



**CITY OF WEST ST. PAUL**  
1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

---

**REGULAR CITY COUNCIL MEETING**

**March 28, 2016**

**6:30 p.m.**

**MUNICIPAL CENTER COUNCIL CHAMBERS**

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. PLEDGE OF ALLEGIANCE**

**4. ADOPT THE AGENDA**

**5. OCWS BRIEFING**

**6. ROBERT STREET REVIEW**

**7. CITIZEN COMMENTS**

*Individuals may address the City Council about any item not included on the regular agenda. Speakers are requested to come to the podium, state their name and address for the Clerk's record. Generally, the City Council will not take official action on items discussed at this time, but may typically refer the matter to staff for a future report or direct that the matter be scheduled on an upcoming agenda.*

**8. COUNCIL COMMENTS**

**9. PROCLAMATIONS, PRESENTATIONS AND RECOGNITIONS**

**A. South Robert Street Business Association Donations (2)**

**1. Accept \$350 Donation From South Robert Street Business Association**

Documents: [COUNCIL REPORT - ACCEPT 350 DONATION FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION.PDF](#), [RESOLUTION - ACCEPT 350 DONATION FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION.PDF](#)

**2. Accept \$5,000 Donation From South Robert Street Business Association**

Documents: [COUNCIL REPORT - ACCEPT 5000 DONATION FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION.PDF](#), [RESOLUTION - ACCEPT 5000 DONATION FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION.PDF](#)

**10. CONSENT AGENDA**

*All items on the Consent Agenda are considered to be routine and have been made available to the City Council at least two days prior to the meeting; these items will be enacted by one motion. There will be no separate discussion of these items unless a Council member or citizen so requests, in which event the item will be removed from this agenda and considered under separate motion.*

**A. City Council Meeting Minutes**

Documents: [3-14-16 CC MINUTES \(FINAL\).PDF](#), [3-14-16 OCWS MINS \(FINAL\).PDF](#)

B. List Of Claims March 28, 2016

Documents: [COUNCIL REPORT - LIST OF CLAIMS.PDF](#)

C. Approve February 2016 Bank Reconciliation

Documents: [COUNCIL REPORT - FEBRUARY 2016 BANK RECONCILIATION.PDF](#),  
[FEBRUARY 2016 BANK RECONCILIATION.PDF](#)

D. Approve February 2016 Investment Report

Documents: [COUNCIL REPORT - FEBRUARY 2016 INVESTMENT REPORT.PDF](#),  
[FEBRUARY 2016 INVESTMENT REPORT.PDF](#)

E. Approve February 2016 General Fund Budget Report

Documents: [COUNCIL REPORT - FEBRUARY 2016 GENERAL FUND BUDGET REPORT.PDF](#),  
[FEBRUARY 2016 GENERAL FUND BUDGET REPORT.PDF](#)

F. Rental Licensing

Documents: [COUNCIL REPORT - RENTAL LICENSING.PDF](#)

**11. PUBLIC HEARING**

**12. NEW BUSINESS**

A. Consider Resolution For Comcast Franchise Extension

Documents: [RESOLUTION-COMCAST EXTENSION.PDF](#), [COUNCIL REPORT-EXTENSION OF COMCAST FRANCHISE.PDF](#)

B. Consider First Reading Of Ordinance Establishing New Franchise Agreement With CenturyLink For Cable Communication Services

Documents: [ORDINANCE- CENTURYLINK CABLE TELEVISION FRANCHISE.PDF](#),  
[COUNCIL REPORT-CENTURYLINK FRANCHISE CONSIDERATION.PDF](#)

C. Approve Additional Muck Excavation As Part Of Supplemental Agreement #1 On Robert Street

Documents: [COUNCIL REPORT - APPROVE ADDITIONAL MUCK EX FOR SA 1 ON ROBERT ST.PDF](#)

D. Approve JPA Revisions With Dakota County For Wentworth/Oakdale Roundabout Project 14-5

Documents: [COUNCIL REPORT - APPROVE JPA REVISIONS WITH COUNTY FOR PROJECT 14-5.PDF](#), [COUNCIL REPORT - APPROVE JPA REVISIONS WITH COUNTY FOR PROJECT 14-5-ATTACHMENT.PDF](#)

E. Approve Temporary No Parking Resolution Along A Portion Of Livingston Avenue

Documents: [RESOLUTION - LIVINGSTON TEMPORARY NO PARKING.PDF](#),  
[COUNCIL REPORT - APPROVE TEMPORARY NO PARKING RESOLUTION LIVINGSTON.PDF](#), [COUNCIL REPORT - LIVINGSTON TEMPORARY NO PARKING-ATTACHMENT.PDF](#)

F. Approve Purchase Of Public Works Capital Equipment

Documents: [COUNCIL REPORT-PW EQUIPEMENT PURCHASE GENERATOR.PDF](#)

G. Consider JPA For Dakota County Broadband

Documents: [COUNCIL REPORT -PROPOSED JPA FOR BROADBAND BOARD.PDF](#),  
[JPA - BROADBAND 030816 REVISED FINAL DRAFT.PDF](#)

**13. OLD BUSINESS**

## 14. ADJOURN

---

*If you need an accommodation to participate in the meeting, please contact the ADA Coordinator at 651-552-4100, TDD 651-322-2323 at least 5 business days prior to the meeting  
[www.wspmn.gov](http://www.wspmn.gov) EOE/AA*

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** Accept \$350 Donation from South Robert Street Business Association for Volunteer Appreciation Event



City of West St. Paul

---

**BACKGROUND INFORMATION:**

The South Robert Street Business Association has donated money to the City for events and special needs for many years from their charitable gambling program. They have recently donated \$350 to the City in recognition of the City's many volunteers. The donation is being used for the Annual Volunteer Appreciation Event to be held in April.

**FISCAL IMPACT:**

The \$350 donation helps offset the City's cost for the volunteer event.

		Amount
<b>Fund:</b>	<b>101</b>	
<b>Department:</b>	<b>30000</b>	
<b>Account:</b>	<b>36230</b>	<b>\$350.00</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council accept the \$350 donation from the South Robert Street Business Association.

On Motion of

Seconded by

RESOLUTION NO. 16-

RESOLUTION ACCEPTING DONATION  
FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION

WHEREAS, South Robert Street Business Association has donated \$350 to the City of West St Paul, and

WHEREAS, the Mayor and City Council acknowledge their generosity and extend their appreciation to South Robert Street Business Association for their donation.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council accepts the donation of \$350 on behalf of the City of West St. Paul.

Adopted by the City Council of the City of West St. Paul this 28<sup>th</sup> day of March, 2016.

Ayes:            Nays:

\_\_\_\_\_  
David Meisinger, Mayor

Attest: \_\_\_\_\_  
Chantal Doriott, City Clerk

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** Accept \$5,000 Donation from South Robert Street Business Association for the Winter Fun Fest



City of West St. Paul

---

**BACKGROUND INFORMATION:**

The South Robert Street Business Association has donated money to the City for events and special needs for many years from their charitable gambling program. They have recently donated \$5,000 to the City for the Winter Fun Fest Event. This is the second donation of \$5,000 for sponsorship of this new event.

**FISCAL IMPACT:**

This, and the previous \$5,000 donation, offset nearly all of the City's cost for the event.

		Amount
<b>Fund:</b>	<b>101</b>	
<b>Department:</b>	<b>30000</b>	
<b>Account:</b>	<b>36230</b>	<b>\$5,000.00</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council accept the \$5,000 donation from the South Robert Street Business Association.

On Motion of

Seconded by

RESOLUTION NO. 16-

RESOLUTION ACCEPTING DONATION  
FROM SOUTH ROBERT STREET BUSINESS ASSOCIATION

WHEREAS, South Robert Street Business Association has donated \$5,000 to the City of West St Paul, and

WHEREAS, the Mayor and City Council acknowledge their generosity and extend their appreciation to South Robert Street Business Association for their donation.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council accepts the donation of \$5,000 on behalf of the City of West St. Paul.

Adopted by the City Council of the City of West St. Paul this 28<sup>th</sup> day of March, 2016.

Ayes:            Nays:

\_\_\_\_\_  
David Meisinger, Mayor

Attest: \_\_\_\_\_  
Chantal Doriott, City Clerk

**City of West St. Paul  
City Council Meeting Minutes  
March 14, 2016**

**1. Call to Order**

Mayor David Meisinger called the meeting to order at 6:33 p.m.

**2. Roll Call**

Present: Mayor David Meisinger and Councilmembers Pat Armon, John Bellows, Jenny Halverson, Ed Iago, Dave Napier and Dick Vitelli.

Others: City Manager Matt Fulton, Assistant City Manager and HR Director Sherrie Le, Finance Director Joan Carlson, Police Chief Manila Shaver, PW and Parks and Rec Director/City Engineer Ross Beckwith, City Planner Ben Boike, City Attorney Korine Land and Recording Secretary Cindy Holzmer.

**3. Pledge of Allegiance**

**4. Adopt the Agenda**

The following changes were made to the City Council Agendas:

- Clpn. Halverson moved Consent Item I to New Business Item E (Accept 2015 Annual Report on Shared Volunteer Program).
- Mayor Meisinger added Access to Livingston – Arby’s, Office Buildings, Applebees, 5-8 Club and Rack Shack to New Business Item F
- Mayor Meisinger added City Hall Architect as Item 13D.

Motion made by Clpn. Bellows and seconded by Clpn. Iago to adopt the agenda with the change above. All members present voted aye. Motion carried.

**5. OCWS Briefing**

Mayor Meisinger briefly mentioned that discussed 1010 Dodd, access Livingston – Arby’s, Office Buildings, Applebees, 5-8 Club and Inflow/Infiltration with the Met Council.

**6. Robert Street Review**

City Engineer Ross Beckwith gave an update. Preliminary work right now, from Annapolis to Thompson the inside lane is closed for the southbound lane during daytime; outside lane closed for south half from Thompson to Mendota. We are easing into the construction season which is scheduled to start April 4, 2016. Business Liaison meeting is April 1, 2016.

Mayor Meisinger stated the revised cost of the project is currently \$43,237,339 which is an overage of \$1,691,825. We are working on controlling costs.

## 7. Citizen Comments

Chris Rossley (886 Winslow Avenue). Discuss garbage hauling issue. Multiple trucks on street and cans left all over, sometimes they are backed up and it's a cost issue. In his view a controlled/one supplier service would be a good idea.

- Mayor Meisinger stated the City is looking into this right now. No decision has been made, but we have started the process.

George Hamernick (1323 Manomin Avenue). He has received an Infiltration Inspection Letter. His sump pump goes into his street. The only water that is going into the sewer system is infiltration into the sewer line. The amount has to be minimal. The estimate he has received is over \$6,000. He would like the Council's opinion and wondered if he could get a waiver.

- Mayor Meisinger stated that the City can't give a waiver to not do the work but can extend his time because the Council is re-evaluating.

Robert Dusterhoft (281 Edith Drive). He is concerned about the overage on the Robert Street Project. We won't know until the project is done.

- Mayor Meisinger stated that we have budgeted \$500,000 for soil correction on the second half.
- Mr. Dusterhoft wondered where the cost is going to come from to cover if we can't get it from legislation.
- Mayor Meisinger stated it'll come from property taxes.
- Mr. Dusterhoft expressed that Edith Drive is a mess and needs to be rebuilt and is frustrated that it keeps getting pushed.
- Mayor Meisinger stated that all street improvements have been postponed.
- Mr. Dusterhoft stated that Edith Drive is also getting hit with Inflow/Infiltration.

Jodi Wanner (127 Bernard Street East). Ms. Wanner explained to the Council that there are inoperable and unlicensed vehicles that are being parked in front of her house because they can't park on Robert Street. The people are sometimes parking on or in her driveway and she has to drive off of her driveway to get out. People are also littering and nothing is being done about that.

- Mayor Meisinger stated they are looking at options for parking for apartments.
- Clpn. Vitelli recommended she call the police every time there is an issue.
- Police Chief Shaver stated that an officer can't cite a person for littering unless they see it occurring.
- Clpn. Halverson stated they had an issue on the other side of street and said that calling it to our attention is helpful and getting in touch with the apartment manager could also be helpful.

## 8. Council Comments

Clpn. Vitelli urged residents to shop and eat at businesses and restaurants on Robert and to keep their dollars at home.

Clpn. Napier represented the City at the State of the County Address. Appreciates what they are doing at the County level.

Clpn. Iago wanted to takes hats off to St. Croix Lutheran Boys Basketball Team for making it to one step before the State Tourney. Clpn. Iago also mentioned that the golf course is open.

Clpn. Armon mentioned that April 23, 2016 is the second annual City clean up date. Clpn. Armon asked residents to continue to call the Legislature to try to get their support to try to keep the cost down.

Clpn. Halverson mentioned Hills Floral on 1166 South Robert as they are struggling and asking for support. The Neighbor's, Inc. food drive has started.

Clpn. Bellows stated that last Thursday, Clpn. Armon, Clpn. Halverson, Clpn. Bellows and City Manager met with Secretary Peterson of the St. Cloud Area about Robert Street and seeking additional funding for Robert Street. Clpn. Bellows urged residents to call the Governor as Senator Metzen met with the Governor a week ago or so and it would particularly important to follow-up.

Mayor Meisinger stated the City did receive a check from Rosa Reece and thanked her for the unsolicited check.

Mayor Meisinger also mentioned that with respect to Inflow/Infiltration, if you received a Notice for 180, that the City is not currently enforcing that right now but to please contact City Staff to let them know you received the Notice.

## **9. Proclamations, Presentations and Recognitions**

### **A. Presentation by Met Council Regarding Inflow/Infiltration**

Jeannine Clancy and Kyle Colvin gave a presentation regarding Inflow/Infiltration.

Infiltration is the seepage of groundwater into sewer pipes through cracks or joints in the pipes. Inflow is flow from a single point.

The goal is to protect public health; protect water quality; avoid high costs to convey and treat excessive wet weather flow; encourage regional, local and private investment into the wastewater collection system.

Ms. Clancy stated the Council continues to evaluate the program. Questions of how can we improve the program and how we recommend the program modifications are being looked at and the Group is working on this.

Mayor Meisinger stated MetCouncil has not taken this lightly. This has been going on for over 10 years and a lot of numbers go into factoring what our Council needs to do.

Clpn. Napier appreciated the Met Council for being here and asked they send a copy of their powerpoint to the Council.

- Ms. Clancy said they would send them a copy.

Clpn. Armon requested the bill number for state assistance.

Residents Comments:

Robert Dusterhoeft (281 Edith Drive). Mr. Dusterhoeft is concerned that the charts are going off of 2014. He had 17 inches of rain. Basement flooded and dumped excess water down drain because he can't carry it out of the basement. Where was he supposed to put the water because he can't physically carry it out. He wondered if that was factored in.

Mayor Meisinger reminded the residents that the 180 notices are on hold until Council can figure it out.

Ms. Clancy stated that some cities have done some work and have seen a decrease.

Mr. Dusterhoeft asked if it doesn't show a difference, is there going to be a rebate.

Ryan Kracht (1272 Galvin Avenue). Mr. Kracht wondered if the charts show the time delay from when there is rainfall and peak flow. He wondered what if we fixed the problem and then we have a major rainfall event, what percentage of sump pumps can we expect to fail? Can we still expect to exceed due to sump pump failure. He would like more data.

Mr. Colvin stated that there are situations where there are power failures that causes the sump pumps to fail and could cause the basement to flood and go into the floor drain.

Mayor Meisinger asked what the reaction of Met Council if that happens and clean water is dumped.

Mr. Colvin stated the City does have the power to appeal surcharges based on extenuating circumstances, i.e. sump pump failures could be a possible reason for appeal.

Mr. Kracht would like to request that the City has confidence if the City repairs everything.

City Manager Matt Fulton stated they had 3 neighborhoods that had sanitary sewer system back up into their homes during the 2014 storms. Lift Stations exceeded their capacity.

Mr. Colvin cautioned the City in increasing the pumping systems because it could raise the peak flow.

Clpn. Bellows stated it's the Council's obligation to determine the inflow and infiltration.

Mr. Colvin stated the Council has available flow data at each one of its meter stations down to 15 minute intervals and national weather service data.

Clpn. Iago stated the 2 stations (Robert and Dodd) have impervious surface that leads to Robert Street. The meters were placed where massive water is going to run.

Mayor Meisinger stated the City is looking at to make sure the system is tight.

Lou Flynn (1219 Galvin Avenue). Mr. Flynn stated the peak flow will change a lot and volume of flow wouldn't be affected, but the reading on the meter could be different with a reading on the top of the hill versus the bottom of the hill.

Mr. Colvin stated the peak flow is the amount of flow that flows during a period of time. The program is based on a flow rate. Peak flow is early morning and dinner time.

Mayor Meisinger would like to see the data.

Tom Focke (1252 Galvin Avenue). Mr. Focke wondered if other communities contracted with certain contractor to get the repairs done so we could possibly get a discount.

Mayor Meisinger stated the Council is looking into this and under discussion.

Mr. Focke asked how fully vetted have they been.

Mayor Meisinger stated the recommended contractors are not vetted but they have done work in the City within the last 12 months and they are licensed by the State.

Mr. Bellows reminded the residents that the 180 days' notice is not being enforced right now and recommended that Mr. Focke wait on repairs until after the Council makes a decision.

Clpn. Halverson stated that Golden Valley has a point of sale program and wondered if West St. Paul was not allowed because we need to have it done by 2020 and she wondered what the perimeters were for that program.

Ms. Clancy stated that she would defer to City Manager Fulton. The Met Council has developed a program that works best for the community.

Rhonda Meyer (1245 Ohio Street). Ms. Meyer feels that the City is under pressure because of the time limit.

Mayor Meisinger is going to put together a special meeting once the Council receives the data. He would like to meet in the next 10 days and figure out a plan by the end of the month.

Chuck Howell (293 Bernard Street West). Mr. Howell stated that things that have not been considered. He already has a contractor and his requires a complete replacement. This has created a lot of confusion. He wants his line fixed and replaced. If he only replaces out to the street and not under the street, does he get his compliance letter from the City stating he is compliance or is he going to get a letter stating there is an exception because he needs to replace

the part under the street. Is he going to need to get a rebid for under the street? Please consider all these facts.

Mayor Meisinger thanked the residents and Met Council. The Council is trying to keep the citizens and Met Council happy. The City will send another letter on this. If you received a 180 days' notice, the City will send those residents a card.

## **10. Consent Agenda**

Motion was made by Clpn. Vitelli and seconded by Clpn. Halverson to approve the consent agenda items as presented:

- A. City Council Meeting Minutes (February 22, 2016 OCWS, February 22, 2016 CC and March 1, 2016 Special Closed Meeting)
- B. List of Claims March 14, 2016
- C. Approve Transfer of Funds
- D. Approval of UBS Client Services Agreement
- E. All Hazard Planning Process, Resolution
- F. Coordinated Community Response (CCR), MOU (Informational Item)
- G. Tobacco Compliance Grant
- H. Council Report – City Licensing
- I. ~~Accept 2015 Annual Report on Shared Volunteer Program~~ (moved to Item 12E)
- J. Appoint MnDOT to Act as City's Agent in Accepting Federal Transportation Aid
- K. Approve Final Payment for Carrie/Annapolis Sewer Lining Project 14-7

All members present voted aye. Motion carried.

## **11. Public Hearing**

There were no public hearings.

## **12. New Business**

### **A. Approve Consultant Contract for Target Turn Lane Design on Robert Street**

City Engineer Beckwith stated this will be helpful with the upcoming Chick-fil-a as it helps traffic flow and safety. We are under Contract; therefore we need to get verbal approval from MnDot and they have agreed. The next step is to put together a set of designs for approval by MnDot. The cost of this request is \$10,000, in the form of a not-to-exceed contract with SRF, Inc. for design and plan sheet modifications.

Clpn. Napier stated this was a compromise of what had to be done.

Motion was made by Clpn. Napier and seconded by Clpn. Halverson to approve the contract with SRF, Inc. to perform design services for construction of a right turn lane on Robert Street at Target for a not-to-exceed contract amount of \$10,000. All members present voted aye. Motion carried.

**B. Approve Revision to Consultation Contract for Lift Stations 5 & 6 Project 16-2**

City Engineer Beckwith informed the Council that through a preliminary investigation, significant changes are needed in order to effectively operate and back-up each of the lift stations in the event of a power outage. City Staff recommends the City Council approve a revision to the City's existing consultant contract with AE2S increasing the not-to-exceed contract fee to \$140,898 for services on the Lift Station 5 and 6 Replacement Project No. 16-2.

Mayor Meisinger stated they would be increasing \$49,000 to the consultant contract.

Clpn. Bellows asked if this already in the budget or is it being shifted.

City Engineer Beckwith stated that it was budgeted for.

Clpn. Vitelli wondered if the results show that the forcemain isn't big enough if we will need to replace it.

City Engineer Beckwith stated that we are placing an 8" forcemain next to the current 6" and it'll go from Delaware to Butler. It will be put behind the curb.

Clpn. Vitelli asked if it will be drilled in and City Engineer responded likely.

Clpn. Vitelli asked if they would leave the 6" in place and City Engineer Beckwith responded that for the interim they would.

Motion was made by Clpn. Vitelli and seconded by Clpn. Armon to approve a revision to the City's existing consultant contract with AE2S increasing the not-to-exceed contract fee to \$140,898 for services on the Lift Station 5 and 6 Replacement Project No. 16-2. All members present voted aye. Motion carried.

**C. Authorization to Prepare Plan and Specifications and Solicit Bids for Lift Station 5 & 6 Project 16-2**

City Engineer Beckwith stated we are ready for bids.

Clpn. Vitelli asked if the City anticipates sewer backups. City Manager Fulton stated that increasing the forcemain will address that issue.

Motion was made by Clpn. Armon and seconded by Clpn. Napier to authorize plan and specifications and soliciting of bids for the Lift Station 5 and 6 Replacement Project No. 16-2. All members present voted aye. Motion carried.

**D. Authorize Request for Legislative Language Changes Relating to 2014 \$2million State Bonding Appropriation for Robert Street Pedestrian Bridge**

City Manager Fulton explained that the 2014 Minnesota Legislature approved \$2,000,000 of bond proceeds to be appropriated to the City of West St. Paul as follows:

**West St. Paul – North Suburban Regional Trail Bridge \$2,000,000**

For a grant to the city of West St. Paul to predesign, design and construct a pedestrian bridge for the North Urban Regional Trail as an overpass of Robert Street in the area near Wentworth Avenue in West St. Paul. This appropriation may also be used to acquire property or purchase rights-of-way needed for bridge construction. A nonstate match is not required.

As the Council continues to consider whether we should build a tunnel or an overpass, this simply allows for the legislative language to be changed to accommodate that.

City Staff is requesting the Council to authorize Staff to work with our state legislators to propose and support the following legislative changes in order to maximize options for the use of the bonding appropriation:

1. Change “pedestrian bridge” to “separated crossing.”
2. Change the name of the Trail from North Urban Regional Trail to “River to River Greenway.”
3. Delete “as an overpass.”
4. Change “bridge construction” to “any separated grade.”

Clpn. Iago asked if the proposal says all three, bridge, tunnel and at grade. City Manager Fulton said it does have tunnel and at grade. Clpn. Iago asked if we are committed to anything. Clpn. Halverson stated that the proposal would be for a separated grade. Mayor Meisinger stated right now, the grant only allows for a bridge.

Clpn. Bellows has reservations about this project. He would not be in favor of making the change.

Clpn. Halverson is in favor of making the change so we have options. She said it is important to have safe crossing.

Clpn. Napier stated that we are not asking for money, just asking for a change in the language.

Clpn. Halverson stated that we can’t revisit if we don’t ask for the language change right now.

Clpn. Bellows stated that he does believe there is a session in 2017.

Motion was made by Clpn. Vitelli and seconded by Clpn. Halverson to authorize Staff to work with our state legislators to propose and support the legislative changes proposed as follows:

1. Change “pedestrian bridge” to “separated crossing.”
2. Change the name of the Trail from North Urban Regional Trail to “River to River Greenway.”
3. Delete “as an overpass.”
4. Change “bridge construction” to “any separated grade.”

Clpn. Armon, Clpn. Halverson, Clpn. Napier and Clpn. Vitelli voted aye. Clpn. Bellows and Clpn. Iago voted nay. Motion carried.

#### **E. Accept 2015 Annual Report on Shared Volunteer Program**

Asst. City Manager Sherrie Le presented the 2015 Shared Volunteer Program Annual Report. The cost in 2015 was roughly \$7,000, resulting in a positive value of \$38,000.

Asst. City Manager Sherrie Le thanked our volunteers. The volunteer dinner is on April 12, 2016 in the evening and invitations will be going out soon.

Clpn. Armon is glad we are discussing because it allows us to thank the volunteers and ask for more.

Clpn. Napier acknowledged the partnership with other communities and the success. This is something that needs to be out and exposed to the community.

Clpn. Halverson thought it was important to thank volunteers and asked that the Council be included in the volunteer dinner invitation.

Clpn. Bellows thanked the range of volunteers.

Clpn. Armon stated that a group that has significant contribution are cop carts.

Asst. City Manager Sherrie Le stated that the volunteer dinner will just be exclusively for the volunteers in West St. Paul.

Motion was made by Clpn. Napier and seconded by Clpn. Vitelli to accept the 2015 Shared Volunteer Program Annual Report. All members present voted aye. Motion carried.

**F. Access to Livingston – Arby’s, Office Buildings, Applebees, 5-8 Club and Rack Shack**

Mayor Meisinger provided a brief update from the Open Council Work Session Meeting. The City will be getting engineering on board to provide access and to make Lowe’s happy.

**13. Old Business**

**A. Final Reading – Rezoning of 1636 Delaware From C, Conservancy to R1-C, Single Family Residential – Thomas I. Dodge**

City Planner Ben Boike provided a brief update.

Staff recommends approval of the rezoning of 1636 Delaware Avenue From C, Conservancy to R1-C, Single Family Residential subject to the approval of the corresponding Plat application.

Staff recommends approval of the preliminary/final plat subject to the following conditions:

1. Approval is contingent upon approval of the corresponding rezoning application.
2. The plat shall be recorded at the County Recorder’s Office within 12 months of city approval.
3. Prior to recording, the applicant must apply for and obtain all required rental licenses for homes on the property that are being rented to non-family members.
4. The applicant shall prepare and record an access easement through Lots 2 and 3 benefitting Lot 4 as shown on the plat.
5. Parkland dedication fees will be required upon application of a building permit for any new home.
6. The plat shall adhere to the requests of Dakota County per the letter dated February 10, 2016.
7. If any of the lots are redeveloped in the future, water and sewer hook-ups to the City infrastructure will be required.

Motion was made by Clpn. Vitelli and seconded by Clpn. Halverson to approve Staff recommendations. All members present voted aye. Motion carried.

**B. Provisional Rental License Review – 212/232 Thompson Avenue**

City Planner Ben Boike provided a brief update. The rental licenses for 212/232 Thompson Avenue have been provisional since April 13, 2015. The Council last reviewed the status of the license on November 23, 2015, and at that time, Council opted to continue the provisional license for a four month period. During the four month period, there have been 0 police calls and 0 code compliance problems.

Staff is recommending that we continue the provisional license until the next license date which is November 2016 because the issues were in the summer months.

Clpn. Halverson agreed with the recommendations.

Motion was made by Clpn. Halverson and seconded by Clpn. Iago to continue the provisional rental license for 212 and 232 Thompson Avenue until the next license renewal. All members present voted aye. Motion carried.

**C. Provisional Rental License Review – 966/976 Robert St. (Blew Holdings, LLC)**

City Planner Ben Boike provided a brief update. There have been 6 valid police calls and 2 compliance letters issued. Staff is doing monthly walkthroughs and notice general uncleanliness, heating issues, issues with tenant behavior and issues with trespassing. A security system has been installed. All 29 rental units are licensed individually and all licenses must be looked at individually.

