivate employees and community volunteers, the City wishes to recognize hard work and service through other than monetary payment; and

WHEREAS, the City Council has further determined certain expenditures for typical business costs are necessary for the effective delivery of public service; and

WHEREAS, the City Council has reviewed the Public Purpose Expenditure Policy.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Richfield approves the updated Public Purpose Expenditure Policy.

Adopted by the City Council of the City of Richfield, Minnesota this 13th day of June 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

CITY OF RICHFIELD

CITY POLICY

DATE: _____ 2023

SUBJECT: Public Purpose Expenditures

Purpose

Pursuant to provisions of the Richfield City Charter and the statutes and laws of the State of Minnesota, which permit and require the expenditure of public funds for public purposes, the City of Richfield believes it necessary and appropriate to provide assistance and guidance to the officials, employees and representatives of Richfield to aid in the determination of when public funds may be spent for a public purpose.

Definition

A public purpose expenditure is one which benefits the community as a body and is explicitly or impliedly authorized by law. A public purpose expenditure relates to the purpose for which the City of Richfield exists and the duties and responsibilities of Richfield, its elected and appointed officials, employees, and other representatives.

The Minnesota Supreme Court has clarified that activities that promote the following objectives for the benefit of all the City's residents further a public purpose:

- Public Health
- Safety
- General Welfare
- Security
- Prosperity
- Contentment

Public Purpose Guidelines

- A. Training and professional development programs for Richfield employees serve a public purpose when those training and development programs are directly related to the performance of the employees' job-related duties and are directly related to the programs/services for which the City is responsible.
- B. Payment of employee work-related expenses, including travel, lodging and meal expenses, serves a public purpose when those expenses are necessarily incurred by Richfield employees in connection with their actual work assignments or official duties and those expenses are directly related to the performance of the governmental functions for which Richfield has responsibility.
- C. Appropriate safety and health programs for Richfield employees serve a public purpose because they result in healthier and more productive employees and reduce certain costs to the City and the taxpayers of Richfield, including various costs associated with workers' compensation and disability benefit claims, insurance premiums and lost time from employee absences.
- D. Public expenditures for appropriate Richfield employee and volunteer recognition programs serve a public purpose because formally recognizing employees and volunteers who make significant contributions and demonstrate their commitment during the performance of their duties result in higher morale and productivity among all Richfield employees and volunteers, and therefore help the City to fulfill its responsibilities efficiently and more cost effectively.

- E. Public expenditures for food and refreshments associated with official Richfield City functions serve a public purpose when the provision of food or refreshments is an integral part of the function and is deemed necessary to ensure meaningful participation by the participants.
- F. Public expenditures for appropriate community and customer outreach and similar activities serve a public purpose when those expenditures are necessary for Richfield to ensure the efficient operation of its programs/services, promote the availability and use of City resources, and promote coordinated, cooperative planning activities among and between the public and the private sectors.
- G. Appropriate employee benefits are a natural incident of the employee/employer relationship and enable the City to attract, retain, and compensate employees. The employee benefits that are offered are deemed to be an additional form of employee compensation.

Specific Programs and Expenditures

Every City of Richfield expenditure must be valid based upon the public purpose for which it is purchased. The following items are deemed to meet the Council definition of public purpose expenditures.

A. Employee Recognition and Engagement Programs

Pursuant to the authority granted in Minnesota Statutes section 15.46, the City Council approves the expenditure of funds for designated employee recognition events and awards programs, as well as a holiday employee engagement event. The Richfield City Council recognizes the hard work and service performed by the employees of the City through a formal Employee Recognition Program. The City Council believes the benefits of attracting, retaining and motivating employees through an Employee Recognition Program support employee job satisfaction, which in turn impacts cooperation and productivity. The result is to provide excellent public and customer service to better serve the interests of the citizens of the community.

The Employee Recognition Program is considered "additional compensation" for work performed by employees but is entirely dependent on receiving funding from year-to-year. No provisions of this policy, or its administration, shall be subject to review under the grievance or arbitration provisions of any collective bargaining agreement.

The Program may include:

1. City employees completing 5, 10, 15, 20, 25, 30, 35, 40, and 45 years of service may receive a service award not to exceed \$185 in value, as determined by the City Manager.
2. Annually, the City may have an annual budget allotted to the City staff's Employee Engagement Committee for recognition and engagement events or activities.
3. Annually, the City may sponsor a Holiday Party for City employees. In lieu of a Holiday Party, the City may sponsor an annual employee event.
4. The City supports other events that are planned and paid for by employees. Examples of such events include holiday gatherings, and/or tournaments.
5. The City supports recognition clocks or gift certificates to a restaurant up to \$100 in recognition of retirement for employees if greater than five years of service. Departments may recognize retirements with cake receptions for retirements after at least five years of service and separations after at least 10 years of service.
6. Annually, at the end of each calendar year, each Department may receive designated funds related to participating in and promoting safety practices in their respective

Departments. Each Department may use such funds to recognize their employees' safety accomplishments.

The cost of the elements of the Employee Recognition Program will be included in the City of Richfield Annual Budget. This item will be approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

B. Employee Wellness and Safety Programs

Pursuant to the authority granted in Minnesota Statutes section 15.46, the City Council approves the expenditure of funds for employee wellness purposes. The City Council recognizes the importance of employee fitness and health as it relates to the overall work and life satisfaction of the employee and the overall impact on the City's health insurance program. As such, the City Council supports an Employee Wellness Program, which has been designed to educate employees on fitness/health issues.

The Employee Wellness Program is considered "additional compensation" for work performed by employees but is entirely dependent on receiving funding from year-to-year. No provisions of this policy, or its administration, shall be subject to review under the grievance or arbitration provisions of any collective bargaining agreement.

The cost of an Employee Wellness Program will be included in the City of Richfield Annual Budget. This item will be approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

The Employee Safety Program is funded by the Self-Insurance Fund. The City supports programs created by the Human Resources Division and the Safety Committee to promote and maintain a safe work environment. Safety incentive programs such as Richfield Safety Pays, which provide the opportunity for cash prizes for accident/injury-free workdays, is an example of such programs. Such safety incentives shall be included in the City of Richfield Annual Budget.

C. Meeting Food/Meals

The City Council recognizes that situations in which City business needs to be discussed can and do occur during meal hours (i.e. luncheon meetings). In addition, there are public and employee meetings and events in which reasonable refreshments may be necessary to create a more productive environment and to be responsive to participants' time schedules. The following items are deemed to meet the Council definition of public purpose expenditures in regard to food and meals.

1. Meals and refreshments are allowed at City meetings and events that have a purpose of discussing City issues. These meetings would normally have a pre-planned agenda.
2. Meals and refreshments are allowed at employee meetings and events that have the purpose of discussing City issues or are a part of employee training. These meetings would also normally have a pre-planned agenda. These meetings could include new employee receptions to introduce new employees to existing employees, provide an orientation to the City, and promote teamwork and cooperation. This does not include routine staff meetings.
3. Meals and refreshments are allowed when they are part of a breakfast/lunch/dinner meeting for official City business when it is the only practical time to meet. Usually, these meals involve meeting with City Council members, Committee/Commission members, business or civic organizations. Payment for fees relating to a special event, such as a Chamber of Commerce event, may also be allowed when approved by the City Manager and when attendance is deemed to meet the public purpose guidelines for community or customer outreach and marketing of the City.

4. Meals and refreshments may be provided during official meetings of the City Council, City Council committees, advisory boards/commissions, and taskforces that have the purpose of discussing City business. These meetings would normally have a pre-planned agenda.
5. Travel expenses for employees as outlined in the Richfield Travel Reimbursement Policy.
6. Meals and refreshments are allowed where employees or volunteers are participating in a City-sponsored special event, participating in an outside event as an official representative of the City, or working additional hours and where the Department Director deems appropriate as recognition of efforts above those normally required. Because emergency personnel are often called to perform for extended periods of time and duties where refreshments are important to duty performance, emergency response personnel may be provided refreshments or food when it is deemed appropriate by the City Manager or Department Director to assure the delivery of quality emergency response service.
7. No purchase of alcoholic beverages is allowed at any time.

The cost of these meals or fees is included in the department's travel/conferences line-item in the City of Richfield Annual Budget. These items are approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

D. Membership, Dues, and Donations

The City Council has determined that the City will fund memberships and dues (individual or organization) in professional organizations and City social and community organizations when the purpose is to promote, advertise, improve or develop the City's resources and relationships and not personal interest or gain.

The cost of memberships/dues is included in the departments' dues and subscriptions line-item in the City of Richfield Annual Budget. These items are approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

All donations must be approved by the City Council during the annual budget process and/or by City resolution. Donations provided by the City must be for programs that serve our citizens and are deemed to meet the public purpose guidelines.

E. Education Reimbursement

The Personnel Policy contains guidelines for the Richfield Employee Education Program (REEP). Job related advanced education meets the public purpose guidelines of this policy. The amount available for this program shall be considered annually. The cost of this program is contained in the City of Richfield Annual Budget.

F. Clothing and Other Sundry Items

Employees may receive T-shirts, and other sundry items of nominal value (\$20.00) when these items are made available to the general public or if these items are determined by the City Manager to be important to the successful involvement of employees in special City-sponsored or City-supported events (i.e. Nite to Unite, etc.). The cost of these items for City-sponsored or City-supported events shall be contained in the City of Richfield Annual Budget.

Employees may be supplied with uniforms, clothing, boots and other gear necessary for the performance of their job. For purposes of City branding and easy identification of employees to customers and members of the public, staff will be provided with one apparel item with the City logo. This clothing item (fleece zip, cardigan or polo shirt with approximate value of \$60) will be

issued to new employees and to current employees at the discretion of their respective Department Directors.

G. Special Requests

From time to time, there may be an event that is a proper public expenditure, but that is not contemplated by this policy. Department Directors may submit a written request to the City Manager, or the Manager's designee, for such a public expenditure. The request must show how the expenditure is related to a public purpose as defined by this policy. Only expenditures that meet the definition of a public purpose may be approved.

Conclusion

The Richfield City Council has determined that the above expenditures are valid and serve a public purpose.

Approved: /s/ Katie Rodriguez

City Manager

PUBLIC PURPOSE EXPENDITURE

CITY OF RICHFIELD

CITY POLICYDATE: January 1, 2018 2023SUBJECT: Public Purpose Expenditures BackgroundPurpose

Pursuant to provisions of the Richfield City Charter and the statutes and laws of the State of Minnesota, which permit and require the expenditure of public funds for public purposes, the City of Richfield believes it necessary and appropriate to provide assistance and guidance to the officials, employees and representatives of Richfield to aid in the determination of when public funds may be spent for a public purpose.

Definition

A public purpose expenditure is one which benefits the community as a body and is explicitly or impliedly authorized by law. A public purpose expenditure relates to the purpose for which the City of Richfield exists and the duties and responsibilities of Richfield, its elected and appointed officials, employees, and other representatives.

The Minnesota Supreme Court has clarified that activities that promote the following objectives for the benefit of all the City's residents further a public purpose:

- Public Health
- Safety
- General Welfare
- Security
- Prosperity
- Contentment

Public Purpose Guidelines

- ~~A.~~ A. Training and professional development programs for Richfield employees serve a public purpose when those training and development programs are directly related to the performance of the employees' job-related duties and are directly related to the programs/services for which the City is responsible.
- ~~B.~~ B. Payment of employee work-related expenses, including travel, lodging and meal expenses, serves a public purpose when those expenses are necessarily incurred by Richfield employees in connection with their actual work assignments or official duties and those expenses are directly related to the performance of the governmental functions for which Richfield has responsibility.
- ~~C.~~ C. Appropriate safety and health programs for Richfield employees serve a public purpose because they result in healthier and more productive employees and reduce certain costs to the City and the taxpayers of Richfield, including various costs associated with workers' compensation and disability benefit claims, insurance premiums and lost time from employee absences.
- ~~D.~~ D. Public expenditures for appropriate Richfield employee and volunteer recognition programs serve a public purpose because formally recognizing employees and volunteers who make significant contributions and demonstrate their commitment during the performance of their duties result in higher morale and productivity among all Richfield employees and volunteers, and therefore help the City to fulfill its responsibilities efficiently and more cost effectively.

- ~~E.~~ E. Public expenditures for food and refreshments associated with official Richfield City functions serve a public purpose when the provision of food or refreshments is an integral part of the function and is deemed necessary to ensure meaningful participation by the participants.
- ~~F.~~ F. Public expenditures for appropriate community and customer outreach and similar activities serve a public purpose when those expenditures are necessary for Richfield to ensure the efficient operation of its programs/services, promote the availability and use of City resources, and promote coordinated, cooperative planning activities among and between the public and the private sectors.
- G. Appropriate employee benefits are a natural incident of the employee/employer relationship and enable the City to attract, retain, and compensate employees. The employee benefits that are offered are deemed to be an additional form of employee compensation.

Specific Programs and Expenditures

Every City of Richfield expenditure must be valid based upon the public purpose for which it is purchased. The following items are deemed to meet the Council definition of public purpose expenditures.

A. Employee Recognition and Engagement Programs

Pursuant to the authority granted in Minnesota Statutes section 15.46, the City Council approves the expenditure of funds for designated employee recognition events and awards programs, as well as a holiday employee engagement event.

The Richfield City Council recognizes the hard work and service performed by the employees of the City through a formal Employee Recognition Program. The City Council believes the benefits of attracting, retaining and motivating employees through an Employee Recognition Program support employee job satisfaction, which in turn impacts cooperation and productivity. The result is to provide excellent public and customer service to better serve the interests of the citizens of the community.

The Employee Recognition Program is considered "additional compensation" for work performed by employees but is entirely dependent on receiving funding from year-to-year. No provisions of this policy, or its administration, shall be subject to review under the grievance or arbitration provisions of any collective bargaining agreement.

The Program may include:

1. City employees completing 5, 10, 15, 20, 25, 30, 35, 40, and 3545 years of service may receive a service award not to exceed \$150185 in value, as determined by the City Manager.
- ~~2.~~ Annually, the City may have an annual budget allotted to the City staff's Employee Recognition & Engagement Team.
- ~~3.2.~~ Annually, the City may sponsor a Volunteer Recognition event to promote teamwork Committee for recognition and coordination among the City Council, Department Directors, Commission/Committees, and employees. This event and/or a token gift for invited participants and their guests also serve as de minimus compensation for the service provided by the volunteers engagement events or activities.
- ~~4.3.~~ Annually, the City may sponsor a Holiday Party for City employees. In lieu of a Holiday Party, the City may sponsor an annual employee event, such as Rootbeer Float Day.
- ~~5.4.~~ The City supports other events that are planned and paid for by employees. Examples of such events include holiday gatherings, golf and/or bowling tournaments.

~~6.5.~~ The City supports recognition clocks and/or gift certificates to a restaurant up to \$65 ~~for a cake-100~~ in recognition of ~~long-time service or retirement for employees, volunteers and elected officials if greater than five years of service.~~ Departments may recognize retirements with cake receptions for retirements after at least five years of service and separations after at least 10 years of service.

~~7.~~ Annually, at the end of each calendar year, each Department may receive designated funds related to participating in and promoting safety practices in their respective

~~6.~~ Departments. Each Department may use such funds to ~~sponsor an employee event recognizing~~ recognize their employees' safety accomplishments.

The cost of the elements of the Employee Recognition Program will be included in the City of Richfield Annual Budget. This item will be approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

~~B.~~ B. Employee Wellness and Safety Programs

Pursuant to the authority granted in Minnesota Statutes section 15.46, the City Council approves the expenditure of funds for employee wellness purposes. The City Council recognizes the importance of employee fitness and health as it relates to the overall work and life satisfaction of the employee and the overall impact on the City's health insurance program. As such, the City Council supports an Employee Wellness Program, which has been designed to educate employees on fitness/health issues.

The Employee Wellness Program is considered "additional compensation" for work performed by employees, but is entirely dependent on receiving funding from year-to-year. No provisions of this policy, or its administration, shall be subject to review under the grievance or arbitration provisions of any collective bargaining agreement.

The cost of an Employee Wellness Program will be included in the City of Richfield Annual Budget. This item will be approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

The Employee Safety Program is funded by the Self-Insurance Fund. The City supports programs created by the Human Resources Division and the Safety Committee to promote and maintain a safe work environment. Safety incentive programs such as Richfield Safety Pays, which provide the opportunity for cash prizes for accident/injury-free ~~work days~~ workdays, is an example of such programs. Such safety incentives shall be included in the City of Richfield Annual Budget.

~~C.~~ C. Meeting Food/Meals

The City Council recognizes that situations in which City business needs to be discussed can and do occur during meal hours (i.e. luncheon meetings). In addition, there are public and employee meetings and events in which reasonable refreshments may be necessary to create a more productive environment and to be responsive to participants' time schedules. The following items are deemed to meet the Council definition of public purpose expenditures in ~~regards~~ regard to food and meals.

- ~~1.~~ 1. Meals and refreshments are allowed at City meetings and events that have a purpose of discussing City issues. These meetings would normally have a pre-planned agenda.
- ~~2.~~ 2. Meals and refreshments are allowed at employee meetings and events that have ~~athe~~ the purpose of discussing City issues or are a part of employee training. These meetings would also normally have a pre-planned agenda. These meetings could include new employee receptions to introduce new employees to existing employees, provide an orientation to the City, and promote teamwork and cooperation. This does not include routine staff meetings.
- ~~3.~~ 3. Meals and refreshments are allowed when they are part of a breakfast/lunch/dinner meeting for official City business when it is the only practical time to meet. Usually, these meals involve meeting with City Council members, Committee/Commission members, business or civic organizations. Payment for fees relating to a special event, such as a Chamber of Commerce event, may also be allowed when approved by the City Manager and when attendance is deemed to meet the public purpose guidelines for community or customer outreach and marketing of the City.
- ~~4.~~ 4. Meals and refreshments may be provided during official meetings of the City Council, City Council committees, advisory boards/commissions, and taskforces that have the purpose of discussing City business. These meetings would normally have a pre-planned agenda.
- ~~5.~~ 5. Travel expenses for employees as outlined in the Richfield Travel Reimbursement Policy.
- ~~6.~~ 6. Meals and refreshments are allowed where employees or volunteers are participating in a City-sponsored special event, participating in an outside event as an official representative of the City, or working additional hours and where the Department Director deems appropriate as recognition of efforts above those normally required. Because emergency personnel are often called to perform for extended periods of time and duties where refreshments are important to duty performance, emergency response personnel may be provided refreshments or food when it is deemed appropriate by the City Manager or Department Director to assure the delivery of quality emergency response service.
- ~~7.~~ 7. No purchase of alcoholic beverages is allowed at any time.