City Planner Boike reviewed the Mitigation Plan along with new recommendations by Staff. Staff is recommending an additional \$1,000 fee to cover the cost of the mitigation plan.

City Staff is recommending the Council adopt the Resolution amending the provisional license as noted and extending the provisional status for an additional 6 months.

Clpn. Armon asked in relation to the mitigation plan fee, if there was any prohibition where the tenant won't be assessed for that fee or disbursed among the renters.

- City Planner Boike said we could put a stipulation.
- City Attorney Land did not recommend that City put a provision on the fee as it would be interfering with the landlord/tenant relationship.

Clpn. Vitelli stated that he did receive a call that there was no heat in the building.

Mayor Meisinger asked if the building official went into any specific units to check the heat. City Planner Boike said they did.

The Owner (Eldon Marier) tried to explain that sometimes an air bubble gets into the system so it appears the heat is working. They do check the zone valves regularly and try to help the tenants as much as can. He is working with landlords to make improvements. In response to the police calls, he has gotten rid of two bad apples. He is trying to work with City to get better tenants. He would like to work with the City to try to address the parking issues.

Clpn. Armon asked how the mitigation plan fee will be handled and Mr. Marier responded that it would be the owner's cost.

Ron Woelfel owns Unit 101. He informed the Council that it was his unit that was broken into. His condo isn't improved. There were issues with the place being dirty. He doesn't think Blew Holdings should be allowed to renew their license because they have been given so many chances.

Mayor Meisinger stated Staff is recommending this will be a provisional license and we will re-evaluate

Alisha Jackson (976 Robert Sreet, #303). Ms. Jackson agrees with Mr. Woelfel and Mr. Marier should not be allowed to get his license. She has had heat one time. Microwave is broken. Ms. Jackson rents from Mr. Marier.

Clpn. Armon has observed some of the items that are being talked about. Grounds and litter should be picked up when you are under a microscope. He stated that he was at a loss of what to do.

Clpn. Halverson stated that if we can deny the license, she would move for that, but she didn't think they could.

Mayor Meisinger stated that they can't hold the applicant responsible for the common area trash because this is a condo. If Staff says we are making progress, then he would take their recommendation.

Clpn. Halverson stated that some issues are landlord/tenant issues that the City should not be involved in anyway.

Clpn. Armon asked would the common area, maintenance and upkeep, is that an Item O issue?

- City Planner Boike stated that it could be. The third party could handle but the intent was for landlord/tenant relationship.
- Clpn. Armon asked so it isn't.
- City Planner Boike said not directly.

Mayor Meisinger suggests that as it stands today we have no teeth against it, but if the Council would consider an ordinance in the future where a certain percentage of units are owned by one person (quasi-landlord) could be labeled to that individual, something we could look at to address something like this in the future, but right now we can't address it, as those with the same issues.

Clpn. Bellows stated that is sounds like right now we have tenant/landlord issues and the second issue of the service calls we've had from the City going to the condo. We would have to consider revocation of each unit because they are licensed individually. We should try to start monitoring calls on each unit to see if we can revoke per unit.

Clpn. Iago asked Mr. Marier if it was true that Ms. Jackson received an eviction notice because she called the police. Mr. Marier stated that Ms. Jackson received a notice because of unlicensed vehicles and her husband threatening tow company drivers.

Clpn. Iago asked Mr. Marier if he had Ms. Jackson sign a letter stating she wouldn't call the City because of a broken microwave. Mr. Marier said no and that he provided her with a countertop microwave.

Clpn. Iago asked if there was any way that Ms. Jackson was not receiving any heat. Mr. Marier stated there was an issue that him and the Building Official fixed so they now have heat.

Clpn. Iago pointed out to Mr. Marier that the same people that previously spoke on his behalf and now lodging complaints. He reminded Mr. Marier that if he found out that he was withholding heat, that he would go after him.

Mr. Marier stated that you can't withhold heat, that there was an air bubble in the line.

Clpn. Iago stated you are the owner of the individual condos and that you are only going to get 2 weeks from him to fix the problems and then the City is going to pull the licenses one by one.

Mr. Marier stated that he was sorry to hear that and that they are trying to improve everything they can to address the problems.

Mr. Vitelli asked how much is the association dues were. Mr. Marier stated the dues are determined by the size of the unit and are about \$400. Mr. Marier stated that some units are delinquent. They did have a management company until 6 months ago. Now his son, Frank is in charge of collection.

Clpn Vitelli asked about cleaning staff. Mr. Marier stated his wife vacuums the buildings and Frank and Mr. Marier patrol trash on the grounds.

Clpn. Vitelli asked how many units there were. Mr. Marier stated that there are 46 units. There is not enough to cover all the expenses. They have had a lot of repairs that they have had to spend money on.

Clpn. Vitelli asked what association fees cover. Mr. Marier stated they cover heat, snow removal, trash, etc.

Clpn. Halverson told Mr. Marier that she wished they could just deny this request to solve your problems. Clpn. Halverson asked what they could do to go after each unit. She understands that doesn't happen tonight and it takes time. Clpn. Halverson would like to be as strict as they can get and is committed to doing that.

Clpn. Bellows asked about the hot water heat system because he was trying to figure out where the air bubble would come from.

Mayor Meisinger asked Mr. Marier if he had a licensed contractor come in and bleed out the system. Mr. Marier stated that he did not the last time because the contractor showed him previously how to do it.

Ron Woelfel would like to address the crime problem. He lost his renter because he was afraid of the break-ins. He has not re-rented the condo out yet. There are issues with the keypad/key to get into building.

Gregory Jackson (976 Robert #303). Mr. Jackson informed the Council that Mr. Marier has towed his vehicle three times at \$400 a time. He has a permit to park there. His vehicle was towed because it was over the line. Other vehicles have not been towed when they have done this. He is very aggravated. He has not had heat other than he one time when the City came out.

Mayor Meisinger thanked Mr. Jackson for coming and taking the proper channels.

Alisha Jackson showed a picture of the letter that was signed stating she would not complain. Once she did complain and the City came, she received an eviction notice.

Mr. Vitelli stated that in looking at the situation, he is not sure how we are going to get out of it, other than one by one revoke the licenses.

Mr. Vitelli reviewed the profit/loss statement and stated that it is full of bogus numbers and the Association is never going to succeed. He would like to start revoking tonight. He stated that we need to do something, it's an ongoing blight.

Mayor Meisinger asked what the process was.

City Attorney Land stated that City has to provide 20 day's notice and City Staff would inspect the units. The Notice would be for revoking all of Mr. Marier's rental licenses.

City Attorney Land addressed the third party management issue and stated that it was the intention that management go to a third party so the book was out of Mr. Marier's hands.

Motion was made by Clpn. Vitelli and seconded by Clpn. Halverson to have a public hearing to revoke all 29 rental licenses.

Discussion:

Clpn. Iago asked to make a friendly amendment to extend for two weeks to have the City Staff do all possible inspections for the next two week.

Clpn. Halverson doesn't have anything against the two week extension but wondered if it be doubling up work and costing tax payers.

City Attorney Land stated there would be inspections to make sure all information is up to date for the revocation hearing.

Clpn. Iago withdrew his friendly amendment.

Clpn. Vitelli stated the evidence is that the association is non-existent based on the profit/loss statement.

Mayor Meisinger asked what's going to happen if we revoke and all the properties are now vacant, what are we left with.

Clpn. Halverson stated that at least we are left with something better.

Mayor Meisinger stated that we don't know the downside.

Clpn. Iago Ed – successful property owner; he knows how to get things done; something tells me that he will find a way to remedy this. As of the alance of this I don't think we have to concern ourselves.

Clpn. Armon stated that he is for strict action but is concerned about the consequences.

Mayor Meisinger stated we have 20 days to figure this out and would ask City Staff to figure out the downside.

Clpn. Bellows agreed with Mayor Meisinger in that this is a slippery slope, but if we don't do anything it'll just be a slow spiral into a bottomless pit. Clpn. Bellows stated that he will support the motion.

Clpn. Halverson told Mr. Jackson that we are trying to create a better City.

Ron Woelfel informed the Council that the Association used to have money but Mr. Marier used the money to buy property on Bernard Avenue.

All members present voted aye. Motion carried. The hearing will be set for April 11, 2016.

---

Robert Dusterhoeft approached the Council again about the Inflow/Infiltration issue.

Mayor Meisinger reminded Mr. Dusterhoeft that as mentioned numerous times, the Council is going to figure this out and tell the residents what to do. Mayor Meisinger stated that he should not do anything until that decision has been made and acknowledged that he is on record stating he received a notice.

---

#### **D. Approval of City Hall Architect Design Firm.**

City Manager Matt Fulton has received proposals and the most responsive proposal was submitted by Wold Architects Engineers for a price of \$16,875 and is requesting authorization to go forward.

Motion was made by Clpn. Halverson and seconded by Clpn. Napier to authorize City Staff to go forward.

Clpn. Bellows stated that he will not vote for it because the Council received it at 4:30 p.m. and he did not get a chance to review it.

Mayor Meisinger stated that in the defense of Staff, he asked them to include the low bid on Friday, but it was missed.

Clpn. Iago asked what happens if it's delayed. Mayor Meisinger stated then we would wait two weeks; however, buildings are already being torn apart.

Clpn. Napier personally believes this is a Staff deal and supports them.

Clpn. Napier, Clpn. Vitelli, Clpn. Armon, Clpn. Halverson and Clpn. Iago voted aye and Clpn. Bellows voted nay. Motion passed.

#### **14. Adjourn**

Motion was made by Clpn. Halverson and seconded by Clpn. Napier to adjourn the meeting at 9:45 p.m. All members present voted aye. Motion carried.

David Meisinger  
Mayor  
City of West St. Paul

**City of West St, Paul**  
**Open Council Work Session (OCWS)**  
**March 14, 2016**

**1. Roll Call**

Mayor Meisinger called the work session to order at 5:00 p.m.

Present: Mayor David Meisinger and Councilmembers Pat Armon, John Bellows, Jenny Halverson, Ed Iago, Dave Napier and Dick Vitelli.

Others: City Manager Matt Fulton, Assistant City Manager and HR Director Sherrie Le, Finance Director Joan Carlson, Police Chief Manila Shaver, South Metro Fire Dept Chief Mike Pott, PW and Parks and Rec Director/City Engineer Ross Beckwith, Civil Engineer Darin Rezac, Community Development Director Jim Hartshorn, City Planner Ben Boike, City Attorney Korine Land and Recording Secretary Cindy Holzmer.

**2. Approve OCWS Agenda**

The open council work session agenda was approved as presented.

**3. Regular The Regular Meeting Consent Agenda**

Council approved the consent agenda items:

- Pulling Consent Item I off and adding it as New Business Item E (Accept 2015 Annual Report on Shared Volunteer Program).
- Adding Access to Livingston – Arby's, Office Buildings, Applebees, 5-8 Club and Rack Shack to new Business.
- Adding Approval of City Hall Architect to the end of the agenda as Old Business Item D.

**4. Agenda Items**

**4A. Discussion Regarding 1010 Dodd**

In the Fall the Council had previously discussed possible uses for the site. Mayor Meisinger previously suggested a park area and green space. As an update, West St. Paul Royalty contacted Mayor Meisinger and the money they raise this year is going to be allocated to Officer Scott Patrick's widow and she can direct it where she wants to and she wants to direct it to the City of West St. Paul. Unsure of how much money is going to be donated to the City. Mrs. Patrick would like some sort of memorial where Officer Patrick was murdered.

Mayor Meisinger stated that we need to move forward at this point.

Comments:

- Clpn. Halverson is for putting a memorial there. She doesn't think it's the best place for a park and would like to see the Council maximize and purchase more properties behind there and develop that corner.
- Clpn. Bellows agrees for memorial but not for a park because too small.
- Mayor Meisinger stated there is not much green there and would like to see a welcome to WSP. He could live without a playground being there. Not in favor of redevelopment.
- Clpn. Bellows stated if it's a green space that doesn't preclude for redevelopment. The first thing we do is put up no parking signs on the property.
- Clpn. Halverson stated that parking is right across the street and is worried about kids running across the street.
- City Manager Matt Fulton submitted application for \$15,000 to the CDA. Have not received a response yet.
- Exec. Dir. Hartshorn said the concrete is being removed in April.
- Clpn. Vitelli is against memorial, green space.
- Mayor Meisinger asked to have City Staff tell us how much is buildable space on this piece of property.
- Clpn. Halverson agrees with not having a memorial because she doesn't want to be remembered for where she died. She suggested possibly naming a park after Officer Patrick.

Mayor Meisinger asked if the City should accept the offer for the funds to do some kind of memorial. Clpn. Bellows stated as long as Mrs. Patrick understands it may not be in the area where Officer Patrick was murdered.

Mayor Meisinger asked City Staff to get the Council the buildable information.

#### **4B. Access to Livingston – Arby's, Office Buildings, Applebees, 5-8 Club and Rack Shack**

Looking at options to give access to businesses that don't have side or back entrances.

Arby's will be covering their own expenses for obtaining a permanent access and has submitted a couple of proposals.

- Clpn. Bellows asked if the City would lose any space in the parking lot.
  - The City would not lose any spaces.
- City Manager Matt Fulton stated the City anticipated that there would be a connection when the dome was built. This is a permanent easement across the lot and not a temporary.
- City Attorney Land said she was not sure that an easement would be needed because it is public parking lot and already a driveway.

The cost to temporarily fix Applebees' access would be divided in thirds between Applebees, the City and 5-8 Club. Applebees would be willing if this was permanent. Lowe's is not for that, unless we cover the area. City Staff is asking to contract with TKDA and needs approval for a drawing for Lowe's (\$6,200). Exec. Dir. Hartshorn would negotiate as a third each.

- Clpn. Bellows would like to see this as a permanent easement.
- Mayor Meisinger asked if we could ask TKDA to draw as temporary and permanent.
- Clpn. Iago stated that at one time we were talking about drawing an exit behind Ideal Credit Union and Sonic.
  - Exec. Dir. Hartshorn stated that is still on the table.
- Clpn. Iago. asked what is Rack Shack going to do for a rear exit.
  - Exec. Dir. Hartshorn said that is part of this. They are going through the Guild and are okay with this on a temporary basis.

City Manager Fulton stated that we need to realign because the road is going to be closed in the next couple of weeks.

Would it ever be acceptable to do a gravel road if it's only temporary to try to save money?

Mayor Meisinger stated that we need a survey.

Clpn. Bellows stated that need to make sure Guild, Inc. will be satisfied with gravel.

Council is okay with getting engineering on board to make Lowe's happy. This will be on tonight's Council Meeting Agenda.

#### **4C. Inflow/Infiltration Discussion with Met Council Representatives**

Discussion was lead by Jeannine Clancy and Kyle Colvin from MetCouncil. Rich Kramer also appeared as he is the Met Council Representative for City and Kirby Van Note from SEH.

General discussion of Inflow/Infiltration (I/I). The Council has approved the City to hire an I/I liaison, whose job is to go into the home and assess to make sure the SEH is working as efficiently as possible. Letters have been sent to property owners to request they not excavate the road so. Intent of this time was to provide the Council time to ask questions.

Comments:

- Clpn. Napier asked if there was any way to evaluate a home to show success?
  - Ms. Clancy stated not right now, the study was done by neighborhood.
- Clpn. Vitelli stated you do have the data, just need to dig out and evaluate. He believes the excess is coming from sump pumps.
- Clpn. Bellows asked who did the planning originally with what the capacity is of what clean water collection system can go in? What studies as to the amount of inflow you have because of sump pumps, beaver drains and other clean water gathering systems that end up going into the sanitary system? If it is in fact infiltration where roots are getting into the system, do you have some type of measure?
  - Mr. Colvin stated the original design was based on some allowable clean water.
- Clean water act – separate the two sewer systems.
- Clpn. Bellows asked what efforts has Met Council done to address huge flows of water coming through because of rainfalls.
- Ms. Clancy stated that how to use an I/I is up to the City. System varies by community.

- City Manager Fulton stated they are not finding many sump pumps. One of the solution is to redirect the drains into a sump pump so the water can be pushed out.
- Sump pumps are being identified as part of the I/I inspection.
- Pat stated that the 2008/2009 grant money is gone and wondered if the legislative had any ask for any more?
  - Ms. Clancy stated they have bond money and clean water legacy fund.
  - Task force is to look at whether it is appropriate to have a long term funding.
  - Regional issue.
  - There might be a chance for grant money.
- Clpn. Vitelli stated that during super storms, Pigseye did not discharge into the storm sewer.
  - Why is the penalty stretched over a long period of time?
  - Doesn't think the approach to this thing is correct.
  - As building new homes, there shouldn't be any I/I.
  - Doesn't believe its coming from little cracks in the pipe.
- Clpn. Iago stated that senior citizens have been receiving scams because of this project and is concerned about all the advertisement. He has also received mixed reviews from SEH.
- Clpn. Halverson stated this is a sump pump issue and agrees with Clpn. Vitelli that this is a larger issue than we are saying it is. The major problem is that this is being put back on older homes so we can handle the new construction that is occurring.
- Mayor Meisinger stated we can handle the new sewage demand, can't handle the water on top of it.
- Clpn. Halverson asked that we suspend the project after it started because SEH was having problems inspecting homes. Is the third task force still operating? Are there points that they are assigned to address.
  - Ms. Clancy stated they were assigned to look at the private property issues and I/I mitigation properties.
- Clpn. Halverson would like to see they suspend the project.
- Mayor Meisinger stated that Met Council said we have until 2020 to get the system back up.
- Clpn. Napier suggests we stage this and go and do the floor drains and not do the laterals because we have until 2020.
- Ms. Clancy stated that each community has to define a program, investigate and understand what West St. Paul's challenges are and fix it.
- Clpn. Bellows stated that Met Council is telling us there is a problem and telling us to fix it, but not giving us information on how to fix it. There should be some kind of information available to us.
- Mayor Meisinger agrees with Clpn. Bellows.
- Clpn. Bellows would like additional information as to how other communities have handled similar issues.
- Civil Engineer Rezac showed a brief video showing a leak in the joint. There was surface flooding above the pipe. SEH would produce a video of the pipe.

Resident Comments:

- Resident would like to find out what the basis for the excess water is? SEH monitors are in and are calibrated weekly.
- Resident said it's a tragedy to have pipes replaced if its truly sump pumps causing the problems. It would be helpful to know where 90% of the problem is coming from so we fix that issue instead of spending money somewhere else.
- Resident stated the City needs to make a decision as to what the problem is, is it roots or what is the problem?
- Resident asked if we paid the 2.7 million and it did nothing, would we have to repay.
- Resident asked what happens in 2020.
  - MetCouncil continues to monitor. If they exceed, they tell the Cities.

Council Comments continued:

- Clpn. Halverson stated that we invest 2.7 million into infrastructure and then you have to continue to invest to solve the problem.
- Ms. Clancy stated that there are issues with local collection system and we want to make sure you don't have backups into basements.
- Mr. Colvin stated that 2.7 million is the best estimate.
- Mayor Meisinger asked what if we don't do anything from here on out, what is Met Council going to do to us?
- Clpn. Napier stated 15 homes flooded in 2015.
- Clpn. Iago asked if Met Council had any information as to when the readings were taken originally compared to 2014/2015.
  - Mr. Colving stated that they don't have anything today but they do have a regional analysis.

Resident – will we have an extension on the 180 days notice to repair?

Mayor Meisinger stated they will because the Council is going a different direction.

## 5. Adjourn

The Open Council Work Session adjourned at 6:22 p.m.

David Meisinger  
Mayor  
City of West St. Paul

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** List of Claims

---



City of West St. Paul

**BACKGROUND INFORMATION:**

Invoices to be paid

**FISCAL IMPACT:**

\$1,093,879.56

**STAFF RECOMMENDATION:**

Approve payment of attached

**CITY OF WEST ST PAUL**

Summary of List of Claims  
Council Meeting of March 28, 2016

**PAYROLL CHECK REGISTER:**

Payroll Period	2/29/16 - 3/13/16	
Date Paid	3/118/16	\$136,825.49
Direct Deposit		

Payroll Period	
Date Paid	
Direct Deposit	

**TOTAL NET PAYROLL**

**\$136,825.49**

**DISBURSEMENT CHECK REGISTER:**

Checks	121319 - 121438	\$740,354.79
EFTS	777- 791, 6504	\$216,699.28

**TOTAL DISBURSEMENT CHECKS**

**\$957,054.07**

**TOTAL PAYROLL, DISBURSEMENTS, ACH AND WIRE TRANSFERS**

**\$1,093,879.56**

# Payment Register

From Payment Date: 3/22/2016 - To Payment Date: 3/28/2016

Number	Date	Payee Name	Transaction Amount
AP - Accounts Payable			
<u>Check</u>			
121319	03/22/2016	CAPITOLCOMM	\$992.80
121320	03/22/2016	HENNEPIN COUNTY WARRANTS	\$156.00
121321	03/22/2016	MENARDS	\$1,281.36
121322	03/28/2016	FIDELITY SECURITY LIFE	\$124.04
121323	03/28/2016	SWISZCZ/CAROLYN	\$3.00
121324	03/28/2016	A-1 HYDRAULIC SALES & SERVICE	\$180.46
121325	03/28/2016	ABRAMS & SCHMIDT ATTORNEYS	\$45.00
121326	03/28/2016	ADVANCED ENGINEERING &	\$7,557.30
121327	03/28/2016	ADVANTAGE SIGNS & GRAPHICS	\$59.80
121328	03/28/2016	B T DESIGN	\$100.00
121329	03/28/2016	BCA CJTE	\$630.00
121330	03/28/2016	BEACON ATHLETICS	\$220.40
121331	03/28/2016	BENJAMIN FRANKLIN PLUMBING	\$12,461.00
121332	03/28/2016	BOLTON & MENK INC	\$58,812.00
121333	03/28/2016	BRYAN ROCK PRODUCTS INC	\$193.75
121334	03/28/2016	CAPITOL BEVERAGE SALES	\$145.80
121335	03/28/2016	CAPRA'S UTILITIES	\$6,275.00
121336	03/28/2016	CARBONES PIZZA	\$71.77
121337	03/28/2016	CARL BOLANDER & SONS	\$24,909.00
121338	03/28/2016	CARLTON COUNTY WARRANTS	\$300.00
121339	03/28/2016	CENTURYLINK	\$596.29
121340	03/28/2016	CHIRHART , DENNIS	\$2,391.00
121341	03/28/2016	CHLIC-BLOOMFIELD EASC	\$2,556.94
121342	03/28/2016	COCA-COLA BOTTLING CO	\$323.43
121343	03/28/2016	COMCAST	\$490.63
121344	03/28/2016	COORDINATED BUSINESS SYSTEMS	\$123.75
121345	03/28/2016	CORVAL CONSTRUCTORS, INC	\$770.00
121346	03/28/2016	CUB FOODS	\$39.35
121347	03/28/2016	CUMMINS NPOWER,LLC	\$335.00
121348	03/28/2016	CUNINGHAM GROUP	\$6,212.50
121349	03/28/2016	DAKOTA COMMUNICATIONS	\$55,602.00
121350	03/28/2016	DAKOTA COUNTY FINANCIAL SERV	\$2,659.62
121351	03/28/2016	DAKOTA COUNTY PROPERTY	\$10,700.54
121352	03/28/2016	DORIOTT, CHANTAL	\$182.74
121353	03/28/2016	EAGAN SOCCER	\$562.40
121354	03/28/2016	EASTWOOD, JOHN	\$70.00
121355	03/28/2016	EDUCATION & TRAINING SERVICES	\$499.00
121356	03/28/2016	EHLERS & ASSOCIATES	\$1,150.00
121357	03/28/2016	EILEN & SONS TRUCKING INC	\$100.00
121358	03/28/2016	EMERGENCY AUTOMOTIVE TECH	\$2,027.44
121359	03/28/2016	ENTIRA FAMILY CLINICS WSP	\$132.00
121360	03/28/2016	EUREKA CONSTRUCTION	\$83,576.08
121361	03/28/2016	FASTSIGNS	\$454.00
121362	03/28/2016	FIRST-SHRED	\$111.80
121363	03/28/2016	FIRSTLAB	\$44.75
121364	03/28/2016	FIT TEST	\$637.00
121365	03/28/2016	GERRY'S FIRE & SAFETY INC	\$69.50
121366	03/28/2016	GRAINGER INC	\$321.36
121367	03/28/2016	H & L MESABI INC	\$187.10
121368	03/28/2016	HIDEAWAY SHOOTING RANGE	\$416.96

# Payment Register

From Payment Date: 3/22/2016 - To Payment Date: 3/28/2016

121369	03/28/2016	HORNUNG'S	\$323.36
121370	03/28/2016	INTERNATIONAL CODE COUNCIL	\$7.00
121371	03/28/2016	JIM MURR PLUMBING	\$1,995.40
121372	03/28/2016	JJ TAYLOR DIST. OF MN	\$96.60
121373	03/28/2016	KANGE, COLLIN	\$70.00
121374	03/28/2016	KEEPRS, INC	\$847.30
121375	03/28/2016	KENNEDY & GRAVEN	\$16,680.50
121376	03/28/2016	KISS'S COLLISION CENTER	\$1,044.81
121377	03/28/2016	LANGUAGE LINE SERVICES	\$54.88
121378	03/28/2016	LAWSON PRODUCTS INC	\$730.19
121379	03/28/2016	LEVANDER, GILLEN & MILLER	\$47,741.47
121380	03/28/2016	LMCIT	\$5,842.33
121381	03/28/2016	LOGIS	\$493.55
121382	03/28/2016	LOWER MISSISSIPPI RIVER WMO	\$9,528.52
121383	03/28/2016	LS BLACK CONSTRUCTORS	\$11,575.90
121384	03/28/2016	M P C A	\$23.00
121385	03/28/2016	M R P A	\$100.00
121386	03/28/2016	M T I DISTRIBUTING	\$45,618.25
121387	03/28/2016	M-R SIGN CO., INC	\$186.65
121388	03/28/2016	MADDEN GALANTER HANSEN, LLP	\$270.00
121389	03/28/2016	MARCO, INC	\$425.54
121390	03/28/2016	MENARDS	\$1,225.26
121391	03/28/2016	METROPOLITAN COUNCIL	\$138,214.18
121392	03/28/2016	MIDWAY FORD	\$150.00
121393	03/28/2016	MISTER CAR PARTNERS	\$109.76
121394	03/28/2016	MN CHIEFS OF POLICE ASSOCIATIO	\$109.90
121395	03/28/2016	MN DEPT OF HEALTH	\$85.00
121396	03/28/2016	MN GLOVE	\$922.59
121397	03/28/2016	MN OCCUPATIONAL HEALTH	\$1,802.00
121398	03/28/2016	NATURE CALLS	\$452.00
121399	03/28/2016	NEOPOST GREAT PLAINS	\$63.00
121400	03/28/2016	NORTHERN TOOL & EQUIPMENT	\$296.89
121401	03/28/2016	NYSTROM PUBLISHING CO INC	\$3,402.24
121402	03/28/2016	O'REILLY AUTOMOTIVE, INC	\$344.32
121403	03/28/2016	OFFICE DEPOT	\$91.59
121404	03/28/2016	PETCO ANIMAL SUPPLIES	\$179.97
121405	03/28/2016	PIONEER PRESS SUBSCRIPTION	\$408.72
121406	03/28/2016	POSTMASTER	\$10,000.00
121407	03/28/2016	PUBLIC AGENCY TRAINING COUNCIL	\$295.00
121408	03/28/2016	R & R SPECIALTIES	\$123.00
121409	03/28/2016	RAWLINGS, AUDRA	\$45.00
121410	03/28/2016	REGENCY OFFICE PRODUCTS	\$33.68
121411	03/28/2016	RICOH AMERICAS CORPORATION	\$195.88
121412	03/28/2016	SAC WIRELESS LLC	\$1,902.32
121413	03/28/2016	SAM'S CLUB DIRECT	\$272.36
121414	03/28/2016	SELECTACCOUNT	\$141.37
121415	03/28/2016	SENTRY SYSTEMS INC	\$100.20
121416	03/28/2016	SFDMG	\$6,693.61
121417	03/28/2016	SPRINGSTED, INC	\$5,200.00
121418	03/28/2016	SPRWS	\$1,190.01
121419	03/28/2016	SRF CONSULTING GROUP INC	\$30,362.79
121420	03/28/2016	ST PAUL/CITY OF	\$5,251.73
121421	03/28/2016	STANDARD WATER CONTROL	\$4,500.00
121422	03/28/2016	STAPLES BUSINESS ADVANTAGE	\$78.46