The cost of these meals or fees is included in the ~~departments'~~ department's travel/conferences line-item in the City of Richfield Annual Budget. These items are approved annually by the City Council

as a part of the overall budget approval process which includes a public hearing on the proposed budget.

D. Membership, Dues, and Donations

The City Council has determined that the City will fund memberships and dues (individual or organization) in professional organizations and City social and community organizations when the purpose is to promote, advertise, improve or develop the City's resources and relationships and not personal interest or gain.

The cost of memberships/dues is included in the departments' dues and subscriptions line-item in the City of Richfield Annual Budget. These items are approved annually by the City Council as a part of the overall budget approval process which includes a public hearing on the proposed budget.

All donations must be approved by the City Council during the annual budget process and/or by City resolution. Donations provided by the City must be for programs that serve our citizens and are deemed to meet the public purpose guidelines.

E. Education Reimbursement

The Personnel Policy contains guidelines for the Richfield Employee Education Program (REEP). Job related advanced education meets the public purpose guidelines of this policy. The amount available for this program shall be considered annually. The cost of this program is contained in the City of Richfield Annual Budget.

F. Clothing and Other Sundry Items

Employees may receive T-shirts, and other sundry items of nominal value (\$20.00) when these items are made available to the general public or if these items are determined by the City Manager to be important to the successful involvement of employees in special City-sponsored or City-supported events (i.e. Nite to Unite, etc.). The cost of these items for City-sponsored or City-supported events shall be contained in the City of Richfield Annual Budget.

Employees may be supplied with uniforms, clothing, boots and other gear necessary for the performance of their job. For purposes of City branding and easy identification of employees to customers and members of the public, staff will be provided with one apparel item with the City logo. This clothing item (fleece zip, cardigan or polo shirt with approximate value of \$60) will be issued to new employees and to current employees at the discretion of their respective Department Directors.

G. Special Requests

From time to time, there may be an event that is a proper public expenditure, but that is not contemplated by this policy. Department Directors may submit a written request to the City Manager, or the Manager's designee, for such a public expenditure. The request must show how the expenditure is related to a public purpose as defined by this policy. Only expenditures that meet the definition of a public purpose may be approved.

Conclusion

The Richfield City Council has determined that the above expenditures are valid and serve a public purpose.

Approved: /s/ Steven L. Devich Katie Rodriguez

City Manager



STAFF REPORT NO. 73
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Julie Urban, Asst. Community Development Director

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director
6/6/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a resolution authorizing submittal of a grant application by Beacon Interfaith Housing Collaborative to Minnesota Brownfields for environmental investigation at 6613-25 Portland Avenue.

EXECUTIVE SUMMARY:

The Housing and Redevelopment Authority (HRA) owns the property at 6613-25 Portland Avenue. On April 18, 2022, the HRA approved a Preliminary Redevelopment Agreement (Agreement) with Beacon Interfaith Housing Collaborative (Developer) to explore the development of 38 supportive housing units on the property.

As part of the Agreement, the HRA granted the Developer the right to enter the property to conduct due diligence, including environmental testing. On April 23, 2023, a Phase I environmental assessment was completed, which identified two Recognized Environmental Conditions (RECs) on the property and recommended that a Phase II environmental assessment be conducted.

Funds are available to nonprofits and governmental entities to pay for the cost of environmental testing through Hennepin County's Brownfield Gap Financing Program (BGFP). The Developer is planning to apply for a grant, and the application requires City Council approval.

The identified RECs include the site's proximity to two former petroleum leak sites located to the north and northwest of the site and the former presence of a printing operation at 6613 Portland Avenue.

RECOMMENDED ACTION:

By motion: Approve a resolution authorizing the submittal of a grant application by Beacon Interfaith Housing Collaborative to Minnesota Brownfields for environmental investigation at 6613-25 Portland Avenue.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The properties at 6613-25 Portland Avenue were acquired by the City for the construction of the Portland Avenue and 66th Street roundabout in 2008. The remnants were turned over to the HRA to facilitate redevelopment.
- Properties to the north and northwest of the HRA site are former petroleum leak sites causing the

potential for residual petroleum impacts in groundwater and soil vapor to have migrated to the HRA properties.

- A former printing operation was located at 6613 Portland Avenue. The activities commonly associated with printing create a potential for contamination that should be explored further.
- On April 18, 2022, the HRA approved the Agreement with Beacon Interfaith Housing Collaborative to explore the development of 38 supportive housing units. The Agreement authorized a right of entry to Beacon to conduct environmental and soils testing.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The City and HRA encourage developers to apply for outside funding when possible.
- An assessment of environmental conditions and related clean up is required before new development can occur.

C. CRITICAL TIMING ISSUES:

Upon approval of a resolution, the Developer will apply for BGFP funds to conduct the Phase II.

D. FINANCIAL IMPACT:

Grant funds from Hennepin County would pay the cost of the Phase II environmental assessment. There is no cost to the City or HRA.

E. LEGAL CONSIDERATION:

The BGFP application requires submittal of a City Council resolution authorizing the application for funds.

ALTERNATIVE RECOMMENDATION(S):

Decide not to authorize the submittal of the grant application.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter

RESOLUTION NO.

**RESOLUTION AUTHORIZING SUBMITTAL OF A GRANT APPLICATION TO
MINNESOTA BROWNFIELDS FOR ENVIRONMENTAL INVESTIGATION AT
6513-25 PORTLAND AVENUE**

WHEREAS, the Housing and Redevelopment Authority (HRA) approved a Preliminary Redevelopment Agreement with Beacon Interfaith Housing Collaborative on April 18, 2022, to explore the redevelopment of 6613-25 Portland Avenue with 38 supportive housing units; and

WHEREAS, as part of its due diligence required by the Preliminary Development Agreement, Beacon had a Phase I Environmental Site Assessment prepared, dated April 27, 2023; and

WHEREAS, the Phase I identified two Recognized Environmental Conditions impacting the site and recommends that a Phase II Environmental Site Assessment be prepared; and

WHEREAS, Hennepin County provides funds to cities and non-profit organizations for such environmental assessment of property through its Brownfield Gap Financing Program; and

NOW, THEREFORE, BE IT RESOLVED the City of Richfield approves the submittal of an application by Beacon to the Minnesota Brownfields Brownfield Gap Financing program funded with an Environmental Response Fund grant from Hennepin County Department of Environmental Services.

Adopted by the City Council of the City of Richfield, Minnesota this 13th day of June, 2023.

Mary B. Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 74
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Chris Swanson, Management Analyst

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Approve the first reading of an ordinance approving renewal of a cable television franchise with Comcast of Minnesota, Inc., and schedule a public hearing and second reading for June 27, 2023.

EXECUTIVE SUMMARY:

The Southwest Suburban Cable Commission ("Commission") consists of the cities of Eden Prairie, Edina, Hopkins, Minnetonka and Richfield, Minnesota ("Member Cities"). The Commission administers and enforces the cable franchises on behalf of its Member Cities.

Effective August 1, 2012 each of the Member Cities granted a cable franchise to Comcast. The initial term of the franchise ran for ten (10) years and was extended by the Member Cities through January 31, 2023.

In 2019 Comcast requested renewal of the franchise and the Cable Commission has since been engaged in informal renewal negotiations with Comcast to reach mutually acceptable terms for a renewal cable franchise.

In response to Comcast's request for franchise renewal, the Cable Commission retained an outside consultant to conduct a needs assessment of the future cable-related needs and interests of the member cities for the next franchise term.

The final Needs Assessment Report and draft renewal franchise were sent to Comcast for review on July 5, 2022. The Commission and Comcast have exchanged draft documents and held multiple negotiation sessions to discuss the terms and conditions of the document in an effort to reach mutually acceptable language for the next cable franchise. On May 24, 2023, the Cable Commission adopted Resolution 2023-1 recommending that the renewal cable franchise be adopted by each Member City.

Final Results of the Franchise Negotiations:

Existing Franchise	Renewal Franchise
"Gross Revenue" definition	more clear definition
5% franchise fee	Same % as Existing Franchise – federal law (maximum allowed)
\$.65/subscriber/month PEG Fee	1.5% of gross revenues

3 PEG Channels	Same as Existing Franchise
Option for 1 HD PEG channel	All PEG channels will be provided in HD
Complimentary cable service at certain public buildings	Maintain status quo; however, FCC 621 Order adopted in 2019 allows Comcast to deduct “marginal costs” from franchise fees upon 120 days notice to Member City
PEG Transport	Maintain status quo and same comment as above regarding FCC 621 Order
10-year term	10-year term, effective date of adoption
Performance bond \$100,000 per Member City	Same as Existing Franchise
Security fund \$10,000 per Member City, upon violation notice	\$25,000 security fund per Member City

RECOMMENDED ACTION:

By Motion: Approve the first reading of an ordinance approving renewal of a cable television franchise with Comcast of Minnesota, Inc., and schedule a public hearing and second reading for June 27, 2023.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

On or about January 1, 1997, each of the Member Cities granted a Cable Television Franchise to KBL Cable systems of the Southwest, Inc. At that same time the Member Cities each adopted a Cable Television Regulatory Ordinance to be incorporated into the city code of each Member City. In 2000, the Commission and Member Cities approved a transfer of the existing franchise to Time Warner, Inc. In June of 2005, Time Warner transferred the existing franchise to Comcast Communications. Comcast currently operates the cable systems in each of the Member Cities under authority granted in the existing franchise.

The initial term of the existing franchise ran for fifteen years and was extended by the Member Cities to expire on July 31, 2012. Each member city adopted a cable franchise in 2012 which granted Comcast a 10-year franchise with an effective date of August 1, 2012. In September of 2022, the city extended the existing franchise agreement with Comcast, set to expire on August 1, 2022, until January 31, 2023, to finalize negotiations.

In response to Comcast’s request for franchise renewal, the Cable Commission retained an outside consultant to conduct a needs assessment of the future cable-related needs and interests of the member cities for the next franchise term. The Commission identified 8 main goals for the next franchise agreement.

Cable Commission Goal:

The Cable Commission’s primary goals during renewal negotiations were:

1. Ensure each city’s right-of-way code is incorporated into the renewal franchise.
2. Retain ability to regulate noncable services provided by Comcast – broadband.
3. Ensure all local PEG (public, educational and governmental) access channels are provided in HD (high-definition).
4. Increase the level of capital support for PEG access channels.
5. Maintain the 5% franchise fee as consideration for use of the city’s right-of-way.
6. Maintain strong customer service standards.

7. Renew for a 10-year term.
8. Adopt enforcement procedures and security to ensure compliance.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

A public hearing is required for this franchise under City Charter, Section 10.05. A notice of the public hearing will be posted in the Sun Current on June 15, 2023.

C. CRITICAL TIMING ISSUES:

The cable television franchise renewal should be extended as soon as possible because the existing franchise extension expired January 31, 2023.

D. FINANCIAL IMPACT:

The 5% franchise fee will stay the same as this is the maximum allowed under federal law. In 2022, Richfield collected \$286,730.31 from the franchise fee. The number of cable subscribers has been steadily declining, resulting in declining franchise revenue, as residents have more options to access content online.

However, staff anticipates the PEG Fee revenues to increase with the new franchise agreement as one key provision of the new franchise is an increase in the PEG fee to 1.5% of Comcast's gross revenues.

Actual 2022 \$.65/sub/mo PEG Fee: \$32,435.72 (Current Contract)

Estimated 1.5% annual PEG Fee: \$86,018.94 (Proposed Contract)

The revenues help replace technology for the benefit of broadcast production and support public access, and eliminate the need to increase the City's costs

E. LEGAL CONSIDERATION:

The franchise ordinance was negotiated and drafted by legal counsel for the Southwest Cable Communications Commission, Brian Grogan.

Under the City Charter, the new ordinance will not be effective until 30 days after publication of the ordinance.

The Commission has negotiated that the new rates will be applied retroactively to January 1, 2023. The attached draft ordinance amendment was reviewed and finalized by the City Attorney.

ALTERNATIVE RECOMMENDATION(S):

All five member cities are considering the renewal cable franchise simultaneously. Any proposed revisions from one of the cities may require the Commission to seek agreement, not only from Comcast, but also from the other four member cities. This is not to say further revisions are impossible, but to highlight the complex negotiation process undertaken to get to this final Franchise Agreement.

The City Council could choose to not adopt the proposed ordinance amendment; however, its adoption has been recommended by the Commission.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
□ Proposed Renewal with Comcast - SWSCC (Clean)	Ordinance
2012 Comcast franchise compared to 2023 Proposed	

- | | | |
|---|---|-----------------|
| ▣ | renewal - SWSCC (Redline) | Ordinance |
| ▣ | RESOLUTION NO. 2023-1 recommending approval of the Franchise agreement with Comcast | Backup Material |
| ▣ | Cable Franchise Renewal Presentation | Presentation |

City of Richfield, Minnesota

Ordinance Granting a Cable Television Franchise

to

Comcast of Minnesota, Inc.

June 1, 2023

TABLE OF CONTENTS

SECTION 1	DEFINITIONS.....	1
SECTION 2	FRANCHISE	7
SECTION 3	OPERATION IN STREETS AND RIGHTS-OF-WAY	10
SECTION 4	REMOVAL OR ABANDONMENT OF SYSTEM.....	14
SECTION 5	SYSTEM DESIGN AND CAPACITY	15
SECTION 6	PROGRAMMING AND SERVICES.....	17
SECTION 7	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS	20
SECTION 8	REGULATORY PROVISIONS.....	26
SECTION 9	BOND	27
SECTION 10	SECURITY FUND	27
SECTION 11	DEFAULT	30
SECTION 12	FORECLOSURE AND RECEIVERSHIP	32
SECTION 13	REPORTING REQUIREMENTS	33
SECTION 14	CUSTOMER SERVICE POLICIES.....	34
SECTION 15	SUBSCRIBER PRACTICES.....	40
SECTION 16	COMPENSATION AND FINANCIAL PROVISIONS	41
SECTION 17	MISCELLANEOUS PROVISIONS.....	44
EXHIBIT A	COMPLIMENTARY SERVICE LOCATIONS	A-1
EXHIBIT B	EXISTING PEG TRANSFPORT LOCATIONS	B-1
EXHBIT C	FRANCHISE FEE PAYMENT WORKSHEET	C-1
EXHIBIT D	SUMMARY OF ORDINANCE FOR PUBLICATION.....	D-1

ORDINANCE NO. _____

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF RICHFIELD, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 2012-10

RECITALS

The City of Richfield, 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.

Comcast of Minnesota, Inc. (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to Ordinance No. 2012-10.

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

The Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.

The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement with other cities authorized to grant cable communications franchises and has delegated certain authority to the Southwest Suburban Cable Communications Commission to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

The City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.

NOW, THEREFORE, THE CITY OF RICHFIELD, MINNESOTA DOES ORDAIN that a franchise is hereby granted to Comcast of Minnesota, Inc., to operate and maintain a Cable System 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.

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

1.2 “Affiliate” or “Affiliated Entity” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successors.

1.3 “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 by any governmental authority of competent jurisdiction.

1.4 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast.

1.5 “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.

1.6 “Cable Service” means (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.

1.7 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment which is designed to provide Cable Service that includes Video Programming, and which is provided to multiple Subscribers within a community, but such term does not include:

(a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(b) a facility that serves Subscribers without using any Streets;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) an open video system that complies with 47 U.S.C. § 573; or

(e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Grantee's Cable System constructed and operated in the City under this Franchise.

1.8 "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.

1.9 "City" means the City of Richfield, a municipal corporation in the State of Minnesota.

1.10 "City Code" means the Municipal Code of the City of Richfield, Minnesota, as may be amended from time to time.

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

1.12 "Connection" means the attachment of the Drop to the television set of the Subscriber.

1.13 "Converter" means an electronic device, including digital transport adapters, 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 Cable Service signals.

1.14 "Council" means the governing body of the City.

1.15 "Day" means a calendar day, unless otherwise specified.

1.16 "Drop" means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable in the Street and any electronics on Subscriber property between the Street and Subscriber terminal.

1.17 "Effective Date" means February 1, 2023.

1.18 "FCC" means the Federal Communications Commission, or a designated representative.

1.19 "Franchise" means the right granted by this Ordinance and conditioned as set forth herein.

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

1.21 "Franchise Fee" means the fee assessed by the City to Grantee, in consideration of Grantee's right to operate the Cable System within the City's Streets, 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).

1.22 “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”).

1.23 “Gross Revenues” means, and shall be construed broadly to include, all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

- (a) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (b) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;
- (c) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;
- (d) installation, disconnection, reconnection, change-in service, “snow-bird” fees;
- (e) Advertising Revenues as defined herein;
- (f) late fees, convenience fees, and administrative fees;
- (g) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provision of Cable Service;
- (h) revenues from program guides and electronic guides;
- (i) Franchise Fees;
- (j) FCC regulatory fees;
- (k) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and

(l) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.

(i) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight, or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

(ii) “Gross Revenues” shall not include:

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the City; and

2. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(m) Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on the current published rate card for the packaged services delivered on a stand-alone basis as follows:

(i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis, when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific Applicable Law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing 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 will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

(iii) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP 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”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.24 “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.

1.25 “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.

1.26 “Other Programming Service” is information that a cable operator makes available to all Subscribers generally.

1.27 “PEG” means public, educational and governmental.

1.28 “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.

1.29 “Section 621 Order” means the Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019, as modified by any court of competent jurisdiction or any subsequent order of the FCC.

1.30 “Street” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A Street does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

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

1.32 “Twin Cities Region” shall mean the cities in Minnesota wherein Grantee or Affiliate hold a franchise agreement to provide Cable Service.

1.33 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.34 “Wireline MVPD” means any entity, including the City, 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, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

SECTION 2 FRANCHISE

2.1 **Grant of Franchise.** 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. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2 herein, this 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.

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.** The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended, or extended by mutual written consent in accordance with Section 17.7 or terminated sooner in accordance with this Franchise.

2.4 **Franchise Area.** This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.6 herein. This Franchise governs any Cable Services provided by Grantee to residential and commercial Subscribers to Grantee's Cable System.

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 17.18. 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. § 238.08 and any other applicable federal level playing field requirements.

2.6 **Periodic Public Review of Franchise.** Within sixty (60) Days of the third and sixth annual anniversary of the Effective Date of this Franchise, 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 17.7 of this Franchise.

2.7 **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 reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on Grantee's Subscribers resulting from the sale or transfer.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be handled 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) 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 2.7. 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 accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section.

(i) 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 ninety (90) 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.

2.8 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.

2.9 Right to Require Removal of Property. At the expiration of the term for which this 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 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. However, Grantee shall have no obligation under this Franchise to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Streets, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

2.10 Continuity of Service Mandatory. It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the Cable System in accordance with Section 2.7, 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, while the Franchise remains effective. 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 franchise, the current Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of Cable 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, 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.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner in accordance with the City Code and Applicable Law. 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.

(d) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing, or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining, or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3.2 Construction or Alteration. 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.

(a) 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:

- (i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (ii) Grantee is unable to get pole clearance;
- (iii) underground easements are obtained from developers of new residential areas; or
- (iv) utilities are overhead but residents prefer underground (service provided at cost).

(b) 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.

(c) 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, 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 requirements of this section pertaining to public property shall also apply to the restoration of private easements and other private property. 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 Streets 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 Street, 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 advising Grantee of the date or dates that 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 Grantee to arrange for such temporary wire changes.

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) 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 or the City Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System 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. However, Grantee shall have no obligation under this Franchise to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Streets, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

4.2 Abandonment of Cable System. In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to conform to the state right-of-way rules, Minn. Rules, Ch. 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, 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 for the 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 for 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, 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. In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps and records of all of its wires, conduits, cables and other property and facilities located, constructed, and maintained in the City, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Streets. Grantee shall make all maps and records available for review by the appropriate City personnel.

SECTION 5 SYSTEM DESIGN AND CAPACITY

5.1 Availability of Signals and Equipment.

(a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers. The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream Cable Service Channels.

(b) The entire System shall be technically capable of transmitting industry-standard digital television signals in a manner and quality consistent with applicable FCC regulations.

(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 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 Equal and Uniform Service. To the extent required by Applicable Law, Grantee shall provide access to equal and uniform Cable Service throughout the City.

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 Laws 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 and at all hubs. 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 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.

(e) **System Upgrades.** The Cable System will be upgraded consistent with future System upgrades performed in Grantee's other Twin Cities Region Cable Systems, when any other of Grantee's Cable Systems in Hennepin County also receives a System upgrade, understanding that work on the Cable System is done based on Grantee's construction schedules.

5.4 Performance Testing. Grantee shall perform all 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; and
- (b) Tests in response to Subscriber complaints; and
- (c) Tests requested by the City to demonstrate franchise compliance; and
- (d) 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

PEG Programming (to the extent required by the Franchise)
Movies
Leased Access

6.2 Changes in Programming Services. As required by Applicable Law, 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.

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(b) Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. Grantee may offer the Persons requesting Service the opportunity to "prepay" some or all of the necessary line extensions according to its regular business policies. Grantee shall at all times implement such line extension policy in a nondiscriminatory manner throughout the City.

(c) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

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

6.8 Free Cable Service to Public Buildings.

(a) The parties acknowledge that as of the Effective Date of this Franchise, Grantee continues to provide, free of charge, basic Cable Service (including the PEG Channels) to certain schools, libraries and public institutions within the Franchise Area as set forth in Exhibit A (“Complimentary Services”). In the event Grantee elects, to the extent permitted by Applicable Law, to invoice the City for the marginal cost of the Complimentary Services, the Grantee agrees that it will do so only after providing City with one hundred twenty (120) Days’ prior written notice.

(b) The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to impose a charge to the City for the Complimentary Service as set forth in the preceding paragraph. Within ninety (90) days of receiving the aforementioned notice, the City will notify the Grantee whether, with respect to each identified Complimentary Service location, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(c) Additional Subscriber network Drops and/or outlets will be installed at designated institutions by Grantee at the cost of Grantee’s time and material, or such other price as may be required to comply with Applicable Law. Alternatively, said institution may add outlets at its own expense as long as such installation meets Grantee’s standards. Grantee will complete construction of the additional Drop and outlet within three (3) months from the date of City’s designation of additional institution(s) unless weather or other conditions beyond the control of Grantee requires more time. The City may substitute locations listed on Exhibit A attached hereto as long as the number of locations to receive Complimentary Service remains the same as Exhibit A.

(d) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional

outlets, Grantee will provide up to three (3) devices at no charge and will provide additional devices at Grantee's lowest residential rate charged within the Twin Cities Region.

(e) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.

SECTION 7

PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 Number of PEG Access Channels.

(a) Grantee will make available three (3) PEG Access Channels in addition to Channels required by the State of Minnesota, such as Regional Channel 6, throughout the entire term of this Franchise and any extensions of the Franchise term.

(b) Grantee shall provide the PEG Access Channels on the Basic Cable Service tier, or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee.

(c) For purposes of this Franchise, a high definition ("HD") format or signal refers to a PEG signal delivered by Grantee to Subscribers in a resolution that is either:

(i) the same as received by Grantee from City or the entity from which Grantee received the PEG signal, or

(ii) the highest resolution used for the delivery of the primary signals of local broadcast stations, if lower than the level described in subparagraph (c)(i) above.

7.2 HD PEG Carriage Requirements.

(a) No later than September 1, 2023, Grantee shall provide all three (3) PEG Access Channels in HD format and shall also simulcast all three (3) PEG Access Channels in standard definition ("SD") until SD is no longer offered by Grantee. The parties agree that PEG funding may be used to support streaming of PEG programming, provided the City does not permit PEG funding to be used for operational expenses except as permitted by Applicable Law.

(b) The City acknowledges that receipt of an HD format PEG Access Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services.

(c) Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the

Grantees' headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties related to the government PEG Access Channel.

7.3 Control of PEG Access Channels. The control and administration of the PEG 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 PEG Access Channels. PEG 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 PEG Access Channel Locations.

(a) PEG Access Channels shall be carried on the Basic Cable Service tier to the extent required by Applicable Law and as set forth in Section 7.2 herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service. Grantee shall make every reasonable effort to coordinate the cablecasting of PEG access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. 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.

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

(c) In conjunction with any occurrence of any Access Channel(s) relocation, Grantee shall provide a minimum of One Thousand Five Hundred Dollars (\$1,500) Thousand Five-Hundred Dollars (\$1,500) of reimbursement for costs incurred by City to promote the new Channel locations.

7.6 Navigation to PEG Access Channels and Electronic Programming Guide. Grantee agrees that if it utilizes any navigation interfaces, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. Grantee will maintain the existing ability of the City to place PEG Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. PEG programming provided by the City shall appear on the EPG for each Channel carried in the City. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. Each programming stream will not be individually listed for narrowcast Channels unless technically feasible. All costs and operational requirements of the EPG provider shall be the responsibility of the City.

City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

7.7 Ownership of PEG 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 PEG Monitoring. Grantee shall provide the capability, without charge, to the City and to the City of Edina (location of the Commission’s master control facility), to monitor and verify the audio and visual quality of PEG Access Channels received by Subscribers as well as the existing connections and equipment at the City and the City of Edina. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the City and the City of Edina to verify the accuracy of EPG listings for the PEG Access Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the City and one (1) additional feed to the City of Edina to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e., Xfinity X1).

7.9 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.

7.10 PEG Transport. Grantee will maintain all existing fiber paths in place as of the Effective Date to facilitate PEG origination/return capacity in the City. Such fiber returns paths are listed in Exhibit B attached hereto and will be provided by Grantee without additional charge, with no recurring, monthly costs or offsets, except that Grantee may invoice the Commission for any maintenance costs consistent with Applicable Law and the Section 621 Order. Grantee shall not be responsible for fiber “replacement” but will handle any damage and all maintenance on the existing fiber. Grantee anticipates, but cannot guarantee, that that this will result in minimal fiber expenditures by the City over the Franchise term.

7.11 Interconnection. To the extent technically feasible, 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.

7.12 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, free of charge and at no cost to the City, Commission 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, Commission or school is responsible for all other production/playback equipment.

7.13 Future PEG Transport. 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 Exhibit B); 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 proceeding 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.

7.14 PEG Access Channel Carriage.

(a) Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG 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 PEG 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 PEG Access Channel when the cumulative time on all the existing PEG Access Channels combined meets the following standard: whenever one of the PEG 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, PEG 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) Only to the extent mandated by Applicable Law, the VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated PEG Access Channels.

(d) 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 PEG Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG 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 PEG Access Channel including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

7.15 Access Channel Support.

(a) No later than September 1, 2023, Grantee shall collect and remit to the City a minimum of one and one-half percent (1.5%) of Grantee's Gross Revenues in support of PEG ("PEG Fee") to be used by the City as permitted under Applicable Law.

(b) The PEG Fee is not part of the Franchise Fee and instead falls within one (1) or more of the exceptions in 47 U.S.C. § 542, unless 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.

(c) Grantee shall pay the PEG Fee to the City quarterly, on the same schedule as the payment of Franchise Fees as set forth in Section 16.1 of this 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.

7.16 PEG Technical Quality and Support.

(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 PEG Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG 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 PEG Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in a PEG Access Channel signal from the point of origination upstream to the point of reception (hub or headend) or downstream to the Subscriber on the Cable System.

(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG 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.

7.17 Access Channel Promotion. If a PEG Access Channel is relocated, Grantee shall notify the Commission, City and Subscribers of the relocation in a manner consistent with Grantee's other normal Channel relocation notices.

7.18 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 PEG 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 PEG Access Channels in accordance with the requirements of the Franchise.

7.19 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.

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

7.21 Government Access Channel Functionality. Grantee and City agree that City will continue to have the following capability on the government Access Channel:

- (a) City can insert live Council meetings from City Hall;
- (b) City can replay government access programming from City Hall;
- (c) City can transmit character generated programming; and
- (d) City can schedule to replay City-provided programming in pre-arranged time slots on the government PEG Access Channel.

7.22 **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.

(a) 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:

- (i) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility; and
- (ii) Coordinating the operation of PEG Access Channels; and
- (iii) Formulating and recommending long-range cable communications policy for the Franchise Area; and
- (iv) Disbursing and utilizing Franchise revenues paid to the City; and
- (v) Administering the regulation of rates, to the extent permitted by Applicable Law; and
- (vi) All other regulatory authority permitted under Applicable Law.

(b) 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, disabled, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

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 and No/100 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.

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.

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-five Thousand and No/100 Dollars (\$25,000.00). In no event shall Grantee fail to post a Twenty-five Thousand and No/100 Dollar (\$25,000.00) 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 Five Thousand and No/100 Dollars (\$5,000) in that action.

10.2 Withdrawal of Funds. The security fund shall permit the City to withdraw funds upon demand (sight draft). 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 Section 10.4 of this Franchise, 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 Two Hundred Fifty and No/100 Dollars (\$250.00) 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 Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) Forty-five (45) Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage

shall be Five Hundred and No/100 Dollars (\$500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) 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 Two Hundred Fifty and No/100 Dollars (\$250.00) 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 Draw Per Violation. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-five Thousand and No/100 Dollars (\$25,000). If after that amount of draw from the security fund 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 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 up to Twenty-five Thousand and No/100 Dollars 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; or
- (b) Attempted to evade any material provision of this Franchise or the acceptance hereof; or
- (c) Practiced any fraud or deceit upon City or Subscribers resulting in material harm; 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

premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

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 the Franchise Fee and PEG Fee payments, signed by an authorized representative of Grantee, in form and substance substantially equivalent to Exhibit C attached hereto. This report shall separately indicate Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.23 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 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 established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 Other 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, 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 Confidential and Trade Secret Information. Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act ("MGDPA") pursuant to Minn. Stat. Ch. 13. The City shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to City. Grantee acknowledges that the City shall at all times comply with the MGDPA related to the release of information and nothing herein shall be read to modify the City's obligations under the MGDPA.

13.5 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. Grantee will continue to maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

14.2 Definition of "Complaint." For the purposes of Section 14.1 and 14.4 only, the word "complaint" shall mean any communication to the Commission or the City by a Subscriber, and thereafter reported to the Grantee, 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) Converter/Subscriber terminal equipment policy.
- (g) Breach of Franchise specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) 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. 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.

- (a) The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.
- (b) 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.
- (c) 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. 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.

14.7 Cable System office hours and telephone availability. Grantee shall comply with the standards and requirements for customer service set forth in Section 14.5 – 14.21 during the term of this Franchise.

(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.

(f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee's compliance with this Section 14.7 as is the current practice

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 that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.6(c).

(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.

(a) 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:

- (i) Products and Services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and Service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) Channel positions of programming carried on the System; and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

(b) 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. 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 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 a commission of the City.

14.17 **Subscriber Bills.** Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Subscriber 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 shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of this Franchise.

14.19 **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, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.20 **Subscriber Privacy.**

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following:

(i) 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.

(ii) 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.

(iii) 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 (ii) of this section.

14.21 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 affected 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.

(a) 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.

(b) 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.

(c) 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 C, 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.

(d) 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.

(e) 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.

16.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of 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 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 Minn. Stat. § 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.

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 or PEG Fees paid to the City under this Franchise. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. 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 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. 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.

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 and No/100 Dollars (\$3,000,000.00). 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 City 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. The Summary of Ordinance for Publication ("Summary") attached hereto as Exhibit D shall be published at least once in the official newspaper of the City. Grantee shall assume the cost of posting and publication of the Summary 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 ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

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.

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 Prior Franchise Terminated. The cable television franchise as originally granted by Ordinance No. 2012-10 is hereby terminated.

17.6 Franchise Acceptance. No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall accept and return to the City an executed Franchise along with performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to accept this Franchise, or fails to provide the required documents, 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 February 1, 2023.

17.7 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 2.6 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 Applicable Laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

17.8 **Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

To the City: City Manager, City of Richfield
6700 Portland Avenue
Richfield, MN 55423

To the Grantee: Comcast Regional Vice President of Operations
10 River Park Place
St. Paul, MN 55107

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes 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.

17.9 **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.

17.10 Work of Contractors and Subcontractors. Work by contractors and subcontractors is 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.

17.11 Governing Law. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. 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.

17.12 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.

17.13 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.

17.14 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.

17.15 No Waiver. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.16 Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

17.17 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.

17.18 Competitive Equity

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Cable Services or Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.18 will apply.

(b) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a Wireline MVPD: the obligation to pay to the City a Franchise Fee, Gross Revenues as provided for and defined in this Franchise, and the obligation to comply with the requirements in this Franchise regarding PEG funding, PEG Channels, security instruments, audits, remedies, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are materially equivalent.

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects and following the ninety (90) Day negotiation time period set forth in this paragraph 17.18 (c), the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream Video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.

(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the

Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.18 is intended to alter the rights or obligations of either party under Applicable Law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to mandate a Cable Service franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists or does not exist.

17.19 FCC Preemption.

(a) At any time after this Franchise is approved by the City Council, the Grantee may, if Grantee is legally permitted by Applicable Law, provide the City with a written list of “in-kind cable-related contributions” (as that term is defined by the FCC in the Section 621 Order) that the Franchise requires Grantee to provide (including but not limited to the Complimentary Service requirements in Section 6.8) and the incremental cost(s) associated with the provision of the in-kind cable-related contributions. Within one hundred and twenty (120) days of receiving the aforementioned list, the City will notify the Grantee whether, with respect to each identified in-kind cable-related contribution, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(b) In the event the Section 621 Order is stayed or overturned in whole or in part by action of the FCC, the City and the Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies. It is the intent of the parties that the City shall be treated by the Grantee in a reasonably comparable manner as other jurisdictions within the Twin Cities Region with respect to any offsets or charges imposed by Grantee for the provision of Complimentary Service. Nothing herein waives the City's right to enforce Grantee's compliance with all lawful obligations contained in this Franchise.

17.20 Treatment of Negotiated Provisions. For the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2(c), 7.5(c), 7.8, 7.10, 7.11, 7.12, 7.13, 7.16(b), 7.17, 7.18, 7.19, 13.1, 13.2, and 13.3, shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 1.23 and 16.1 of this Franchise or as a PEG Fee under Section 7.15 of this Franchise. Grantee reserves any rights it may have to recover

from Subscribers, as a separate line item from the PEG Fee in Section 7.15 of this Franchise, any PEG capital costs set forth in Section 7.2(a) and (c), 7.8, 7.10, 7.11, 7.12, 7.14 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this ____ day of _____ 2023.

ATTEST

CITY OF RICHFIELD, MINNESOTA

By: _____
Its: City Clerk

By: _____
Its: Mayor

ACCEPTED: This Franchise is accepted, and Comcast of Minnesota, Inc. agrees to be bound by its terms and conditions.

COMCAST OF MINNESOTA, INC.