# Payment Register

From Payment Date: 3/22/2016 - To Payment Date: 3/28/2016

121423	03/28/2016	STEPP MANUFACTURING CO. INC	\$66.25
121424	03/28/2016	STREICHER'S	\$625.99
121425	03/28/2016	T - MOBILE	\$1,303.00
121426	03/28/2016	T MOBILE USA	\$2,478.59
121427	03/28/2016	THE TITLE GROUP	\$3,416.86
121428	03/28/2016	TRI STATE BOBCAT INC	\$45,800.00
121429	03/28/2016	TROJE'S TRASH PICK-UP SERVICE	\$628.00
121430	03/28/2016	TWINS BALLPARK, LLC	\$1,010.00
121431	03/28/2016	UNIFORMS UNLIMITED	\$1,750.44
121432	03/28/2016	UNITED BROADCASTING	\$1,015.32
121433	03/28/2016	VIKING INDUSTRIAL CENTER	\$67.09
121434	03/28/2016	WALMSLEY, GRACE	\$86.40
121435	03/28/2016	WEISS-HOLZBAUER, EDI	\$975.00
121436	03/28/2016	XCEL ENERGY	\$33,197.54
121437	03/28/2016	ZACK'S INC	\$31.50
121438	03/28/2016	ZAYO ENTERPRISE NETWORKS	\$2,143.07
Type Check Totals:			<u>\$740,354.79</u>

## EFT

777	03/22/2016	ANCHOR BANK OF W. ST PAUL	\$45,457.73
778	03/22/2016	I C M A	\$150.00
779	03/22/2016	I C M A RETIREMENT TRUST-457	\$7,761.82
780	03/22/2016	MII LIFE --- VEBA	\$3,041.15
781	03/22/2016	MN DEPARTMENT OF REVENUE	\$9,437.04
782	03/22/2016	MSRS - 457	\$1,665.00
783	03/22/2016	MSRS HCSP	\$2,143.81
784	03/22/2016	PUBLIC EMPLOYEES RETIRMNT	\$42,645.25
785	03/22/2016	PUBLIC EMPLOYEES RETIRMNT	\$372.16
786	03/22/2016	MII LIFE --- VEBA	\$1,452.69
787	03/22/2016	SW/WC SERVICE COOPERATIVE	\$91,693.50
788	03/22/2016	SELECTACCOUNT	\$13.54
789	03/22/2016	SELECTACCOUNT	\$131.79
6504	03/22/2016	HIGHER STANDARDS INC	\$1,331.92
790	03/28/2016	SELECTACCOUNT	\$322.73
791	03/28/2016	US BANK CARDMEMBER SERVICES	\$9,079.15
Type EFT Totals:			<u>\$216,699.28</u>

## EFT

\$957,054.07

# CREDIT CARD PURCHASES 1/14/16-2/10/16

Transaction date	Card holder name	Expense Type	Vendor	Amount
01/15/16	Carlson, Joan	Shipping chgs mic line mixer	Electrocin Enter	\$36.97
01/22/16	Carlson, Joan	Membership	Survey Monkey	\$24.00
02/08/16	Carlson, Joan	Membership	MN Society of CPA	\$280.00
02/08/16	Carlson, Joan	Membership	MNGFOA	\$60.00
02/08/16	Carlson, Joan	Membership	MNGFOA	\$60.00
01/13/16	Hartshorn, James D	Business Mtg	TOKYO 23	\$23.01
01/15/16	Hartshorn, James D	Parking - Other	Lawson Ramp	\$12.00
01/20/16	Hartshorn, James D	Conference / Summit	EDA of MN	\$280.00
01/21/16	Hartshorn, James D	Books	MN Bookstore	\$120.54
01/27/16	Hartshorn, James D	Business Mtg	5-8 Grill & Tap	\$13.78
02/04/16	Hartshorn, James D	Books	ICMA	\$59.80
02/05/16	Hartshorn, James D	Business Mtg	Teresa's Mexican	\$11.64
02/08/16	Hartshorn, James D	supplies	Menards	\$11.77
02/10/16	Hartshorn, James D	Conference / Summit	International Code Council	\$545.00
01/21/16	Swenke, Matthew	Business Mtg	Jimmy John's	\$320.30
02/02/16	Swenke, Matthew	searches	TransUnions	\$42.00
02/09/16	Swenke, Matthew	Supplies K-9	Royal Canin	\$48.99
01/19/16	Sturgeon, Brian W	supplies	Quality Tools	\$148.99
01/19/16	Sturgeon, Brian W	Business Mtg	DeGidio's	\$713.55
01/22/16	Sturgeon, Brian W	Supplies K-9	Tractor Supply	\$147.95
01/25/16	Sturgeon, Brian W	Repairs	Ahlmans Guns	\$67.95
01/14/16	Schletty, Dave	supplies	Kwikgoal	\$473.00
01/26/16	Schletty, Dave	Supplies - parks & rec program	CSC Wholesale costume	\$160.72
01/26/16	Schletty, Dave	Supplies - parks & rec program	S&S Worldwide	\$69.98
01/12/16	Schneider, Duane F	supplies	PetroChoice	\$154.02
01/15/16	Schneider, Duane F	supplies	PayPal Gifts2you	\$49.81
01/21/16	Schneider, Duane F	supplies	National Safety Council	\$234.40
01/28/16	Schneider, Duane F	supplies	Foresstershop	\$89.43
01/28/16	Schneider, Duane F	supplies	Zoro	\$486.78
01/29/16	Schneider, Duane F	supplies	Global Industrial	\$207.94
01/29/16	Schneider, Duane F	supplies	Global Industrial	\$14.82
02/05/16	Schneider, Duane F	supplies	PayPal Littlebee	\$60.00
02/01/16	Doriott, Chantal M	supplies	Cub Foods	\$42.09
01/21/16	Shaver, Manila	supplies	Mn County Attorneys Assn	\$72.00
01/24/16	Shaver, Manila	Supplies K-9	Menards	(\$124.35)
01/24/16	Shaver, Manila	Supplies K-9	Menards	(\$160.33)
01/23/16	Shaver, Manila	Supplies K-9	Menards	\$114.97
01/23/16	Shaver, Manila	Supplies K-9	Menards	\$17.83
01/23/16	Shaver, Manila	Supplies K-9	Menards	\$275.88
01/24/16	Shaver, Manila	Supplies K-9	Menards	\$252.28
01/24/16	Shaver, Manila	Supplies K-9	Menards	\$24.78
01/26/16	Shaver, Manila	Business Mtg	Joseph's Grill	\$779.50
02/04/16	Shaver, Manila	Supplies K-9	Mills Fleet Farm	\$173.87
02/05/16	Shaver, Manila	Business Mtg	Dollartree	\$35.00
02/05/16	Shaver, Manila	Business Mtg	Dollartree	\$2.49
02/05/16	Shaver, Manila	supplies	Party City	\$25.96
02/08/16	Shaver, Manila	supplies	Walmart	\$64.00
02/08/16	Shaver, Manila	supplies	Lowe's	\$60.44
02/08/16	Shaver, Manila	supplies	Walmart/Lowe's/Party tax	\$10.72
02/08/16	Shaver, Manila	supplies	Office Depot	\$5.98
02/08/16	Shaver, Manila	supplies	Office Depot	\$0.43

Transaction date	Card holder name	Expense Type	Vendor	Amount
02/08/16	Shaver, Manila	supplies	Dollartree	\$12.00
02/08/16	Shaver, Manila	supplies	Dollartree	\$0.86
01/13/16	Le, Sheryl L	Membership	MN Assoc of Volunteer	\$72.00
01/24/16	Le, Sheryl L	On-line sys tracking/coord volunteers	Volgistics	\$31.00
01/31/16	Le, Sheryl L	Facebook ads	Facebook, Inc	\$38.19
01/29/16	Le, Sheryl L	supplies	South Suburban Rental	\$133.00
02/02/16	Le, Sheryl L	Conference / Summit	American Mgmt Assn	\$159.62
01/29/16	Gade, Marc	supplies	Menards	(\$38.54)
01/14/16	Gade, Marc	supplies	Amazon	\$37.45
01/20/16	Gade, Marc	supplies	Amazon	\$56.33
01/24/16	Gade, Marc	supplies	Amazon	\$19.90
01/24/16	Gade, Marc	supplies	Amazon	\$8.98
01/24/16	Gade, Marc	supplies	Amazon	\$25.61
01/22/16	Gade, Marc	supplies	Amazon	\$32.99
01/22/16	Gade, Marc	supplies	Amazon	\$19.98
01/23/16	Gade, Marc	supplies	Amazon	\$185.39
01/28/16	Gade, Marc	supplies	Amazon	\$44.96
01/28/16	Gade, Marc	supplies	Amazon	\$31.97
01/29/16	Gade, Marc	supplies	Menards	\$38.54
01/29/16	Gade, Marc	supplies	Lowe's	\$27.79
02/02/16	Gade, Marc	supplies	PayPal Ebay Sale	\$83.76
02/03/16	Gade, Marc	supplies	Amazon	\$9.59
02/03/16	Gade, Marc	supplies	Amazon	\$20.93
02/04/16	Gade, Marc	supplies	Walmart	\$127.32
02/04/16	Gade, Marc	supplies	Walmart	\$9.07
02/04/16	Gade, Marc	supplies	Amazon	\$180.00
02/04/16	Gade, Marc	supplies	Amazon	\$159.68
02/06/16	Gade, Marc	Conference / Summit	Eventbrite	\$34.62
02/07/16	Gade, Marc	supplies	Amazon	\$33.40
02/07/16	Gade, Marc	supplies	Amazon	\$20.10
02/07/16	Gade, Marc	supplies	Amazon	\$144.98
02/07/16	Gade, Marc	supplies	Amazon	\$7.52
02/07/16	Gade, Marc	supplies	Amazon	\$39.07
02/05/16	Gade, Marc	supplies	PayPal Kidzlove	\$54.26
01/19/16	Fulton, Matthew S	supplies	Cub Foods	\$20.97
01/19/16	Fulton, Matthew S	supplies	Target	\$11.98
01/29/16	Fulton, Matthew S	Parking	Courtyard by marriott	\$4.50
01/28/16	Sanders, Mike	supplies	American Step Company	\$356.08
02/05/16	Sanders, Mike	supplies	PayPal Camartineau	\$34.95
02/03/16	Beckwith, Ross	supplies	Lowe's	\$56.88
02/03/16	Beckwith, Ross	supplies	Lowe's	\$4.05
02/04/16	Beckwith, Ross	supplies	Home Depot	\$23.09
02/04/16	Beckwith, Ross	supplies	Home Depot	\$1.65
				\$9,079.15

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** February 2016 Bank Reconciliation

---



City of West St. Paul

**BACKGROUND INFORMATION:**

Attached is the summary bank reconciliation for February 2016.

**FISCAL IMPACT:**

There is no fiscal impact.

		Amount
Fund:		
Department:		
Account:		

**STAFF RECOMMENDATION:**

Approve the February 2016 bank reconciliation.

**CITY OF WEST ST. PAUL  
BANK RECONCILIATION  
February 29, 2016**

**ANCHOR BANK BALANCE:**

Ending Balance - Checking Account	\$	1,518,670.56
Deposits in Transit		22,275.71
Outstanding Disbursements & Checks		(1,130,672.66)
Voided Check		
Petty Cash		2,600.00
<b>RECONCILED BALANCE</b>	<b>\$</b>	<b>412,873.61</b>

**CITY TREASURER'S BALANCE:**

Previous Month's Reconciled Balance		(10,721.50)
Daily Receipts Posted		1,582,609.13
Disbursement Checks Issued		(2,674,831.58)
Payroll Checks and Direct Deposits		(284,186.46)
Cash Journal Entries (net)		1,800,004.00
Adjustments:		
Reverse Prior Months Adj.		427.15
Adjustment		(427.13)
<b>RECONCILED BALANCE</b>	<b>\$</b>	<b>412,873.61</b>

**CASH ACCOUNT BALANCE:**

	\$	413,300.74
Adjustments:		
		(427.13)
<b>RECONCILED BALANCE</b>	<b>\$</b>	<b>412,873.61</b>

## CITY OF WEST ST. PAUL

02/29/16

FUND NUMBER AND NAME		CURRENT MONTH'S ACTIVITIES		
		BEGINNING BAL	NET REV / (EXP)	ENDING BAL
101	General Fund	8,913,026.17	(699,203.41)	8,213,822.76
209	Economic Development Authority	377,021.16	(5,025.07)	371,996.09
212	Insurance Fund	672,453.44	(84,367.41)	588,086.03
213	Innovation Fund	68,131.07	-	68,131.07
323	2006 GO Bonds	152,743.11	-	152,743.11
324	2008 GO Bonds	(7,139.14)	18.16	(7,120.98)
325	2009 GO Refunding Bonds	626,481.57	-	626,481.57
327	2008 Capital Note	558,674.37	-	558,674.37
328	2009 Capital Note	711,117.66	402.40	711,520.06
329	2012 GO Bonds	400,638.55	6,793.74	407,432.29
330	2013 GO Bonds	13,214.92	-	13,214.92
331	2014A GO Bonds	18,045.12	-	18,045.12
332	2014B GO Bonds	142,711.13	-	142,711.13
333	2015A Refunding Bonds	(286,466.67)	-	(286,466.67)
334	2015B Go Refunding Bonds	3,541.89	-	3,541.89
335	2015C Go Tax Increment Refunding	4,202.40	-	4,202.40
375	2005 G O TIF Bonds	170,750.44	(250,000.00)	(79,249.56)
401	Vehicle and Equipment Reserve	2,283,646.72	(6,200.92)	2,277,445.80
402	M S A Streets Fund	(111,077.68)	(193,270.99)	(304,348.67)
403	Street Maintenance Fund	527,448.96	43,135.25	570,584.21
409	Police and Fire PERA	233,827.82	-	233,827.82
411	Technology Replacement Fund	340,190.65	(22,519.46)	317,671.19
413	Parks Improvement Fund	180,024.84	(244,785.00)	(64,760.16)
415	Govt Facilities Cap Proj	703,094.58	(666.20)	702,428.38
420	Public Works Facility	-	-	-
450	TIF 1-1	1,218,177.30	(1,756.23)	1,216,421.07
451	TIF 1-2	257,193.24	(1,896.69)	255,296.55
452	TIF 1-3	47,620.09	(46,653.00)	967.09
453	Lowes TIF	92,291.46	(1,732.50)	90,558.96
551	Perm. Improv. Revolving Fund	(8,653,362.68)	(152,786.14)	(8,806,148.82)
600	Storm Sewer Utility	1,239,545.40	69,277.02	1,308,822.42
602	Public Utilities (Sewer) Fund	191,472.51	172,000.09	363,472.60
613	Golf Course Enterprise Fund	(18,296.69)	(1,608.72)	(19,905.41)
615	Civic Arena Enterprise Fund	241,666.14	(33,655.03)	208,011.11
616	Swimming Pool Enterprise Fund	(32,032.41)	(1,335.24)	(33,367.65)
617	Regional Athletic Center Fund	721,408.81	79,857.59	801,266.40
705	Investment Fund	(12,012,707.75)	1,800,000.00	(10,212,707.75)
<b>CASH TOTAL ALL FUNDS</b>		<b>(10,721.50)</b>	<b>424,022.24</b>	<b>413,300.74</b>

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** February 2016 Investment Report

---



City of West St. Paul

**BACKGROUND INFORMATION:**

Attached is the Investment Report for February 2016.

**FISCAL IMPACT:**

There is no fiscal impact.

		Amount
Fund:		
Department:		
Account:		

**STAFF RECOMMENDATION:**

Approve the February 2016 Investment Report.



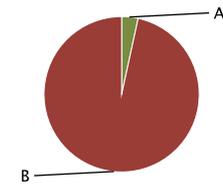
# Portfolio holdings

as of March 14, 2016

## Summary of Portfolio Holdings

	Cost basis (\$)	Value on 03/14/2016 (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of portfolio
<b>A Cash</b>	<b>334,149.31</b>	<b>334,149.31</b>	<b>0.00</b>	<b>0.00%</b>	<b>307.24</b>	<b>0.09%</b>	<b>3.42%</b>
Cash	334,149.31	334,149.31	0.00	0.00%	307.24	0.09%	3.42%
<b>B Fixed Income</b>	<b>9,162,933.75</b>	<b>9,436,361.84</b>	<b>72,629.38</b>	<b>0.79%</b>	<b>165,170.00</b>	<b>1.75%</b>	<b>96.58%</b>
US	8,677,933.75	8,947,166.18	68,433.72	0.79%	156,902.50	1.75%	91.57%
International	485,000.00	489,195.66	4,195.66	0.87%	8,267.50	1.69%	5.01%
<b>C Equity</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00%</b>
<b>D Commodities</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00%</b>
<b>E Non-Traditional</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00%</b>
<b>F Other</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00%</b>
<b>Total Portfolio</b>	<b>\$9,497,083.06</b>	<b>\$9,770,511.15</b>	<b>\$72,629.38</b>	<b>0.76%</b>	<b>\$165,477.24</b>	<b>1.69%</b>	<b>100%</b>

Balanced mutual funds are allocated in the 'Other' category





Portfolio holdings - as of March 14, 2016 (continued)

Details of portfolio holdings

	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of asset class	% of portfolio
<b>Total Portfolio</b>	<b>\$9,497,083.06</b>	<b>\$9,770,511.15</b>	<b>\$72,629.38</b>	<b>0.76%</b>	<b>\$165,477.24</b>	<b>1.69%</b>	<b>100%</b>	<b>100%</b>

Cash	Quantity	Purchase price (\$)/Avg Price	Price on 03/14/2016 (\$)	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of Cash	% of portfolio
<b>Cash</b>											
UBS BANK USA DEPOSIT ACCOUNT	2,626.53	1.00	1.00	2,626.53	2,626.53	0.00	0.00%	0.00	0.00%	0.79%	0.03%
UBS SELECT PRIME INSTITUTIONAL FUND	93,102.19	1.00	1.00	93,102.19	93,102.19	0.00	0.00%	307.24	0.33%	27.86%	0.95%
Client investment: \$0.00 Reinvested dividends: \$93,102.19 Investment return: \$93,102.19 (0%)											
USD CASH	238,420.59	1.00	1.00	238,420.59	238,420.59	0.00	0.00%	0.00	0.00%	71.35%	2.44%
<b>Total Cash</b>				<b>\$334,149.31</b>	<b>\$334,149.31</b>	<b>\$0.00</b>	<b>0.00%</b>	<b>\$307.24</b>	<b>0.09%</b>	<b>100.00%</b>	<b>3.42%</b>
<b>Total Cash</b>				<b>\$334,149.31</b>	<b>\$334,149.31</b>	<b>\$0.00</b>	<b>0.00%</b>	<b>\$307.24</b>	<b>0.09%</b>	<b>100.00%</b>	<b>3.42%</b>

Fixed Income	Quantity	Purchase price (\$)/Avg Price	Price on 03/14/2016 (\$)	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of Fixed Income	% of portfolio
<b>US</b>											
ALLY BK UT US RT 00.9000% MAT 08/22/16 FIXED RATE CD	240,000.00	100.00	100.15	240,000.00	240,487.79	487.79	0.20%	2,160.00	0.90%	2.55%	2.46%
AMERICAN EXPRESS C NY US RT 02.1000% MAT 10/17/18 FIXED RATE CD	240,000.00	100.00	101.70	240,000.00	246,135.02	6,135.02	2.56%	5,040.00	2.06%	2.61%	2.52%
AMERICAN EXPRESS F UT US RT 02.0000% MAT 07/24/19 FIXED RATE CD	240,000.00	100.00	101.44	240,000.00	244,115.93	4,115.93	1.71%	4,800.00	1.97%	2.59%	2.50%
BANK OF HAMPTON RO VA US RT 01.0000% MAT 09/27/17 FIXED RATE CD	240,000.00	100.00	99.98	240,000.00	241,065.63	1,065.63	0.44%	2,400.00	1.00%	2.55%	2.47%
BANKUNITED FSB FL US RT 01.1000% MAT 02/20/18 FIXED RATE CD	200,000.00	0.00	100.32	0.00	200,798.71	0.00	0.00%	2,200.00	1.10%	2.13%	2.06%
BARCLAYS BK DE US RT 02.1000% MAT 07/23/19 FIXED RATE CD	245,000.00	100.00	101.41	245,000.00	249,161.14	4,161.14	1.70%	5,145.00	2.07%	2.64%	2.55%



Portfolio holdings - as of March 14, 2016 (continued)

Fixed Income	Quantity	Purchase price (\$)/ Avg Price	Price on 03/14/2016 (\$)	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of Fixed Income	% of portfolio
<b>US</b>											
BK OF NORTH CAROLI ME US RT 01.0000% MAT 01/30/17 FIXED RATE CD	200,000.00	100.00	100.26	200,000.00	200,602.71	602.71	0.30%	2,000.00	1.00%	2.13%	2.05%
BMW BANK NORTH AME UT US RT 02.1500% MAT 12/10/19 FIXED RATE CD	240,000.00	100.00	101.94	240,000.00	246,001.41	6,001.41	2.50%	5,160.00	2.11%	2.61%	2.52%
CAPITAL ONE BANK NA RT 02.3000% MAT 07/29/20 FIXED RATE CD	245,000.00	100.00	101.77	245,000.00	250,038.58	5,038.58	2.06%	5,635.00	2.26%	2.65%	2.56%
CAPITAL ONE BK VA US RT 02.1000% MAT 10/01/19 FIXED RATE CD	245,000.00	100.00	101.28	245,000.00	250,471.62	5,471.62	2.23%	5,145.00	2.07%	2.65%	2.56%
CIT BK SALT LAKE C UT US RT 02.1000% MAT 11/13/19 FIXED RATE CD	240,000.00	100.00	101.59	240,000.00	245,500.60	5,500.60	2.29%	5,040.00	2.07%	2.60%	2.51%
COMENITY BANK DE US RT 01.3500% MAT 12/12/17 FIXED RATE JUMBO CD	200,000.00	100.00	100.15	200,000.00	200,379.37	379.37	0.19%	2,700.00	1.35%	2.12%	2.05%
COMPASS BANK AL US RT 01.3000% MAT 12/11/17 FIXED RATE CD	245,000.00	100.00	100.20	245,000.00	246,327.70	1,327.70	0.54%	3,185.00	1.30%	2.61%	2.52%
DISCOVER BANK DE US RT 02.5500% MAT 08/27/21 FIXED RATE CD	240,000.00	100.00	103.25	240,000.00	248,075.47	8,075.47	3.36%	6,120.00	2.47%	2.63%	2.54%
FFCB BOND 01.900 % DUE 121721 DTD 121712 FC 06172013	500,000.00	100.00	98.95	500,000.00	497,040.83	-2,959.17	-0.59%	9,500.00	1.92%	5.27%	5.09%
FHLMC MED TERM NTS 02.000 % DUE 042921 DTD 102915 FC 04292016	500,000.00	100.00	100.06	500,000.00	504,050.00	4,050.00	0.81%	10,000.00	2.00%	5.34%	5.16%
FIRST BK HIGHLAND IL US RT 01.9500% MAT 07/24/19 FIXED RATE CD	240,000.00	100.00	100.16	240,000.00	241,020.30	1,020.30	0.43%	4,680.00	1.95%	2.55%	2.47%
FNMA NTS 01.000 % DUE 122617 DTD 122612 FC 06262013	250,000.00	100.00	100.02	250,000.00	250,581.67	581.67	0.23%	2,500.00	1.00%	2.66%	2.56%
FNMA STEP UP CALL NTS 1.2500% DUE 013020 DTD 013013 FC 07302013	500,000.00	100.50	99.64	502,500.00	498,963.89	-3,536.11	-0.70%	6,250.00	1.25%	5.29%	5.11%
GE CAPITAL BANK UT US RT 01.3500% MAT 08/29/17 FIXED RATE CD	240,000.00	100.00	100.32	240,000.00	240,882.67	882.67	0.37%	3,240.00	1.35%	2.55%	2.47%
GOLDMAN SACHS BANK NY US RT 02.0500% MAT 07/23/19 FIXED RATE CD	200,000.00	100.00	101.28	200,000.00	203,122.88	3,122.88	1.56%	4,100.00	2.02%	2.15%	2.08%



Portfolio holdings - as of March 14, 2016 (continued)

<b>Fixed Income</b>	Quantity	Purchase price (\$)/ Avg Price	Price on 03/14/2016 (\$)	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of Fixed Income	% of portfolio
<b>US</b>											
GOLDMAN SACHS BANK UT US RT 01.8500% MAT 08/31/16 FIXED RATE CD	40,000.00	100.00	100.59	40,000.00	40,263.58	263.58	0.66%	740.00	1.84%	0.43%	0.41%
HSBC BANK , NA DE US RT 01.2500% MAT 03/30/20 STEP RATE CD	240,000.00	100.00	99.95	240,000.00	239,877.60	-122.40	-0.05%	3,000.00	1.25%	2.54%	2.46%
JPMORGAN CHASE & C DE US RT 01.2500% MAT 11/30/18 FIXED RATE CD	200,000.00	100.00	99.69	200,000.00	199,481.89	-518.11	-0.26%	2,500.00	1.25%	2.11%	2.04%
NEW YORK CITY TRANSITION TAX C-3 RV BE/R/ 1.280 110118 DTD 120412	500,000.00	100.00	99.84	500,000.00	501,584.44	1,584.44	0.32%	6,400.00	1.28%	5.32%	5.13%
NEW YORK CITY TRANSITION TAX C-3 RV BE/R/ 2.400 110123 DTD 120412	500,000.00	97.63	97.21	488,145.00	490,503.33	2,358.33	0.48%	12,000.00	2.47%	5.20%	5.02%
SALLIE MAE BK UT US RT 01.5000% MAT 10/10/17 FIXED RATE CD	240,000.00	100.00	100.71	240,000.00	243,240.23	3,240.23	1.35%	3,600.00	1.49%	2.58%	2.49%
SUN NATL BK NJ US RT 01.0000% MAT 10/03/17 FIXED RATE CD	240,000.00	100.00	101.21	240,000.00	242,969.75	2,969.75	1.24%	2,400.00	0.99%	2.57%	2.49%
SYNCHRONY BK UT US RT 02.6500% MAT 08/23/21 FIXED RATE CD	240,000.00	100.00	103.25	240,000.00	248,156.32	8,156.32	3.40%	6,360.00	2.57%	2.63%	2.54%
THIEF RIVER FALLS MN TAX SR B BE/R/ 3.000 020125 DTD 060112	375,000.00	101.68	100.40	381,288.75	377,840.00	-3,448.75	-0.90%	11,250.00	2.99%	4.00%	3.87%
THIRD FED S&L ASSN OH US RT 02.0000% MAT 11/25/19 FIXED RATE CD	247,000.00	100.00	101.54	247,000.00	252,296.22	5,296.22	2.14%	4,940.00	1.97%	2.67%	2.58%
TWO RIVERS ST BK NE US RT 01.2500% MAT 07/18/19 FIXED RATE CD	169,000.00	100.00	99.02	169,000.00	167,480.04	-1,519.96	-0.90%	2,112.50	1.26%	1.77%	1.71%
WORLD'S FOREMOST B NE US RT 02.3000% MAT 08/06/20 FIXED RATE JUMBO CD	200,000.00	100.00	99.27	200,000.00	198,648.86	-1,351.18	-0.68%	4,600.00	2.32%	2.11%	2.02%
<b>Total US</b>				<b>\$8,677,933.75</b>	<b>\$8,947,166.18</b>	<b>\$68,433.72</b>	<b>0.79%</b>	<b>\$156,902.50</b>	<b>1.75%</b>	<b>94.82%</b>	<b>91.57%</b>



Portfolio holdings - as of March 14, 2016 (continued)

<b>Fixed Income</b>	Quantity	Purchase price (\$)/ Avg Price	Price on 03/14/2016 (\$)	Cost basis (\$)	Market value (\$)	Unrealized gain/loss (\$)	Unrealized gain/loss (%)	Est. annual income (\$)	Current yield (%)	% of Fixed Income	% of portfolio
<b>International</b>											
ORIENTAL BANK PR RT 01.2500% MAT 08/31/17 FIXED RATE CD	240,000.00	100.00	100.30	240,000.00	240,835.07	835.07	0.35%	3,000.00	1.25%	2.55%	2.46%
STATE BK OF INDIA NY US RT 02.1500% MAT 09/11/19 FIXED RATE CD	245,000.00	100.00	101.35	245,000.00	248,360.59	3,360.59	1.37%	5,267.50	2.12%	2.63%	2.55%
<b>Total International</b>				<b>\$485,000.00</b>	<b>\$489,195.66</b>	<b>\$4,195.66</b>	<b>0.87%</b>	<b>\$8,267.50</b>	<b>1.69%</b>	<b>5.18%</b>	<b>5.01%</b>
<b>Total Fixed Income</b>				<b>\$9,162,933.75</b>	<b>\$9,436,361.84</b>	<b>\$72,629.38</b>	<b>0.79%</b>	<b>\$165,170.00</b>	<b>1.75%</b>	<b>100.00%</b>	<b>96.58%</b>
<b>Total Portfolio</b>				<b>\$9,497,083.06</b>	<b>\$9,770,511.15</b>	<b>\$72,629.38</b>	<b>0.76%</b>	<b>\$165,477.24</b>	<b>1.69%</b>	<b>100%</b>	<b>100%</b>

Total accrued interest (included in market values): \$32,976.12



## Disclosures applicable to accounts at UBS Financial Services Inc.

This section contains important disclosures regarding the information and valuations presented here. This report presents information since December 31, 2002. This report does not include complete account activity or performance of your accounts before this date. All information presented is subject to change at any time and is provided only as of the date indicated. The information in this report is for informational purposes only and should not be relied upon as the basis of an investment or liquidation decision. UBS FS accounts statements and official tax documents are the only official record of your accounts and are not replaced, amended or superseded by any of the information presented in these reports.