By: _____

Its: _____

EXHIBIT A
COMPLIMENTARY SERVICE LOCATIONS

	BUILDING	ADDRESS	CITY
1.	Admin Serv Dept, Richfield	6700 Portland Ave Apt Asd	Richfield
2.	Richfield Comm Center	7000 Nicollet Ave	Richfield
3.	Centennial Elem School	7315 Bloomington Ave	Richfield
4.	Sheridan Elementary	6400 Sheridan Ave S	Richfield
5.	Fire Station 2, Richfield	6401 Penn Ave S	Richfield
6.	Fire Station, Richfield	6700 Portland Ave Apt 1	Richfield
7.	Richfield High School	7001 Harriet Ave S	Richfield
8.	Richfield Ice Arena	636 E 66th St	Richfield
9.	Richfield Middle School	7461 Oliver Ave S	Richfield
10.	Augsburg Library	7100 Nicollet Ave	Richfield
11.	Mt Calvary Lutheran School	6541 16th Ave S	Richfield
12.	Richfield City Hall	6700 Portland Ave Apt Hall	Richfield
13.	Richfield Pub Safety	6700 Portland Ave Apt Eoc	Richfield
14.	Richfield School Garage	300 W 72nd St	Richfield
15.	Holy Angels School	6600 Nicollet Ave	Richfield
16.	Richfield Dual Language School	7001 Elliot Ave S	Richfield
17.	Central Education Center	7145 Harriet Ave	Richfield
18.	Richfield Stem	7020 12th Ave S	Richfield

* For as long as the building remains publicly owned and operated. If the building is leased or operated by a commercial tenant, Grantee's voluntary courtesy service offer will expire.

EXHIBIT B
EXISTING PEG TRANSPORT LOCATIONS

BUILDING

Richfield City Hall

STREET ADDRESS

6700 Portland Avenue

EXHIBIT C

FRANCHISE FEE PAYMENT WORKSHEET

*****CONFIDENTIAL*****



System Name: Comcast of Minnesota, Inc.
 Email: Prasant_Nadella@cable.comcast.com
 Phone: 610-665-2579

Vendor ID:	XXXXX
Contract Name:	X
Statement Period:	Jan - Mar, 2020
Payment Amount:	\$X
Statement Number:	XXXXXX
CUID:	XXXXXX
System ID:	XXXX-XXXX-XXXX

This statement represents your payment for the period listed above.

Revenue Category	Amount
Expanded Basic Video Service	\$
Limited Basic Video Service	\$
Digital Video Service	\$
Pay	\$
PPV / VOD	\$
Digital Video Equipment	\$
Video Installation / Activation	\$
Franchise Fees	\$
Guide	\$
Other	\$
Late Fees	\$
Write-offs / Recoveries	\$
Ad Sales	\$
Home Shopping Commissions	\$
Total	\$
Franchise Fee %	%
Franchise Fee	\$
PEG Fee 1.5%	

Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of "Gross Revenues" set forth in this Franchise.

EXHIBIT D
SUMMARY OF ORDINANCE FOR PUBLICATION

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF RICHFIELD, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On _____, 2023, the City of Richfield, Minnesota ("City") adopted an ordinance granting a Cable Television Franchise to Comcast of Minnesota, Inc. ("Comcast"). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible cable service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable television franchise to Comcast, to operate, construct and maintain a cable system within the City and contains specific requirements for Comcast to do so.

The Franchise includes the following: 1) a Franchise Fee of 5% of Comcast's annual gross revenues; 2) a Franchise term of ten (10) years; 3) incorporation of the City Code regarding right-of-way protections; 4) a list of schools and public buildings entitled to receive complimentary cable service; 5) dedicated channel capacity for public, education and government ("PEG") access programming; 6) a PEG Fee of 1.5% of Comcast's annual gross revenues to support local access programming as permitted under applicable law; 7) strong customer service standards regarding Comcast's cable services; and 8) a performance bond and letter of credit to enforce Comcast's compliance with the Franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. _____. A copy of the entire ordinance shall be posted at the Richfield City Hall.

It is hereby directed that only the above title and summary of Ordinance No. ____ be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the Richfield City Hall at 6700 Portland Avenue, Richfield, MN 55423 during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

	<u>Yes</u>	<u>No</u>
Mayor _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____

Passed by the Richfield City Council this ____ day of _____, 2023.

ATTEST: _____, Mayor
_____, _____

~~Southwest Suburban Cable Communications Commission~~

Proposed Renewal Template

May 18, 2023

City of _____, Minnesota

Ordinance Granting a Cable Television Franchise

to

Comcast of ~~Arkansas / Florida / Louisiana /~~ Minnesota ~~/ Mississippi / Tennessee~~, Inc.

~~May 25, 2012~~

~~Submitted for informal renewal negotiations only (47 U.S.C. 546 (h))—pursuant to Federal~~

~~Rules of Evidence 408 or its state, local or city equivalent.~~

TABLE OF CONTENTS

SECTION 1	DEFINITIONS	2
SECTION 2	FRANCHISE.....	99
SECTION 3	OPERATION IN STREETS AND RIGHTS-OF-WAY	1212
SECTION 4	REMOVAL OR ABANDONMENT OF SYSTEM.....	1616
SECTION 5	SYSTEM DESIGN AND CAPACITY	1717
SECTION 6	PROGRAMMING AND SERVICES	2020
SECTION 7	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.....	2323
SECTION 8	REGULATORY PROVISIONS.....	3131
SECTION 9	BOND.....	3232
SECTION 10	SECURITY FUND.....	3232
SECTION 11	DEFAULT	3535
SECTION 12	FORECLOSURE AND RECEIVERSHIP	3737
SECTION 13	REPORTING REQUIREMENTS	3838
SECTION 14	CUSTOMER SERVICE POLICIES	3939
SECTION 15	SUBSCRIBER PRACTICES	4545
SECTION 16	COMPENSATION AND FINANCIAL PROVISIONS	4646
SECTION 17	MISCELLANEOUS PROVISIONS	4949
EXHIBIT A—FREE CABLE SERVICE TO PUBLIC BUILDINGS A-Error! Bookmark not defined.		
EXHIBIT B—EXISTING FIBER RETURN LINES B-Error! Bookmark not defined.		
EXHIBIT C—FRANCHISE FEE PAYMENT WORKSHEET C-Error! Bookmark not defined.		
<u>EXHIBIT A COMPLIMENTARY SERVICE LOCATIONS</u> <u>A-1</u>		
<u>EXHIBIT B EXISTING PEG TRANSFPORT LOCATIONS</u> <u>B-1</u>		
<u>EXHBIT C FRANCHISE FEE PAYMENT WORKSHEET</u> <u>C-1</u>		
<u>EXHIBIT D SUMMARY OF ORDINANCE FOR PUBLICATION.....</u> <u>D-1</u>		

ORDINANCE NO. _____

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF ~~ARKANSAS / FLORIDA / LOUISIANA / MINNESOTA / MISSISSIPPI / TENNESSEE~~, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF _____; _____; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. _____.

RECITALS

The City of _____, 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.

Comcast of ~~Arkansas / Florida / Louisiana / Minnesota / Mississippi / Tennessee~~, Inc., a ~~Delaware corporation~~, ("Grantee") has operated a Cable System in the City, under a cable television franchise granted pursuant to Ordinance No. _____.

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

~~_____ The City reviewed the legal, technical and financial qualifications of Grantee and, after a properly noticed public hearing, as~~ The Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.

The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement with other cities authorized to grant cable communications franchises and has delegated certain authority to the Southwest Suburban Cable Communications Commission to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

The City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.

NOW, THEREFORE, THE CITY OF _____ DOES ORDAIN that a franchise is hereby granted to Comcast of ~~Arkansas / Florida / Louisiana / Minnesota / Mississippi / Tennessee~~, Inc., to operate and maintain a Cable System 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.

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

1.2 “Affiliate” ~~shall mean~~ or “Affiliated Entity” means any Person ~~controlling, who owns or controls, is owned or~~ controlled by, or is under common ownership or control ~~of~~ with, Grantee and its successors.

1.3 “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 by any governmental authority of competent jurisdiction.

1.4 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast.

1.5 “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.

1.6 “Cable Service” ~~shall mean~~ means (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.~~

1.7 ~~“Cable System” shall have the meaning specified for “Cable System” in~~

1.7 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment which is designed to provide Cable Service that includes Video Programming, and which is provided to multiple Subscribers within a community, but such term does not include:

(a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(b) a facility that serves Subscribers without using any Streets;

~~(a) — the Cable Act.~~

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) an open video system that complies with 47 U.S.C. § 573; or

(e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Grantee's Cable System constructed and operated in the City under this Franchise.

1.8 “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.

1.9 “City” ~~shall mean~~ means the City of _____, a municipal corporation in the State of Minnesota.

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

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

1.12 “Connection” means the attachment of the Drop to the television set of the Subscriber.

1.13 “Converter” means an electronic device, including digital transport adapters, 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~~ Cable Service signals.

1.14 “Council” ~~shall mean~~ means the governing body of the City.

1.15 “Day” means a calendar day, unless otherwise specified ~~shall mean a calendar day~~.

1.16 “Drop” ~~shall mean~~means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable in the Street and any electronics on Subscriber property between the Street and Subscriber terminal.

1.17 “Effective Date” ~~shall mean August~~means February 1, 2012~~2023~~.

~~“Expanded Basic Service” means the next tier of service above the Basic Cable Service tier excluding premium or pay-per-view services.~~

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

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

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

1.21 “Franchise Fee” ~~shall mean~~means 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).

1.22 “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”).

1.23 “Gross Revenues” means ~~any~~, and shall be construed broadly to include, all ~~compensation in whatever form, from any source, revenues derived~~ directly or indirectly earned by Grantee and/or any Affiliate of Grantee or any other Person who would constitute a cable an Affiliated Entity that is the cable operator of the Cable System ~~under the Cable Act, derived~~ from the operation of the Grantee’s Cable System to provide Cable ~~Service~~Services within the City. Gross Revenues include, by way of illustration and not limitation, ~~monthly fees charged Subscribers for Cable Services including Basic~~:

(a) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);

(b) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;

(a) ~~“Cable Service, any expanded tiers of Cable Service, optional premium or digital services; pay-per-view services; Pay Services;~~

(c) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;

(d) installation, disconnection, reconnection and change-in service fees, Leased Access Channel, "snow-bird" fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City;

(e) Advertising Revenues as defined herein;

~~(b) — 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 Converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP;~~

(f) late fees, convenience fees, and administrative fees;

(g) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provision of Cable Service;

~~(e) — 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~~

(h) revenues from program guides and electronic guides;

(i) Franchise Fees;

(j) FCC regulatory fees;

(k) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and

(l) commissions from home shopping channels and other Cable Service revenue -sharing arrangements-, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.

(i) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions-paid-to-the, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight, or their successors associated with sales

of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.
~~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.~~

(ii) “Gross Revenues” shall not include:

~~1. 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~~

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the City; and

2. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(m) Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on the current published rate card for the packaged services delivered on a stand-alone basis as follows:

~~(ii) 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~~

(i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis, when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific Applicable Law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.

~~(iii) payments for PEG Access capital support. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.~~

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing

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 will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

~~—————“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.~~

(iv) ~~—————“Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP 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”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.~~ Stat. § 238, et. seq., as amended.

~~1.23~~1.24 ———“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.

~~1.24~~1.25 ———“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.

~~1.25~~1.26 ———“Other Programming Service” is information that a cable operator makes available to all Subscribers generally.

~~—————“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.~~

~~1.26~~1.27 ———“PEG” means public, educational and governmental.

~~1.27~~1.28 “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.

~~“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, man-holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.~~

1.29 “Section 621 Order” means the Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019, as modified by any court of competent jurisdiction or any subsequent order of the FCC.

1.30 “Street” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A Street does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

~~1.28~~1.31 “Subscriber” means a Person who lawfully receives Cable Service.

1.32 “Twin Cities Region” shall mean the cities in Minnesota wherein Grantee or Affiliate hold a franchise agreement to provide Cable Service.

1.33 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

~~1.29 “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.~~

1.34 “Wireline MVPD” means any entity, including the City, 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, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

SECTION 2 FRANCHISE

2.1 **Grant of Franchise.** 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~~Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2 herein, this 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.

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.** The term of ~~the~~this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended, or extended by mutual written consent in accordance with Section 17.7 or terminated sooner in accordance with this Franchise.

2.4 **Franchise Area.** This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.6 herein. This Franchise governs any Cable Services provided by Grantee to residential and commercial Subscribers to Grantee's Cable System.

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 17.18. 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 Periodic Public Review of Franchise. Within sixty (60) Days of the third and sixth annual anniversary of the Effective Date of this Franchise, 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 17.7 of this Franchise.

2.7 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 ~~effect~~^{effect} 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~~^{handled} 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 2.7. 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 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.~~

(h) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section.

(i) 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)~~ninety (90) 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.

2.8 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.

2.9 Right to Require Removal of Property. At the expiration of the term for which ~~the~~this 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 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. However, Grantee shall have no obligation under this Franchise to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Streets, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

2.10 Continuity of Service Mandatory. It shall be the right of all Subscribers to receive ~~all available services insofar as their financial~~ Cable Service in accordance with the terms of this Franchise and ~~other obligations to Grantee are honored.~~ Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or ~~sell the system~~ transfer the Cable System in accordance with Section 2.7, 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~~ while the Franchise remains effective. 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 Cable System in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of Cable 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, 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 in accordance with the City Code and Applicable Law. 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.

(d) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing, or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining, or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3.2 Construction or Alteration. 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.

(a) 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:

- (i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (ii) Grantee is unable to get pole clearance;
- (iii) underground easements are obtained from developers of new residential areas; or
- (iv) utilities are overhead but residents prefer underground (service provided at cost).

(b) 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.

(c) 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, 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 requirements of this section pertaining to public property shall also apply to the restoration of private easements and other private property. 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~~ Streets 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~~ Street, 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 that 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~~ Grantee to arrange for such temporary wire changes.

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) 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 or the City Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System 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. However, Grantee shall have no obligation under this Franchise to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Streets, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

4.2 Abandonment of Cable System. In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to conform to the state right-of-way rules, Minn. Rules, ~~Chapter~~ Ch. 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, 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~~ for the 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 ~~to be in~~for 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, 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. In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps and records of all of its wires, conduits, cables and other property and facilities located, constructed, and maintained in the City, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Streets. Grantee shall make all maps and records available for review by the appropriate City personnel.

SECTION 5 SYSTEM DESIGN AND CAPACITY

5.1 Availability of Signals and Equipment.

(a) ~~Prior to the Effective Date of this Franchise, Grantee upgraded its~~The Cable System ~~to utilize~~ a fiber to the fiber node ~~Cable System~~ architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System ~~already~~-serving Subscribers. ~~Active and passive devices currently are passing~~The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) ~~providing and shall be maintained to provide~~ to Subscribers a minimum of at least two hundred (200) or more activated ~~minimum~~ downstream ~~video~~Cable Service Channels ~~and minimum activated upstream digital~~

~~Channel capacity of 35 MHz accessible from any node and any Subscriber in the Franchise Area. This upstream capacity requires no additional installation of equipment for use except on users' premises.~~

(b) The entire System shall be technically capable of transmitting ~~NTSC analog, compressed~~ industry-standard digital television signals in a manner and ~~HDTV transmissions. The Grantee shall comply~~ quality consistent with ~~all applicable~~ 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.

~~5.21.1 Free Cable Service to Public Buildings.~~

~~(a) Throughout the term of this Franchise Grantee shall provide, free of charge, one (1) service Drop, three (3) Converters, if necessary and requested, and Basic Cable Service and the next highest level of Service generally available to all Subscribers (as of the Effective Date referred to as Expanded Basic Cable Service) ("Complimentary Service"), to all of the sites listed on Exhibit A attached hereto.~~

~~(b) If the Drop line to such building exceeds three hundred fifty (350) feet, Grantee will accommodate the Drop up to three hundred fifty (350) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency agrees to pay the incremental cost of such Drop in excess of two hundred (200) feet for an aerial service Drop, or in excess of one hundred twenty five (125) feet for an underground service Drop. For purposes of this paragraph, "incremental cost" means Grantee's actual cost to provide the Drop beyond the applicable distances, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.~~

~~(c) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets, Grantee will provide up to three devices at no charge, and will provide additional devices at Grantee's lowest residential rate charged within the Twin Cities metropolitan area.~~

~~(d)(a) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is~~

~~technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.~~

5.35.2 Equal and Uniform Service. To the extent required by Applicable Law, Grantee shall provide access to equal and uniform Cable Service throughout the City.

5.45.3 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~~ Laws 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 and at all hubs. Grantee shall maintain standby power system supplies, rated at least at two (2) ~~hours'~~ 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 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.

(e) **System Upgrades.** The Cable System will be upgraded consistent with future System upgrades performed in Grantee's other Twin Cities Region Cable Systems, when any other of Grantee's Cable Systems in Hennepin County also receives a System upgrade, understanding that work on the Cable System is done based on Grantee's construction schedules.

5.55.4 Performance Testing. Grantee shall perform all 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; and
- (b) ~~Semi-annual compliance tests;~~
- ~~(c)~~(b) Tests in response to Subscriber complaints; and
- ~~(d)~~(c) Tests requested by the City to demonstrate franchise compliance; and
- ~~(e)~~(d) Written records of all system test results performed by or for Grantee shall be maintained; and shall be available for City inspection upon request.

~~5.6~~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~~ PEG 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~~ As required by Applicable Law, 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.

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(b) Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be

provided within fifteen (15) working days of such a request. Grantee may offer the Persons requesting Service the opportunity to “prepay” some or all of the necessary line extensions according to its regular business policies. Grantee shall at all times implement such line extension policy in a nondiscriminatory manner throughout the City.

(c) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

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

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

(a) The parties acknowledge that as of the Effective Date of this Franchise, Grantee continues to provide, free of charge, basic Cable Service (including the PEG Channels) to certain schools, libraries and public institutions within the Franchise Area as set forth in Exhibit A (“Complimentary Services”). In the event Grantee elects, to the extent permitted by Applicable Law, to invoice the City for the marginal cost of the Complimentary Services, the Grantee agrees that it will do so only after providing City with one hundred twenty (120) Days’ prior written notice.

(b) The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to impose a charge to the City for the Complimentary Service as set forth in the preceding paragraph. Within ninety (90) days of receiving the aforementioned notice, the City will notify the Grantee whether, with respect to each identified Complimentary Service location, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(c) Additional Subscriber network Drops and/or outlets will be installed at designated institutions by Grantee at the cost of Grantee’s time and material, or such other price as may be required to comply with Applicable Law. Alternatively, said institution may add outlets at its own expense as long as such installation meets Grantee’s standards. Grantee will complete construction of the additional Drop and outlet within three (3) months from the date of City’s designation of additional institution(s) unless weather or other conditions beyond the control of Grantee requires more time. The City may substitute locations listed on Exhibit A attached hereto as long as the number of locations to receive Complimentary Service remains the same as Exhibit A.

(d) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets, Grantee will provide up to three (3) devices at no charge and will provide additional devices at Grantee's lowest residential rate charged within the Twin Cities Region.

(e) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.

SECTION 7

PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 Number of PEG Access Channels. ~~Grantee will maintain four (4) PEG Access Channels for the first twelve (12) months of the Franchise term. Twelve (12) months after the Effective Date of the Franchise, the City shall be entitled to only three (3) PEG Access Channels.~~

7.2 Analog, Digital and HD PEG Carriage Requirements. ~~Grantee shall provide the Access Channels on the most basic tier of service offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth in this Section 7. At such time as Grantee no longer offers Basic Cable Service in an analog format, Grantee shall carry all PEG Access Channels in a standard digital format in Grantee's Basic Cable Service package, unless the parties agree to an earlier conversion date. Thereafter, and upon ninety (90) days' notice from the City, Grantee shall make one (1) of the three (3) PEG Access Channels available in high definition (HD) format, provided that Grantee receives a satisfactory HD signal from the program originator.~~

(a) Grantee will make available three (3) PEG Access Channels in addition to Channels required by the State of Minnesota, such as Regional Channel 6, throughout the entire term of this Franchise and any extensions of the Franchise term.

(b) Grantee shall provide the PEG Access Channels on the Basic Cable Service tier, or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee.

(c) For purposes of this Franchise, a high definition ("HD") format or signal refers to a PEG signal delivered by Grantee to Subscribers in a resolution that is either:

(i) the same as received by Grantee from City or the entity from which Grantee received the PEG signal, or

(ii) the highest resolution used for the delivery of the primary signals of local broadcast stations, if lower than the level described in subparagraph (c)(i) above.

7.2 HD PEG Carriage Requirements.

(a) No later than September 1, 2023, Grantee shall provide all three (3) PEG Access Channels in HD format and shall also simulcast all three (3) PEG Access Channels in standard definition ("SD") until SD is no longer offered by Grantee. The parties agree that PEG funding may be used to support streaming of PEG programming, provided the City does not permit PEG funding to be used for operational expenses except as permitted by Applicable Law.

~~(a)(b)~~ The City acknowledges that receipt of an HD format PEG Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

~~(b) All Access Channels may be delivered by City to Grantee in either analog or standard digital format.~~

(c) Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the Grantees' headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties related to the government PEG Access Channel.

~~(d) Within twelve (12) months of the Effective Date, and with at least one hundred twenty (120) Day written notice to Grantee, the City may provide PEG Access Channels in only HD format to the demarcation point to provide the signal to Grantee, and as such the City will no longer provide the PEG Access Channels in a standard definition digital format. Grantee shall provide all necessary transmission equipment from the demarcation point and throughout Grantee's distribution system, in order to deliver the PEG Access Channels. Access Channel Signals delivered in HD format to Grantee shall not require Grantee to deliver such HD signals to Subscribers except as set forth herein.~~

7.3 Existing PEG Studio and Playback. ~~Within thirty (30) Days of the Effective Date, Grantee shall have no further obligation to maintain Grantee's public access studio located in Eden Prairie ("Studio"). Grantee shall maintain all public access and educational access playback equipment and playback staff at the Studio for twelve (12) months from the Effective Date ("Transition Period").~~

~~(a)(c) Existing PEG Equipment Transfer.~~ Grantee will transfer all existing PEG equipment, racks, lights, facilities, etc. currently in use at the Studio to the Commission. Timing for the equipment transfer will occur within sixty (60) days following close of the Studio and the equipment transfer for playback will occur shortly after the Transition Period is completed.

7.4.3 Control of PEG Access Channels. The control and administration of the PEG 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.

7.57.4 Transmission of PEG Access Channels. PEG 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.

7.67.5 PEG Access Channel Locations.

(a) PEG Access Channels shall be carried on the Basic Cable Service tier to the extent required by Applicable Law and as set forth in Section 7.2 herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service. Grantee shall make every reasonable effort to coordinate the cablecasting of PEG access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. 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.

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

~~(c) In conjunction with any occurrence of any Access Channel(s) relocation, 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.~~

(c) In conjunction with any occurrence of any Access Channel(s) relocation, Grantee shall provide a minimum of One Thousand Five Hundred Dollars (\$1,500) Thousand Five-Hundred Dollars (\$1,500) of reimbursement for costs incurred by City to promote the new Channel locations.

~~7.7 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.~~

7.6 Navigation to PEG Access Channels and Electronic Programming Guide. Grantee agrees that if it utilizes any navigation interfaces, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. Grantee will maintain the existing ability of the City to place PEG Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. PEG programming provided by the City shall appear on the EPG for each

Channel carried in the City. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. Each programming stream will not be individually listed for narrowcast Channels unless technically feasible. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

7.8.7.7 Ownership of PEG 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 PEG Monitoring. Grantee shall provide the capability, without charge, to the City and to the City of Edina (location of the Commission’s master control facility), to monitor and verify the audio and visual quality of PEG Access Channels received by Subscribers as well as the existing connections and equipment at the City and the City of Edina. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the City and the City of Edina to verify the accuracy of EPG listings for the PEG Access Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the City and one (1) additional feed to the City of Edina to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e., Xfinity X1).

7.9 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.

7.10 ~~Dedicated Fiber Return Lines.~~ PEG Transport. Grantee will maintain all existing fiber paths in place as of the Effective Date to facilitate PEG origination/return capacity in the City. Such fiber returns paths are listed in Exhibit B attached hereto. and will be provided by Grantee without additional charge, with no recurring, monthly costs or offsets, except that Grantee may invoice the Commission for any maintenance costs consistent with Applicable Law and the Section 621 Order. Grantee shall not be responsible for fiber “replacement” but will handle any damage and all maintenance on the existing fiber. Grantee anticipates, but cannot guarantee, that that this will result in minimal fiber expenditures by the City over the Franchise term.

7.11 Interconnection. To the extent technically feasible, 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.

7.12 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 as switchers, routers, or other equipment, will be maintained by Grantee, free of charge and at no cost to the City, Commission 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, Commission or school is responsible for all other production/playback equipment.

7.13 Future ~~Fiber Return Lines for~~ PEG Transport. 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~~ Exhibit B); 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 proceeding 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.

7.14 PEG Access Channel Carriage.

- (a) Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG 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 PEG 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 [PEG](#) Access Channel when the cumulative time on all the existing [PEG](#) Access Channels combined meets the following standard: whenever one of the [PEG](#) 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, [PEG](#) 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) [Only to the extent mandated by Applicable Law](#), the VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated [PEG](#) Access Channels.

(d) 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 [PEG](#) Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of [PEG](#) 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 [PEG](#) Access Channel including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

7.15 Access Channel Support.

~~(a) Within thirty (30) days of the Effective Date of this Franchise Grantee shall remit to the Commission a one time Two Hundred Thousand and No/100 Dollar (\$200,000) grant in support of PEG capital purposes ("PEG Grant"). Comcast retains all legal authority it may possess to recover the PEG Grant from Subscribers in any manner permitted by Applicable Law.~~

[\(a\) No later than September 1, 2023, Grantee shall collect and remit to the City a minimum of one and one-half percent \(1.5%\) of Grantee's Gross Revenues in support of PEG \("PEG Fee"\) to be used by the City as permitted under Applicable Law.](#)

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

~~(c) During the twelve (12) months following the Effective Date, Grantee shall retain Thirteen cents (13¢) of the Sixty cent (60¢) PEG Fee to reimburse Grantee for the costs associated with maintaining staff, equipment and space at the Studio to handle the public and educational playback obligations for the Transition Period. This will result in the City receiving a Forty seven cent (47¢) PEG Fee for the first twelve (12) months of~~

~~the Franchise. Thereafter the PEG Fee will revert to the Sixty-cent (60¢) level for the remainder of the ten (10) year Franchise term subject to the one-time inflation adjustment set forth in Section 7.16 (d) below.~~

~~(d) At the fifth (5th) anniversary of the Effective Date of this Franchise, the City, at its discretion, 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.~~

~~(e)(b) The PEG Fee Neither the PEG Grant nor the PEG Fee are intended to represent~~is not part of the Franchise Fee and ~~are intended to fall~~instead falls within one (1) or more of the exceptions in 47 U.S.C. § 542. ~~The PEG Grant and, unless 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 Funds or the PEG Fee.~~

(c) Grantee shall pay the PEG Fee to the City quarterly, on the same schedule as the payment of Franchise Fees as set forth in Section 16.1 of this 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.

~~(f)(d)~~ Any PEG Access capital support~~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.

7.16 PEG Technical Quality and Support.

(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 PEG Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG 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 PEG 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~~ a PEG Access Channels~~Channel~~ signal from the point of origination upstream to the point of reception (hub or headend) or downstream to the Subscriber on the Cable System.

(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG 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.

~~7.17 — **Access Channel Promotion.** Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements 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 and at such times that the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers.~~

7.17 **Access Channel Promotion.** If a PEG Access Channel is relocated, Grantee shall notify the Commission, City and Subscribers of the relocation in a manner consistent with Grantee's other normal Channel relocation notices.

7.18 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 PEG 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 PEG Access Channels in accordance with the requirements of the Franchise.

7.19 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.

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

7.21 Government Access Channel Functionality. Grantee ~~agrees~~and City agree that City will continue to providehave the following capability ~~such that on the City, from its City Hall, can switch its~~ government Access Channel ~~in the following ways:~~

- (a) City can insert live Council meetings from City Hall;
- (b) City can replay government access programming from City Hall; ~~and~~
- (c) City can transmit character generated programming. and

~~(d) — **Schedule for Grantee**~~City can schedule to replay City-provided ~~tapes~~programming in pre-arranged time ~~slots~~slots on the government PEG Access Channel; ~~and~~

~~(e)(d) Switch to C-SPAN 2 or other comparable programming provided by the Grantee at any time when not carrying live or taped government access programming.~~

7.22 **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.**

(a) 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:

- (i) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility; ~~and~~ [and](#)
- (ii) Coordinating the operation of [PEG Access Channels](#); ~~and~~ [and](#)
- (iii) Formulating and recommending long-range cable communications policy for the Franchise Area; ~~and~~ [and](#)
- (iv) Disbursing and utilizing Franchise revenues paid to the City; ~~and~~ [and](#)
- (v) Administering the regulation of rates, to the extent permitted by Applicable Law; ~~and~~ [and](#)
- (vi) All other regulatory authority permitted under Applicable Law.

(b) 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~~ disabled, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

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 ~~and~~ No/100 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.

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.

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-five Thousand and No/100 Dollars (\$~~20~~25,000.00). In no event shall Grantee fail to post a Twenty-five Thousand and No/100 Dollar (\$~~20~~25,000.00) 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~~Five Thousand and No/100 Dollars (\$~~2~~5,000) in that action.

10.2 **Withdrawal of Funds.** ~~Provision~~The security fund shall ~~be made to~~ permit the City to withdraw funds ~~from the security fund upon demand (sight draft).~~ 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 Section 10.4 of this ~~section~~Franchise, 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~~Two Hundred Fifty and No/100 Dollars (\$~~100~~250.00) 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 ~~D~~, ~~the liquidated damage shall be One Hundred Fifty Dollars (\$150.00) per Day for each Day, or part thereof, such failure occurs or continues.~~

~~(e)(b)~~ For failure to test, analyze and report on the performance of the System following a request by City 10.4, the liquidated damage shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

~~(d)(c)~~ Forty-five (45) Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be ~~Two~~Five Hundred and No/100 Dollars (~~\$200~~500.00) per Day for each Day, or part thereof, such failure occurs or continues.

~~(e)(d)~~ 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~~Two Hundred Fifty ~~(\$150~~and No/100 Dollars (\$250.00) 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~~ Draw Per Violation. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of ~~one hundred twenty (120) Days~~Twenty-five Thousand and No/100 Dollars (\$25,000). If after that amount of ~~time~~draw from the security fund 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~~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~~ up to Twenty-five Thousand and No/100 Dollars 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; or

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

(c) Practiced any fraud or deceit upon City or Subscribers; resulting in material harm; or

(d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise; ~~or~~

~~(e)(d) Incurred a twelve (12) month or more delay in the construction schedule.~~

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 premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

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~~ the Franchise Fee and PEG Fee payments, signed by an ~~officer~~ authorized representative of Grantee ~~showing the basis for the computation of the Franchise Fees paid during that period in a~~ in form and substance substantially equivalent to Exhibit C attached hereto. This report shall separately indicate ~~revenues received by Grantee~~ Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.23 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 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 established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 **Other 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, 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 **Confidential and Trade Secret Information.** Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act ("MGDPA") pursuant to Minn. Stat. Ch. 13. The City shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to City. Grantee acknowledges that the City shall at all times

comply with the MGDPA related to the release of information and nothing herein shall be read to modify the City's obligations under the MGDPA.

~~13.4~~13.5 **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~~ 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~~ 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. Grantee will continue to maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

14.2 Definition of "Complaint." For the purposes of Section 14, ~~with 1 and 14.4 only, the exception of Subsection 14.5, a word~~ "complaint" shall mean any communication to ~~Grantee~~ the Commission or ~~to the City by a Subscriber or a Person who has requested Cable Service; a Person, and thereafter reported to the Grantee,~~ 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) Converter/Subscriber terminal equipment policy.
- (g) Breach of Franchise specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) 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. 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.

(a) The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.

(b) 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.

(c) 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. 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.~~

14.7 Cable System office hours and telephone availability. Grantee shall comply with the standards and requirements for customer service set forth in Section 14.5 – 14.21 during the term of this Franchise.

(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.

(f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee's compliance with this Section 14.7 as is the current practice

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 that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.6(c).

(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.**

(a) 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:

- (i) Products and Services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and Service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) Channel positions of programming carried on the System; and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

(b) 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. 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 a commission of the City.

14.17 ~~Customer~~Subscriber Bills. ~~Customer~~Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to ~~Customers~~Subscribers, 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~~Subscriber 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 shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of ~~the~~this Franchise.

~~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~~14.19 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, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

~~14.21~~14.20 **Subscriber Privacy.**

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following:

(i) 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.

(ii) 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.

(iii) 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*ii*) of this section.

~~14.22~~14.21 **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~~affected 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 ~~Subscribers~~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.

(a) 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.

(b) 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.

(c) 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 C, 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.

(d) 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.

(e) 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.

16.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of 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 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 ~~seven (7)~~^{six (6)} years, pursuant to ~~Minnesota Statutes Section~~^{Minn. Stat. §} 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.

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 or PEG Fees paid to the City ~~under this Franchise~~. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. 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 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. 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~~ 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.

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 and No/100 Dollars (\$3,000,000~~75,000~~). 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~~City 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~~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.** The Summary of Ordinance for Publication (“Summary”) attached hereto as Exhibit D shall be published at least once in the official newspaper of the City. Grantee shall assume the cost of posting and publication of ~~this Franchise~~the Summary 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 ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

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 the City Code 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 **Prior Franchise Terminated.** The cable television ~~franchises~~franchise as originally granted by Ordinance No. _____ is hereby terminated.

17.6 **Franchise Acceptance.** No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall ~~execute~~accept and return to the City ~~three (3) original franchise agreements. The~~an executed ~~agreements shall be returned to the City~~ accompanied by Franchise along with performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to accept this Franchise, or fails to provide the required documents, 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 ~~August~~February 1, ~~2012~~2023.

17.7 **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 2.6 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~~Applicable Laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

~~17.8 **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:~~

17.8 **Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

To the City: City Manager, City of

To the Grantee: Comcast Regional Vice President of Operations
10 River Park Place
St. Paul, MN 55107

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes 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.

17.9 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.

17.10 Work of Contractors and Subcontractors. Work by contractors and subcontractors is 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.

17.11 Governing Law. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein.

~~**Abandonment of System.** Grantee may not abandon the System or any portion thereof 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 Grantor for damages resulting from the abandonment.~~

~~**17.12 Removal After Abandonment.** In the event of Grantee's abandonment of the System, 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.~~

~~17.13~~ 17.11 ~~**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.

~~17.14~~ 17.12 ~~**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.

~~17.15~~ 17.13 ~~**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.

~~17.16~~ 17.14 ~~**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.

17.15 **No Waiver.** All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.16 **Grantee Acknowledgment of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

17.17 **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.

17.18 Competitive Equity ~~If any~~

~~(a) — other Wireline MVPD enters into any~~

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Cable Services or Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.18 will apply.

(b) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a Wireline MVPD: the obligation to pay to the City a Franchise Fee, Gross Revenues as provided for and defined in this Franchise, and the obligation to comply with the requirements in this Franchise regarding PEG funding, PEG Channels, security instruments, audits, remedies, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are materially equivalent.

~~(b) — 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~~

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial

burdens on each entity are equivalent. If Grantee so elects, and following the ninety (90) Day negotiation time period set forth in this paragraph 17.18 (c), the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream Video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.