UBS FS offers a number of investment advisory programs to clients, acting in our capacity as an investment adviser, including fee-based financial planning, discretionary account management, non-discretionary investment advisory programs, and advice on the selection of investment managers and mutual funds offered through our investment advisory programs. When we act as your investment adviser, we will have a written agreement with you expressly acknowledging our investment advisory relationship with you and describing our obligations to you. At the beginning of our advisory relationship, we will give you our Form ADV brochure(s) for the program(s) you selected that provides detailed information about, among other things, the advisory services we provide, our fees, our personnel, our other business activities and financial industry affiliations and conflicts between our interests and your interests.

Please review the report content carefully and contact your Financial Advisor with any questions.

The account listing may or may not include all of your accounts with UBS FS. The accounts included in this report are listed under the "Accounts included in this review" shown on the first page or listed at the top of each page.

**Portfolio:** For purposes of this report "portfolio" is defined as all of the accounts presented on the cover page or the header of this report and does not necessarily include all of the client's accounts held at UBS FS or elsewhere.

**Percentage:** Portfolio (in the "% Portfolio" column) includes all holdings held in the account(s) selected when this report was generated. Broad asset class (in the "% broad asset class" column) includes all holdings held in that broad asset class in the account(s) selected when this report was generated.

**Tax lots:** This report displays security tax lots as either one line item (i.e., lumped tax lots) or as separate tax lot level information. If you choose to display security tax lots as one line item, the total cost equals the total value of all tax lots. The unit cost is an average of the total cost divided by the total number of shares. If the shares

were purchased in different lots, the unit price listed does not represent the actual cost paid for each lot. The unrealized gain/loss value is calculated by combining the total value of all tax lots plus or minus the total market value of the security.

If you choose to display tax lot level information as separate line items on the Portfolio Holdings report, the tax lot information may include information from sources other than UBS FS. The Firm does not independently verify or guarantee the accuracy or validity of any information provided by sources other than UBS FS. As a result this information may not be accurate and is provided for informational purposes only. Clients should not rely on this information in making purchase or sell decisions, for tax purposes or otherwise. See your monthly statement for additional information.

**Pricing:** All securities are priced using the closing price reported on the last business day preceding the date of this report. Every reasonable attempt has been made to accurately price securities; however, we make no warranty with respect to any security's price. Please refer to the back of the first page of your UBS FS accounts statement for important information regarding the pricing used for certain types of securities, the sources of pricing data and other qualifications concerning the pricing of securities. To determine the value of securities in your account, we generally rely on third party quotation services. If a price is unavailable or believed to be unreliable, we may determine the price in good faith and may use other sources such as the last recorded transaction. When securities are held at another custodian or if you hold illiquid or restricted securities for which there is no published price, we will generally rely on the value provided by the custodian or issuer of that security.

**Cash:** Cash on deposit at UBS Bank USA is protected by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 in principal and accrued interest per depositor for each ownership type. Deposits made in an individual's own name, joint name, or individual retirement account are each held in a separate type of ownership. Such deposits are not guaranteed by UBS FS. More information is available upon request.

**Margin:** The quantity value may indicate that all or part of this position is held on margin or held in the short account. When an account holds a debit balance, this debit balance is incorporated into the account's total market value and deducted from the total value. When calculating the percent of portfolio on each security, the percentage will be impacted by the total market value of the account. Therefore, if the account's market value is reduced by a debit value of a holding the percent of portfolio will be greater and if the account's market value is increased by a holding then the percent of portfolio will be less.

**Mutual Fund Asset Allocation:** If the option to

unbundle balanced mutual funds is selected and if a fund's holdings data is available, mutual funds will be classified by the asset class, subclass, and style breakdown of their underlying holdings. Where a mutual fund or ETF contains equity holdings from multiple equity sectors, this report will proportionately allocate the underlying holdings of the fund to those sectors measured as a percentage of the total fund's asset value as of the date shown.

This information is supplied by Morningstar, Inc. on a monthly basis to UBS FS based on data supplied by the fund which may not be current. Mutual funds change their portfolio holdings on a regular (often daily) basis. Accordingly, any analysis that includes mutual funds may not accurately reflect the current composition of these funds. If a fund's underlying holding data is not available, it will be classified based on its corresponding overall Morningstar classification. All data is as of the date indicated in the report.

**Equity Style:** The Growth, Value and Core labels are determined by Standard and Poor's using a price-to-book ratio methodology. The Growth, Value and Core labels are based on how a company's price-to-book ratio compares to the median price-to-book ratio for its industry based on the company's assigned Industry Sector. If the company's ratio is greater than or equal to the industry median, it is classified as a growth stock. If the company's ratio is less than the industry median, it is classified as a value stock. If a security includes both growth and value attributes, it is classified as a core stock. If price-to-book is not available or the industry's median is not available, this item will be Unclassified.

**Equity Capitalization:** Market Capitalization is defined as the number of shares outstanding times the market value. Equity securities are classified as Large Cap if they have a capitalization of 8 billion or above. Securities with capitalization between 1.8 and 7.9 billion are classified as Mid Cap. Securities with capitalization below 1.79 billion are classified as Small Cap. Unclassified securities are those for which no capitalization is available or applicable.

**Equity Sectors:** The Equity sector analysis may include a variety of accounts, each with different investment and risk parameters. As a result, the overweighting or underweighting in a particular sector or asset class should not be viewed as an isolated factor in making investment/liquidation decisions; but should be assessed on an account by account basis to determine the overall impact on the account's portfolio.

**Classified Equity:** Classified equities are defined as those equities for which the firm can confirm the specific industry and sector of the underlying equity instrument.

**Estimated Annual Income:** The Estimated Annual Income is the annualized year to date per share dividends paid and multiplied by the quantity of shares held in the selected account(s).

**Current Yield:** Current yield is defined as the estimated annual income divided by the total market value.

**Credit/Event Risk:** Investments are subject to event risk and changes in credit quality of the issuer. Issuers can experience economic situations that may have adverse effects on the market value of their securities.

**Interest Rate Risk:** Bonds are subject to market value fluctuations as interest rates rise and fall. If sold prior to maturity, the price received for an issue may be less than the original purchase price.

**Reinvestment Risk:** Since most corporate issues pay interest semiannually, the coupon payments over the life of the bond can have a major impact on the bond's total return.

**Accrued Interest:** Interest that has accumulated between the most recent payment and the report date may be reflected in market values for interest bearing securities.

**Gain/Loss:** The gain/loss information may include calculations based upon non-UBS FS cost basis information. The Firm does not independently verify or guarantee the accuracy or validity of any information provided by sources other than UBS FS. In addition, if this report contains positions with unavailable cost basis, the gain/(loss) for these positions are excluded in the calculation for the Gain/(Loss). As a result these figures may not be accurate and are provided for informational purposes only. Clients should not rely on this information in making purchase or sell decisions, for tax purposes or otherwise. Rely only on year-end tax forms when preparing your tax return. See your monthly statement for additional information.

**Account changes:** At UBS, we are committed to helping you work toward your financial goals. So that we may continue providing you with financial advice that is consistent with your investment objectives, please consider the following two questions:

- 1) Have there been any changes to your financial situation or investment objectives?
- 2) Would you like to implement or modify any restrictions regarding the management of your account? If the answer to either question is "yes," it is important that you contact your Financial Advisor as soon as possible to discuss these changes. For MAC advisory accounts, please contact your investment manager directly if you would like to impose or change any investment restrictions on your account.

**ADV disclosure:** A complimentary copy of our current Form ADV Disclosure Brochure that describes the advisory program and related fees is available through your Financial Advisor. Please contact your Financial Advisor if you have any questions.



## Disclosures applicable to accounts at UBS Financial Services Inc. (continued)

### **Important information for former Piper Jaffray and McDonald Investments clients:**

As an accommodation to former Piper Jaffray and McDonald Investments clients, these reports include performance history for their Piper Jaffray accounts prior to August 12, 2006 and McDonald Investments accounts prior to February 9, 2007, the date the respective accounts were converted to UBS FS. UBS FS has not independently verified this information nor do we make any representations or warranties as to the accuracy or completeness of that information and will not be liable to you if any such information is unavailable, delayed or inaccurate.

For insurance, annuities, and 529 Plans, UBS FS relies on information obtained from third party services it believes to be reliable. UBS FS does not independently verify or guarantee the accuracy or validity of any information provided by third parties. Information for insurance, annuities, and 529 Plans that has been provided by a third party service may not reflect the quantity and market value as of the previous business day. When available, an "as of" date is included in the description.

Investors outside the U.S. are subject to securities and tax regulations within their applicable jurisdiction that are not addressed in this report. Nothing in this report shall be construed to be a solicitation to buy or offer to sell any security, product or service to any non-U.S. investor, nor shall any such security, product or service be solicited, offered or sold in any jurisdiction where such activity would be contrary to the securities laws or other local laws and regulations or would subject UBS to any registration requirement within such jurisdiction.

UBS FS All Rights Reserved. Member SIPC.

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** March 28, 2016  
**SUBJECT:** February 2016 General Fund Budget Report



City of West St. Paul

---

**BACKGROUND INFORMATION:**

Attached is the February 2016 General Fund Budget to Actual Report for Council review. The revenues are reported by major type and the expenditures are reported by department.

The budget target percentage for January is 17%. Actual revenues total 2% and expenditures total 12%. Total revenue will remain well below budget until July when the first half tax settlement is received.

All departments are below 17% with the following exceptions:

- Mayor/Council – 23% due to audit billing for January services and Winter Fun Fest expenditures (these expenses were offset by donations).
- Civil Defense – 42% due to annual membership fee paid in February.
- Human Resources – 27% due to annual sick leave conversion payout.

**FISCAL IMPACT:** None

	Amount
<b>Fund:</b>	
<b>Department:</b>	
<b>Account:</b>	

**STAFF RECOMMENDATION:**

Approve the February 2016 General Fund Budget Report.

City of West St Paul  
 General Fund Budget to Actual Report  
 February 2016

<u>Account Description</u>	<u>Adopted Budget</u>	<u>Current Transactions</u>	<u>YTD Transactions</u>	<u>Remaining Budget</u>	<u>% of Budget Rec'd/Used</u>
<b>Fund 101 - General Fund</b>					
<b>REVENUE</b>					
Taxes	10,053,785	-	-	10,053,785	0%
Licenses and Permits	519,500	18,024	37,725	481,775	7%
Intergovernmental Revenues	484,500	43,983	49,768	434,732	10%
Charges for Services	639,205	28,354	120,374	518,831	19%
Fines & Forfeits	125,000	11,158	19,279	105,721	15%
Miscellaneous	231,908	8,076	20,538	211,370	9%
Other Financing Sources	688,000	-	-	688,000	0%
<b>REVENUE TOTALS</b>	<b>12,741,898</b>	<b>109,595</b>	<b>247,683</b>	<b>12,494,215</b>	<b>2%</b>
<b>EXPENSE</b>					
Mayor and Council	120,652	22,138	27,187	93,465	23%
Charter Commission	1,500	76	76	1,424	5%
City Manager / City Clerk	778,375	61,190	119,858	658,517	15%
Elections	28,575	-	-	28,575	0%
Finance	378,370	29,071	60,438	317,932	16%
Legal	360,000	33,256	33,256	326,744	9%
Planning & Comm Develop	317,275	15,371	32,685	284,590	10%
Recycling Dept	23,250	-	-	23,250	0%
Information Technology	437,225	26,974	73,775	363,450	17%
City Hall Building	205,610	15,991	23,390	182,220	11%
PW Facility	63,000	4,887	5,712	57,288	9%
Police	4,319,675	320,646	651,873	3,667,802	15%
Communications Center	638,065	49,486	100,082	537,983	16%
Fire	2,125,394	-	-	2,125,394	0%
Building Inspections	415,635	36,193	58,795	356,840	14%
Civil Defense	15,295	21	6,492	8,803	42%
Traffic Signs	23,900	286	286	23,614	1%
Animal Control	5,150	-	-	5,150	0%
Engineering	204,004	21,534	28,791	175,213	14%
Streets	1,201,698	104,579	199,106	1,002,592	17%
Street Lighting	132,025	10,671	10,671	121,354	8%
Human Resources	88,775	17,260	24,056	64,719	27%
Parks and Recreation	823,450	53,442	104,289	719,161	13%
Transfers Out	35,000	-	-	35,000	0%
<b>EXPENSE TOTALS</b>	<b>12,741,898</b>	<b>823,073</b>	<b>1,560,817</b>	<b>11,181,081</b>	<b>12%</b>
<b>General Fund Totals</b>					
<b>REVENUE TOTALS</b>	<b>12,741,898</b>	<b>109,595</b>	<b>247,683</b>	<b>12,494,215</b>	<b>2%</b>
<b>EXPENSE TOTALS</b>	<b>12,741,898</b>	<b>823,073</b>	<b>1,560,817</b>	<b>11,181,081</b>	<b>12%</b>
<b>General Fund Net</b>	<b>-</b>	<b>(713,478)</b>	<b>(1,313,134)</b>	<b>1,313,134</b>	

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Community Development Department  
**DATE:** March 28, 2016  
**SUBJECT:** City Rental Licenses



City of West St. Paul

---

**BACKGROUND INFORMATION:**

2016 Rental Business Licenses – Background Required

According to the Rental Dwelling Ordinance, the city requires a background investigation for each applicant. In addition, the Police Department reviewed calls for service to the properties to help identify potential problem properties.

The Community Development Department reviewed the application, inspection report, rental density, and code compliance requirements.

The background investigation, inspection report and code compliance review on the property listed below did not identify any incidents that would result in a denial of the rental license.

**Applications/Rentals for approval:**

235 Thompson Ave W. – Paul Payne Jr. (single-family unit)

**FISCAL IMPACT:**

Application Fees Received:		Amount:
Fund:	101	
Department:	30000	
Account:	32170	\$290

**STAFF RECOMMENDATION:**

Staff recommends City Council approve the license application.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY OF WEST ST. PAUL, MINNESOTA  
GRANTING COMCAST OF ST. PAUL, INC. A FRANCHISE  
EXTENSION TO MARCH 31, 2017**

**WHEREAS**, on or about April 1, 2000, the City of West St. Paul, Minnesota granted Cable Television Franchise Ordinance (“Franchise”) which is currently held by Comcast of St. Paul, Inc. (“Comcast”); and

**WHEREAS**, Comcast has requested renewal of the Franchise; and

**WHEREAS**, the initial term of the Franchise was extended by the City on February 9, 2015 when the City adopted Resolution No. 15-21 which extended the term of the Franchise until March 31, 2016; and

**WHEREAS**, Comcast executed Resolution No. 15-21 and agreed to continue complying with the Franchise, as amended; and

**WHEREAS**, both the City and Comcast desire to reserve all of their respective rights under state and federal law regarding the franchise renewal process, specifically all rights provided by 47 U.S.C. 546.

**NOW, THEREFORE**, the City of West St. Paul, Minnesota hereby resolves as follows:

1. The Franchise is hereby amended by extending the term of the Franchise from April 1, 2016 through and including March 31, 2017.
2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.
3. The City and Comcast hereby agree that neither party waives any rights either may have under the Franchise or applicable law.
4. This Resolution shall become effective upon the occurrence of both of the following conditions: (1) The Resolution being passed and adopted by the City; and (2) Comcast’s acceptance of this Resolution.

Adopted by the City of West St. Paul, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2016.

ATTEST:

**CITY OF WEST ST. PAUL, MINNESOTA**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ACCEPTANCE AND AGREEMENT**

Comcast of St. Paul, Inc. hereby accepts this Resolution No. \_\_\_\_\_  
("Resolution") and hereby accepts the terms, provisions and recitals of the Resolution and  
agrees to be bound by the Franchise.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016.

**COMCAST OF ST. PAUL, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

SWORN TO BEFORE ME this  
\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

**TO: Mayor and City Council**  
**FROM: Matt Fulton, City Manager**  
**DATE: March 28, 2016**  
**SUBJECT: Extension of Comcast Franchise Agreement**

---



**BACKGROUND INFORMATION:** Comcast has been operating and providing services in West St Paul under the terms of a franchise agreement that was initially approved by the City Council in 2000. The Franchise agreement was extended in 2015 to March 31, 2016.

**DISCUSSION:** NDC4 Cable Commission/Town Square Television staff and representatives have successfully worked out the terms for an additional extension to the current franchise for the period April 1, 2016 to March 31, 2017.

NDC4 Executive Director Jodie Miller will be present to provide additional background information respond to any questions

**FISCAL IMPACT** The terms of the extended franchise agreement will continue to include the current franchise fee provisions.

		Amount
<b>Fund:</b>		
<b>Department:</b>		
<b>Account:</b>		

**STAFF REQUEST FOR CONSIDERATION** Staff recommends Council approval of the attached resolution providing for the extension of the Comcast Franchise until March 31, 2017

**CABLE TELEVISION FRANCHISE ORDINANCE**

**FOR**

**QWEST BROADBAND SERVICES, INC. D/BA/  
CENTURYLINK INC.**

**CITY OF \_\_\_\_\_, MINNESOTA**

**February 23, 2016**

**TABLE OF CONTENTS**

SECTION 1.	SHORT TITLE AND DEFINITIONS .....	2
SECTION 2.	GRANT OF AUTHORITY AND GENERAL PROVISIONS .....	7
SECTION 3.	CONSTRUCTION STANDARDS .....	13
SECTION 4.	DESIGN PROVISIONS.....	17
SECTION 5.	SERVICE PROVISIONS.....	20
SECTION 6.	LOCAL CHANNELS AND NETWORK DROP PROVISIONS .....	25
SECTION 7.	INSTITUTIONAL NETWORK (I-NET) PROVISIONS .....	28
SECTION 8.	OPERATION AND ADMINISTRATION PROVISIONS .....	28
SECTION 9.	GENERAL FINANCIAL AND INSURANCE PROVISIONS.....	30
SECTION 10.	SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.....	36
SECTION 11.	PROTECTION OF INDIVIDUAL RIGHTS.....	39
SECTION 12.	UNAUTHORIZED CONNECTIONS AND MODIFICATIONS .....	39
SECTION 13.	MISCELLANEOUS PROVISIONS .....	40
SECTION 14.	PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS ....	42
EXHIBIT A	GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT	
EXHIBIT B	SERVICE TO PUBLIC AND PRIVATE BUILDINGS	
EXHIBIT C	FRANCHISE FEE PAYMENT WORKSHEET	
EXHIBIT D	INDEMNITY AGREEMENT	

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK ("GRANTEE") TO CONSTRUCT, OPERATE, AND MAINTAIN A COMPETITIVE CABLE COMMUNICATIONS 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;

The City Council of the City of \_\_\_\_\_, Minnesota ordains:

**STATEMENT OF INTENT AND PURPOSE**

The City intends, by the adoption of this Franchise, to bring about the consumer, business and economic development benefits of facilities based competition in the Cable Communications market place. Such competition can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a competitive Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of the City and its residents.

**FINDINGS**

In the review of the request for a competitive franchise by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations;
4. The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement, and an Amended Joint and Cooperative Agreement, with other cities authorized to grant a cable communications franchise, and has delegated authority to the Northern Dakota County 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; and
5. The Franchise granted to Grantee is nonexclusive.

## SECTION 1. SHORT TITLE AND DEFINITIONS

1. **Short Title.** This Franchise Ordinance shall be known and cited as the CenturyLink Cable Television Franchise Ordinance.
2. **Definitions.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
  - a. “Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.
  - b. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to Grantee by any governmental authority of competent jurisdiction.
  - c. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
  - d. “Cable Service” or “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. Cable Service or Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
  - e. “Cable System” or “System” means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7). Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.
  - f. “Channel” or “Cable 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 Federal Communications Commission.
  - g. “City” means the City of \_\_\_\_\_, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

- h. “City Code” means the Municipal Code of the City of \_\_\_\_\_, Minnesota, as may be amended from time to time.
- i. “City Council” means the governing body of the City of \_\_\_\_\_, Minnesota.
- j. “Commission” means the Northern Dakota County Cable Communications Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement and Amended Joint and Cooperative Agreement between Member Cities.
- k. “Commission Office” or “Commission Facility” means the facility located at 5845 Blaine Avenue, Inver Grove Heights, Minnesota 55076-1401 or alternative location established in the Commission’s sole discretion.
- l. “Day” unless otherwise specified shall mean a calendar day.
- m. “Demarcation Point” means the mutually agreed upon physical point at which the Cable System enters a Subscriber’s home or building.
- n. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- o. “Effective Date” shall mean \_\_\_\_\_, 201\_.
- p. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- q. “Franchise” or “Cable Franchise” means this ordinance and the regulatory and contractual relationship established hereby.
- r. “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- s. “Franchise Fee” shall mean the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s streets and Rights-of-Way, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).
- t. “FTTH” (“Fiber to the Home”) means fiber directly to the household.
- u. “FTTN” (“Fiber to the Neighborhood”) means fiber directly to the neighborhood terminating at Remote Terminals.
- v. “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”).

- w. “Grantee” means Qwest Broadband Services, Inc. d/b/a CenturyLink, its agents, employees, lawful successors, transferees or assignees.
  
- x. “Gross Revenue” means any and all compensation in whatever form, from any source, directly or indirectly earned by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Service within the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Cable Service, any expanded tiers of Cable Service, optional premium or on-demand services; pay-per-view services; Pay Services, installation, disconnection, reconnection and change-in-service fees, leased access Channel fees, other service fees such HD fees, convenience fees, broadcaster fees, bill payment fees and related charges imposed by Grantee regarding the provision of Cable Services; all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or any other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law; revenue from the sale or carriage of other Cable Services, revenues from home shopping and other revenue-sharing arrangements. Grantee agrees that Gross Revenues shall include all commissions paid to any Affiliate of the Grantee, or their successors, associated with sale 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.

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

- y. “Installation” means the connection, by or on the behalf of the Grantee, of the System from feeder cable to the point of connection with the Subscriber Set Top Box or other terminal equipment.
- z. “Institutional Network” or “I-Net” means a communications network which is described in Section 7 herein and which is generally available only to Subscribers who are not residential Subscribers.
- aa. “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.
- bb. “Living Unit” means a distinct address as tracked in the QC network inventory, used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.
- cc. “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.
- dd. “Local Origination” means programming produced by the Grantee, the Commission, or the City staff regarding issues and events affecting the Member Municipalities of the Commission. Local origination programming may include public, education, and government access programming.
- ee. “Member Cities” or “Member Municipalities” means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul.
- ff. “Mosaic Channel” means a Channel which displays miniaturized media screens and related information for a particular group of Channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Channels on a single Channel screen and also provides for easy navigation to a chosen Channel.
- gg. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” shall include some evening hours at least one night per week and/or some weekend hours.
- hh. “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 System.

- ii. “Other Video Programming” means information that a cable operator makes available to all Subscribers generally.
- jj. “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.
- kk. “PEG” means public, educational and governmental.
- ll. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- mm. “QC” means Qwest Corporation, a wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.
- nn. “Qualified Living Unit” means a Living Unit which meets the minimum technical qualifications defined by Grantee for provision of Cable Service. A Living Unit receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.
- oo. “Remote Terminal” means a facility that is located in a neighborhood, which houses the electronics used to support the provision of Cable Services.
- pp. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the City, in which the City has an interest, including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- qq. “Right-of-Way Ordinance” means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration and permitting requirements.
- rr. “Set Top Box” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Subscriber’s service.
- ss. “Signal” means any digital electrical or light impulses carried on the Cable System, whether one-way or bi-directional.

- tt. “Subscriber” means any Person who lawfully receives Cable Service via the Cable System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means each lessee, tenant or occupant, not the building owner.
- uu. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- vv. “Wireline MVPD” means a multichannel video programming distributor that utilizes the streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of Video Programming in the City.

## **SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS**

### **1. Grant of Franchise.**

- a. The City hereby authorizes Grantee to occupy or use the City’s Rights-of-Way subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.
- b. Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC’s installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any Applicable Laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event the City cannot resolve these violations or disputes with QC then the City

may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other Affiliate's compliance with Applicable Laws, including the terms of this Franchise, shall be deemed a material breach of this Franchise by Grantee.

2. **Grant of Nonexclusive Authority.**

- a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of the City Code, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in the City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
- b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present or reasonably anticipated future use of the Right-of-Way.
- c. This Franchise shall be nonexclusive, and the City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. Such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. At a minimum, the City shall comply with Minn. Stat. § 238.08, subd. 1(b) and subd. 1(c) when granting such additional franchise.
- d. Before granting an additional cable television franchise, the City shall give written notice to the Grantee of any other proposal to service all or part of the Franchise Area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional cable television franchise should be granted.

3. **Lease or Assignment Prohibited.** No Person may lease any portion of Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization from the City. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10, Paragraph 5.

4. **Franchise Term.** This Franchise shall be in effect for a term of five (5) years from the date of acceptance by Grantee, unless terminated sooner as hereinafter provided. Six (6) months prior to the expiration of the initial five (5) year term, if the City determines that Grantee is in compliance with all other material terms of this Franchise including the build out obligations set forth in this Franchise as required by Applicable Law, the City

shall have the unilateral right to extend the Franchise for an additional five (5) year term and notify Grantee in writing.

**5. Compliance with Applicable Laws and the City Code.**

- a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, and eminent domain rights of the City. This Franchise may be modified or amended with the written consent of Grantee and the City as provided in Section 13, Paragraph 3 herein.
- b. Grantee shall comply with the terms of the City Code, including any Right-of-Way Ordinance, which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8 herein, except that Grantee shall not, through application of such City Code requirement or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which conflict with federal law or exceed burdens on similarly situated Rights-of-Way users.
- c. In the event of any conflict between Section 3 and/or Section 8 of this Franchise and any lawful and generally applicable City Code provision which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8 of this Franchise shall be superseded by such City Code provision, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which conflicts with federal law or exceeds burdens on similarly situated Rights-of-Way users.
- d. In the event any lawfully and generally applicable City Code provision which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8 of this Franchise, Grantee shall comply with such City Code provision regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which conflicts with federal law or exceeds burdens on similarly situated Rights-of-Way users.
- e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City, in accordance with Section 2, Paragraph 14. The City shall provide a written response within seventeen (17) Days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written

response is not received within seventeen (17) Days of mailing or delivering such written question.

- f. Except as otherwise set forth in Section 2, Paragraph 5 (a-e), in the event of a conflict with the City Code, the terms of this Franchise shall govern.
6. **Rules of Grantee.** Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.
7. **Franchise Area.** The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise. The parties acknowledge that Grantee is not the first entrant into the wireline video market in the City. The Grantee acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Grantee aspires to provide Cable Service to all households within the City by the end of the five (5) year term of this Franchise. Grantee agrees that its deployment of Cable Service in the City will be geographically dispersed throughout the City, and shall be made available to diverse residential neighborhoods of the City without discrimination.
8. **Initial Build out.** No later than the second anniversary of the Effective Date of this Franchise, Grantee shall: (i) be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service, provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time; and (ii) activate at least one (1) Remote Terminal capable of offering Cable Service in each of the seven (7) Member Cities. This initial minimum build-out commitment shall include a significant number of households below the medium income in the City. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with Cable Service.
9. **Quarterly Meetings.** In order to permit the Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, upon demand, promptly make available to the Commission maps and other documentation showing exactly where within the City the Grantee is currently providing Cable Service through FTTN and FTTH. Grantee shall meet with the Commission, not less than once quarterly, to demonstrate Grantee's compliance with the provisions of this section concerning the deployment of Cable Services in each Member City including, by way of example, the provision of this section in which Grantee commits that a significant portion of its initial investment will be targeted to areas below the median income within the City, and the provisions of this section that prohibit discrimination in the deployment of Cable Services to certain Member Cities on the basis of the income level of the residents of those Member Cities. In order to permit the Commission and the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing ninety (90) Days after the Effective Date, and continuing throughout

the term of this Franchise, meet quarterly with the Commission and provide reports and make available maps showing the Commission the following information:

- a. The total number of Living Units throughout the City;
- b. The total number of Qualified Living Units; and
- c. Information demonstrating Grantee's commitment that a significant portion of Grantee's initial investment and Grantee's deployment of Cable Services in the City has been targeted to households below the City's median household income.

10. **Additional Build-Out Based on Market Success.** If, at any quarterly meeting, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service from Grantee, then Grantee agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of 75% of the total households). This additional build-out based on market success shall continue until every household in the City is served.
11. **Nondiscrimination.** Grantee shall provide Cable Service under non-discriminatory rates and reasonable terms and conditions to all Living Units in the City where the Grantee is capable of providing Cable Service. Grantee shall not arbitrarily refuse to provide Cable Services to any Living Unit where the Grantee is capable of providing Cable Service. Grantee shall provide information to the City clearly identifying all Qualified Living units in the City. Grantee shall not deny Cable Services to any group of Living Units based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or facilities based upon the income level of residents of the local area in which such group resides. Grantee shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Grantee shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.
12. **Standard Installation.** Except as otherwise provided in this Franchise, where Grantee is capable of providing Cable Service, Grantee shall provide Cable Services at its Standard Installation rates within seven (7) Days of a request by any Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.



Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the Person of record as specified above.

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

### **SECTION 3. CONSTRUCTION STANDARDS**

#### **1. Registration, Permits, Construction Codes, and Cooperation.**

- a. Grantee agrees to obtain a permit as required by the City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee shall notify the City prior to such repairs, if practicable, and shall obtain the necessary permits in a reasonable time after notification to the City.
- b. Generally applicable fees and reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the Franchise.
- c. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other Applicable Law.
- d. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

#### **2. Use of existing poles or conduits.**

- a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially and technologically feasible, and shall not construct or install any new, different or additional poles whether on public property or on privately-owned property until the written approval of the City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and any Grantee poles or structures shall be removed or modified by Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.
- b. The facilities of Grantee shall be placed underground where all utility lines are placed underground.

3. **Minimum Interference.**

- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- b. All transmission and distribution structures, lines and equipment maintained by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

4. **Disturbance or damage.** Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the Grantee's System shall be promptly and fully restored by Grantee, at its expense, to substantially the same condition as that prevailing prior to Grantee's work, as determined by the City. If Grantee shall fail to promptly perform the restoration required herein, after written request of the City and reasonable opportunity to satisfy that request, the City shall have the right to put the Rights-of-Way, public, or private property back into substantially the same condition as that prevailing prior to Grantee's work. In the event the City determines that Grantee is responsible for such disturbance or damage and fails to restore as set forth in this section, Grantee shall be obligated to fully reimburse the City for such restoration within thirty (30) Days after its receipt of the City's invoice therefor.

5. **Temporary Relocation.**

- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of the City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, the City freeway or Rights-of-Way construction, the City alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes temporary disconnection, removal, or relocation necessary or less expensive for the City.
- b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The actual expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) Days advance written notice from such Person holding a permit to arrange such temporary wire alterations.

6. **Emergency.** Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the city administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against the City for restoration, repair or damages. Notwithstanding the above, Grantee reserves the right to assert a right of reimbursement or compensation from any responsible party.
7. **Tree Trimming.** Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to any required supervision and direction by the City. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the Grantee in the Rights-of-Way shall be subject to such generally applicable regulation as the city administrator or other authorized official may establish to protect the public health, safety and convenience.
8. **Protection of Facilities.** Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.
9. **Installation Records.** Grantee shall keep accurate installation records, maps or diagrams, of the location of its facilities in the Rights-of-Way and public ways and furnish them to the City upon request. Grantee shall cooperate with the City to furnish, if possible, such information in an electronic mapping format compatible with the then-current City electronic mapping format. At the commencement of this Franchise and upon completion of any further construction or relocation of underground facilities in the Rights-of-Way and public ways, Grantee shall provide the City, if possible, with installation records in an electronic format compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.
10. **Locating Facilities.**
  - a. If, during the design process for public improvements, the City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with the City or State to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) Days.
  - b. The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of the City limits.

11. **City's Rights.** 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 Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
12. **Interference with the City Facilities.** The installation, use and maintenance of Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to unreasonably interfere with the City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by the City.
13. **Interference with Utility Facilities.** Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or unreasonably interfere with any existing facilities of a utility located within the Rights-of-Way and public ways of the City. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
14. **Collocation.** To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along the City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities, in the case that relocation or extension of Grantee's facilities is approved or required by the City.
15. **Safety Requirements.**
  - a. Grantee shall at all times employ ordinary and reasonable care and shall install, maintain, and use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
  - b. Grantee shall install and maintain its System and other equipment in accordance with the City Code and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with the City's communications technology related to health, safety and welfare of the residents.
  - c. Cable System structures, lines, equipment and connections in, over, under and upon the Rights-of-Way of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any Person.

## SECTION 4. DESIGN PROVISIONS

### 1. System Description.

- a. The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different architectures. First, using a passive optical network (“PON”) platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household (“FTTH”). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber into the neighborhoods to Remote Terminals and using the existing copper infrastructure to increase broadband speeds (“FTTN”). In both the FTTH and FTTN footprint, a household receiving a minimum of 25 Mbps shall be generally capable of receiving Cable Service after Grantee performs certain network grooming and conditioning. Grantee shall determine in its discretion where to upgrade its network to convert these households to Qualified Living Units.
- b. Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design. The System shall be designed such that at a minimum all technical specifications of this Franchise are met. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.
- c. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided Grantee notifies the City and Subscribers in writing thirty (30) Days prior to any Channel additions, deletions, or realignments in the manner and to the extent required by federal law and subject to Grantee’s signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536 and to the City’s rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit A.

2. **Interruption of Service.** To the extent within Grantee’s control in the ordinary course of business, Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System rebuttably presumed to be between the hours of 12:00 a.m. and 6:00 a.m. local time. If service is interrupted for a total period of more than twenty-four (24) continuous hours to one or more Subscribers in any thirty (30) Day period, those Subscribers shall, upon request, be credited pro rata for such interruption.

3. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be

designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.

4. **Special Testing.**

- a. Throughout the term of this Franchise, the City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the 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. The 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. The 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, the 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 a qualified engineer selected by the City and Grantee shall cooperate in such testing.

5. **Drop Testing and Replacement.** To the extent applicable, Grantee shall insert a 750 MHz carrier or equivalent at a level 10db below the video carriers that shall be measured and recorded by Grantee as a normal procedure during all service and installation calls. In addition, the Drops and related passive equipment may be inspected to assure that the Drop and passive equipment can pass the full 750 MHz System capacity. In the event measurement of the carrier or the inspection demonstrates that a Drop or associated passive equipment does not pass the full 750 MHz, the Subscriber address will be recorded by Grantee, and Grantee shall provide the City and the Commission, or their designees, upon request, a report indicating the addresses where Drops or associated passive equipment have failed. Grantee shall replace all failing Drops and/or associated passive equipment at the time the address upgrades service to a level which requires a signal above the 550 MHz spectrum at no separate charge to the individual Subscriber.

6. **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC or placed in Grantee's public inspection file as required by FCC rules, shall also be made

available to the City or its designee upon request within ten (10) Days of the date of request.

7. **Annexation.** Upon the annexation of any additional land area by the City, the annexed area shall thereafter be subject to all the terms of this Franchise immediately upon notification to Grantee of the annexation by the City.
8. **Line Extension.**
  - a. Grantee shall construct and operate its Cable System to as to provide service to all parts of its Franchise Area as provided in this Franchise and having a density equivalent to seven (7) 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 aerial plant, and ten (10) 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. The charge for installation or extension for each Person requesting service shall not exceed a pro rata share of the actual cost of extending the service and Grantee shall not be obligated to extend its System until seventy-five percent (75%) of the Persons requesting service in such area have prepaid their pro rata share of the extension.
  - c. Any residential unit located within one-hundred twenty-five (125) feet of the nearest active plant on Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in the 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.
  - d. Under Normal Operating Conditions, if Grantee cannot perform installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any installation that is not a free installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within twelve (12) Days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.

- e. Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including the density requirements set forth in Section 4, Paragraph 8 (a-d) above.
9. **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.
10. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available a Lockout Device in accordance with Applicable Law.
11. **Home Wiring.** In order to ensure consumer choice for all Wireline MVPDs, Grantee shall fully cooperate with all Wireline MVPDs. Grantee shall further, upon request, provide all Wireline MVPDs immediate access to all “home run” wiring in a multiple dwelling unit, provided however, that if the equipment is owned by Grantee, the competitive provider shall, in accordance with Minnesota Statutes Section 238.25, and upon request, reimburse Grantee its *pro rata* cost of the home run wiring and installation, reduced to the extent of cumulative depreciation of the home run wiring at the time the competitive provider begins providing service.

## SECTION 5. SERVICE PROVISIONS

1. **Regulation of Service Rates.** The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under Applicable Laws. The City and the Commission reserve the right to regulate rates for any future services to the extent permitted by Applicable Laws. Any rate regulation undertaken by the City shall at all times comply with the rate regulations of the FCC at 47 C.F.R. §76.900 et. seq., as may from time to time be amended.
2. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing any of its services within the City. In its initial communication or contact with a prospective Subscriber and in all general solicitation materials marketing the Grantee or its services as a whole, Grantee shall inform the prospective Subscriber of all levels of service available, including the lowest priced service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with Applicable Laws.
3. **Consumer Protection and Service Standards.** Grantee shall at all times comply with all of the standards and requirements for customer service set forth in this Section 5, Paragraph 3 (c-f) below during the term of this Franchise. During the term of the Franchise the Grantee shall comply with one (1) of the following requirements, a or b below.
  - a. Grantee shall maintain one (1) or more convenient local customer service and bill payment business office locations within the Commission Franchise Area (i.e. within one (1) or more of the Member Cities’ Franchise Areas) for matters such as

receiving Subscriber payments, handling billing questions, equipment drop-off, pick up or replacement and customer service information. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions and replacement, billing disputes, property or service restoration issues and similar customer service matters. The office must be reachable by a local, toll-free telephone call.

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

- i. Multiple third party commercial locations within the Commission's Franchise Area (such as grocery stores or check cashing establishments, e.g. Western Union) at which Subscribers can remit payments and receive immediate receipts and transaction activation numbers allowing them to expeditiously maintain or restore Cable Service.
- ii. Grantee will provide a service technician to any Qualified Living Unit in the City, free of charge to the Subscriber, where necessary to repair, replace or troubleshoot equipment issues.
- iii. Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as FedEx or UPS) if a service technician is not required to visit the Subscriber's Qualified Living Unit.
- iv. In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers within Commission Franchise Area served by cable operators franchised within the Commission Franchise Area, the Grantee shall then be required to comply with the requirements of Section 5, Paragraph 3 (a) above.

c. Grantee shall comply with the following consumer protection standards:

Cable System office hours and telephone availability:

- i. 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.

1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
  2. 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.
- ii. 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.
  - iii. Grantee shall provide the Commission and the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will 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).
  - iv. The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City 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.
  - v. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - vi. Customer service center and bill payment locations will be open at least during Normal Business Hours. Payment drop boxes shall be emptied at least once a day, Monday through Friday, with the exception of legal holidays, and payments shall be posted to Subscribers' accounts within forty-eight (48) hours of pick-up. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to empty a drop box as specified herein, or to properly credit a Subscriber for a payment

timely made. Grantee shall provide Subscribers with notice regarding drop box payment, pick up and posting procedures.

- d. Installations, outages and service calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
  - i. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are to a Qualified Living Unit.
  - ii. 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.
  - iii. The "appointment window" alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-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.)
  - iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - v. 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.
  - vi. For purposes of determining conditions beyond the control of Grantee under this section, power outages of Grantee's power supplies or telephone system may be within the control of Grantee.
- e. Communications between Grantee and Subscribers:
  - i. Notifications to Subscribers:
    - 1. Grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:
      - a. Products and services offered;
      - b. Prices and options for all levels, including free programming services and conditions of subscription to programming and other services;

- c. Installation and service maintenance policies;
  - d. Instructions on how to use the Cable Service;
  - e. Channel positions of the programming carried on the System; and
  - f. Billing and complaint procedures, including the address and telephone number of the Commission's office.
2. Customers 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 changes are within the control of Grantee. In addition, the Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the other information required by Section 5, Paragraph 3(e)(i)(1) above. Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the Subscriber.
- ii. Billing:
    - 1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
    - 2. In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.
  - iii. Refunds: Refund checks will be issued promptly, but no later than either:
    - 1. The customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or
    - 2. The return of the equipment supplied by Grantee if service is terminated.
  - iv. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- f. Grantee shall provide the City with a quarterly customer service compliance report which shall, at a minimum, demonstrate Grantee's compliance with the terms and provisions of this Section 5, Paragraph 3 and any additional customer

service requirements contained in this Franchise, FCC Customer Service Obligations, and other Applicable Laws, and include a summary by category of Subscriber complaints summarizing the number and nature of such complaints.

4. **Subscriber Contracts.** Grantee shall file with Commission any standard form 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 Subscriber contract(s) shall be available for public inspection during Normal Business Hours.
5. **Refund Policy.** In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.
6. **Late Fees.** Fees for the late payment of bills shall not be assessed by Grantee until after the service has been fully provided and, then, only if the bill remains unpaid after the Subscriber is notified of a delinquent balance. Grantee shall comply with 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 Applicable Laws to the maximum extent legally permissible.

## **SECTION 6. LOCAL CHANNELS AND NETWORK DROP PROVISIONS**

1. **Grantee Support for PEG Access.** Grantee shall provide the following support for PEG access within the Franchise Area:
  - a. Provision of the Channels designated in Exhibit A of this Agreement for PEG access programming at no charge in accordance with the requirements of Exhibit A.
  - b. Financial support of PEG access and Local Origination programming to the extent specified in Exhibit A of this Agreement.
  - c. Continuing technical assistance and support for all PEG Channels, including line checks, tests, audio/video adjustments, live feeds, and any other technical issues related to the PEG Channels.
2. **Subscriber Network Drops to Designated Buildings.**
  - a. Service to Commission. Grantee will provide the Commission, free of charge and at no cost to the Commission, complimentary service with the highest level of standard definition (SD) and high definition (HD) Cable Service offered by Grantee, excluding pay-per-view, pay per channel (premium) programming, high-speed data services or newly created non-video Cable Services ("Complimentary Commission Service"). However, Grantee must provide the Commission any platform that includes the PEG Channels. In addition, the Grantee will also

provide the Commission, free of charge and at no cost to the Commission, any equipment necessary to receive these services at a minimum of seven (7) television sets, which shall include SD, HD, video on demand (VOD), and new platforms, boxes, devices, remotes, and digital television adapters (DTAs). If changes in the technology used by the Grantee require additional equipment for reception of PEG Channels the Grantee shall make such equipment available at to up to seven (7) television sets free of charge and at no cost to the Commission.

- b. Service to City Halls. Grantee shall, free of charge and at no cost to any Member City or Commission, provide to each Member City's City Hall Complimentary Commission Service as defined in Section 6, Paragraph 2.(a) above. The Complimentary Commission Service for the City Halls shall include all necessary SD and HD reception equipment for to up to seven (7) television sets at each Member City's City Hall (if no City Hall exists, then the location used by the City as City Hall) as identified on Exhibit B attached hereto and made a part hereof. Exhibit B may be modified by the Commission from time to time to accommodate changes in the City/Commission facilities locations. Grantee shall provide the Complimentary Commission Service so long as these addresses in Exhibit B are designated as a Qualified Living Unit. Grantee shall comply with the obligations of this Section 6, Paragraph 2(b) even if the City Hall is served by another franchised cable communications provider, so long as the City Hall is a Qualified Living Unit. In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers within Commission Franchise Area served by cable operators franchised within the Commission Franchise Area, the Grantee shall then be required to ensure that the City Halls referenced herein are Qualified living units. By way of example, the thirty percent (30%) threshold shall be calculated in the following manner: Company A and Company B both hold franchises to provide Cable Service in the City. Company A has 12,000 Cable Service Subscribers and Company B has 8,000 Cable Service Subscribers - for a total of 20,000 Cable Service Subscribers in the City. Under this example, Company A has 60% of the total Cable Service Subscribers and Company B has 40% of the total Cable Service Subscribers.
- c. Service to Designated Public Buildings. Grantee shall , free of charge and at no cost to any Member City or Commission, provide SD Cable Service (currently Prism Essentials) which, at a minimum, shall include a package of Channels including all Broadcast and PEG Channels and at least one hundred (100) additional commercial channels (but not including pay-per-view or premium Channels, ("Complimentary Public Building Service") including all necessary SD and HD reception equipment for to up to three (3) television sets at all other government buildings, schools and public libraries identified on Exhibit B attached hereto and made a part hereof. Exhibit B may be modified by the Commission from time to time to accommodate changes in city/school/community facilities locations. Grantee shall provide the Complimentary Public Building Service so long as these addresses in Exhibit B are designated as a Qualified Living Unit and no other franchised cable communications provider is providing complimentary service at such location.

However, the City/Commission may determine to disconnect the other franchised cable communications provider and require Grantee to meet the Complimentary Public Building Service obligations set forth herein, as determined in the City's/Commission's sole discretion provided the selected location is a Qualified Living Unit. For purposes of this Section 6, Paragraph 2 (c), "school" means all State-accredited K-12 public and private schools. Complimentary Public Building Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. If requested by any buildings receiving Complimentary Public Building Service under this Section 6, Paragraph 2 (c), Grantee shall provide HD service, at the difference between the lowest retail rate offered by Grantee in the market for HD minus the rate for SD service. At such time Grantee no longer offers programming in standard definition to Subscribers in Commission Franchise Area, the Grantee shall include high definition service in the Complimentary Public Building Service free of charge and at no cost to any Member City, Commission or designated public buildings.

- d. Grantee agrees that if any broadband service is required in order to receive the Complimentary Public Building Service or Complimentary Commission Service obligations set forth in this Section 6, Paragraph 2 (a, b and c), Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision free Cable Service required by Section 6, Paragraph 2. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligations required by Section 6, Paragraph 2.
- e. Additional Subscriber network Drops and/or outlets in any of the locations identified on Exhibit B will be installed by Grantee at the lowest actual cost of Grantee's time and material consistent with Applicable Law ("Actual Cost"). Grantee shall provide the Commission with a complete and detailed cost estimate which shall include Grantee's Actual Costs for any additional Subscriber network Drop and/or outlets. Within no more than ninety (90) Days thereafter, the Commission shall work with institution requesting the additional Subscriber network Drop and/or outlets and provide Grantee with written approval, if applicable, to move forward with the additional Subscriber network Drop and/or outlets. Grantee shall only begin work on construction of the additional Subscriber network Drop and/or outlets once final approval is received from the Commission, and Grantee shall complete construction within thirty (30) Days from the date of approval. Grantee shall bill the institution requesting the additional Subscriber network Drop and/or outlets its Actual Costs in accordance with the agreed upon estimate. The terms and conditions of such payment shall be between the Grantee and the institution. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which approval shall not be unreasonably withheld. Grantee shall have three (3) months from the date of the City designation to

complete construction of the Drop and/or outlets unless weather or other conditions beyond the control of Grantee requires more time.

- f. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required pursuant to Section 8, Paragraph 3 of this Franchise, as a result of its obligation to provide the services listed in Section 6, Paragraph 2 and Exhibit B of this Franchise.

## **SECTION 7. INSTITUTIONAL NETWORK (I-NET) PROVISIONS**

### **1. Institutional Network Facilities and Capacity.**

- a. Grantee acknowledges that the franchise held by the existing franchised cable communications provider within the Commission Franchise Area includes obligations for an Institutional Network for the benefit of the Member Cities and other institutions and to facilitate PEG uses of the I-Net. The Grantee and the City acknowledge that the public interest would not be served by duplicating existing I-Net obligations provided under other Cable Service franchises.
- b. Grantee agrees that if any other franchised cable communications provider within the Commission Franchise Area provides additional I-Net obligations as a condition of a Cable Service franchise, and such condition results in additional costs incurred by such other franchised cable communications provider, the Grantee shall meet with the Commission upon request of the Commission to determine a fair and equitable contribution by the Grantee to proportionately match said I-Net obligations. If the Commission and Grantee are not able to reach mutual agreement to resolve this issue, the Grantee and Commission agree to enter into binding mediation to determine a fair and equitable contribution by the Grantee to proportionately match (on a per month, per subscriber basis) said I-Net obligations.

## **SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS**

- 1. **Delegated-Authority.** The City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.
- 2. **Administration of Franchise.** Commission or any designee thereof shall have continuing regulatory jurisdiction and supervision over the System and Grantee's operation under the Franchise. Commission, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and Applicable Law.

3. **Franchise Fee.**

- a. During the term of the Franchise, Grantee shall pay quarterly to the City or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.
- b. Any payments due under this provision shall be payable quarterly. The payments shall be made on April 30th (1<sup>st</sup> qtr.) July 31st (2<sup>nd</sup> qtr.) October 31st (3<sup>rd</sup> qtr.) and January 31st (4<sup>th</sup> qtr.), together with a report showing the basis for the computation in form and substance substantially the same as Exhibit C attached hereto.
- c. All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
- d. Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall thereafter immediately begin to 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.

4. **Not Franchise Fees.**

- a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of the Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.
- b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to the City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by the City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services that does not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.
- c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be

paid or made by Grantee to the City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

5. **Access to Records.** The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time, copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records related to Cable Service.
6. **Reports and Maps to be Filed with the City.**
  - a. Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as the City may require.
  - b. Subject to reasonable confidentiality protections pursuant to Section 13, Paragraph 10 herein, Grantee shall, if required by Commission, make available to the Commission maps, plats, and records of the location and character of all facilities constructed, including underground facilities, and Grantee shall make available to the Commission updates of such maps, plats and records annually if changes have been made in the System.
7. **Periodic Evaluation.**
  - a. The City may require evaluation sessions at any time during the term of this Franchise, but in no event more than once per calendar year, upon thirty (30) Days written notice to Grantee.
  - b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, and any other topics the City deems relevant.
  - c. As a result of a periodic review or evaluation session, upon notification from the City, Grantee shall meet with the City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are legally, economically and technically feasible.

## **SECTION 9. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. **Performance Bond.**
  - a. Upon the Effective Date of this Franchise and at all times thereafter, the City reserves the right to impose on Grantee an obligation to file with Commission, on behalf of all Member Cities, a bond in the amount of One Hundred Thousand Dollars (\$100,000.00) in a form and with such sureties as reasonably acceptable to Commission. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the

event Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes, due the City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

- b. The City shall provide Grantee thirty (30) Days written notice of its intent to draw on the performance bond together with the reason for such draw. Grantee shall have the right to cure or petition for additional time.
- c. The time for Grantee to correct any violation or liability, shall be extended by the City if the necessary action to correct such violation or liability is, in the sole determination of the City, of such a nature or character as to require more than thirty (30) Days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) Days to correct such violations or liability, commences the corrective action within the thirty (30) Day period and thereafter uses reasonable diligence to correct the violation or liability.
- d. In the event this Franchise is revoked by reason of default of Grantee in accordance with the procedure set forth in Section 10, the City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by the City as a result of said default or revocation.
- e. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) Days after the expiration of the term of the Franchise or revocation for default thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- f. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.

## 2. **Security Fund.**

- a. Within thirty (30) Days of the Effective Date, Grantee shall provide a letter of credit in the amount of Fifty Thousand Dollars (\$50,000) as a common security fund for the faithful performance by it of all the provisions of this Franchise and all other franchises which combine to make up the System (hereinafter "Security Fund"). In compliance with all orders, permits and directions, of any Member

City or Commission and the payment by Grantee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the System. Interest accrued on this deposit shall be paid to Grantee on a quarterly basis provided that all requirements of this section have been complied with by Grantee. Provisions shall be made to permit the Commission to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge, or otherwise use the security fund as security for any purpose.

- b. In addition to recovery of any monies owed by Grantee to the City or any Person or damages to the City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, the City in its sole discretion, subject to the procedure set forth in Section 9, Paragraph 2(d) may charge to and collect from the security fund the following penalties:
  - i. For failure to comply with Section 2, Paragraphs 8, 9, 10 and 12 related to system build out, unless the City approves the delay, the penalty shall be \$500.00 per Day for each Day, or part thereof, such failure occurs or continues.
  - ii. For failure to provide data, documents, reports or information or to cooperate with the City during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per Day for each Day, or part thereof, such failure occurs or continues.
  - iii. Fifteen (15) Days following notice from the City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 per Day for each Day, or part thereof, such failure occurs or continues.
  - iv. For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the PEG Channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be \$500.00 per Day for each Day, or part thereof, such failure occurs or continues.
  - v. For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be \$500.00 per Day for each Day, or part thereof, such breach occurs or continues.
  - vi. For failure to comply with any of the provisions of this Franchise, or other Applicable Laws for which a penalty is not otherwise specifically provided pursuant to this Paragraph (b), the penalty shall be \$250.00 per Day for each Day, or part thereof, such failure occurs or continues.
- c. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

- d. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph b. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) Days (or such longer reasonable time which, in the sole determination of the City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City, the City may draw from the security fund all penalties and other monies due the City from the date of the local receipt of notice.
- e. Grantee may, within seven (7) Days of receipt of such written notice, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to the City shall specify with particularity the matters disputed by Grantee. The City shall hear Grantee's dispute within sixty (60) Days and render a final decision within sixty (60) Days thereafter.
- f. If Grantee does not dispute the alleged violation or upon the determination of the City that a violation has taken place, subject to Grantee's right to seek any applicable judicial review, the City may draw from the security fund an amount to cover any failure of Grantee to pay penalties accrued but unpaid after seven (7) Days written notice of such final determination.
- g. If said security fund or any subsequent security fund delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced security fund shall be of the same form and with a bank authorized herein and for the full amount stated in Paragraph a. of this section.
- h. If the City draws upon the security fund or any subsequent security fund delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) Days and shall deliver to the City a like replacement security fund or certification of replenishment for the full amount stated in Paragraph (a) of this section as a substitution of the previous security fund. This shall be a continuing obligation for any draws upon the security fund.
- i. If any security fund is not so replaced or replenished, the City may draw on said security fund for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace or replenish any security fund may also, at the option of the City and/or Commission, be deemed a default by Grantee under this Franchise. The drawing on the security fund by the 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.

- j. The collection by the City of any damages, monies or penalties from the security fund shall not affect any other right or remedy available to the City, nor shall any act, or failure to act, by the City pursuant to the security fund, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

**3. Liability Insurance.**

- a. 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 Grantee, Commission, the City and the Commission's and the City's officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000.00). The following shall be included in the certificate:

- i. The policy shall provide coverage on an "occurrence" basis.
- ii. The policy shall cover personal injury as well as bodily injury.
- iii. Broad form property damage liability shall be afforded.

The following endorsements shall be attached to the liability policy:

- i. The City shall be listed as an additional insured on the policy.
- ii. An endorsement shall be provided which states that the coverage is primary insurance subject to the indemnification clause and that no other insurance maintained by the Grantee will be called upon to contribute to a loss under this coverage.
- iii. Standard form of cross-liability shall be afforded.
- iv. An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to the City.

- b. Grantee shall submit to the City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

**4. Indemnification.**

- a. Grantee shall indemnify, defend and hold the City and Commission, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including reasonable attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.
- b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- c. The City and/or Commission does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by the City, or the deposit with the City by Grantee, of any of the insurance policies described in this Franchise.
- d. The indemnification of the City and Commission by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- e. Grantee shall not be required to indemnify the City and Commission for negligence or misconduct on the part of the City and the Commission or its officials, boards, commissions, agents, or employees, including any loss claims related to public access Channels in which the City and/or Commission participate subject to applicable state and federal statutory limitations.
- f. Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City, attached hereto as Exhibit D, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of applicable federal, state, or local law(s).

5. **Grantee's Insurance.** Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

**SECTION 10. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE**

**1. City's Right to Revoke.**

- a. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by the City that:
  - i. Grantee has violated material provisions(s) of this Franchise; or
  - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
  - iii. Grantee has practiced fraud or deceit upon the City.
- b. The City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged to be bankrupt.

**2. Procedures for Revocation.**

- a. The City and/or Commission shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) Days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, the City and/or Commission shall provide Grantee with the basis of the revocation.
- b. Grantee shall be provided the right to a public hearing affording due process before the City Council and/or Commission prior to the Effective Date of revocation, which public hearing shall follow the thirty (30) Day notice provided in subparagraph (a) above. The City and/or Commission shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

3. **Abandonment of Service.** Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City and/or Commission. Grantee shall at all times comply with Minnesota Rules Chapter 7819 regarding any abandonment of the System. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment, including all costs incident to removal of the System.
  
4. **Removal after Abandonment, Termination or Forfeiture.**
  - a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System, used exclusively for the provision of Cable Service, from all Rights-of-Way and public property within the City consistent with Minnesota Rules Chapter 7819.
  
  - b. If Grantee has failed to commence removal of System, if used exclusively for the provision of Cable Service, or such part thereof as was designated by the City, within thirty (30) Days after written notice of the City's demand for removal consistent with Minnesota Rules Chapter 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the security fund and performance bond toward removal and/or declare all right, title, and interest to the System, to the extent it is used exclusively for the provision of Cable Service, to be held by the 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.
  
5. **Sale or Transfer of Franchise.**
  - a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger, including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or Affiliate entity, shall take place until a written request has been filed with the City requesting approval and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
  
  - b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10, Paragraph 5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law, the following:
  - i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof (Confidential, trade, business, pricing or marketing information, or information not otherwise publicly available may be redacted) pursuant to the Procedures for Handling Trade Secret and Privileged Data to be adopted by the Commission.
  - ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MNDOT. Upon request, Grantee shall provide the City with a complete copy of any such document.
- d. The City shall have such time as is permitted by federal law in which to review a transfer request.
- e. Grantee shall reimburse the City for all reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates if permitted by Applicable Laws.
- f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to this Section 10, Paragraph 5 (a) or (b), 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 including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.
- g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to this Section 10, Paragraph 5 (a) or (b), the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon the City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to the City in writing and be separate from any general announcement of the transaction.
- h. The City shall be deemed to have waived its right to purchase the System pursuant to this section only in the following circumstances:
  - i. If the City does not indicate to Grantee in writing, within sixty (60) Days of receipt of written notice of a proposed sale, transfer, corporate change,

or assignment as contemplated in Section 10, Paragraph 5 (g) above its intention to exercise its right of purchase; or

- ii. It approves the assignment or sale of the Franchise as provided within this section.
- i. No Franchise may be transferred if the City determines Grantee is in noncompliance with the Franchise unless an acceptable compliance program has been approved by the City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.
- j. Upon notice to Commission, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its Minnesota Systems provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee and such changes do not otherwise trigger review under Minnesota Statutes Section 238.083.

#### **SECTION 11. PROTECTION OF INDIVIDUAL RIGHTS**

- 1. **Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, or disability. Grantee shall comply at all times with all other Applicable Laws relating to nondiscrimination.
- 2. **Subscriber Privacy.** Grantee shall, at all times, comply with Applicable Laws regarding Subscriber privacy, including but not limited to 47 U.S.C. § 551.

#### **SECTION 12. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

- 1. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.
- 2. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City and the Commission may have pursuant to this Franchise or its police powers.

### SECTION 13. MISCELLANEOUS PROVISIONS

1. **Franchise Renewal.** Any renewal of this Franchise shall be performed in accordance with Applicable Law. The term of any renewed Franchise shall be limited to a period no longer than allowed by Applicable Law.
2. **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.
3. **Amendment of Franchise Ordinance.** Grantee and the City may mutually agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 8, Paragraph 7 or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict the City's exercise of its police powers.
4. **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, sabotage, 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.
5. **Compliance with Federal, State and Local Laws.**
  - a. The terms of this Franchise shall govern Grantee's performance under this Franchise except where federal or state laws or regulation preempt such local regulation. In such cases the applicable federal or state laws or regulations shall govern Grantee's performance under this Franchise.
  - b. If any federal or state law or regulation shall require or permit the City or Grantee to perform any service or act or shall prohibit the 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 the 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 conform to federal laws and regulations regarding cable as they become effective.

- c. If the Commission and Grantee do not agree that a material provision of this Franchise is affected by such federal or state law or regulation, then either the Commission or Grantee shall have the right to seek review of the provision in question as permitted by Applicable Laws.
  - d. 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 the City.
6. **Non-enforcement by the City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
7. **Rights Cumulative.** 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.
8. **Grantee Acknowledgment of Validity of Franchise.**
- a. 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. Except as provided in Section 13, Paragraph 4 of this Franchise, Grantee agrees that it will not, at any time, set up against the City or the Commission in any claim or proceeding, any condition or term of the Franchise as

unreasonable, arbitrary, void as of the Effective Date of this Franchise or that the City or the Commission had no power or authority to make such term or condition.

- b. In the case of any dispute or question as to the meaning, interpretation, or application of any term, provision, or condition of this Franchise, the City, in its reasonable discretion, shall promptly resolve such dispute or question.
9. **Commission.** In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City pursuant to a transition agreement to be negotiated at such time by and between the City and the Commission.
10. **Confidential and Trade Secret Information.** The Commission shall follow, all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to Commission. Grantee shall not be relieved of its obligation to provide information or data required under this Franchise simply because the Commission may not be able to guarantee its confidentiality. Grantee acknowledges that the Commission shall at all times comply with the Minnesota Data Practices Act (“MDPA”) related to the release of information and nothing herein shall be read to modify the Commission’s obligations under the MDPA.

#### **SECTION 14. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. **Publication, Effective Date.** This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date set forth in the definition Section 1, Paragraph 2 (o).
2. **Acceptance.**
  - a. Grantee shall accept this Franchise within thirty (30) Days of its enactment by the City Council, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, or should all ordinance adoption procedures, timelines and payments not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void. The Commission’s “Notice of Intent to Consider an Application for a Franchise” (“Notice”) provided, consistent with Minn. Stat. 238.081 subd. 8, that applicants would be required to reimburse the Commission for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the Commission. The Notice further provided that any unused portion of the application fee would be returned and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the Commission at the time of acceptance of this Franchise, a check made payable to the Commission for all additional fees and costs incurred by the

Commission. Within thirty (30) Days of each Member Cities' approval, the Commission shall provide Grantee with a letter specifying such additional costs. The Commission shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by each Member City.

- b. Upon acceptance of this Franchise, Grantee and the City shall be bound by all the terms and conditions contained herein.
- c. Grantee shall accept this Franchise in the following manner:
  - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
  - ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein that have not previously been delivered.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

CITY OF \_\_\_\_\_, MINNESOTA

By: \_\_\_\_\_  
SIGNATURE

By: \_\_\_\_\_  
SIGNATURE

Name: \_\_\_\_\_  
PRINTED/TYPED NAME

Name: \_\_\_\_\_  
PRINTED/TYPED NAME

Its: \_\_\_\_\_  
TITLE

Its: \_\_\_\_\_  
TITLE

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

QWEST BROADBAND SERVICES, INC.  
D/B/A CENTURYLINK

Date: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
SIGNATURE

Name: \_\_\_\_\_  
PRINTED/TYPED

Its: \_\_\_\_\_  
TITLE

SWORN TO BEFORE ME this  
\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**  
**GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT**

**1. Public, Educational and Government (PEG) Access Channels.**

- a. Upon the Effective Date of this Franchise, Grantee shall make seven (7) video Channels available exclusively for noncommercial PEG use (“PEG Channels”). The PEG Channels shall be dedicated for PEG use for the term of the Franchise. SD PEG Channels shall be carried on Channels 14, 15, 16, 18, 19, 20, 21 on Grantee’s Cable System unless the parties mutually agree to PEG Channel relocation.
- b. Grantee shall configure the Cable System to allow PEG programming on the PEG Channels to be discretely distributed (Narrowcast) to individual Member Cities via designated node sites. The City and Grantee acknowledge that programming may not be discretely distributed to one hundred percent (100%) of the City due to the location of particular node sites and configuration of the Cable System.
- c. PEG Channels will be grouped with like Channels (for example SD Channel line-up and HD Channel line-up) in the lowest cost SD and HD tier, and will be located adjacent to broadcast channels and other basic mainstream cable/satellite Channels.
- d. After January 1, 2016 and with at least one hundred eighty (180) Day advance written notice to Grantee, the City shall have the right to require that Grantee carry one (1) of the PEG Channels in both SD and HD format equivalent to the broadcast channels and commercial cable/satellite Channels carried by the Grantee on its Cable System. The City shall have the sole discretion to determine which of its Channels will be provided in HD without the addition of mandates or content restrictions imposed by Grantee. HD resolution will be equivalent to the resolution used in Grantee’s HD tier. Grantee will continue to carry the PEG Channels in SD format in addition to HD format as long as there are SD Channels in Grantee’s Basic Cable Service tier. If Grantee discontinues carriage of SD Channels, all of the PEG Channels shall be carried in HD format.
- e. After January 1, 2017 and with at least one hundred eighty (180) Day advance written notice to Grantee (which notice may be sent no sooner than July 1, 2016), the City shall have the right to require that Grantee carry up to two (2) additional PEG Channels (for a total of three (3) PEG Channels) in both SD and HD in accordance with the technical and other requirements of subparagraph 1 (d) above.
- f. After January 1, 2018 and with at least one hundred eighty (180) Day advance written notice to Grantee (which notice may be sent no sooner than July 1, 2017), the City shall have the right to require that Grantee carry up to two (2) additional PEG Channels (for a total of five (5) PEG Channels) in both SD and HD in accordance with the technical and other requirements of subparagraph (d) above.

g. After January 1, 2019 and with at least one hundred eighty (180) Day advance written notice to Grantee (which notice may be sent no sooner than July 1, 2018), the City shall have the right to require that Grantee carry up to two (2) additional PEG Channels (for a total of seven (7) PEG Channels) in both SD and HD in accordance with the technical and other requirements of subparagraph (d) above.

2. **NDC4 Mosaic Channel Alternative.** In lieu of the requirements set forth in this Exhibit A paragraph 1 (a-g) above, Grantee may instead elect to comply with the following requirements which shall be met no later than one hundred twenty (120) Days from the date the Commission adopts a resolution recommending approval of the Franchise by the Member Cities.

- a. Grantee shall provide seven (7) PEG Channels in both HD and SD and shall not reduce the number of PEG Channels unless directed by the Commission.
- b. Grantee shall use designated Channels in its Channel lineup as a means to provide ease of access by Subscribers to the group of PEG Channels placed consecutively on Channel numbers as agreed upon herein. This use of one (1) or more Channels to access the group of seven (7) PEG Channels required under this Franchise shall be referred to as the "NDC4 Mosaic Channel." The NDC4 Mosaic Channel shall display the group of PEG Channels on a single Channel screen and serve as a navigation tool for Subscribers. The NDC4 Mosaic Channel shall allow Subscribers to navigate directly from a designated Channel to any of the seven (7) PEG Channels requested in a single operation (with one click, or, in one step) without any intermediate steps to a chosen PEG Channel in the group.
- c. Grantee shall use Channel 31 as the SD NDC4 Mosaic Channel and Channel 1031 as the HD NDC4 Mosaic Channel to access the PEG Channels required under this Franchise. The group of seven (7) consecutive PEG Channels residing at higher Channel numbers will retain Channel names and identity numbers 14-21 for marketing purposes, unless approved by the Commission, and will have the final two (2) digits matching with the current Basic Cable Service tier Channels 14-21. The designated Channels shall be as follows: 8414, 8415, 8416, 8418, 8419, 8420, and 8421 for SD PEG Channels and 8914, 8915, 8916, 8918, 8919, 8920, and 8921 for HD PEG Channels. Grantee shall not include any other programming or Channels on the NDC4 Mosaic Channel unless the Commission provides advance written consent.
- d. When using the NDC4 Mosaic Channel, Subscribers shall be directed to the requested PEG Channel in HD format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the SD PEG Channel.
- e. Grantee shall consult with the Commission to determine how the PEG Channel information is displayed on the NDC4 Mosaic Channel. The NDC4 Mosaic Channel shall have the same video and audio Signal strength, Signal quality, and navigational functionality equivalent to every other commercial Mosaic Channel carried by the Grantee on its Cable System.

- f. As the Grantee innovates and improves the functionality and interactivity and/or adds capability for personalization of the Mosaics, the Grantee will provide the same navigational, interactive and personalization features for the NDC4 Mosaic Channel as are available to Subscribers for every other commercial Mosaic Channel. (For example, if a Subscriber has the capability to add selected sports or news Channels to the Sports or News Mosaics, then the Subscriber shall also be able to add a PEG Channel to any of the Mosaics.)
- g. If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations for other Channels including broadcast channels and commercial cable/satellite Channels (such as the News Mosaic, the Sports Mosaic, and/or the Children's Mosaic), then Grantee will either continue to support the NDC4 Mosaic Channel as determined in the Commission's sole discretion or reach mutual agreement with the Commission regarding how to accommodate the NDC4 Mosaic Channel to ensure PEG Channels are treated no less favorably than commercial channels provided by Grantee. In all cases Grantee shall maintain Channels 31 and 1031 for use by the Commission for PEG purposes.

**3. PEG Technical Quality.**

- a. The City may not request additional Channel capacity beyond the seven (7) PEG Channels in both SD and HD except in accordance with Applicable Laws. The City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair, on the PEG Channels.
- b. The Grantee shall provide all PEG Channels on the Basic Cable Service tier or the lowest cost tier of service throughout the life of the Franchise. Grantee shall at all times provide the PEG Channels to any Person who subscribes to any level of cable Video Programming service, and otherwise in accordance with Applicable Laws. The Grantee shall not charge for use of the PEG Channels, equipment, facilities or services.
- c. The City shall establish rules and procedures for PEG Channel scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).
- d. Grantee will deliver PEG Channels to Subscribers with video and audio Signal strength, signal quality, and functionality equivalent to every other broadcast channel and commercial cable/satellite channels carried by the Grantee on its Cable System. Grantee agrees that Subscribers will not be required to obtain or pay for any additional equipment required solely to receive the PEG Channels.
- e. Grantee shall carry all components of the SD and HD PEG access signals provided by the City and Commission, including but not limited to, closed captioning, multichannel television sound, Channel recording or DVR capability, last Channel capability, active format description, and any captioning or text

signals which are inserted by Commission or passed-through by Commission on its PEG Channels and other elements associated with the PEG programming. Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the signal delivered to Grantee, but Grantee shall distribute all PEG Channels without degradation.

- f. The Commission shall provide PEG Channels audio and video signals to the Grantee in a format approved by Commission. Grantee shall obtain PEG Channels at point of origin chosen and approved by Commission (currently the master control room located at 5845 Blaine Avenue, Inver Grove Heights, MN).
  - g. All PEG Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the Subscriber receives. The City and Commission acknowledge that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the Cable System at a receiver shall also be able to view the HD PEG Channels at that receiver, without additional charges or equipment. By agreeing to make PEG Channels available in HD format, Grantee is not agreeing to provide free HD equipment to Subscribers, or to modify its equipment or pricing policies in any manner. The City and Commission acknowledge that not every Subscriber may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Grantee or other equipment provider) or on every television in the home. Grantee agrees that any Subscriber shall be able to view all PEG Channels in SD on any equipment that is not HD capable.
4. **Metro Cable Network Channel 6.** In addition to the seven (7) PEG Channels Grantee is required to provide herein, Grantee shall also designate the standard VHF Channel 6 for uniform regional Channel usage as currently provided by “Metro Cable Network Channel 6” to the extent and under the terms required by Minn. Stat. § 238.43.
  5. **PEG Operations.** The Commission and the City may, in their sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels.
  6. **Title to PEG Equipment.** The City shall retain title to all PEG equipment and facilities purchased or otherwise acquired by the City.
  7. **PEG Equipment.** The Grantee shall provide, at the Grantee's sole cost and expense, all modulators and any other necessary equipment to permit full and practical utilization from the Grantee's headend downstream, by conventional technical means, of each PEG Channel.
  8. **Relocation of PEG Channels.**

- a. Grantee shall not relocate any PEG Channel to a different Channel number unless specifically required by Applicable Laws or unless otherwise agreed to in writing by the Commission. Grantee shall provide at least sixty (60) Days prior written notice of such relocation to Subscribers and the Commission. In the event the Commission agrees in writing to a PEG Channel relocation, the PEG Channels will be located within reasonable proximity to other broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.
  - b. Grantee agrees not to encrypt the PEG Channels differently than other commercial Channels available on the Cable System.
  - c. Grantee shall reimburse the Commission for reasonable costs caused by such relocation, including (1) logo, business card or signage changes, (2) equipment modifications necessary to effect the change at the programmer's production or receiving facility, or (3) reasonable constituency notification costs.
9. **Promotion of PEG Access.** During the term of the Franchise the Grantee shall comply with one of the following requirements, (a) or (b) below. Grantee shall at all times comply with all of the standards and requirements set forth in this paragraph 9 (c-g) below during the term of this Franchise.
- a. Upon sixty (60) Days' notice from the Commission, the Grantee shall twice annually, free of charge and at no cost to the Commission, print and mail a post card promoting the PEG programming to Grantee's Subscribers in the Commission Franchise Area. The post card shall be designed by the Commission and shall conform to the Grantee's standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted.
  - b. Grantee shall allow Commission to place bill stuffers in Grantee's Subscriber statements at a cost to Commission not to exceed Grantee's actual cost (with no markup), no less frequently than twice per year upon the written request of Commission 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. Commission agrees to pay Grantee in advance for the actual cost of such bill stuffers.
  - c. Grantee shall distribute, free of charge and at no cost to Commission, through advertising insertion equipment, thirty (30) second promotional and awareness commercial spots, on a "run of schedule" basis in unsold time slots, produced at Commission's cost and submitted by Commission once each month in a format compatible with such advertising insertion equipment. Grantee shall provide monthly ad insertion affidavits in the same format provided to commercial advertising clients.
  - d. Grantee shall use its best efforts to make available PEG access information provided by Commission in Subscriber packets at the time of Installation and at the counter in the Grantee's business office serving the Franchise Area.

- e. If the Grantee offers localized information on its website specific to the Twin Cities or the Commission Franchise Area, then the Grantee will allow the Commission to place its web link and/or other information about Commission PEG programming and PEG Channels on Grantee's website in a format mutually acceptable to the Commission and the Grantee.
  - f. Grantee shall include the PEG Channels and programming information in any electronic/interactive program guide, program listings, search options, record and DVR options, navigation systems and search functions accessible through Grantee's Set Top Box and remote controls, or their successor technologies, provided to its Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local broadcast channels. Grantee shall bear all capital, implementation and operating costs to include the basic programming information in the programming guides for the PEG Channels, free of charge and at no cost to the City or Commission. The City and Commission shall have the right to pay for more enhanced program information to be made available on the programming guides including the Channel name and logo/icon, program titles scheduled in thirty (30) minute time blocks, program descriptions, information needed for search & record features, and any other information similarly provided for other broadcast channels and commercial cable/satellite Channels. Grantee shall, to the maximum extent possible, make available to the City and Commission any price discounts Grantee may have in place with third party vendors that offer such programming guide services.
  - g. Throughout the term of the Franchise, and as the term may be extended, Grantee shall provide the Commission high speed internet service with a modem and up to five (5) static IP addresses, with Grantee's highest available upstream bandwidth ("Commission Broadband Service"), which may be used by the Commission for public use and various PEG purposes as determined in Commission's sole discretion. The Commission Broadband Service shall be provided by Grantee free of charge and at no cost to the Commission for both the monthly service and equipment.
10. **PEG Support.** In addition to satisfying the other requirements of this Franchise, Grantee is required to provide the following additional PEG support funding to the Commission:
- a. The PEG fee shall be One and 77/100 Dollars (\$1.77) per Subscriber per month commencing on the Effective Date and continuing for the duration of this Franchise ("PEG Fee"). Payments pursuant to this subsection shall be payable quarterly to the Commission (or its designated access entity), on the same schedule as Franchise Fee payments. The PEG Fee may be unilaterally increased no more than once each calendar year in the Commission's sole discretion, upon sixty (60) Days advance written notice to Grantee, annually compounded from the Effective Date of this Franchise, based on the increase from the Minneapolis/St. Paul Consumer Price Index for all consumers and/or three percent (3%) each year, whichever is lower. In no event shall the PEG Fee paid by Grantee be in excess

of the per Subscriber, per month fee paid by the existing cable communications provider.

- b. Upon sixty (60) Days' written notice to Grantee, Commission may elect to unilaterally change the PEG Fee to a different dollar amount per Subscriber per month or change the format to a percentage of Gross Revenues up to two and one-half percent (2.5%) of Gross Revenues. In no event shall the PEG Fee be assessed in an amount or manner different from that imposed upon the existing cable communications provider. In the event the existing cable communications provider agrees to a higher, or lower, PEG Fee, Grantee will increase, or decrease, its PEG Fee upon sixty (60) Days' written notice from the Commission. The PEG Fee may be used for operational or capital support of PEG programming as determined in the Commission's sole discretion. In no event shall the PEG Fee paid by Grantee be in excess of the per Subscriber, per month fee paid by the existing cable communications provider.
- c. Any PEG support amounts owing pursuant to this Franchise which remain unpaid after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate as quoted by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater.
- d. Grantee agrees that financial support for PEG arising from or relating to the obligations set forth in this section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Commission. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise. Grantee and the City agree that the PEG Fee referenced in this Exhibit A will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 8 hereof or (ii) part of the Franchise Fees to be paid to the City by Grantee pursuant to Section 8 hereof.

## 11. **Technical Support.**

- a. Throughout the Franchise term, playback from the PEG Channels must be configured so that the Commission or its designated entity is able to use its own independent automated playback facilities, located at the premises of its choice. Any master control that Grantee intends to use for its operations must be located outside the space occupied by a designated entity, unless the parties agree otherwise. The playback facility must be configured so as to permit the designated entity to program all Channels for which it is responsible for content, on a live or pre-recorded basis. Grantee shall continue to have access to the designated entity's master control so that it can conduct necessary maintenance

and repair affecting Grantee's network or equipment upon reasonable notice or at any time in the event of emergencies, at no cost to the City or Commission.

- b. Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues, who will respond to urgent tech-support requests within fifteen (15) minutes and non-urgent tech support requests within three (3) hours or forty-eight (48) hours, depending upon the response time needed. Commission technical staff will determine what requests are urgent or non-urgent. Commission agrees to use best efforts to verify that the issue is not on the Commission's side of the demarcation point before a call is made to Grantee.
- c. Grantee shall provide, at no cost to Commission, six (6) live feeds (SD or HD as determined by the Commission) per year from the Commission's offices to the offices of Metro Cable Network Channel 6. Such feeds shall connect directly to Metro Cable Network Channel 6 master control. Grantee shall have the option to meet this obligation via the interconnection obligations set forth in Section 13 of this Exhibit A to the extent the interconnection reaches the Metro Cable Network Channel 6 playback location.
- d. Grantee and the Commission shall, on or before June 1, 2016, meet to mutually agree on two locations to televise live PEG programming from two (2) locations, to provide live remote feeds back to the Commission's master control and other PEG related uploads/downloads and data transfer. Grantee shall provide two (2) locations sufficient capacity to transmit live, uncompressed SD and HD audio and video signals back to the Commission's master control. No more than once annually, upon ninety (90) Days advance written notice to Grantee, the Commission shall have the right to request modification to the locations (a total of no more than five (5) modifications within a five (5) year term) provided that Grantee and Commission mutually agree upon such new location(s).
- e. To the extent technically feasible on Grantee's System, Grantee shall: 1) provide, free of charge and at no cost to Commission, live feeds for PEG access and Local Origination programming from any location in the Commission's Franchise Area that is passed by the Grantee's fiber optic network. The Commission shall provide a minimum of seventy-two (72) hours advance notice to Grantee of the need for such live feeds and shall endeavor to provide a minimum seven (7) Days advance notice when possible; and 2) upon two (2) weeks prior notice by Commission, work with Commission to accommodate one time programming via live feeds from areas not passed by the Grantee's fiber optic network. Such live feeds shall be under Grantee's direct supervision and on a frequency designated by Grantee.
- f. Grantee shall also feed the Local Origination and PEG Channels provided in the City of St. Paul into the Commission's master control for potential simulcasting

on the PEG Channels required pursuant to this Franchise. Determination regarding the simulcasting of such PEG Channels and Local Origination signals from St. Paul shall be in the sole discretion of the Commission. Grantee shall have the option to meet this obligation via the interconnection obligations set forth in Section 13 of this Exhibit A to the extent the interconnection reaches St. Paul, or its designated access entity (currently St. Paul Neighborhood Network - SPNN), playback location.

- g. In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers within Commission Franchise Area served by cable operators franchised within the Commission Franchise Area, the Grantee shall then be required to also comply with the requirements of this Section 11(f) of this Exhibit A in the following manner: Grantee shall provide regular satellite feeds from Grantee's headend facility and/or hub site locations to be fed directly to the Commission's master control facility. At a minimum, Grantee shall provide six (6) such satellite feeds. By way of example, the thirty percent (30%) threshold shall be calculated in the following manner: Company A and Company B both hold franchises to provide Cable Service in the City. Company A has 12,000 Cable Service Subscribers and Company B has 8,000 Cable Service Subscribers - for a total of 20,000 Cable Service Subscribers in the City. Under this example, Company A has 60% of the total Cable Service Subscribers and Company B has 40% of the total Cable Service Subscribers.
- h. Grantee shall provide twenty-six (26) live feeds, free of charge, each year from Grantee's headend facility (presently located in Golden Valley) to and from, other municipalities where Grantee holds a franchise in the Twin Cities to allow for the sharing of local programming such as high school sports and/or other programs with shared audiences. Grantee shall have the option to meet this obligation via the interconnection obligations set forth in Section 13 of this Exhibit A provided that such other municipal franchises require Grantee to provide access to the interconnection network (i.e. Section 13 of this Exhibit A).
- i. To the extent required for Grantee to receive PEG programming, Grantee shall provide free fiber optic links, including internal wiring to Drop points and required commercial-grade equipment to the West St. Paul City Hall, South St. Paul City Hall, Inver Grove Heights City Hall, Mendota Heights City Hall and Lilydale City Hall, as well as to the Commission's facility within ninety (90) Days of request by the Commission. These fiber optic connections will permit the above-referenced Member Cities to cablecast live governmental meetings on the PEG Channels, free of charge.
- j. Notwithstanding the foregoing, Grantee shall at all times maintain, free of charge and at no cost to Commission or the City, all existing fiber return paths, existing origination paths and transmission equipment in place as of the Effective Date throughout the term of this Franchise.

12. **Video on Demand.**

- a. During the term of its Franchise, for as long as the Grantee makes video on demand (“VOD”) available on its Cable System, Grantee will include in its VOD offerings twenty-five (25) hours of either SD or HD PEG programming, or a combination of both, per Member City of the Commission, or such greater amount as may be mutually agreed to by the parties, as designated and supplied by the Commission or a Member City to the Grantee. The Commission’s or Member Cities’ content may be electronically transmitted and/or transferred and shall be stored on the Grantee’s VOD system. The Commission or Member City VOD PEG programming will be available to Subscribers twenty-four (24) hours per day, seven (7) days per week. Any Commission or Member City PEG programming placed on VOD shall be available to Subscribers free of charge. The Grantee will provide, upon Commission or the City’s request, any aggregate data regarding Subscriber use of the City’s programming on the VOD platform, if available to Grantee. PEG programming content shall have the same viewing quality and features (including program descriptions and search function) as all other free VOD content on Grantee’s Cable System. Programming submitted for placement on the VOD system shall be placed on and available for viewing from the VOD system as soon as possible from time of receipt of said programming and Grantee will make best efforts to provide a 24-hour turn-around, and in no case longer than seventy-two (72) hours from receipt of said programming. Grantee agrees to treat PEG VOD programming in a nondiscriminatory manner as compared to other similarly situated providers of VOD content.
- b. The Commission or the City shall have the sole discretion to select the content of such PEG VOD programming and shall be responsible for such content. The Commission’s VOD programming will be located on Grantee’s On-demand menu pages on the second page or higher on a button labeled “Town Square Television” (or the Commission’s choice of label). The Commission’s PEG VOD programming will be available in the Commission’s Franchise Area, or more broadly distributed at Grantee’s option.
- c. To the extent permitted, Grantee shall authorize Commission to obtain from Grantee’s third party vendor, free of charge and at no cost to the Commission, monthly viewership/traffic reports showing statistics for PEG VOD programs, or Grantee shall provide (or require its third party vendor to provide) the Commission with access to online dashboard analytics allowing Commission staff to directly access traffic information.

13. **Interconnection.** Grantee shall provide a discrete, non-public, video interconnect network, from an agreed upon Demarcation Point at the Commission's master control facility at the Commission's office, to Grantee's headend. The video interconnect network shall provide not less than 50 Mbps of allocated bandwidth, allowing PEG operators that have agreed with Grantee to share (send and receive) live and recorded programming for playback on their respective systems. Where available the Grantee shall provide the video interconnect network and the network equipment necessary, for

the high-priority transport of live multicast HD/SD video streams as well as lower-priority file-sharing. Grantee shall provide a minimum of 50 Mbps bandwidth for each participating PEG entity to send its original programming, receive at least two (2) additional multicast HD/SD streams from any other participating PEG entity, and allow the transfer of files. Each participating PEG entity is responsible for encoding its own SD/HD content in suitable bit rates to be transported by the video interconnect network without exceeding the 50 Mbps of allocated bandwidth. The System servicing the Commission and its Member Cities shall be completely interconnected. In addition, Grantee shall make available for Interconnection purposes one (1) Channel for forward video purposes, one (1) six (6) MHz Channel for return video purposes, one (1) Channel for forward data or other purposes, and one (1) Channel for return data or other purposes between all Cable Systems adjacent to the Commission's Cable System and under common ownership with Grantee. This commitment may be satisfied through the provision of the Twin Cities Metro PEG Interconnect Network, provided Grantee agrees to allow all cities adjacent to the Commission Franchise Area to participate.

**EXHIBIT B**  
**SERVICE TO PUBLIC AND PRIVATE BUILDINGS**

**Cable Commission Office & PEG Studio/Master Control**

Northern Dakota County Cable Communications Commission  
and Town Square Television, its designated access entity  
5845 Blaine Avenue  
Inver Grove Heights, MN 55076-1401

**City of Inver Grove Heights**

Inver Grove Heights City Hall  
8150 Barbara Avenue  
Inver Grove Heights, MN 55077

Inver Grove Heights Police Department  
8150 Barbara Avenue  
Inver Grove Heights, MN 55077

IGH Fire Station #3  
2059 Upper 55th Street E  
Inver Grove Heights, MN 55077

IGH Fire Station #1  
7015 Clayton Avenue East  
Inver Grove Heights, MN 55076

IGH Public Works  
8168 Barbara Avenue  
Inver Grove Heights, MN 55077

Inver Wood Golf Course  
1850 70<sup>th</sup> Street East  
Inver Grove Heights, MN 55077

Veterans Memorial Community Center  
8055 Barbara Avenue  
Inver Grove Heights, MN 55077

IGH Water Treatment Plant  
2015 75<sup>th</sup> Street  
Inver Grove Heights, MN 55077

IGH Future Fire Station  
(Address not determined yet)  
Inver Grove Heights, MN

**City of Lilydale**

Lilydale City Hall  
1011 Sibley Memorial Hwy  
Lilydale, MN 55118

**City of Mendota**

Sites to be determined

**City of Mendota Heights**

Mendota Heights City Hall  
1101 Victoria Curve  
Mendota Heights, MN 55118

Mendota Heights Police Department  
1101 Victoria Curve  
Mendota Heights, MN 55118

Mendota Heights Fire Department  
2121 Dodd Road  
Mendota Heights, MN 55120

Mendota Heights Par 3 Golf Course  
1695 Dodd Road  
Mendota Heights, MN 55118

Mendota Heights Public Works Building  
2431 Lexington Avenue  
Mendota Heights, MN 55118

### **City of South St. Paul**

South St. Paul City Hall  
125 3rd Avenue  
South St. Paul, MN 55075

South St. Paul Police Department  
125 3<sup>rd</sup> Avenue  
South St. Paul, MN 55075

Doug Woog Civic Arena  
141 East 6th Street  
South St. Paul, MN 55075

Fleming Field Airport  
1720 Henry Avenue  
South St. Paul, MN 55075

SSP Municipal Service Center  
400 Richmond St. W.  
South St. Paul, MN 55075

Central Square Community Center  
110 7<sup>th</sup> Avenue North  
South St. Paul, MN 55075

South Metro Fire Department Station #2  
310 Marie Avenue  
South St. Paul, MN 55075

South St. Paul Public Library  
106 3rd Avenue N.  
South St. Paul, MN 55075

### **City of Sunfish Lake**

Sites to be determined

### **City of West St. Paul**

West St. Paul City Hall  
1616 Humboldt Avenue  
West St. Paul, MN 55118

West St. Paul Police Department  
1616 Humboldt Avenue  
West St. Paul, MN 55118

South Metro Fire Station #1  
1616 Humboldt Avenue  
West St. Paul, MN 55118

West St. Paul Regional Athletics Center (Dome)  
1655 Livingston Avenue  
West St. Paul, MN 55118

West St. Paul Municipal Pool  
92 West Orme Avenue  
West St. Paul, MN 55118

John V. Hoene Ice Arena  
60 West Emerson Avenue  
West St. Paul, MN 55118

Thompson Oaks Golf Course  
1555 Oakdale Avenue  
West St. Paul, MN 55118

West St. Paul Public Works  
403 Marie Avenue East  
West St. Paul, MN 55118

**Dakota County  
Facilities Located In NDC4 Area**

Northern Service Center  
1 West Mendota Road  
West St. Paul, MN 55118

Inver Glen Library  
8098 Blaine Avenue  
Inver Grove Heights, MN 55076

Wentworth Library  
199 East Wentworth Avenue  
West St. Paul, MN 55118

Thompson Park Activity Center  
1200 Stassen Lane  
West St. Paul, MN 55118

Dakota County Historical Society &  
Lawshe Memorial Museum  
130 3<sup>rd</sup> Avenue North  
South St. Paul, MN 55075

**Independent School District #199  
(Inver Grove Heights Schools)**

Simley Senior High School  
2920 East 80th Street  
Inver Grove Heights, MN 55076

Inver Grove Middle School  
8167 Cahill Avenue East  
Inver Grove Heights, MN 55076

ISD #199 District Office  
2990 80th Street East  
Inver Grove Heights, MN 55076

Pine Bend Elementary School  
9875 Inver Grove Trail  
Inver Grove Heights, MN 55076

Hilltop Elementary School  
3201 East 68th Street  
Inver Grove Heights, MN 55076

Salem Hills Elementary School  
5899 East Babcock Trail  
Inver Grove Heights, MN 55076

Tri-District Community Ed. – IGH Office  
2925 Buckley Way  
Inver Grove Heights, MN 55076

Inver Grove Elementary School  
4100 East 66<sup>th</sup> Street  
Inver Grove Heights, MN 55076

Early Learning Center  
3203 68<sup>th</sup> Street East  
Inver Grove Heights, MN 55076

**Independent School District #197  
(Mendota Heights / West St. Paul Schools)**

Henry Sibley High School/District Office  
1897 Delaware Avenue  
Mendota Heights, MN 55118

Friendly Hills Middle School  
701 Mendota Heights Road  
Mendota Heights, MN 55118

Heritage E-STEM Magnet School  
121 West Butler Avenue  
West St. Paul, MN 55118

Somerset Elementary School  
1355 Dodd Road  
Mendota Heights, MN 55118

Mendota Elementary School  
1979 Summit Lane  
Mendota Heights, MN 55118

Moreland Arts & Health Sciences Magnet School  
217 West Moreland Avenue  
West St. Paul, MN 55118

Garlough Environmental Magnet School  
1740 Charlton Street  
West St. Paul, MN 55118

Tri-District Community Ed.- ISD 197 Office  
1897 Delaware Avenue  
Mendota Heights, MN 55118

**Special School District 6**  
(South St. Paul Schools)

South St. Paul Secondary School  
700 2nd St. North  
South St. Paul, MN 55075

Tri-District Community Education  
South St. Paul Office & Kid Connections  
1541 5<sup>th</sup> Avenue South  
South St. Paul, MN 55075

South St. Paul Schools District Office  
104 5th Ave. South  
South St. Paul, MN 55075

Lincoln Center Elementary  
357 9th Ave. North  
South St. Paul, MN 55075

Kaposia Education Center  
1225 1st Ave. South  
South St. Paul, MN 55075

SSP Community Learning Center  
151 6th St. East  
South St. Paul, MN 55075

South St. Paul Early Childhood Family Education  
1515 5<sup>th</sup> Avenue South  
South St. Paul, MN 55075

**Private Schools**

Convent of the Visitation School  
2455 Visitation Drive  
Mendota Heights, MN 55120

St. Thomas Academy  
949 Mendota Heights Road  
Mendota Heights, MN 55120

St. Croix Lutheran School  
1200 Oakdale Avenue  
West St. Paul, MN 55118

Community of Saints Catholic School  
335 E. Hurley Street  
West St. Paul, MN 55118

St. Joseph's School  
1138 Seminole Avenue  
West St. Paul, MN 55118

Holy Trinity School  
745 - 6th Avenue South  
South St. Paul, MN 55075

Crown of Life Lutheran School  
115 Crusader Avenue  
West St. Paul, MN 55118

### **Colleges**

Inver Hills Community College  
2500 East 80th Street  
Inver Grove Heights, MN 55076

**EXHIBIT C**  
**FRANCHISE FEE PAYMENT WORKSHEET**

	Month/Year	Month/Year	Month/Year	Total
A la Carte Cable Services				
Audio Services				
Basic Cable Services				
Expanded Basic Cable Services				
Pay Services				
Premium Services				
Video-On-Demand Services				
Pay-per-view Services				
Installation Charges				
Activation/Disconnection Charges				
Technician Service Call Charges				
Equipment Charges				
DTA Equipment Charges				
Wireless Set-Top Box				
DVR Charges				
Additional Outlets				
Guide Revenue				
Bulk Revenue				
Advertising Revenue				
Home Shopping Revenue				
Inside Wiring / Service Protection Plan				
Other Revenue				
Processing Fees				
Franchise Fee Revenue				
Late Fees				
Bad Debt				
<b>TOTAL REVENUE</b>				
Franchise Fee Factor: 5%				
Franchise Fee Remitted				
PEG Fee Factor 2.5% [if percentage formula is used]				
PEG Fee Remitted				

**PEG FEE PAYMENT WORKSHEET [if fee per Subscriber is used]**

	Month/Year	Month/Year	Month/Year	Total
Number of Subscribers Inver Grove Heights				
Number of Subscribers Lilydale				
Number of Subscribers Mendota				
Number of Subscribers Mendota Heights				
Number of Subscribers South St. Paul				
Number of Subscribers Sunfish Lake				
Number of Subscribers West St. Paul				
<b>TOTAL SUBSCRIBERS</b>				
Current Monthly PEG Fee \$1.77 per month per Subscriber				
PEG Fee Remitted				

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

**EXHIBIT D  
INDEMNITY AGREEMENT**

**INDEMNITY AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of \_\_\_\_\_, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

**WITNESSETH:**

**WHEREAS**, the City of \_\_\_\_\_ has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of \_\_\_\_\_; and

**WHEREAS**, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

**NOW THEREFORE**, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys' fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink.

Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then the City shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to the City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

**QWEST BROADBAND SERVICES, INC.**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
SIGNATURE

Name: \_\_\_\_\_  
PRINTED/TYPED NAME

Its: \_\_\_\_\_  
TITLE

STATE OF LOUISIANA    )  
                                  ) SS  
                                  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_

CITY OF \_\_\_\_\_

By: \_\_\_\_\_  
SIGNATURE

Name: \_\_\_\_\_  
PRINTED/TYPED NAME

Its: \_\_\_\_\_  
TITLE

SWORN TO BEFORE ME this  
\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC

**TO: Mayor and City Council**  
**FROM: Matt Fulton, City Manager**  
**DATE: March 28, 2016**  
**SUBJECT: Consider first reading of Ordinance granting Cable Communication franchise to Century Link.**



**BACKGROUND INFORMATION:** Northern Dakota County Cable Commission (NDC4) includes the Cities of Inver Grove Heights, Lilydale, Mendota, Mendota Heights, Sunfish Lake, South St. Paul, and West St Paul. NDC4 administers and enforces cable communication franchises on behalf of its member cities. QWestBroadband Services, Inc. d/b/a Centurylink, Inc (CenturyLink) approached NDC4 and each of the member cities seeking a cable communications franchise. On behalf of the member cities, NDC4 followed the franchise procedure required by Minnesota Statutes as it responded to that request.

**DISCUSSION:** After considerable discussion with Centurylink representatives, NDC4 staff and legal counsel have negotiated recommended terms and conditions for a competitive cable franchise. The draft cable franchise Ordinance that resulted from those negotiations is attached. Also attached is a proposed resolution authorizing the grant of a cable communications franchise to CenturyLink.

The grant of a cable franchise to CenturyLink requires the enactment of an Ordinance by each of the member Cities. The Council is being request this evening to have the first reading of the ordinance and set the second reading and public hearing on this item for Monday, April 25, 2016.

Representatives from NDC4 will be present to provide additional details and necessary and to respond to questions.

**FISCAL IMPACT**

The proposed franchise provides for a 5% franchise fee, based on Gross Revenues as defined in the ordinance.

		Amount
<b>Fund:</b>		
<b>Department:</b>		
<b>Account:</b>		

**STAFF REQUEST FOR CONSIDERATION**

Introduce and hold first reading of Ordinance providing for a cable communications franchise to CenturyLink, Inc. and set second reading and public hearing for Monday April 25, 2016.

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Public Works & Parks Dir./City Engineer  
**DATE:** March 28, 2016  
**SUBJECT:** Approve Additional Muck Excavation as part of Supplemental Agreement #1 on Robert St. Phase 1 Improvements - Project #11-3



City of West St. Paul

**BACKGROUND INFORMATION:**

On October 26, 2015, City Council approved Supplemental Agreement (SA) #1 with Eureka Construction for Phase 1 of the Robert Street Project. SA #1 was the approval of muck excavation at a unit price of \$17.75 per cubic yard (cy). City Council approved payment of the 2015 muck excavation quantity, which ended up to be 29,371 cy of muck excavation and requested to have the 2016 quantities identified and approved.

Eureka disputed the quantity of 29,371 cy, and over the course of the winter SRF worked with Eureka to sort through truck tickets and daily inspection reports concluding the amount of muck excavation in 2015 to be 43,612 cy. Technically, SA #1 is approved for 50,000 cy of muck excavation based on the way supplemental agreements are written. However, this amount was expected to cover both 2015 and 2016 muck quantities.

The portion of muck excavation being disputed by Eureka is from muck excavation that occurred very early in the 2015 construction season. On-site construction inspection early on did not properly track removal quantities or muck excavation. As a result, an inspector from SRF was taken off the project after review of the first month's quantities on the project. Subsequent muck excavation which occurred last year was properly tracked and paid for already as part of SA #1.

**FISCAL IMPACT:**

A summary of the current contract work orders and estimated SA amounts for the project is below:

Estimated SA's #1-6	\$ 1,053,677.00
Minor Work Orders	\$ <u>83,405.32</u>
Total	\$ 1,137,082.32

Supplemental agreements are written with estimated quantities. Actual quantities will determine the actual costs. To date, the quantity of muck excavation in SA #1 is 43,612 cy which is for all 2015 work. There will be additional muck excavation in 2016 and staff will bring 2016 quantities back to Council for authorization.

		<b>Amount</b>
--	--	---------------

<b>Fund:</b>	<b>551</b>	
<b>Department:</b>	<b>43121</b>	
<b>Account:</b>	<b>41113</b>	<b>\$252,777.75</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the additional payment of 2015 muck excavation, a quantity of 14,241 cubic yards, in the amount of \$252,777.75, under Supplemental Agreement #1 for the City's contract with Eureka Construction for Phase 1 of the Robert St. Improvement Project #11-3.

**TO:** Mayor and City Council  
**THROUGH:** City Manager  
**FROM:** Public Works & Parks Dir./City Engineer  
**DATE:** March 28, 2016  
**SUBJECT:** Approve Revised JPA with Dakota County for Wentworth/Oakdale Avenue Roundabout – Project #14-5



City of West St. Paul

---

**BACKGROUND INFORMATION:**

On December 15, 2014 the City Council approved a Joint Powers Agreement (JPA) with Dakota County for design, right-of-way acquisition, construction improvements, and on-going maintenance responsibilities for a proposed roundabout at Wentworth/Oakdale in West St. Paul. At that time, the estimated City cost in the JPA was \$142,000. Dakota County is the lead entity on the project, handling the design and construction administration. Dakota County has hired a consultant, SRF, to assist with preliminary/final design. This project is scheduled to go out for bid in 2016 with construction in 2017.

Dakota County started the process in 2012 when they applied for Highway Safety Improvement Program (HSIP) funding which they were successful in receiving. HSIP funds can only be used for construction costs, not right-of-way or design. The HSIP funding is programmed for 2016 and can only be claimed in 2016. Therefore, it is critical to get the project awarded this year.

At one point this project was going to be incorporated with the Robert Street Project, at least through design. However, once the Robert Street Project started taking shape it was determined that the intersection should be used as part of the local detour and construction should occur after Robert Street is complete.

The JPA revisions are for changes to the cost and payment. The JPA mirrors the current Dakota County Transportation policy which requires cities with a population of over 5,000 to contribute 45% of the funding on a County project. The City's portion of right-of-way (which came in \$100k higher than expected) and design accounts for approximately \$200k and construction is estimated at \$300k. In total, the City's estimated total cost is \$500,000. The City Attorney's office has reviewed the revised JPA.

**FISCAL IMPACT:**

In order to take advantage of the HSIP funding and move forward with construction, the City is requesting Dakota County to allow the policy for Advanced Funding City Cost Share of Transportation Capital Improvement Program (CIP) Project to be put into action to finance the City's portion of the project. This County policy allows for re-payment to be made by the City to the County over a three year period at 0% interest. There are three steps which need to occur in order to put this policy into motion for this project. The first step is City Council taking action to approve the

revised JPA. The second is a letter to the County requesting advanced funding. The third is County Board approval of the revised JPA.

Following City Council approval of this JPA, staff will submit the required letter to the County and the revised JPA is on the County Board's agenda for approval on April 5, 2016. With this in place, the City proposes to fund this project accordingly:

2016 - \$106k (in current City CIP)  
2017 - \$131k  
2018 - \$131k  
2019 - \$132k (remainder)  
Total \$500k

		<b>Amount</b>
<b>Fund:</b>	<b>402</b>	
<b>Department:</b>	<b>43121</b>	
<b>Account:</b>	<b>41134</b>	<b>\$500,000</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the attached revised Joint Powers Agreement with Dakota County for the Wentworth/Oakdale Avenue Roundabout – Project #14-5.

**FIRST AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR**  
**ENGINEERING, RIGHT OF WAY ACQUISITION AND CONSTRUCTION**

**BETWEEN**

**THE COUNTY OF DAKOTA**

**AND**

**THE CITY OF WEST ST. PAUL**

**DAKOTA COUNTY PROJECT NO. 8-20**

**CITY OF WEST ST. PAUL PROJECT NO. 14-5**

*SYNOPSIS: Dakota County Transportation Department and the City of West St. Paul agree to the construction of a roundabout intersection at County State Aid Highway (CSAH) 8 (Wentworth Avenue) and CSAH 73 (Oakdale Avenue) in West St. Paul, Dakota County.*

THIS AGREEMENT, made and entered into by and between the County of Dakota, referred to in this Agreement as "the County"; and the City of West St. Paul, referred to in this Agreement as "the City".

WHEREAS, under Minnesota Statutes Section 162.17, subdivision 1 and 471.59, subdivision 1, two or more governmental units may enter into an Agreement to cooperatively exercise any power common to the contracting parties, and one of the participating governmental units may exercise one of its powers on behalf of the other governmental units; and

WHEREAS, it is considered mutually desirable to construct a roundabout intersection at County State Aid Highway (CSAH) 8 (Wentworth Avenue) and CSAH 73 (Oakdale Avenue) in West St. Paul, Dakota County, the "Project"; and

WHEREAS, the County and City entered into that certain Joint Powers Agreement for preliminary engineering, right of way acquisition and construction for County Project No. 8-20 and City Project No. 14-5 effective January 14, 2015 (the "Original Agreement"); and

WHEREAS, the parties desire to amend and restate the Original Agreement to include advance funding for CP 8-20 to the City by revising Paragraph 8 of the Original Agreement.

NOW, THEREFORE, it is agreed that the County and the City will share Project responsibilities and jointly participate in the Project costs associated with intersection construction and highway expansion and related activities as described in the following sections:

1. Engineering. Design engineering including all aspects of the Project (public involvement, education, preliminary/final design etc.), construction engineering, construction management, construction inspection and all related materials testing shall be shared in the amount of fifty-five percent (55%) by the County and forty-five percent (45%) by the City.
2. Construction Items. The costs for the construction of the roundabout intersection at CSAH 8 and CSAH 73 shall be shared in the amount of fifty-five percent (55%) by the County and forty-five percent (45%) by the City. Cost sharing includes all highway construction items, mitigation required by state and federal permits including accessibility requirements; storm sewer and other drainage facilities eligible for County State Aid funding based on contributing flows; replacement or restoration of fences, landscaping and driveways when affected by construction; replace or adjust sanitary sewer, water and storm sewer systems, if required due to construction; relocating or adjusting privately owned utilities when not performed at the expense of the utility; County's share of water pollution best management practices, based on contributing flows, meeting National Urban Runoff Protection (NURP) standards; installation of roundabout and design

elements integral to the safe design and operation of a roundabout; intersection lighting, and all other construction aspects outlined in the plan except for elements as called out under this agreement or the current Dakota County Transportation Plan.

3. Miscellaneous Elements. General maintenance will be handled as detailed in the policies with the current Dakota County Transportation Plan.

4. Intersection Lighting Maintenance and Energy Costs. After completion of the Project, the City shall be responsible for maintenance and energy costs of the intersection lighting at the roundabout intersection at CSAH 8 and CSAH 73. The City will perform or coordinate the lighting maintenance, receive billings and pay for all routine maintenance (relamping) and energy costs for the Project. The County will be responsible for up to fifty-five percent (55%) of intersection lighting replacement; the City will be responsible for all remaining costs.

5. City Utilities. Except as stated in the above sections of this agreement, the City shall pay all other costs for new sanitary sewer, water mains and appurtenances constructed as part of this Project. Further, the City shall be responsible for the maintenance of all such facilities after the completion of the Project.

6. Right-of-Way. The County will undertake all actions necessary to acquire all permanent and temporary highway right of way, including relocations, and will acquire all right of way for sidewalk and trail construction, wetland damage mitigation and banking, drainage and ponding, and water pollution control best management practices for the Project. Except as set forth below, the costs of acquiring highway right of way, including right of way for drainage inlets and outlets, shall be shared in the amount of fifty-five percent (55%) by the County and forty-five percent (45%) by the City. Upon completion of the Project, the ownership of the drainage and ponding easements and permanent right of way for City streets shall be transferred to the City. Any right of way costs for new sanitary sewer, water mains and appurtenances, and aesthetic elements outside of the right of way needed for the highway improvements shall be the responsibility of the City. The City will temporarily assign to the County, for the period of construction, all adjacent city-controlled public easements and real property and rights-of-way necessary to construct the Project. This includes, but is not limited to real property, sidewalk easements, landscape easements, and drainage and utility easements. City jurisdiction over City controlled easements and real property will be restored to the City upon final completion of the construction Project. The City will temporarily assign to the County, for the period of construction, all adjacent city-controlled public easements and real property and rights-of-way necessary within the construction limit shown on the construction plan for the Project. This includes, but is not limited to real property, sidewalk easements, landscape easements, and drainage and utility easements. City jurisdiction over City controlled easements and real property will be restored to the City upon final completion of the construction Project. In addition to the temporary use of all adjacent city-

controlled public easements and real property and rights-of-way, the City shall grant the County any Highway easements for the Project.

7. Design and Construction. The County is the lead agency for design and construction administration of this Project, effective upon execution of this Agreement by both Parties. The City and the County shall approve the plans and specifications prior to advertising for bids. The County Board will award the contracts for construction to the lowest responsive and responsible bidder in accordance with state law.

8. Payment. The County will administer the contracts and act as the paying agent for all payments to the Contractor. County shall advance all costs and expenses contemplated under this Agreement in full. City shall promptly reimburse the County the City's share of said costs and expenses described and set forth in this Agreement. Payments to the Contractor will be made as the Project work progresses and when certified by the County Engineer. The County shall provide a financial status report to the City on a quarterly basis. The report shall show estimated final costs, costs paid to date, and each entity's pro-rata share of the total Project cost. The County will request payment on an annual basis for the City's share of the Project costs. The Dakota County Transportation Department will advance the City's Project cost participation. The City shall promptly reimburse its share of Project costs and expenses to the County for any advance payment per the repayment schedule below:

**Advance Funding Reimbursement/Repayment Plan**

CP 8-20 West St. Paul

	Year			
	2016	2017	2018	2019
Repayment	\$106,000	\$131,000	\$131,000	Remainder

The 2019 repayment is subject to revision to ensure that the total City Project cost participation is paid in full to the County by December 31, 2019 or within 45 days of the final itemized Project cost invoice, whichever is later.

Upon presentation of an itemized claim by one agency to the other, the receiving agency shall reimburse the invoicing agency for its share of the costs incurred under this agreement within 45 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving agency, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

9. Amendments. Any amendments to this Agreement will be effective only after approval by both governing bodies and execution of a written amendment document by duly authorized officials of each body.
10. Effective Dates. This Agreement will be effective upon execution by duly authorized officials of each governing body and shall continue in effect until all work to be carried out in accordance with this Agreement has been completed. Except for on-going maintenance activities including sidewalk, landscape and lighting maintenance, in no event will this Agreement continue in effect after December 31, 2017, unless the parties mutually agree to an extension of the Project term.
11. Change Orders and Supplemental Agreements. Any change orders or supplemental agreements that affect the Project cost participation must be approved by appointed representatives of both Parties prior to execution of work. For the purposes of this section, the City's appointed representative is Matt Saam, Public Works Director, and the County's appointed representative is Ross Beckwith, Construction Engineer, or their successors. Both Parties shall endeavor to provide timely approval of change orders and supplemental agreements so as not to delay construction operations.
12. Final completion. Final completion of the construction Project must be approved by both the County and the City.
13. Storm Sewer Construction and Maintenance. The City shall be responsible for assisting with storm sewer inspection including having an inspector on-site during storm sewer installation. Upon completion of the Project, the City shall be responsible for routine storm sewer maintenance and cleaning. The County will participate in replacement or repair of storm sewer constructed by this Project in accordance with the current version of the Dakota County Transportation Plan.
14. Sidewalks and Bike Trails. Upon acceptance of the project, the City shall be responsible for sidewalk and trail maintenance, except for any regional trail which shall be the responsibility of the County. The County and the City shall be responsible for the costs of trail resurfacing or reconstruction in accordance with the current Dakota County Transportation Plan.
15. Pavement Maintenance. Upon acceptance of the Project by the County and City, the County shall be responsible for all pavement maintenance within County right of way unless necessitated by a failure of a municipal utility system or installation of new facilities.
16. Subsequent Excavation. After completion of the Project, and after expiration of the warranty period regarding repair, if excavation within the highway right of way is necessary to repair or install water, sewer, or other city utilities, the City shall apply for a permit from the County and shall be responsible to restore the excavated area and road surface to its original condition at the time of disturbance. If the City fails to have

the highway properly restored, the County Engineer may have the work done and the City shall pay for the work within 30 days following receipt of a written claim by the County.

17. Rules and Regulations. The County and the City shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures.

18. Indemnification. The County agrees to defend, indemnify, and hold harmless the City against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the County and/or those of County employees or agents. The City agrees to defend, indemnify, and hold harmless the County against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement for which the City is responsible, including future operation and maintenance of facilities owned by the City and caused by or resulting from negligent acts or omissions of the City and/or those of City employees or agents. All Parties to this agreement recognize that liability for any claims arising under this agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. In the event of any claims or actions filed against either party, nothing in this agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties.

19. Waiver. Any and all persons engaged in the work to be performed by the County shall not be considered employees of the City for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said County employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the City. The opposite situation shall also apply: the County shall not be responsible under the Worker's Compensation Act for any employees of the City.

20. Audits. Pursuant to Minnesota Statutes Sec 16 C. 05, Subd. 5, any books, records, documents, and accounting procedures and practices of the County and the City relevant to this Agreement are subject to examination by the County or the City and either the Legislative Auditor or the State Auditor as appropriate. The County and the City agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.

21. Integration and Continuing Effect. The entire and integrated agreement of the Parties contained in this Agreement shall supersede all prior negotiations, representations or agreements between the City and the County regarding the Project; whether written or oral. All agreements for future maintenance or cost responsibilities shall survive and continue in full force and effect after completion of the roundabout intersection and road expansion provided for in this Agreement.

22. Authorized Representatives. The authorized representatives for the purpose of the administration of this Agreement are:

Mark Krebsbach (or successor)  
Dakota County Engineer  
14955 Galaxie Avenue  
Apple Valley, MN. 55124  
(952) 891-7100  
[mark.krebsbach@co.dakota.mn.us](mailto:mark.krebsbach@co.dakota.mn.us)

Ross Beckwith (or successor)  
West St. Paul City Engineer  
1616 Humbolt Avenue  
West St. Paul, MN. 55118  
(952) 651-552-4100  
[rbeckwith@wspmn.gov](mailto:rbeckwith@wspmn.gov)

All notices or communications required or permitted by this Agreement shall be either hand delivered or mailed by certified mail, return receipt requested, to the above addresses. Either party may change its address by written notice to the other party. Mailed notice shall be deemed complete two business days after the date of mailing.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS THEREOF, the Parties have caused this agreement to be executed by their duly authorized officials.

**CITY OF WEST ST. PAUL**

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
City Engineer

By \_\_\_\_\_  
Mayor

(SEAL)

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

-----  
**DAKOTA COUNTY**

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

\_\_\_\_\_  
County Engineer

\_\_\_\_\_  
County Attorney                      Date

By: \_\_\_\_\_  
Physical Development Director

COUNTY BOARD RESOLUTION

No. \_\_\_\_\_ Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF WEST ST. PAUL  
RESOLUTION NO. 16-**

**RESOLUTION ESTABLISHING A NO ON-STREET PARKING ZONE ALONG A  
PORTION OF LIVINGSTON AVENUE**

**WHEREAS**, the Robert Street Improvement Project #11-3 is in the second year of construction; and

**WHEREAS**, construction will focus from Thompson Avenue to Mendota Road; and

**WHEREAS**, Livingston Avenue is designated as a local detour route this construction season; and

**WHEREAS**, some businesses along Robert Street have direct access to Livingston Avenue access; and

**WHEREAS**, a temporary all-way stop is in place at Livingston Avenue and Marie Avenue; and

**WHEREAS**, in order to improve sight distances and safety for the increased traffic on Livingston Avenue areas of no parking during construction are recommended;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that no on-street parking be allowed along the east side of Livingston Avenue from 200 feet south of Marie Avenue to 200 feet north of Wentworth Avenue and 200 feet north and south of both Marie Avenue and Wentworth Avenue until normal traffic flow is permanently re-established along Robert Street.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST ST. PAUL  
THIS 28th DAY MARCH, 2016.**

Ayes:                Nays:                Abstain:                Absent:

Attest:

\_\_\_\_\_  
David Meisinger, Mayor

\_\_\_\_\_  
Chantal Doriott, City Clerk



City of West St. Paul

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Public Works & Parks Dir./City Engineer  
**DATE:** March 28, 2016  
**SUBJECT:** Approve Temporary No Parking Resolution along a portion of Livingston Avenue

---

**BACKGROUND INFORMATION:**

In conjunction with the second year of Robert Street construction, Livingston Avenue will be a major local detour route. In addition, some businesses have access to Livingston Avenue as well as to Robert Street so there will be more vehicles entering Livingston Avenue on the east side of the road. There is also a temporary all-way stop condition at Livingston Avenue and Marie Avenue currently in place.

There is some concern about the intersection at Livingston Avenue and Wentworth Avenue and whether a temporary all-way stop would be beneficial during construction. Dakota County's Traffic Engineer will evaluate this intersection during the second full week of construction. Once a new road closure is introduced, it takes motorists a week or so to find new routes and develop new traffic patterns. Having an evaluation done the second week of construction should give a good picture of how traffic is operating at this intersection and if any changes need to be made.

In order to improve visibility for the increased number of motorists along Livingston Avenue, no parking is recommended to be posted along the east side of Livingston from 200 feet south of Marie Avenue to 200 feet north of Wentworth Avenue. In addition, no parking is recommended on the west side of Livingston for 200 feet both north and south of Wentworth Avenue and 200 feet both north and south of Marie Avenue to keep the intersections clear. The attached map shows the recommended no parking areas.

These no parking signs will be removed once normal traffic operations are permanently re-established along Robert Street.

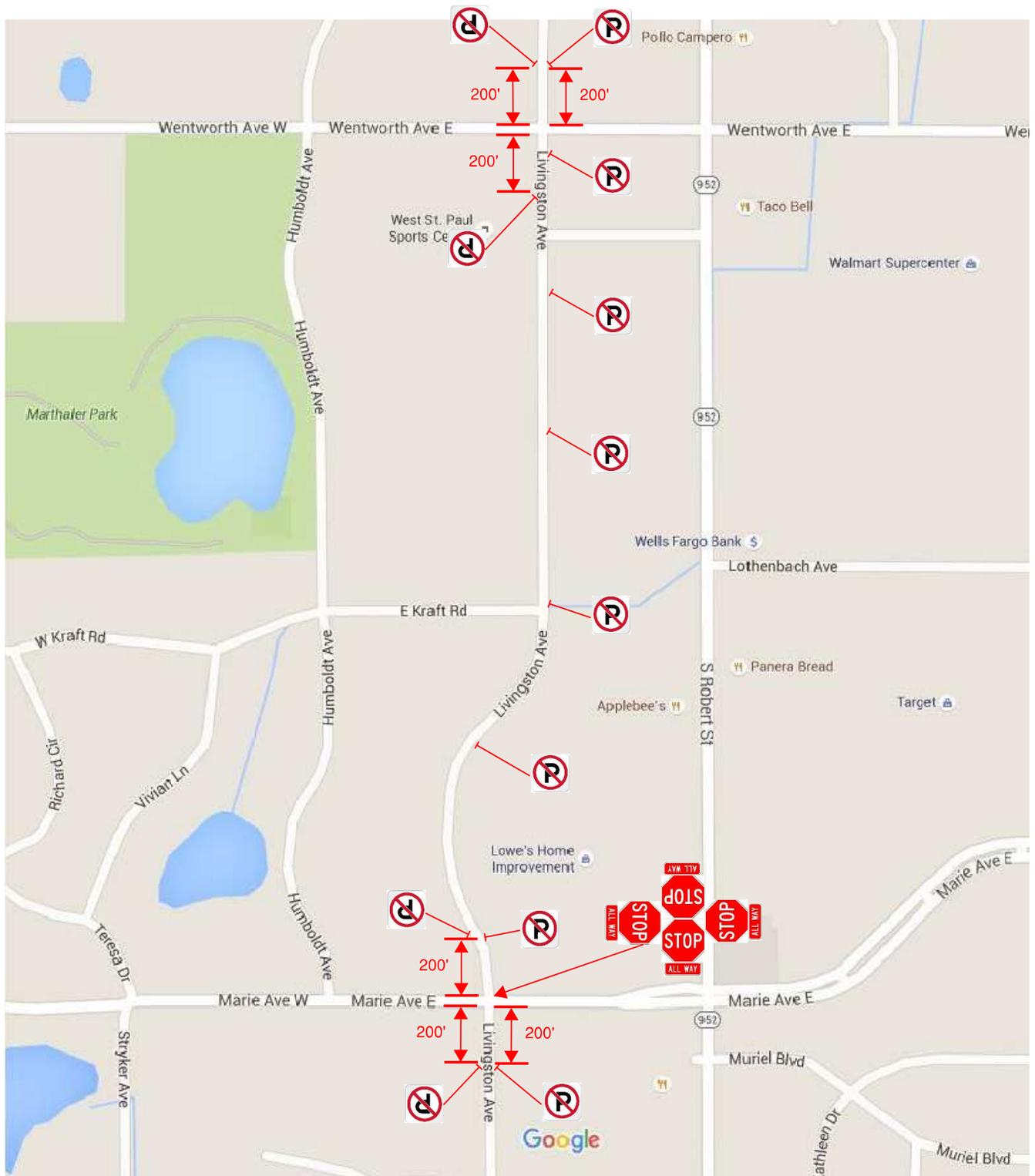
**FISCAL IMPACT:**

City maintenance staff will install and remove the no parking signs.

		<b>Amount</b>
<b>Fund:</b>		
<b>Department:</b>		
<b>Account:</b>		<b>\$0</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve a no parking resolution along the east side of Livingston Avenue from 200 feet south of Marie Avenue to 200 feet north of Wentworth Avenue, and on the west side of Livingston Avenue from 200 feet both north and south of Marie Avenue and 200 feet both north and south of Wentworth Avenue as part of the Robert Street Improvement Project #11-3.



Livingston Ave No-Parking Configuration

**TO:** Mayor and City Council  
**FROM:** Matt Fulton, City Manager  
**THROUGH:** Ross Beckwith, PW & Parks Dir. / City Eng.  
**DATE:** March 28, 2016  
**SUBJECT:** Approve Purchase of PW Capital Equipment

---



**BACKGROUND INFORMATION:**

Capital purchases over \$25k require City Council approval. In the approved 2016 budget, there is \$100,000 scheduled for the replacement of a 1968 mobile generator. Typically this generator would be replaced every 30 years, but it has been proven to stay reliable with little maintenance and therefore not been replaced. However, it has now reached the end of its reliable life and replacement parts for this generator are near impossible to obtain.

The primary function of this generator, which is mounted on a trailer, is to be a mobile emergency backup power source for our sanitary sewer lift stations in the event of a power outage. It is critical that our sanitary lift stations have emergency power backup, and also critical that the emergency backup is reliable. The new generator is a 150KW trailer mounted generator. Three quotes were obtained and Interstate will be supplying the new generator and trailer for \$65,000. The old generator will be sent to auction.

**FISCAL IMPACT:**

		Amount
<b>Fund:</b>	401	
<b>Department:</b>	43100	
<b>Account:</b>	Various	\$65,000

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the capital purchase for the Public Works/Parks department of a replacement mobile generator for a total cost \$65,000.

**TO: Mayor and City Council**  
**FROM: Matt Fulton, City Manager**  
**DATE: February 28, 2016**  
**SUBJECT: Consider Dakota County Broadband Joint Powers Agreement for the preparation of a County-wide Broadband Systems Plan.**

---



**BACKGROUND INFORMATION:** During the past two years, Dakota County, Dakota County Community Development Authority, and Dakota County communities have been studying the feasibility of developing a countywide broadband system that can serve public technology needs as well as support future economic development throughout the County. This project was reviewed with the City Council at a worksession on October 12, 2015.

**DISCUSSION:** Dakota County has made a conscious decision to commence making strategic investment decisions regarding the development of a broadband fiber-optic backbone throughout the County. Dakota County communities are at various stages of developing fiber-optic systems within their communities. The value of developing an overall fiber-optic system connecting important institutions within each community as well as making fiber available for future economic development is starting to be well-recognized as a critical community need. This project is really about working together in the development, use and governance of a redundant fiber-optic broadband system.

Working together over the past year, Dakota County communities have developed a Joint Powers Agreement that would allow for the creation of a "Broadband Systems Plan", which would provide the information needed for participants to decide whether to continue with the Broadband collaborative effort including an inventory of the existing broadband infrastructure and potential costs for a buildout and maintenance for a county-wide broadband system. The agreement provides for the Dakota County CDA to be the contracting agency for this effort.

The JPA provides an initial participation fee that allows communities to withdraw from the JPA, once overall system costs and structures are better understood. The anticipated cost for completing the initial systems work is \$170,763.50. This cost would be split three ways between Dakota County, Dakota County CDA, and Dakota County communities. The community costs are allocated by population which results in a cost of \$2,933.37 for West St Paul.

The City Attorney has reviewed the attached JPA document and finds it satisfactory. Given the potential broad and significant community benefit that could be derived from a County-wide fiber system and the nominal expense for developing a more complete understanding of a systems plan, it makes sense to approve the proposed JPA, recognizing that the City has the opportunity to reconsider its future involvement following the initial participation project phase.

**FISCAL IMPACT** The City has expended \$2,615 in support of this project to date. The next initial phase will cost \$2,933.37

		<b>Amount</b>
<b>Fund:</b>	<b>101</b>	
<b>Department:</b>	<b>41910</b>	
<b>Account:</b>	<b>40399</b>	<b>\$2,933.37</b>

**STAFF REQUEST FOR CONSIDERATION**

Staff is recommending that the City Council approve the attached resolution supporting the proposed Joint Powers Agreement and development of County-wide Broadband Systems Plan at a cost of \$2,933.37

**JOINT POWERS AGREEMENT**  
**Preparation of the Dakota County Broadband Systems Plan**

**Dated as of \_\_\_\_\_, 2016**

## **Table of Contents**

1. Statement of Purpose and Powers to be Exercised .....	1
2. Manner of Exercising Powers .....	1
3. Defined Terms .....	1
4. Participants.....	2
5. CDA’s Powers .....	2
6. Systems Plans.....	3
7. Acquisition of Interests in System Components.....	3
8. Default; Remedies .....	4
9. Limitation of Liability .....	4
10. Amendments.....	4

THIS JOINT POWERS AGREEMENT (as amended from time to time, this “**Agreement**”) is entered into as of \_\_\_\_\_, 2016, by and between the parties described on Schedule A attached hereto (the “**Participants**”), pursuant to Minnesota Statutes, Section 471.59.

1. Statement of Purpose and Powers to be Exercised. The purpose of this Agreement is to provide for the joint exercise of the statutory powers common to the Participants (defined below), to prepare Systems Plans; including, but not limited to, the power to enter into agreements necessary or convenient to the exercise of such powers and to take such other actions reasonably necessary to complete the System Plans (together with other powers described herein, the “**Joint Powers**”). Notwithstanding any other provision of this Agreement, this Agreement does not authorize the use of Participants’ statutory authority to: (a) establish, operate, maintain and improve the existing Systems or establish fees and charges with respect thereto; (b) acquire, own and convey real or personal property; (c) issue bonds or obligations under any law under which the Participants may independently issue and use the proceeds of the bonds or obligations to carry out the purposes of the law; (d) exercise power of eminent domain; (e) exercise any taxing powers; (f) pledge the full faith or taxing power of any of the Participants for any purpose whatever; or (g) issue general obligation indebtedness of any Participant. Participants agree that any of the powers specifically excluded from this Agreement may be authorized by the Participants pursuant to a subsequent joint power agreement as described in paragraph 7.

2. Manner of Exercising Powers. The Joint Powers of the Participants will be exercised through the Dakota County Community Development Agency (the “CDA”), having the powers and duties described herein. The CDA is authorized to exercise the Joint Powers on behalf of and in cooperation with the Participants as provided herein.

3. Defined Terms. Capitalized terms used, but not otherwise defined, herein shall have the following meanings:

“Backbone” means the central portion of the network consisting of redundant optical fiber ring segments interconnecting diverse communications network elements (switches, routers, etc.), including connections at the co-location facility or facilities. Generally, the backbone capacity is greater than the networks connected to it.

“C-Net” means the use of the System on any basis other than by the Participants for their governmental and institutional purposes.

“CDA” means the Dakota County Community Development Agency, and its successors and assigns.

“I-Net” means the use of the System by the Participants for their governmental and institutional purposes.

“Inventory” means a detailed list and summary of the Participants’ Systems Components and Backbone, which may become a part of a consolidated system, if any, in the future.

“IRU” or “Indefeasible Rights to Use” means agreements between a Participant with respect to the use of System Components in which the Participant has an ownership or other legal interest.

“Participation Fee” means, as to Participants, the non-refundable fees identified on Schedule A hereto next to their respective names.

“Systems” means each Participants’ telecommunication infrastructure including, without limitation, fiber optic cables, hand holes, switches and routers and other network elements that provide broadband, I-Net and C-Net services within the boundaries of each of the Participants.

“Systems Components” means the various necessary or convenient elements of the Systems, including, without limitation, fiber optic cables, hand holes, switches and routers, together with contract rights and agreements necessary or convenient in connection with the operation, maintenance, development and use of such components.

“Systems Plans” means general information sufficient for Participants to evaluate the Systems’ physical aspects and the methods for funding or financing the costs associated with the operation, maintenance, and development of the Systems. The Systems Plans shall identify the ownership, operation, maintenance, improvement use, and methods of funding, and/or financing, the Systems.

**4. Participants.**

**A. *General.*** The Participants are: the CDA, Dakota County, Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Mendota Heights, Rosemount, South St. Paul and West St. Paul.

**B. *Participation Fee.*** The aggregate of the Participation Fees described on Schedule A is intended to be an amount sufficient to pay the costs identified on Schedule B attached hereto. Such fees were allocated to the Participants using the formula that was used for cost sharing for the initial Design Nine study.

**5. CDA’s Powers.** The CDA shall have the general powers described in paragraph 1 of this Agreement, including, but not limited the powers to do the following:

- A.** To negotiate and enter into contracts for professional services and consultants for the gathering of information necessary to complete the System Plans and determine the cost of operating the Systems;
- B.** To sue and be sued with regard to contracts entered into pursuant to the authority granted hereunder;
- C.** To review and present the Systems Plans to the Participants; and
- D.** To discharge other duties consistent with the purposes of this Agreement and/or as required by statute.

**6. Systems Plans.**

**A. *Content.*** The Systems Plans shall include the following components:

- i. The design, construction, operation, marketing, public relations, maintenance, expansion and lifecycle replacement costs of the Systems and Systems Components;
- ii. An Inventory;
- iii. The terms under which Systems Components presently owned by Participants will be available for use as part of the Systems;
- iv. A valuation for all Systems Components presently owned by Participants which will be available for use as part of the Systems;
- v. User fees for the Systems; and
- vi. Methods of funding and financing.

**B. *Methodology.*** They Systems Plans shall be prepared capitalizing on the recent work completed by the various committees of the City-County Managers group utilizing it to the extent deemed appropriate by the Participants. City-County Managers will review the Systems Plans or portions thereof as they are prepared or become available.

**C. *Review of the Systems Plans.*** Following the preparation of the Systems Plans, the CDA shall distribute the Systems Plans to the Participants for review.

**7. Acquisition of Interests in System Components.** Upon completing their review of the Systems Plans, Participants may elect to proceed with a joint powers agreement for the following purposes: (a) creating a board to manage and operate consolidated Systems; (b) potential expansion of the Systems; (c) operation and maintenance cost sharing associated with the Systems; (d) complete, update and/or expand the Backbone network interconnecting the Systems; (e) establishment of usage rates; and (f) identifying funding. Those participants that choose to proceed with a subsequent joint powers agreement will enter into an IRU with the board created thereby and other electing participants pursuant to the terms of the subsequent joint powers agreement and the IRU(s).

**8. Default; Remedies.** Upon the occurrence of any default hereunder, the CDA and each Participant shall have any and all remedies available to it at law or in equity.

**9. Limitation of Liability.** As provided in Minnesota Statutes, Section 471.59, Subd. 1a, no Participant shall be liable for the acts or omissions of another Participant, unless it has specifically agreed in writing to be responsible for the same. For purposes of determining total liability for damages, each Participant and the CDA are considered a single governmental unit and the total liability for all of the Participants and the CDA shall not exceed the limits on governmental liability for a single governmental unit as specified under Minnesota Statutes, Sections 466.04, Subd. 1, or as waived or extended by the CDA or all Participants under

Minnesota Statutes Sections 466.06; or 471.981. This provision does not protect a Participant or the CDA from liability for its own independent acts or omissions not directly related to the exercise of the Joint Powers under this Agreement. Neither the CDA nor any Participants shall have the power hereunder to do any act or thing the effect of which is to create a charge or lien against the property or revenues of the CDA or another Participant, except as expressly provided in herein or in any of the documents authorized herein.

**10. Amendments.** This Agreement may be amended, at any time and from time to time, by the Participants.

IN WITNESS WHEREOF, each of the Participants has caused this Agreement to be executed on its behalf by its respective authorized officers, all as of the date first above written.

**DAKOTA COUNTY COMMUNITY  
DEVELOPMENT AGENCY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DAKOTA COUNTY, MINNESOTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Assistant County Attorney      Date

**CITY OF APPLE VALLEY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Hamann-Roland, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Pamela Gackstetter, Clerk

**CITY OF BURNSVILLE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elizabeth Kautz, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Macheal Collins, Clerk

**CITY OF EAGAN**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mike Maguire, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dave Osberg, City Administrator

**CITY OF FARMINGTON**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Todd Larson, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David McKnight, City Administrator

**CITY OF HASTINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Paul Hicks, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Melanie Mesko Lee, City Administrator

**CITY OF INVER GROVE HEIGHTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
George Tourville, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joe Lynch, City Administrator

**CITY OF LAKEVILLE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Matt Little, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Justin Miller, City Administrator

**CITY OF MENDOTA HEIGHTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sandra Krebsbach, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Lorri Smith, Clerk

**CITY OF ROSEMOUNT**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Droste, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Clarissa Hadler, Clerk

**CITY OF SOUTH ST. PAUL**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Beth A. Baumann, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Christy Wilcox, Clerk

**CITY OF WEST ST. PAUL**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Meisinger, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chantal Doriott, Clerk

SCHEDULE A

Dakota County Broadband  
Systems Plan Participation Fee

**Cost-Share Concept**

One-third of costs borne by Dakota County Community Development Agency

One-third of costs borne by Dakota County

One-third of costs borne by cities of over 10,000 pro-rata on population

Estimated Systems Plan Costs		\$ 148,490.00
Contingency	15%	\$ 22,273.50
<b>Total Estimated Cost</b>		<b>\$ 170,763.50</b>

CDA Share		\$ 56,921.17
County Share		\$ 56,921.17
City Share		\$ 56,921.17

**City cost distribution based on % of total of 11 cities with population over 10,000**

<b><u>Participants</u></b>	<b><u>Population</u></b>	<b><u>% of Population</u></b>	<b><u>Amount Due</u></b>
Apple Valley	49,084	12.94%	\$ 7,365.17
Burnsville	60,306	15.90%	\$ 9,049.06
Eagan	64,206	16.93%	\$ 9,634.26
Farmington	21,086	5.56%	\$ 3,164.00
Hastings	22,172	5.84%	\$ 3,326.96
Inver Grove Heights	33,880	8.93%	\$ 5,083.77
Lakeville	55,954	14.75%	\$ 8,396.03
Mendota Heights	11,071	2.92%	\$ 1,661.23
Rosemount	21,874	5.77%	\$ 3,282.25
South St Paul	20,160	5.31%	\$ 3,025.06
West St Paul	19,549	5.15%	\$ 2,933.37
<b>TOTAL</b>	<b>379,342</b>	<b>100.00%</b>	<b>\$ 56,921.17</b>

SCHEDULE B

Dakota County Broadband  
Estimated Systems Plan Elements and Costs

<b>Project Component</b>	<b>Est. Costs</b>	<b>Provider</b>
Legal Services	\$8,000	
<b>Preparation of Systems Plan</b>		
Inventory, Design, etc	\$68,990	Elert 4/17/15 proposal, all options
Balance of Systems Plan work	\$15,000	Design Nine - assumed split
Preparation of Systems Funding Plan	\$51,500	Design Nine - assumed split
Additional consulting costs	\$5,000	
Contingency	\$22,274	
<b>Total</b>	<b>\$170,764</b>	