~~(e) — the new MVPD~~

(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.18 is intended to alter the rights or obligations of either party under Applicable Law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to mandate a Cable Service franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists or does not exist.

17.19 FCC Preemption.

~~(d) — . 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.~~

(a) At any time after this Franchise is approved by the City Council, the Grantee may, if Grantee is legally permitted by Applicable Law, provide the City with a written list of “in-kind cable-related contributions” (as that term is defined by the FCC in the Section 621 Order) that the Franchise requires Grantee to provide (including but not limited to the Complimentary Service requirements in Section 6.8) and the incremental cost(s) associated with the provision of the in-kind cable-related contributions. Within one hundred and twenty (120) days of receiving the aforementioned list, the City will notify the Grantee whether, with respect to each identified in-kind cable-related contribution, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee

payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(b) In the event the Section 621 Order is stayed or overturned in whole or in part by action of the FCC, the City and the Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies. It is the intent of the parties that the City shall be treated by the Grantee in a reasonably comparable manner as other jurisdictions within the Twin Cities Region with respect to any offsets or charges imposed by Grantee for the provision of Complimentary Service. Nothing herein waives the City's right to enforce Grantee's compliance with all lawful obligations contained in this Franchise.

17.20 Treatment of Negotiated Provisions. For the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2(c), 7.5(c), 7.8, 7.10, 7.11, 7.12, 7.13, 7.16(b), 7.17, 7.18, 7.19, 13.1, 13.2, and 13.3, shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 1.23 and 16.1 of this Franchise or as a PEG Fee under Section 7.15 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 7.15 of this Franchise, any PEG capital costs set forth in Section 7.2(a) and (c), 7.8, 7.10, 7.11, 7.12, 7.14 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this _____ day of 2012 2023.

ATTEST

CITY OF _____, MINNESOTA

By: _____
Its: City Clerk

By: _____
Its: Mayor

By: _____
Its: City _____

By: _____

Its: _____

EXHIBIT A

~~Free Cable Service to Public Buildings~~

~~To be inserted for each Member City~~

Exhibit B
Existing Fiber Return Lines

To be inserted for each Member City

Exhibit C
Franchise Fee Payment Worksheet

~~TRADE SECRET—CONFIDENTIAL~~ **COMPLIMENTARY SERVICE LOCATIONS**

<u>BUILDING</u>	<u>Month/Year</u> <u>ADDRESS</u>	<u>Month/Year</u> <u>CITY</u>
Eden Prairie Senior Center	8950 Eden Prairie Rd	Eden Prairie
Eden Prairie City Hall	8080 Mitchell Rd Ofc	Eden Prairie
Hennepin Tech College	13100 Collegeview Rd	Eden Prairie
Eden Prairie School District	8100 School Rd Ste Metro E	Eden Prairie
Oak Point Elementary	13400 Staring Lake Pkwy	Eden Prairie
Cedar Ridge Elementary	8905 Braxton Dr	Eden Prairie
Eden L Elementary	12000 Anderson Lakes Pkwy	Eden Prairie
Prairie View Elementary	17255 Peterborg Rd	Eden Prairie
Fire 3, Eden Prairie	7350 Eden Prairie Rd	Eden Prairie
Fire Station #1, Eden Prairie	14800 Scenic Heights Rd	Eden Prairie
Fire Station #4, Eden Prairie	17920 Linwood Ct	Eden Prairie
Fire Station, Eden Prairie	12100 Sunnybrook Rd	Eden Prairie
Eden Prairie High School	17185 Valley View Rd	Eden Prairie
Forest High School	13708 Holly Rd	Eden Prairie
Eden Prairie Library	479 Prairie Center Dr	Eden Prairie
Central Middle School	8025 School Rd	Eden Prairie
Eden Prairie Police Station	7900 Mitchell Rd	Eden Prairie
Eden Prairie Dispatch	8080 Mitchell Rd Apt Cops	Eden Prairie
Spanish Immersion School	8100 School Rd	Eden Prairie
Edina City Hall	4801 W 50th St	Edina
Normandale Elementary	5701 Normandale Rd	Edina
Fire Station, Edina	6250 Tracy Ave	Edina
Fire Station, Edina	7335 York Ave S	Edina
Braemar Golf Course	6364 John Harris Dr Ste 2	Edina
Braemar Golf Dome	7420 Braemar Blvd	Edina
Edina High School	6754 Valley View Rd	Edina
Bremer Ice Arena	7501 Ikola Way	Edina
Centennial Lakes Park	7499 France Ave S	Edina
Edina Library	5280 Grandview Sq	Edina
Southdale Library	7001 York Ave S	Edina
Braemar Maintenance Shed	7401 Braemar Blvd	Edina
Valley V Middle School	6750 Valley View Rd	Edina
Police Dept, Edina	4801 W 50th St	Edina
Public Works, Edina	7450 Metro Blvd	Edina
St Peter School	5421 France Ave S	Edina
Senior Center, Edina	5280 Grandview Sq	Edina
Hopkins Center,	33 14th Ave N	Hopkins
Hopkins City Hall	1010 1st St S Apt Hall	Hopkins
Eisenhower Elem School	A la Carte Video Services 1001 Highway 7 Apt A	Hopkins

BUILDING	Month/Year ADDRESS	Month/Year CITY
Audio Services <u>Alice Smith Elementary,</u>	<u>801 Minnetonka Mills Rd</u>	<u>Hopkins</u>
Basic Cable Service <u>Fire Dept, Hopkins</u>	<u>101 17th Ave S</u>	<u>Hopkins</u>
Installation Charge <u>Hopkins Center For the Arts</u>	<u>1111 Mainstreet</u>	<u>Hopkins</u>
Bulk Revenue <u>Hopkins Garage</u>	<u>11100 Excelsior Blvd</u>	<u>Hopkins</u>
Expanded Basic Cable Service <u>Hopkins Pavilion</u>	<u>11000 Excelsior Blvd Ste A</u>	<u>Hopkins</u>
<u>Police Dept, Hopkins</u>	<u>1010 1st St S Apt Cops</u>	<u>Hopkins</u>
<u>Public Housing, Hopkins</u>	<u>22 5th Ave S Ste Cmcl</u>	<u>Hopkins</u>
<u>Hopkins Public School</u>	<u>1001 Highway 7</u>	<u>Hopkins</u>
<u>Community Center</u>	<u>14600 Minnetonka Blvd</u>	<u>Minnetonka</u>
<u>Pagel Center</u>	<u>18313 Highway 7</u>	<u>Minnetonka</u>
<u>Technology Center,</u>	<u>5700 County Road 101</u>	<u>Minnetonka</u>
<u>Minnetonka City Hall</u>	<u>14600 Minnetonka Blvd</u>	<u>Minnetonka</u>
<u>Scenic Heights Elem School</u>	<u>5650 Scenic Heights Dr</u>	<u>Minnetonka</u>
<u>Tanglen Elem School</u>	<u>10901 Hillside Ln W</u>	<u>Minnetonka</u>
<u>Glen Lake Elem</u>	<u>4801 Woodridge Rd</u>	<u>Minnetonka</u>
<u>Clear Springs Elem</u>	<u>5701 County Road 101</u>	<u>Minnetonka</u>
<u>Gatewood Elementary</u>	<u>14900 Gatewood Dr</u>	<u>Minnetonka</u>
<u>Groveland Elementary</u>	<u>17310 Minnetonka Blvd</u>	<u>Minnetonka</u>
<u>Fire Station, Minnetonka</u>	<u>1815 Hopkins Xrd</u>	<u>Minnetonka</u>
<u>Minnetonka Hs Fitness Cent</u>	<u>18301 Highway 7</u>	<u>Minnetonka</u>
<u>Hopkins Junior High</u>	<u>10700 Cedar Lake Rd</u>	<u>Minnetonka</u>
<u>Hopkins West</u>	<u>3830 Baker Rd</u>	<u>Minnetonka</u>
<u>Minnetonka Junior High,</u>	<u>17000 Lake Street Ext</u>	<u>Minnetonka</u>
<u>Minnetonka Library</u>	<u>17524 Excelsior Blvd</u>	<u>Minnetonka</u>
<u>Ridgedale Library</u>	<u>12601 Ridgedale Dr</u>	<u>Minnetonka</u>
<u>Police Dept, Minnetonka</u>	<u>14600 Minnetonka Blvd</u>	<u>Minnetonka</u>
<u>Public Works, Minnetonka</u>	<u>11522 Minnetonka Blvd</u>	<u>Minnetonka</u>
<u>Epsilon School</u>	<u>14300 County Road 62</u>	<u>Minnetonka</u>
<u>Omegon School</u>	<u>2000 Hopkins Xrd</u>	<u>Minnetonka</u>
<u>Senior High, Hopkins</u>	<u>2400 Lindbergh Dr</u>	<u>Minnetonka</u>
Pay <u>District Service Center</u>	<u>5621 County Road 101</u>	<u>Minnetonka</u>
Pay per view <u>Admin Serv Dept, Richfield</u>	<u>6700 Portland Ave Apt Asd</u>	<u>Richfield</u>
Guide Revenue <u>Richfield Comm Center</u>	<u>7000 Nicollet Ave</u>	<u>Richfield</u>
Franchise Fee Revenue <u>Centennial Elem School</u>	<u>7315 Bloomington Ave</u>	<u>Richfield</u>
Advertising Revenue <u>Centennial Elem School</u>	<u>7440 Penn Ave S</u>	<u>Richfield</u>
Home Shopping Revenue <u>Sheridan Elementary</u>	<u>6400 Sheridan Ave S</u>	<u>Richfield</u>
Digital Services <u>Fire Station 2, Richfield</u>	<u>6401 Penn Ave S</u>	<u>Richfield</u>

<u>BUILDING</u>	<u>Month/Year</u> <u>ADDRESS</u>	<u>Month/Year</u> <u>CITY</u>
Inside Wiring Fire Station, Richfield	6700 Portland Ave Apt 1	Richfield
Other Revenue Richfield High School	7001 Harriet Ave S	Richfield
Equipment Rental Richfield Ice Arena	636 E 66th St	Richfield
Processing Fees Richfield Junior High	7461 Oliver Ave S	Richfield
PEG Fee Augsburg Library	7100 Nicollet Ave	Richfield
FCC Fees Mt Calvary Lutheran School	6541 16th Ave S	Richfield
Bad Debt Richfield City Hall	6700 Portland Ave Apt Hall	Richfield
Late Fees Richfield Pub Safety	6700 Portland Ave Apt Eoc	Richfield
REVENUE Richfield School Garage	300 W 72nd St	Richfield
Fee Calculated Holy Angels School	6600 Nicollet Ave	Richfield
Richfield Dual Language School	7001 Elliot Ave S	Richfield
Central School Special Ed	7145 Harriet Ave	Richfield
Richfield Stem	7020 12th Ave S	Richfield

* For as long as the building remains publicly owned and operated. If the building is leased or operated by a commercial tenant, Grantee's voluntary courtesy service offer will expire.

EXHIBIT B
EXISTING PEG TRANSPORT LOCATIONS

	<u>BUILDING</u>	<u>STREET ADDRESS</u>
1.	<u>Eden Prairie City Hall</u>	<u>8080 Mitchell Road</u>
2.	<u>Edina City Hall</u>	<u>4801 West 50th Street</u>
3.	<u>Hopkins City Hall</u>	<u>1010 1st Street South</u>
4.	<u>Minnetonka City Hall</u>	<u>14600 Minnetonka Boulevard</u>
5.	<u>Richfield City Hall</u>	<u>6700 Portland Avenue</u>

DRAFT

EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET

*****CONFIDENTIAL*****



System Name: Comcast of Minnesota, Inc.
Email: Prasant_Nadella@cable.comcast.com
Phone: 610-665-2579

Vendor ID:	XXXXXX
Contract Name:	X
Statement Period:	Jan - Mar, 2020
Payment Amount:	\$X
Statement Number:	XXXXXX
CUID:	XXXXXX
System ID:	XXXX-XXXX-XXXX

This statement represents your payment for the period listed above.

Revenue Category	Amount
Expanded Basic Video Service	\$
Limited Basic Video Service	\$
Digital Video Service	\$
Pay	\$
PPV / VOD	\$
Digital Video Equipment	\$
Video Installation / Activation	\$
Franchise Fees	\$
Guide	\$
Other	\$
Late Fees	\$
Write-offs / Recoveries	\$
Ad Sales	\$
Home Shopping Commissions	\$
Total	\$
Franchise Fee %	%
Franchise Fee	\$

~~Fee Factor:~~ _____

PEG Fee %

PEG FEE \$

Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of "Gross Revenues" set forth in this Franchise.

EXHIBIT D
SUMMARY OF ORDINANCE FOR PUBLICATION

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF _____, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On _____, 2023, the City of _____, Minnesota ("City") adopted an ordinance granting a Cable Television Franchise to Comcast of Minnesota, Inc. ("Comcast"). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible cable service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable television franchise to Comcast, to operate, construct and maintain a cable system within the City and contains specific requirements for Comcast to do so.

~~5%~~

The Franchise includes the following: 1) a Franchise Fee of 5% of Comcast's annual gross revenues; 2) a Franchise term of ten (10) years; 3) incorporation of the City Code regarding right-of-way protections; 4) a list of schools and public buildings entitled to receive complimentary cable service; 5) dedicated channel capacity for public, education and government ("PEG") access programming; 6) a PEG Fee of _____ % of Comcast's annual gross revenues to support local access programming as permitted under applicable law; 7) strong customer service standards regarding Comcast's cable services; and 8) a performance bond and letter of credit to enforce Comcast's compliance with the Franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. _____. A copy of the entire ordinance shall be posted at the _____ City Hall.

It is hereby directed that only the above title and summary of Ordinance No. _____ be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the _____ City Hall at _____, _____, MN during the hours of _____ a.m. and _____ p.m., Monday through Friday.

	Yes	No
_____ Mayor		
_____ Councilmember		
_____ Councilmember		
_____ Councilmember		
_____ Councilmember		
_____ Councilmember		
_____ Councilmember		

Passed by the _____ City Council this _____ day of _____, 2023.

ATTEST: _____, Mayor

RESOLUTION NO. 2023-1
RECOMMENDATION OF THE SOUTHWEST SUBURBAN CABLE COMMISSION REGARDING
THE ADOPTION OF A CABLE FRANCHISE TO COMCAST OF MINNESOTA, INC.

Recitals:

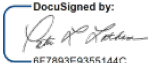
1. The Southwest Suburban Cable Commission ("Commission") administers and enforces cable franchises pursuant to a joint powers agreement.
2. The Commission consists of the cities of Eden Prairie, Edina, Hopkins, Minnetonka and Richfield, Minnesota ("Member Cities").
3. Comcast of Minnesota, Inc. ("Comcast") currently operates a cable system in each of the Member Cities under cable television franchises with an effective date of August 1, 2012 ("Existing Franchises").
4. In 2019 Comcast contacted each of the Member Cities seeking renewal of the Existing Franchises.
5. The Commission's legal counsel, the law firm of Moss & Barnett, a Professional Association, assisted the Commission in conducting the franchise renewal process.
6. Extensive informal franchise renewal negotiations between Comcast and the Commission have been completed and a proposed Renewal Cable Television Franchise Ordinance ("Renewal Franchise") has been finalized.
7. The Commission finds that the Renewal Franchise will benefit the Member Cities and will protect the rights and interests of residents and cable subscribers in each of the Member Cities.

NOW THEREFORE, the Southwest Suburban Cable Commission hereby resolves as follows:

1. The attached May 18, 2023 Renewal Franchise will protect the Member Cities and its residents and cable subscribers regarding the provision of cable services by Comcast.
2. The Commission recommends that each Member City take action to adopt the Renewal Franchise.

PASSED AND ADOPTED this 24th day of May, 2023.

SOUTHWEST SUBURBAN CABLE COMMISSION

DocuSigned by:

6F7893E9355144C...

By: _____

Patty Latham, Chair

ATTEST:

DocuSigned by:



DE6235253EF64C3...

By: _____

Brian T. Grogan, Attorney for the Commission

We Advise.  You Decide.

Comcast Cable Franchise Renewal

June 2023

Brian Grogan, Esq.

Moss & Barnett

Southwest Suburban Cable Commission's Legal Counsel



Agenda

- Southwest Suburban Cable Commission
- Changing industry
- Background of the renewal process
- Key Provisions of New Franchise



Southwest Suburban Cable Commission

- Governed by Joint Powers Agreement
- Five member cities:
 - Eden Prairie, Edina, Hopkins, Minnetonka and Richfield
- Each Member City has two representatives
 - one is a member of the City staff
 - and one is an elected official
- Purpose is to regulate the cable operator - Comcast



Changing Industry

- Gas, electric, water, telephone – all regulated by PUC
- Cable - regulated at local (City) level
- Cities grant nonexclusive cable franchises
- Today, residents want broadband – stream video content
- Franchise grants authority for company to use streets and ROW
- The fees paid by cable operator are rental payment for use of the ROW
- State and federal laws will determine how cities may (or may not) retain compensation from communications companies to access the ROW



Background of the Renewal Process

- **August 1, 2012** - Effective date of existing Comcast cable franchise
- **August 19, 2019** - Comcast requested renewal
- **Spring 2020** – Pandemic caused delays in needs assessment
- **July 5, 2022** - Commission issued Needs Assessment Report
 - increased funding for local programming
- **July 2022 - May 2023** - Comcast negotiations - New Franchise
- **May 24, 2023** - Commission Resolution 2023-1



Key Provisions of New Franchise

- 10-year term
- 5% franchise fee on Comcast's "gross revenues"
 - stronger definition of "gross revenues"
 - Federal law allows fee only on cable
 - not telephone or broadband
- Strong customer service standards
- ROW Management
 - City Code requirements



Key Provisions of New Franchise

- **3 PEG Channels**
 - Public, Educational, Governmental
 - all will be provided in high definition (HD)
 - currently only the government channel is in HD
- **PEG Fee**
 - 1.5% of Comcast's gross revenues
 - designated for PEG "capital" purchases



Key Provisions of New Franchise

- **Strong enforcement provisions**
 - \$100,000 performance bond
 - \$25,000 security fund
- **Maintain existing PEG transport – connections to City hall - etc.**
- **Maintain complimentary cable service**
 - Subject to potential change due to FCC order
 - Comcast may impose “marginal costs”



Commission Recommendation

May 24, 2023 - Commission Resolution 2023-1

Recommends adoption of proposed franchise granting Comcast a 10-year franchise to provide cable television services in the City.



Moss & Barnett

We Advise.  You Decide.

Questions?



STAFF REPORT NO. 75
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Jamie Haefner, Human Resources Manager

DEPARTMENT DIRECTOR REVIEW: Sack Thongvanh, Assistant City Manager
6/6/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider adoption of a resolution authorizing the City to affirm the monetary limits on statutory municipal tort liability.

EXECUTIVE SUMMARY:

The City purchases its liability insurance coverage from the League of Minnesota Cities Insurance Trust (LMCIT). Each year, the City must decide to either affirm or waive its statutory limits of liability by July 1 each year. After reviewing cost considerations measured against potential risk, the City has, historically, affirmed the liability limits which are \$500,000 for an individual claimant and \$1,500,000 per occurrence.

Staff is recommending the same course of action for the upcoming insurance renewal as waiving the liability limits would increase costs due the need to purchase excess liability insurance.

RECOMMENDED ACTION:

By motion: Adopt a resolution authorizing the City Council to affirm the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

A requirement of insurance coverage through the LMCIT is an annual affirmation or waiver of statutory limits of liability.

The current statutory limits of liability for Minnesota cities are \$500,000 for an individual claimant and \$1,500,000 per occurrence. Cities can waive these limits to allow an individual claimant to recover more than \$500,000, up to the \$1,500,000 per occurrence limit, if excess liability insurance is purchased. Because waiving the statutory limits increases the exposure, the premium is higher for coverage under the waiver option. The cost of the excess liability insurance continues to be very expensive.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

State Statute establishes liability limits for cities and the current level is \$1,500,000, which appears to be

a reasonable limit. Historically, the majority of municipalities in Minnesota do not waive the monetary limits on municipality tort liability as established by Statutes 466.04.

C. CRITICAL TIMING ISSUES:

The City's insurance policy with the League of Minnesota Cities Insurance Trust will renew on July 1, 2023. This action must be completed on, or before, that time.

D. FINANCIAL IMPACT:

The City has historically not purchased excess liability coverage because of the cost of such coverage.

E. LEGAL CONSIDERATION:

The tort liability limits established by Minnesota Statutes have historically protected cities and no Minnesota court has ever established a monetary award in excess of the statutory limits against a municipality. Each city must annually decide whether the city would voluntarily waive the statute for both the single claims and each occurrence limit.

ALTERNATIVE RECOMMENDATION(S):

If the Council determines that any single claimant should receive more than the \$500,000 limit, the Council could elect to waive the statutory monetary limits.

If the Council determines that the \$1,500,000 per occurrence limit is not adequate, the City could purchase excess liability coverage at a significant additional cost.

PRINCIPAL PARTIES EXPECTED AT MEETING:

n/a

ATTACHMENTS:

Description		Type
□	RESOLUTION AFFIRMING MUNICIPAL TORT LIABILITY LIMITS	Resolution Letter

RESOLUTION NO. ____

**RESOLUTION AFFIRMING MUNICIPAL TORT LIABILITY LIMITS ESTABLISHED BY
MINNESOTA STATUTES 466.04**

WHEREAS, Minnesota Statute 466.04 provides for Municipal tort liability limits for Minnesota cities; and

WHEREAS, the League of Minnesota Cities Insurance Trust has asked that each city review the tort liability limits and determine if the respective city would choose to waive its limits; and

WHEREAS, such decision to affirm or waive the tort liability limits must be filed with the League of Minnesota Cities Insurance Trust at the insurance renewal date.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is directed to report to the League of Minnesota Cities Insurance Trust that the Richfield City Council does not waive the monetary limits on the municipal tort liability established by Minnesota statutes 466.04.

Adopted by the City Council of the City of Richfield, Minnesota this 13th day of June, 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 76
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Chris Swanson, Management Analyst

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: Kumud Verma, Finance Director

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

First reading of a transitory ordinance providing funding for certain capital improvements from the Liquor Contribution Special Revenue Fund.

EXECUTIVE SUMMARY:

As part of the Capital Improvement Budget (CIB) and annual City Budget process, certain special revenue funds are allocated each year to fund capital projects identified through the budget process.

The source of the special revenue funds are profits derived from the City's Liquor Store operation. These profits are transferred to the Liquor Contribution Special Revenue Fund.

Before the funds can be used for the identified capital projects, the City Charter requires that a transitory ordinance be used to authorize the expenditure of the funds.

The proposed funding for 2023, per the approved CIB budget, totals \$550,000 and encompasses several park and recreation related projects. The projects are listed below.

Fairwood Park Play Equipment	\$ 110,000
Ice Arena Sign	\$ 40,000
Multi-Year Community Center/Wood Lake Building	\$ 20,000
Repair	
Multi-Year Ice Arena Repair	\$ 20,000
Multi-Year Park Maintenance	\$ 50,000
Multi-Year Park Maintenance/Wood Lake Fence	\$ 15,000
Repair	
Outdoor Pool Improvements	\$ 80,000
Skate Park Expansion	\$ 90,000
Wood Lake Nature Center Building	\$ 125,000
<u>Total</u>	<u>\$ 550,000</u>

RECOMMENDED ACTION:

RECOMMENDED ACTION:

By Motion: Approve the attached transitory ordinance providing for the expenditure of funds from the Liquor Contribution Special Revenue Fund for certain capital improvements.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

At the December 13, 2022 City Council meeting, the City Council authorized \$550,000 of Special Revenue Funds for improvements to several City capital improvements in 2023.

Included in the \$550,000 are:

Fairwood Park Play Equipment	\$ 110,000
Ice Arena Sign	\$ 40,000
Multi-Year Community Center/Wood Lake Building Repair	\$ 20,000
Multi-Year Ice Arena Repair	\$ 20,000
Multi-Year Park Maintenance	\$ 50,000
Multi-Year Park Maintenance/Wood Lake Fence Repair	\$ 15,000
Outdoor Pool Improvements	\$ 80,000
Skate Park Expansion	\$ 90,000
<u>Wood Lake Nature Center Building</u>	<u>\$ 125,000</u>
Total	\$ 550,000

The 2023 CIB also provides for expenditures for all types of funds contained in the budget including municipal state aid, user fees, state grants, county funds, and issuance of debt.

Authorization by ordinance is not required for expenditures other than Special Revenues.

A second reading of the attached ordinance is scheduled on June 27, 2023

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

City Charter Section 7.12, Subd. 2 requires that Special Revenue Funds used for capital improvements must be authorized by ordinance.

C. CRITICAL TIMING ISSUES:

Under Section 3.09 of the City Charter, a transitory ordinance becomes effective 30 days after publication of the second hearing notice.

The ordinance requirements must be completed early enough in 2023 so that the capital projects can be initiated on a timely basis, completed and the funds expended.

It is recommended the first reading of the transitory ordinance take place on June 13, 2023 and a second reading be completed at the June 27, 2023 City Council meeting.

D. FINANCIAL IMPACT:

While the total 2023 CIB includes total budgeted expenditures of \$22,353,336, the portion of the CIB concerning proposed funding from the Special Revenue fund is \$550,000.

A transitory ordinance is necessary to finalize the appropriations utilizing special revenue funds pursuant to City Charter.

The source of Special Revenue funds is municipal liquor profits.

E. LEGAL CONSIDERATION:

The City Charter requires that the City Council must pass a resolution to create a Special Revenue Fund.

The City Charter requires that a transitory ordinance be used to authorize the expenditure of Special Revenue funds.

The City Attorney has reviewed the transitory ordinance and approved of its contents and its compliance with the City Charter.

ALTERNATIVE RECOMMENDATION(S):

PRINCIPAL PARTIES EXPECTED AT MEETING:

none

ATTACHMENTS:

Description		Type
D	TRANSITORYORDINANCE FOR THE EXPENDITURE	Ordinance
	OF MONEYFROM THE LIQUOR CONTRIBUTION	
	SPECIAL REVENUE FUND	

BILL NO.

TRANSITORY ORDINANCE NO.

**AN ORDINANCE PROVIDING FOR THE EXPENDITURE OF MONEY FROM
THE LIQUOR CONTRIBUTION SPECIAL REVENUE FUND FOR CERTAIN
CAPITAL IMPROVEMENTS**

CITY OF RICHFIELD DOES ORDAIN:

Section 1: It is found and determined to be necessary and expedient for the City to expend money from the Liquor Contribution Special Revenue Fund for the making of capital improvements listed in Section 2 hereof, for which the City would be authorized to issue general obligation bonds.

Section 2: The capital improvements and amounts of expenditures for such improvements which are authorized to be paid from the Liquor Contribution Special Revenue Fund under Section 7.12, Subdivision 2 of the City Charter, are as follows:

Fairwood Park Play Equipment	\$ 110,000
Ice Arena Sign	\$ 40,000
Multi-Year Community Center/Wood Lake Building	\$ 20,000
Repair	
Multi-Year Ice Arena Repair	\$ 20,000
Multi-Year Park Maintenance	\$ 50,000
Multi-Year Park Maintenance/Wood Lake Fence	\$ 15,000
Repair	
Outdoor Pool Improvements	\$ 80,000
Skate Park Expansion	\$ 90,000
<u>Wood Lake Nature Center Building</u>	<u>\$ 125,000</u>
Total	\$ 550,000

Section 3: The expenditures authorized herein shall be made pursuant to such contracts as are authorized from time to time by Council action.

Passed by the City Council of the City of Richfield this 27th day of June 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



CITY COUNCIL MEETING

6/13/2023

REPORT PREPARED BY: Melissa Poehlman, Community Development Director / HRA Executive Director

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director / HRA Executive Director
5/18/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/9/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a request to modify (2024) and then terminate (2025) Best Buy's Minimum Assessment Agreement.

EXECUTIVE SUMMARY:

On May 23, 2023 the Council considered a request by Best Buy to modify and terminate the Minimum Assessment Agreement in place for their corporate headquarters at 7601 Penn Avenue South. Based on feedback at that meeting, staff and Best Buy representatives have continued discussions in hopes of finding a path forward that addresses the needs and concerns of both parties. These concerns, left unaddressed, could lead to significant costs, staff time, and uncertainty in the coming years.

The attached agreement addresses the largest concerns for both the City/HRA and Best Buy. Specifically, it guarantees that the HRA will be able to recoup \$851,000 without the threat of future litigation; and it allows Best Buy to discuss a fair market value for its property with the County and pay the commensurate taxes.

The agreement requires compromise on both sides. Best Buy believes that the HRA has underpaid them and that they are owed approximately \$600,000, which they will not recoup, and they have agreed not to contest the HRA recouping \$851,000. The HRA will almost certainly see a reduction in tax increment generated in the remaining years of the TIF District; an estimated loss of \$105,000 - \$385,000 in pooling revenue. The parties agree that the costs associated with continued disagreement outweigh the losses posed by the compromise. Staff and its legal and financial experts recommend approval of the attached resolution and agreements.

RECOMMENDED ACTION:

By Motion: Approve a resolution approving agreements with Best Buy Co., Inc.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The Interchange West / Lyndale Gateway Tax Increment Financing (TIF) District was established in 1999. This District is a "scattered site" redevelopment district with multiple projects and outstanding obligations, including the Best Buy Corporate Campus,

Mainstreet Village, and the Casteel Place Townhomes.

- Best Buy has approached the City and Housing and Redevelopment Authority (HRA) to request a modification to their individual contract which would remove the Minimum Assessment Agreement that prevents the tax value of their property from falling below \$118.5 million during the life of the TIF District (ending December 31, 2025).
- The Interchange West / Lyndale Gateway Tax Increment Financing (TIF) District is by-far the most complex TIF District in the City. There have been five amendments to the Contract for Private Redevelopment with Best Buy since its initial adoption.
- Previous staff reports, particularly the report of May 23, 2023, provide additional historical detail.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Additional approvals by the HRA, County, and School Board are required.
- As discussed at the March 6, 2023 work session, there would be no financial impact to the County or School District due to this action.

C. CRITICAL TIMING ISSUES:

Best Buy would like the MAA modified/terminated as soon as possible. In order to reduce pay 2024 taxes, they must obtain the approval of the City, County, and School Board prior to June 30, 2023. While staff does not believe it will be possible to receive County Board approvals in time, the agreement stipulates that the City will support and work toward this goal with Best Buy. The proposed agreement is contingent upon these future approvals by the County and School Board, but not by the June 30, 2023 deadline. Given that there will be no financial impact to the County or School Board, staff does not anticipate a denial by either body and will work with Best Buy to communicate and educate the bodies, as needed.

D. FINANCIAL IMPACT:

- Sufficient increment will be available to make the remaining two payments on the General Obligation Bonds issued for infrastructure improvements related to the Best Buy Corporate Campus Project.
- The MAA is also in place to provide a mechanism for pooling. Pooling allows the HRA to spend a portion of tax increment outside the geographical boundaries of the TIF District for TIF-eligible activities such as affordable housing. A modification and termination of the MAA will likely impact the amount of money contributed to the Housing and Redevelopment Fund by an estimated \$210,000 to \$385,000. If Best Buy is unable to get the required approvals for 2023, the estimated reduction is \$105,000-\$192,500.
- The HRA has concluded that Best Buy has been overpaid by approximately \$851,000. Under the proposed agreement, the HRA is able to recoup this money without threat of future legal challenge.
- The proposed agreement would not impact taxes paid to either Hennepin County or the School District because those jurisdictions receive payments based on the baseline property value established prior to the Best Buy Campus construction.

E. LEGAL CONSIDERATION:

- The HRA has the legal authority and duty to recoup overpayments and will begin to do so with the August 1, 2023 TIF Payment. The proposed agreement allows the HRA to do this without the threat of a legal challenge.
- HRA Attorney Julie Eddington will be present to address legal questions.
- An amendment to the Contract for Private Development between the HRA and Best Buy is also required. Consideration by the HRA has been scheduled for June 20, 2023.

ALTERNATIVE RECOMMENDATION(S):

Deny the request for modification/termination of the Minimum Assessment Agreement with Best Buy for property at 7601 Penn Avenue South.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Julie Eddington, HRA Attorney, Kennedy & Graven Rebecca Kurtz, Municipal Advisor, Ehlers Tracy Smith,

Senior Director and Tax Counsel, Best Buy Dan Lopez, Director of Government Affairs, Best Buy William Griffith & Timothy Rye, Attorneys for Best Buy, Larkin Hoffman

ATTACHMENTS:

Description	Type
▣ Resolution	Resolution Letter
▣ Contract Amendment	Contract/Agreement
▣ Amended Assessment Agreement	Contract/Agreement
▣ Amended Assessment Agreement (Redline)	Contract/Agreement

CITY OF RICHFIELD, MINNESOTA

RESOLUTION NO. _____

RESOLUTION APPROVING AGREEMENTS WITH BEST BUY CO., INC.

BE IT RESOLVED by the City Council of the City of Richfield, Minnesota (the "City"), as follows:

Section 1. Recitals.

1.01. The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") and Best Buy Co., Inc., a Minnesota corporation (the "Redeveloper"), have entered into a Contract for Private Redevelopment, dated March 28, 2000, as amended by the First Amendment to Contract for Private Redevelopment, dated November 27, 2000, as amended by the Second Amendment to Contract for Private Redevelopment, dated February 20, 2001, as amended by the Third Amendment to Contract for Private Redevelopment, dated March 5, 2003, as amended by the Fourth Amendment to Contract for Private Redevelopment, dated December 21, 2010, and as amended by the Fifth Amendment to Contract for Private Redevelopment, dated July 14, 2014 (collectively, the "Contract"), with respect to the redevelopment of land (the "Property") located in the City.

1.02. The Authority and the Redeveloper also entered into an Assessment Agreement, dated March 5, 2003 (the "Assessment Agreement"), which set forth the minimum market value for the Property as improved by the redevelopment.

1.03. The Authority, the City, and the Redeveloper have proposed to revise the provisions related to the Assessment Agreement, the overpayment of tax increment by the Authority, and the release of certain claims.

1.04. There have been presented to the City Council forms of the following documents (collectively, the "City Documents"): (i) a Sixth Amendment to Contract for Private Redevelopment between the Authority, the City, and the Redeveloper, which amends the Contract to govern the overpayment of tax increment; and (ii) an Amended and Restated Assessment Agreement between the Authority, the City, and the Redeveloper, and including consents to termination of the Assessment Agreement by Independent School District No. 280 (Richfield Public Schools) and Hennepin County, Minnesota, which amends and restates the Assessment Agreement to modify the valuation floor of the Property, as improved by the redevelopment.

Section 2. Approvals.

2.01. The City Documents are hereby in all respects authorized, approved, and confirmed, and the Mayor and the City Manager are hereby authorized and directed to execute the City Documents for and on behalf of the City in substantially the forms now on file with the Community Development Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2.02. The Mayor and the City Manager are authorized and directed to execute any and all other documents or certificates deemed necessary to carry out the intentions of this resolution and the City Documents.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval.

Adopted by the City of Richfield, Minnesota this _____ day of June, 2023.

Mary B. Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

RC125-210 (JAE)
881454v1

**SIXTH AMENDMENT
TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS SIXTH AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT (the “Agreement”), made and entered into as of the ____ day of June, 2023, between the CITY OF RICHFIELD, MINNESOTA, a Minnesota municipal corporation (the “City”), the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a Minnesota public body corporate and politic (the “HRA”), and BEST BUY CO., INC., a Minnesota corporation (the “Redeveloper”). The City, the HRA and the Redeveloper are referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, the HRA and the Redeveloper entered into a Contract for Private Development Agreement, dated March 28, 2000 (the “Contract”), for the purposes of redeveloping land within the City of Richfield (the “Property”); and

WHEREAS, the HRA and the Redeveloper entered into an Assessment Agreement, dated March 5, 2003 (the “Assessment Agreement”); and

WHEREAS, the HRA and the Redeveloper amended the Contract five times by entering into a First Amendment on November 27, 2000, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, and a Fifth Amendment on July 14, 2014; and

WHEREAS, the City, the HRA and the Redeveloper propose to amend the Contract further to revise the provisions related to the Assessment Agreement, payment to the HRA, and the release of certain claims; and

NOW, THEREFORE, based upon the mutual covenants and undertakings hereinafter, and in the Contract provided, the Parties hereto stipulate and agree as follows:

Section 1. **Whereas Clauses.** The WHEREAS clauses set forth above are incorporated into this Agreement and are confirmed in all respects.

Section 2. **Definitions.**

“Available Tax Increment” for the purpose of the TIF Note means seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Development Property that is paid to the HRA by the County in the six months preceding each Payment Date, after deducting any amount necessary to pay principal and interest on the TIF Bonds or, subject to the provisions of Section 3.5, subd. 3, any TIF Refunding Bonds.

Section 3. **Amendments to Contract.** The Contract is hereby amended in the following respects:

A. The Redeveloper agrees that the HRA will receive \$851,000 in tax increment, in addition to the funds the HRA receives based on the provisions of the Contract. The Redeveloper agrees that the HRA will be provided the \$851,000 from the County payments of tax increment on August 1, 2023, February 1, 2024, and August 1, 2024 until the amount is paid in full.

B. All Parties agree and understand that the Tax Increment District for the Redeveloper ends as of December 31, 2025 and the final payment for the TIF Note will occur on February 1, 2026.

Section 4. **Assessment Agreement.**

A. The City and the HRA approve the modification and termination of the Assessment Agreement. Modification means the valuation floor in the Assessment Agreement will not be less than \$60 million until the Assessment Agreement is terminated. The modification of the Assessment Agreement is effective for the 2023 tax assessment payable in 2024. The termination of the Assessment Agreement is effective on December 31, 2023, for the 2024 tax assessment payable in 2025.

B. Section 6.3(b) of the Contract is hereby deleted and is no longer of any force or effect.

C. The City and the HRA will support the Redeveloper in seeking consent of the School District and Hennepin County for modifying and terminating the Assessment Agreement.

D. If the Redeveloper appeals its property value after the Assessment Agreement is modified or after the Assessment Agreement is terminated, the Redeveloper will be solely responsible for repaying the Available Tax Increment from the Development Property paid under the TIF Note if Hennepin County determines that the Available Tax Increment should be returned to Hennepin County due to one or more tax appeals initiated by the Redeveloper. The HRA will alert the Redeveloper of any reduction in tax increment due to tax appeals. The Redeveloper shall have three weeks to pay the HRA the funds owed to Hennepin County. Upon receipt of the funds from the Redeveloper, the HRA will send the funds to Hennepin County within five business days and provide timely notice to the Redeveloper of such transmittal to Hennepin County.

E. If the Redeveloper appeals its property value after the Assessment Agreement is modified or after the Assessment Agreement is terminated, the HRA will be solely responsible for repaying the 25% of the Tax Increment from the Development Property paid to the HRA if Hennepin County determines that the Available Tax Increment should be returned to Hennepin County due to one or more tax appeals initiated by the Redeveloper.

F. If the Redeveloper appeals its property value, it must notify the HRA within two weeks of filing the tax petition.

G. The Parties understand and agree that this agreement is contingent upon obtaining approval of this Sixth Amendment and the Amended and Restated Assessment Agreement by the City Council and HRA Board on or prior to June 20, 2023, and the consent of the School District and Hennepin County to modification and termination of the Assessment Agreement as provided in the Amended and Restated Assessment Agreement prior to June 30, 2023 or thereafter. Each party will use best efforts to obtain the approvals and consents contemplated by this paragraph.

Section 5. Release of Claims.

A. All Parties will release all claims to date regarding any defaults under the Contract. The HRA will continue to follow the requirements of the Tax Increment Act and will make any corrective payments determined by the Office of State Auditor.

B. The agreement will constitute a full and final satisfaction between the Parties regarding any and all matters relating to the Assessment Agreement. The Redeveloper will agree not to request, or encourage any other person to request, an audit from the Office of the State Auditor with respect to matters relating to the Contract or the Assessment Agreement.

C. With the exception of Sections 4(D) and 4(E), the City, the HRA, and the Redeveloper will: (a) mutually release and discharge each other from any and all claims or matters arising out of or relating to the Contract or the Assessment Agreement to date; and (b) agree not to sue any Party to this Agreement with respect to any matters arising out of or relating to the Contract or the Assessment Agreement to date.

D. The Parties agree not to disparage another Party to this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Sean Hayford Oleary, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, a Minnesota municipal corporation, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, a Minnesota municipal corporation, on behalf of the City.

Notary Public

AMENDED AND RESTATED
ASSESSMENT AGREEMENT

THIS AMENDED AND RESTATED ASSESSMENT AGREEMENT, made on the ____ day of June, 2023, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota (the "Authority") and Best Buy Co., Inc., a Minnesota corporation, (the "Redeveloper"), modifies and replaces the Assessment Agreement dated March 5, 2003, between the same parties.

WITNESSETH:

WHEREAS, the Authority and Redeveloper entered into a Contract for Private Development, dated March 28, 2000 (the "Development Agreement") regarding certain real property located in the city of Richfield, Hennepin County, Minnesota, and legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Authority and Redeveloper entered into that certain Assessment Agreement dated March 5, 2003 (the "Assessment Agreement"); and

WHEREAS, the Authority and Redeveloper amended the Development Agreement six times by entering into a First Amendment on November 27, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, a Fifth Amendment on July 14, 2014, and a Sixth Amendment on June ____, 2023; and

WHEREAS, pursuant to the Sixth Amendment the parties have agreed to modify and then terminate the Assessment Agreement by entering into this Amended and Restated Assessment Agreement; and

WHEREAS, pursuant to the Development Agreement, the Redeveloper has constructed a 1.5 million square foot office facility and related parking structures and other improvements upon the Property (the "Minimum Improvements"); and

WHEREAS, the Authority and Redeveloper desire to establish a minimum market value for the Property and the Minimum Improvements constructed thereon (the "Minimum Market Value"), pursuant to Minnesota Statutes, Section 469.177, Subdivision 8; and

WHEREAS, the Authority and the Assessor for Hennepin County (the "Assessor") have reviewed or examined the Property and the Minimum Improvements.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. The Minimum Market Value which shall be assessed for the Property described in Exhibit A, together with the Minimum Improvements thereon, shall be \$60,000,000 as of January 2, 2023 payable in 2024.

2. The Minimum Market Value herein established shall be of no further force and effect and this Agreement shall terminate on December 31, 2023.

3. This Agreement shall be promptly recorded by the Authority. The Redeveloper shall pay all costs of recording.

4. Neither the preambles nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of the Development Agreement between the Authority and the Redeveloper.

5. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

6. Each of the parties has authority to enter into this Agreement and to take all actions required of it, and has taken all actions necessary to authorize the execution and delivery of this Agreement.

7. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Property, or for carrying out the expressed intention of this Agreement.

9. Except as provided in Section 8 of this Agreement, this Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the HRA has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Sean Hayford Oleary, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

IN WITNESS WHEREOF, the City of Richfield, Minnesota has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

IN WITNESS WHEREOF, the Redeveloper has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

Drafted By:
William Griffith
Larkin Hoffman
8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437

IN WITNESS WHEREOF, the School District has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**INDEPENDENT SCHOOL DISTRICT NO. 280
(RICHFIELD PUBLIC SCHOOLS),
HENNEPIN COUNTY, MINNESOTA**

By _____
Its Chair

By _____
Its Clerk

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Paula Cole, the Chair of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Allegra Smisek, the Clerk of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

IN WITNESS WHEREOF, Hennepin County, Minnesota has caused this Amended and Restated Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

Reviewed by the County
Attorney's Office

By: _____

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Chair

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
County Administrator

Date: _____

Recommended for Approval:

By: _____
Chief Housing and Economic Development
Officer

Date: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Irene Fernando, the Chair of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by David J. Hough, the County Administrator of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, hereby certifies as follows: the undersigned Assessor, being legally responsible for the assessment of the above-described property, hereby certifies that the market values assigned to the land and improvements are reasonable.

ASSESSOR FOR HENNEPIN COUNTY

By _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by _____, the County Assessor of Hennepin County, Minnesota.

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block 1, Best Buy Campus

AMENDED AND RESTATED
ASSESSMENT AGREEMENT

THIS AMENDED AND RESTATED ASSESSMENT AGREEMENT, made on the ____ day of June, 2023, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota (the "Authority") and Best Buy Co., Inc., a Minnesota corporation, (the "Redeveloper"), modifies and replaces the Assessment Agreement dated March 5, 2003, between the same parties.

WITNESSETH:

WHEREAS, the Authority and Redeveloper entered into a Contract for Private Development, dated March 28, 2000 (the "Development Agreement") regarding certain real property located in the city of Richfield, Hennepin County, Minnesota, and legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Authority and Redeveloper entered into that certain Assessment Agreement dated March 5, 2003 (the "Assessment Agreement"); and

WHEREAS, the Authority and Redeveloper amended the Development Agreement six times by entering into a First Amendment on November 27, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, a Fifth Amendment on July 14, 2014, and a Sixth Amendment on June ____, 2023; and

WHEREAS, pursuant to the Sixth Amendment the parties have agreed to modify and then terminate the Assessment Agreement by entering into this Amended and Restated Assessment Agreement; and

WHEREAS, pursuant to the Development Agreement, the Redeveloper has constructed a 1.5 million square foot office facility and related parking structures and other improvements upon the Property (the "Minimum Improvements"); and

WHEREAS, the Authority and Redeveloper desire to establish a minimum market value for the Property and the Minimum Improvements constructed thereon (the "Minimum Market Value"), pursuant to Minnesota Statutes, Section 469.177, Subdivision 8; and

WHEREAS, the Authority and the Assessor for Hennepin County (the "Assessor") have reviewed or examined the Property and the Minimum Improvements.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. The Minimum Market Value which shall be assessed for the Property described in Exhibit A, together with the Minimum Improvements thereon, shall be \$60,000,000 as of January 2, 2023 payable in 2024.

2. The Minimum Market Value herein established shall be of no further force and effect and this Agreement shall terminate on December 31, 2023.

3. This Agreement shall be promptly recorded by the Authority. The Redeveloper shall pay all costs of recording.

4. Neither the preambles nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of the Development Agreement between the Authority and the Redeveloper.

5. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

6. Each of the parties has authority to enter into this Agreement and to take all actions required of it, and has taken all actions necessary to authorize the execution and delivery of this Agreement.

7. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Property, or for carrying out the expressed intention ~~of this Agreement, including, without limitation, any further instruments required to delete from the description of the Property such part or parts as may be included within a separate assessment agreement, and any instrument necessary to confirm the occurrence of the Termination Date (as defined in the Contract) and thereby the termination~~ of this Agreement.

9. Except as provided in Section 8 of this Agreement, this Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the HRA has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Erin Vrieze Daniels, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

IN WITNESS WHEREOF, the City of Richfield, Minnesota has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

IN WITNESS WHEREOF, the Redeveloper has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

Drafted By:
William Griffith
Larkin Hoffman
8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437

IN WITNESS WHEREOF, the School District has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**INDEPENDENT SCHOOL DISTRICT NO. 280
(RICHFIELD PUBLIC SCHOOLS),
HENNEPIN COUNTY, MINNESOTA**

By _____
Its Chair

By _____
Its Clerk

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Paula Cole, the Chair of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Allegra Smisek, the Clerk of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

IN WITNESS WHEREOF, Hennepin County, Minnesota has caused this Amended and Restated Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

Reviewed by the County
Attorney's Office

By: _____

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Chair

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
County Administrator

Date: _____

Recommended for Approval:

By: _____
Chief Housing and Economic Development
Officer

Date: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Irene Fernando, the Chair of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by David J. Hough, the County Administrator of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, hereby certifies as follows: the undersigned Assessor, being legally responsible for the assessment of the above-described property, hereby certifies that the market values assigned to the land and improvements are reasonable.

ASSESSOR FOR HENNEPIN COUNTY

By _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by _____, the County Assessor of Hennepin County, Minnesota.

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block 1, Best Buy Campus

Document comparison by Workshare 10.0 on Friday, June 9, 2023 12:17:16 PM

Input:	
Document 1 ID	PowerDocs://DOCSOPEN/881427/1
Description	DOCSOPEN-#881427-v1-Amended_and_Restated_Assessment_Agreement
Document 2 ID	PowerDocs://DOCSOPEN/881427/2
Description	DOCSOPEN-#881427-v2-Amended_and_Restated_Assessment_Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	19



STAFF REPORT NO. 77
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Rachel Lindholm, Sustainability Specialist

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director
6/5/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of recommended Climate Action Plan (CAP), prioritized actions for implementation from 2023-2026 and the related amendment in the City's Strategic Plan.

EXECUTIVE SUMMARY:

Richfield's CAP identified over 70 actions for City staff to undertake in efforts to reduce greenhouse gas (GHG), emissions, increase community sustainability education, and develop the City's sustainability efforts. For over 3 years, staff have been working on various actions according to the timelines identified in the CAP and as capacity and funding allows. Over time, it became clear that the City would benefit from both a GHG inventory and working with a consultant to hone in on the most beneficial actions to undertake.

Pale BLUE dot LLC has worked with staff for over 6 months on conducting the inventory, analyzing results, and working together to identify high priority actions. These focus on both emission reduction and feasibility of implementation from a staff/city perspective.

This work connects with the City's strategic plan desired outcome stating "Climate resilience is a priority", with the related identified target of "2 highest priority CAP projects completed by 2025".

RECOMMENDED ACTION:

By motion, approve the below-recommended CAP actions and amend them into the strategic plan. Staff recommend Council and executive leadership "establish clear guidance and direction for the participation in and support of the CAP implementation actions by all City of Richfield departments".

Under this umbrella, the three recommended actions (in no specific order) are:

- 1. Continue and fully implement recommendations from the municipal building energy audits (CAP Action 1.2.2);**
- 2. Conduct an Electric Vehicle Suitability/Fleet Assessment (CAP Action 1.3.2), and continue evaluating fleet for EV/PHEV replacement opportunities; and**
- 3. Establish a coordinated communication and education campaign for all sections of the CAP (aligned with Strategic Plan initiative 3.3.1 and multiple CAP actions).**

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Richfield's CAP was written by staff and ratified by Council in October 2020.
- Richfield's Strategic Plan (ratified in 2022), identified specific sustainability-related actions: Implement prioritized CAP initiatives and create CAP education strategy for staff and public.
- Staff started working with pale BLUE dot LLC in late 2022 to create a timeline for CAP review, conduct a greenhouse gas emissions inventory, and work through a prioritization process based on barriers and available resources.
- In early 2023, city staff and pale BLUE dot LLC worked together to identify the biggest opportunities for emissions reduction and actions that would have fewer barriers to implementation.
- These recommendations and a recap of Richfield's greenhouse gas emissions inventory were presented to councilmembers at a work session on May 23rd, 2023.
- After the work session, staff have started a communications effort surrounding the prioritization process and integration into the City's Strategic Plan. This includes a news release in the Sun Current, social media posts, and a dedicated CAP webpage under the Sustainability category on the City's website.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

These actions come from the City's adopted Climate Action Plan and are related to the identified climate objectives in the 2023-2026 Strategic Plan. Individual actions are related to various city ordinances and resolutions. This information will be detailed as these actions are worked on by staff and shared with Council.

C. CRITICAL TIMING ISSUES:

The recommended actions will take varying amounts of time to implement. In order to meet the 2025 deadline in the Strategic Plan, staff would like to start working on the actions as soon as possible.

D. FINANCIAL IMPACT:

None at this time. Financial information will be detailed as these recommended actions are undertaken by staff and shared with Council via work sessions and other communications. Staff know that implementing some of these actions will require funding and have already identified potential funding sources like grants, franchise fees, and existing budgets. Other actions do not have costs associated or are covered by partner organizations.

E. LEGAL CONSIDERATION:

None at this time. Any legal information will be detailed as these recommended actions are worked on by staff and shared with Council.

ALTERNATIVE RECOMMENDATION(S):

Council could choose to not approve these recommendations and recommend alternative actions to prioritize.

PRINCIPAL PARTIES EXPECTED AT MEETING:



STAFF REPORT NO. 78
CITY COUNCIL MEETING
6/13/2023

REPORT PREPARED BY: Kelly Wynn, Administrative Assistant

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
6/7/2023

ITEM FOR COUNCIL CONSIDERATION:

Closed Executive Session regarding the City Manager's annual performance evaluation. Council will move to the Babcock Room for the closed session portion of the meeting

EXECUTIVE SUMMARY:

The Closed Executive Session will be convened as permitted to evaluate an employee's performance pursuant to Minn. Stat. 13D.05, subd. 3(a).

RECOMMENDED ACTION:

Motion to recess the meeting to enter and hold a closed meeting for the purpose of conducting a performance evaluation of City Manager Katie Rodriguez, pursuant to Minnesota Statutes section 13D.05, subd. 3(a).

BASIS OF RECOMMENDATION:

- A. **HISTORICAL CONTEXT**
- B. **POLICIES (resolutions, ordinances, regulations, statutes, etc):**
- C. **CRITICAL TIMING ISSUES:**
- D. **FINANCIAL IMPACT:**
- E. **LEGAL CONSIDERATION:**

ALTERNATIVE RECOMMENDATION(S):

PRINCIPAL PARTIES EXPECTED AT MEETING: