



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

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**REGULAR CITY COUNCIL MEETING**

**April 25, 2016**

**6:30 p.m.**

**MUNICIPAL CENTER COUNCIL CHAMBER**

**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**

**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: [3-28-16 OCWS MINS \(FINAL\).PDF](#), [3-28-16 CC MINUTES \(FINAL\).PDF](#), [04-11-16 OCWS MINS.PDF](#), [4-11-16 CC MINS.PDF](#)

**B. List Of Claims 4/25/16**

Documents: [COUNCIL REPORT - LIST OF CLAIMS 4.25.16.PDF](#)

**C. March 2016 General Fund Budget Report**

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

**D. Council Report - City Licensing**

Documents: [COUNCIL REPORT - CITY LICENSES.PDF](#)

- E. Interim Use Permit To Allow Outdoor Display/Sale Of Plants And A Food Stand - 2001 Robert St. (Cub Foods)  
Documents: [COUNCIL REPORT - IUP CUB FOODS.PDF](#), [ATTACHMENT - IUP CUB FOODS.PDF](#)

- F. Local Government Resolution In Support Of A MIF Program Application  
Documents: [COUNCIL - MIF APPL RESOLUTION.PDF](#)

## 11. PUBLIC HEARING

- A. Public Hearing And Consideration Of Ordinance Granting Cable Communication Franchise To Century Link.  
Documents: [2016 CABLE FRANCHISE AGREEMENT PH.PDF](#), [MOSS AND BARNETT CABLE COMMISSION FRANCHISE MEMO AND FINDINGS OF FACT.PDF](#), [ORD. NO. 16-XX CABLE TELEVISION FRANCHISE ORDINANCE FOR QWEST BROADBAND SERVICES INC. DBA CENTURYLINK INC..PDF](#), [COUNCIL REPORT-CENTURYLINK FRANCHISE CONSIDERATION.PDF](#)

## 12. NEW BUSINESS

- A. Consider Amendments To City Code Chapter 50 Section 50.08 Regarding Discharge Of Prohibited Clear Water Drainage; Sump Pumps  
Documents: [COUNCIL REPORT-I AND I RECOMMENDATIONS.PDF](#), [ORDINANCE - AMENDING I-I REGARDING INSPECTIONS - 1ST READING 4-25-16 \(2\).PDF](#)
- B. Approve Consultant Contract For Lift Stations 3, 5 And 6 Programming And SCADA Implementation Project 16-2  
Documents: [COUNCIL REPORT - APPROVE CONSULTANT CONTRACT FOR LS 5 AND 6 SCADA CITY PROJECT 16-2.PDF](#)
- C. Rental License Applications - NET Ministries Inc. (1924 Bidwell, 1990 Stryker, 76 Crusader)  
Documents: [COUNCIL REPORT - NET MINISTRIES.PDF](#), [RESOLUTION - NET MINISTRIES.PDF](#)

## 13. OLD BUSINESS

- A. Rental License Review - 218 Annapolis & 966/976 Robert St. (1234 Properties LLC)  
Documents: [COUNCIL REPORT - PROVISIONAL UPDATE.PDF](#), [ATTACHMENT 1 OF 4 - PROVISIONAL REVIEW.PDF](#), [ATTACHMENT 2 OF 4 - PROVISIONAL REVIEW.PDF](#), [ATTACHMENT 3 OF 4 - PROVISIONAL REVIEW.PDF](#), [ATTACHMENT 4 OF 4 - PROVISIONAL REVIEW.PDF](#)

## 14. ADJOURN

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*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*

**City of West St. Paul  
Open Council Work Session (OCWS)  
March 28, 2016**

**1. Roll Call**

Mayor Meisinger called the work session to order at 5:33 p.m.

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

Councilmembers Pat Armon and Dick Vitelli had excused absences.

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

**2. Approve OCWS Agenda**

The open council work session agenda was approved as presented.

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

No changes were made.

**4. Agenda Items**

**4.A. Discussion Regarding Comcast Franchise Extension and New Franchise Agreement with CenturyLink**

Jodie Miller from NDC4 presented Comcast's request for a 12-month extension on their Franchise Agreement. Jodie Miller also presented a new Franchise Agreement with CenturyLink.

Ms. Miller explained that they are not exclusive with Comcast; however, it has taken 32 years for another franchise to come to them. A Franchise Agreement is passed as an Ordinance and will be brought to the City Council Meeting. The Franchise Agreements with both Comcast and CenturyLink need to have similar requirements and obligations so they are fair. There are State Laws that have to be followed in the Franchise Agreements.

Cpln. Napier asked if Ms. Miller knew which part of the city they were going to build off of. Ms. Miller stated the areas that motivate the company to upgrade are places that need to be upgraded such as older neighborhoods, smaller lots, multi-dwelling units, etc. She can't tell how the layout will be exactly, but that seems to be how it is.

City Manager Fulton asked if they had an option to work with CenturyLink to focus on an area. Ms. Miller stated that she is sure they would be interested in meeting with the City and discussing the City's preference.

City Hall will have access to both Comcast and CenturyLink so they can monitor.

Mayor Meisinger asked how the City should explain CenturyLink coming into West St. Paul. Ms. Miller stated that CenturyLink is the last company to provide services to the Country. This provides options to the residents. CenturyLink says they will be able to compete with Comcast and residents can choose. Hopefully it'll provide better services. There might be some issues with businesses updating their equipment in the right-of-ways.

City Manager Fulton stated that its an important franchise to us. The City just received a \$62,000 check for franchise fees.

Clpn. Bellows feels CenturyLink's Franchise Agreement is better than Comcast. People have a choice now. No one is going to be forced to change. It's up to the residents to figure out. We have an Agreement that protects the City and its really a no harm, no foul here.

Clpn. Bellows stated we are 6 of 7 communities to be approached to approve this. Ms. Miller stated that only 2 cities have fully completed the Franchise Agreement with CenturyLink.

Ms. Miller informed the Council that Comcast did officially comment that they were concerned about the build out procedure, but have not actively participated in any public hearings.

Ms. Miller also informed the Council that in South St. Paul, Comcast is going door to door to offer their services in response to CenturyLink coming in.

#### **4.B. Closed Session Pursuant to Minn. Stat. 13D.05 Subd. 3(C)(3) to Develop Offers for the Purchase of Real Property at 150 Thompson Avenue E.**

Roll Call for Closed Meeting:

- Mayor David Meisinger and Councilmembers John Bellows, Jenny Halverson, Ed Iago and Dave Napier.
- Others: City Manager Matt Fulton, Finance Director Joan Carlson, PW and Parks and Rec Director Ross Beckwith, Community Development Director Jim Hartshorn, City Attorney Korine Land and Recording Secretary Cindy Holzmer.

Motion made by Clpn. Napier and seconded by Clpn. Halverson to close the meeting at 6:07 p.m. pursuant to Minn. Stat. 13D.05 Subd. 3(C)(3). All members present voted aye. Motion carried.

Motion made by Clpn. Halverson and seconded by Clpn. Napier to reopen the meeting at 6:26 p.m. All members present voted aye. Motion carried.

**4.C. Set Meeting Date to Discuss I/I Program**

City Manager Fulton will send out some dates to the Council for next week.

**5. Adjourn**

The Open Council Work Session adjourned at 6:26 p.m.

David Meisinger  
Mayor  
City of West St. Paul

**City of West St. Paul  
City Council Meeting Minutes  
March 28, 2016**

**1. Call to Order**

Mayor David Meisinger called the meeting to order at 6:34 p.m.

**2. Roll Call**

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

Councilmembers Pat Armon and Dick Vitelli had excused absences.

Others: City Manager Matt Fulton, Finance Director Joan Carlson, PW and Parks and Rec Director/City Engineer Ross Beckwith, Community Development Director Jim Hartshorn, Police Chief Manila Shaver, Attorney Korine Land and Recording Secretary Cindy Holzmer.

**3. Pledge of Allegiance**

**4. Adopt the Agenda**

Motion made by Clpn. Halverson and seconded by Clpn. Iago to adopt the agenda as presented. All members present voted aye. Motion carried.

**5. OCWS Briefing**

Mayor Meisinger gave a brief update. Comcast and CenturyLink Franchise Agreements were discussed. There was a closed session regarding 150 Thompson Avenue East. Meeting dates will be sent to Council to discuss the I/I Program.

**6. Robert Street Review**

City Engineer Robert Beckwith provided an update. There has been and will be temporary lane closures on Robert Street in preparation of cutting pavement. Starting Sunday at 6:00 p.m. they will be closing southbound 2 lanes from Thompson to Mendota. Northbound open only.

Mayor Meisinger reminded residents that detours will be in full effect. Chief and staff will be out in full force giving out tickets. Please be careful for sake of residents and pocketbook.

On Monday from 4:30 to 6:30 meeting at Wentworth Library residents are welcome to come ask Staff questions. There will not be a formal presentation and this will be a come and go as you please session.

## **7. Citizen Comments**

Alex Escoto – There are break-ins that keep occurring at his family restaurant, El Taquito, and he feels like nothing is being done. He would like the police to patrol more often and address the problem.

Mayor Meisinger stated that there is no bias in the Police Department. He feels safe in town. No different than years ago. Same number of police. Have hired more. Unfortunate situation and will let the police direct.

Alex Escoto's Father - He feels the police need to stop people who are walking around at 3:00 a.m., like they used to when he came in 1974. He feels the City is safe, but he feels terrible.

Mayor Meisinger reiterated that West St. Paul is safe.

Chief Shaver stated that he is sorry that no one has gotten back to them because that's not like our staff. He thanked them for the video and will get back to them tomorrow.

## **8. Council Comments**

Clpn. Napier reminded everyone about the open house and mentioned that Officer McCarty has been paying a little more attention to Marie Avenue and speeders. He appreciates the efforts.

Clpn. Iago stated that in reference to I/I Program, he wanted to assure John on Charleton that City Staff is readdressing the problem and that it would be addressed in the next few weeks. If residents have questions, they should call City Hall until City addresses.

Clpn. Halverson reminded residents that the food drive goes through end of March. Don't forget about it for Neighbors, Inc.

Clpn. Bellows stated that there are a number of constituents that have contacted him. The dialogue has been very productive. It's very helpful. Encourage residents to contact Councilmembers. He appreciates their interest and comments.

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

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

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

Joan Carlson stated this donation will go towards the volunteer recognition appreciation event in April.

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

Joan Carlson stated this donation will go towards Winter Fest. Mayor Meisinger stated the South Robert Street Business Association is a major contributor.

Motion was made by Clpn. Napier and seconded by Clpn. Iago to accept the donations. All members present voted aye. Motion carried.

## **10. Consent Agenda**

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

- A. City Council Meeting Minutes (3/14/16 City Council Meeting Minutes and 3/14/16 Open Council Work Session Meeting Minutes)
- B. List of Claims March 28, 2016
- C. Approve February 2016 Bank Reconciliation
- D. Approve February 2016 Investment Report
- E. Approve February 2016 General Fund Budget Report
- F. Rental Licensing (235 Thompson Avenue West)

All members present voted aye. Motion carried.

## **11. Public Hearing**

There were no public hearings.

## **12. New Business**

### **A. Consider Resolution for Comcast Franchise Extension**

Jodie Miller from NDC4 presented Comcast's request for a 12-month extension on their Franchise Agreement. The extension would be from April 1, 2016 to March 31, 2017.

Motion was made by Clpn. Bellows and seconded by Clpn. Iago to extend Comcast's Franchise Agreement through March 31, 2017. All members present voted aye. Motion carried.

### **B. Consider First Reading of Ordinance Establishing New Franchise Agreement with CenturyLink for Cable Communication Services**

Jodie Miller from NDC4 presented a new Franchise Agreement with CenturyLink. Patrick Haggerty from CenturyLink was also present to answer questions.

Mayor Meisinger asked what the potential timeframe was for CenturyLink to be up and running. Mr. Haggerty stated that if the Franchise Agreement was approved on April 5,

2016, households will begin to have access immediately. Marketing will begin within two to three weeks. It all happens very rapidly.

Clpn. Bellows moved to have the first reading of Ordinance Establishing New Franchise Agreement with CenturyLink for Cable Communication Services on April 11, 2016 and to have the second reading on April 25, 2016. Clpn. Iago second. All members present voted aye. Motion carried.

### **C. Approve Additional Muck Excavation as part of Supplemental Agreement #1 on Robert Street**

City Engineer Beckwith presented that there was additional muck excavated in the amount of \$252,777.75. City Staff is requesting approval.

Dave Hutten from SRF was present to answer questions.

#### Comments:

- Mayor Meisinger stated that we were 50% off which will be an additional bill to the City. He is disappointed that we are paying for this type of service. Does not support this because there are too many questions. He is wondering if this was disputed a year ago, why is the Council just finding out. Mayor Meisinger asked that SRF turn over the tickets and the Staff review all tickets before they approve a quarter million dollars. We need to watch what's going on in this project more than we have been. He wants documentation submitted to City so they can verify the numbers because it's proven that the consultant is inaccurate.
- Clpn. Bellows stated he is confused and frustrated as to how the tickets take from the beginning of the season to the end to tabulate. He doesn't understand how SRF can be that far off.
  - Mr. Hutten stated they had an estimate of 50,000 cubic yards. The unit price was negotiated by MNDOT. The Supplemental Agreement #1 that was approved was for both years. At the time, they had not added up 2015 cubic yards. When they added them up in November, it went from 25,000 to 29,000. They are not at 50,000 cubic yards yet.
- Mayor Meisinger stated 50,000 was to cover both 2015 and 2016.
  - Mr. Hutten informed the Council that in multi-year projects, they sit down in the winter with the subcontractors and adds up tickets. Subcontractors mismarked their tickets and they had to figure out the tickets and that's how they got to 43,000 cubic yards.
- Clpn. Bellows stated that he didn't understand how that gets missed.
  - Mr. Hutten stated the subcontract had tickets but they had them in the wrong piles.
- Mr. Bellows asked how do we avoid this going into the future. We can't take quarter of a million dollar hits.
  - Mr. Hutten stated they have developed a better accounting structure with City Engineer Beckwith and changed staff because of these errors. They didn't pay additional muck, they went through and verified before they

would recommend any yardage. It started in November and went through January in verifying.

- Clpn. Iago stated that was 14,000 cubic yards of muck that was mislabeled.
  - Mr. Hutten stated that an SRF person was taken off of the project because of that.
- Clpn. Iago stated that it has to be Eureka's fault or SRF's fault, not the City's. No way this is going to pass tonight.
- Clpn. Napier stated numbers are factual. Council budgeted for 50,000 cubic yards of muck. The facts are that we had that much muck and someone has to pay for it. He's not excited about having a \$250,000 plus bill being thrown at the Council, but its factual and he's not sure how much we can do on this.
- Clpn. Halverson agrees with Clpn. Napier that it's there and has to be dealt with. Mistakes can be made. She has a hard time moving forward with this.
- Clpn. Bellows was under the impression that the 25,000 cubic yards was supposed to cover last year's work and the other 25,000 cubic yards was supposed to cover 2016. He wants to make sure we have the process and procedure in place to move forward in the future. They should have a better process for identifying materials.
- Mayor Meisinger agrees that it has to be paid. They provided the consultant with over 300 soil borings. Unit price for bidding did not include soil correction. Design did not include anything to include any soil correction and estimate didn't include it. If any claim was made, we were damaged based on the fact that in good faith we used their good faith estimates.
- City Manager Fulton doesn't disagree with errors and omissions. There is no question as to whether we would be successful against a claim but he is opposed.
- Clpn. Iago stated that as soon as you cross Thompson, you are going to run into the same thing. It's a swampy area.
- Mayor Meisinger asked that presumably if we filed a claim in the future, would we get reimbursed. City Attorney Land responded presumably we would.
- Mayor Meisinger stated that if this keeps growing, we are going to exceed what we have budgeted. He asked that Staff/Council review things that we can hold off on to make up for this.

Motion was made by Clpn. Bellows to approve the payment of the additional muck excavation.

City Engineer Beckwith has discussed how they need to track. Supplemental Agreement #1 was based on loose volumes instead of actual volumes.

Clpn. Bellows asked City Engineer Beckwith if has had experience with in this in the past. City Engineer Beckwith stated that he has.

Mayor Meisinger asked if we could count tickets more often. City Engineer Beckwith stated they can do it monthly.

Clpn. Halverson asked what the ramifications were if they did not approve it tonight.

Clpn. Iago stated he was voting no.

Mayor Meisinger stated it would be postponed for two weeks if not approved.

Clpn. Iago stated that he would like to hear what the City Manager, City Engineer, City Attorney and SRF have to say to give him comfort.

Mayor Meisinger asked if City Engineer Beckwith could count the tickets themselves. City Engineer Beckwith stated they could do that.

City Manager Fulton state that there are more staff will be available this summer.

Mr. Hutten stated that SRF has provided a list that things that have been deleted to help save. They have deleted \$300,000 from the bid. This is coming off the top.

Clpn. Bellows asked if the City Engineer was satisfied. City Engineer Beckwith stated that he was.

Clpn. Bellows moved for approval on request, on the basis that the work actually have been one. Clpn. Napier second.

Clpn. Iago asked if they could file a claim. City Attorney Land stated that on the direction of the council, she would.

City Manager Fulton stated that he would like to talk to League of MN Cities.

Clpn. Iago asked to add as a friendly amendment to discuss with the League for a possible claim.

Friendly amendment approved by Clpn. Bellows and Clpn. Napier.

All present voted aye. Motion carried.

**D. Approve JPA Revisions with Dakota County for Wentworth/Oakdale Roundabout Project 14-5**

City Engineer Beckwith presented that the money has to be spent in 2016. The costs are \$200,000 for design and right-of-way and have about \$300,000 for construction for the City to pay. This is not in CIP. The County does have a program to allow advance funding.

Mayor Meisinger asked how far are we along in the design.

City Engineer Beckwith stated that we are about 99% complete.

Mayor Meisinger stated that we are beyond the point to stop this. He apologized to the residents, but there is no going back or else we will say goodbye to \$200,000 and he is not willing to do that.

Clpn. Bellows stated that he understands the incremental changes that have occurred but still the costs are about \$150,000 over the projection. We seem to be getting rosy numbers on project after project, what can Staff do to help Council understand what the upset of projects are going to be so we can look what the real numbers will be. He asked that City Staff really look at these issues. At some point we should be able to look at these numbers as they are

City Engineer Beckwith stated that the hardest is estimation as it is very hard to quantify. Numbers are very difficult to manage.

Clpn. Bellows asked that Staff come up with some way to look at a project so the Council gets the best case scenario and what the Staff actually thinks it'll cost.

Motion was made by Clpn. Napier and seconded by Clpn. Iago to approved the revised Joint Powers Agreement with Dakota County for the Wentworth/Oakdale Avenue Roundabout – Project #14-5. All members present voted aye. Motion carried.

#### **E. Approve Temporary No Parking Resolution Along a Portion of Livingston Avenue**

City Engineer Beckwith stated that this will start at 6:00 p.m. on Monday. It'll take about 2 weeks for people to get adjusted. No parking will give people more room to see and helps safety of roadway.

Mayor Meisinger asked if Staff has gone out of their way to notify the businesses. Just to give extra notice would be nice.

Clpn. Iago asked if we are going to do anything about the turn lanes on Wentworth. City Engineer Beckwith stated that we are going to have the County come out after the travel patterns get established and figure out what the best thing is to do.

Clpn. Iago asked if we could paper the Dome. City Engineer stated they could.

Clpn. Napier stated the most dangerous section is on Wentworth and Livingston.

Clpn. Bellows stated that it might be worthwhile to put a warning sign prior to the stop sign.

City Engineer Beckwith stated that it does take a while to change traffic behavior.

Motion was made by Clpn. Halverson and seconded by Clpn. Iago to approve the temporary 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. All members present voted aye. Motion carried.

**F. Approve Purchase of Public Works Capital Equipment**

City Engineer Beckwith presented that it is time to replace the 1968 mobile generator. The generator is used as emergency backup for our sanitary sewer lift stations. The generator and trailer will cost \$65,000.

Motion was made by Clpn. Bellows and seconded by Clpn. Halverson to approve the mobile generator. All members present voted aye. Motion carried.

**G. Consider JPA for Dakota County Broadband**

City Manager Matt Fulton presented that this allows the City to explore opportunities to join and Staff is requesting authorization to continue.

Motion was made by Clpn. Bellows and seconded by Clpn. Halverson to approve the proposed Joint Powers Agreement and development of County-wide Broadband Systems Plan. All members present voted aye. Motion carried.

**13. Old Business**

None.

**14. Adjourn**

Motion was made by Clpn. Napier and seconded by Clpn. Iago to adjourn the meeting at 7:56 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  
April 11, 2016**

**1. Roll Call**

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

Present: Mayor David Meisinger and Councilmembers Armon, Halverson, Bellows, Iago, Napier and Vitelli.

Others: City Manager Matt Fulton, Assistant City Manager and HR Director Sherrie Le, Community Development Director Jim Hartshorn, Police Chief Manila Shaver, Fire Chief Mike Pott, Finance Director Joan Carlson, Public Works and Park Director Ross Beckwith, Attorney Korine Land, City Clerk Chantal Doriott and Attorney Peter Mikhail

**2. Approve Agenda**

No changes to the work session agenda.

**3. Review the Regular Meeting Consent Agenda**

Council approved the consent agenda items as presented. Clpn. Iago may add an item to the regular agenda during the meeting.

**4. Agenda Item(s)**

**4.A. Closed Session To Discuss Robert Street Property Easement Acquisitions**

Motion was made by Clpn. Napier and seconded by Clpn. Bellows to close the meeting pursuant to Minn. State Stat. 13D.05 sub. 3(b) due to attorney-client privileged communication. All members present voted aye. Motion carried.

Attorney Peter Mikhail gave an overview of ongoing litigation related to acquiring Robert Street business accesses.

Motion was made by Clpn. Vitelli and seconded by Clpn. Armon to open the meeting at 5:22 p.m. All members present voted aye. Motion carried.

Engineer Darin Rezac entered the meeting.

**4.B. Discussion of modifications to I/I program.**

City Manager Matt Fulton gave an overview and thanked Clpn. Iago for suggesting city staff meet with the Met Council. Met Council staff has recognized the challenges that West St. Paul is currently experiencing in attempting to correct I/I issues over a relative short timeframe of

several years. Met Council would like to work with the City to get the issues rectified and to avoid future surcharges. The age of much of the community's housing stock and the historical building methods used in handling clear water has resulted in a very challenging, and cumbersome project. In addition, many corrective measures required excavation into the community's already aging street infrastructure, creating, in many cases, an even worse driving surface. And of course, dealing with I/I is a new topic for most households, which can make it a very confusing and challenging problem to deal with, especially when the financial costs for any repair work is added into the equation.

Because of the cumulative nature of the issues confronted during the past year, staff is recommending, and has Met Council staff support, to modify the program as follows:

- Change the I/I program to be something that is required to be dealt with at the time of selling the property. An I/I compliance inspection would need to occur prior to the sale of the property. This inspection would continue to be provided at no expense, provided an access point is made available and service line roots do not impede the ability to inspect the line. If areas of non-compliance are identified, the owner/buyer can negotiate who pays for it and, if it is the buyer, ensure that an acceptable financing plan is in place for bringing the property into compliance within 12 months of closing on the property.
- During the City's annual street repair program, inspections would be completed on properties adjacent to the construction work so that any problems at the sanitary sewer main can be identified and planned for. Impacted property owners will be encouraged, but not required, to address I/I issues during the street improvement project and to work collaboratively as a neighborhood, to take advantage of the road being opened which possibly could save property owners money.
- Bringing rental properties into compliance would become a requirement for receiving a rental license to operate in the City. Rental properties would be required to bring the licensed facility into compliance within 24 months of receiving their next annual rental license. Rental properties would be responsible for identifying and correcting all internal I/I issues. The City would only inspect the service line(s) connecting to the sanitary main.
- Commercial properties and Homeowner Associations would be required to become compliant within 24 months of the ordinance being approved. The City would only inspect the service line(s) connecting to the sanitary main.
- Street excavation for correcting I/I non-compliance issues would be prohibited, except under unique circumstances as approved by the City Engineer. Any required I/I repairs within the right of way area would need to be done from outside of the right of way and not come any closer than two feet from the Sanitary Sewer main.
- The City would address any needed sanitary service line connection repairs at the time of undertaking sanitary sewermain improvements. Any repairs to the service line connection during such a project would be paid for by the City.
- Current penalties for not correcting I/I non-compliance areas within the allowed timeframes would be implemented and enforced.
- Staff would recommend the I/I program be brought in house and managed through the City's Public Works Department. The City Council has already approved the hiring of an I/I liaison, which would now also be the person undertaking the inspections as well. This approach will save the City significant resources and help ensure accountability, customer friendliness, and quality of the program, including helping residents and businesses get through the process. Inspections would be scheduled through the City.

- The City would continue its current process of reimbursing 15% of all I/I repair costs for an individual property up to \$5,000 as well as provide the opportunity to have remaining I/I repair costs special assessed to the property and paid for over a ten year period at a very low interest rate. Given the “point of sale” nature of the program, the number of special assessments used for correcting I/I should be fewer as property equity is used to cover repair costs. Deferred assessments for income qualifying seniors would also continue to be provided.
- Staff would also propose a significant community educational campaign to help property owners understand the changes to the program and importance of correcting I/I issues.

The program, as proposed, would result in around 400 to 500 annual inspections. The Met Council is aware, and is comfortable with a longer time frame for eliminating I/I, provided the City continues to make concerted progress. Should the City Council endorse this suggested approach, the following steps would be immediately taken:

- The first reading of the revised ordinance would be scheduled for the City Council’s April 25<sup>th</sup> regular meeting with public hearing and final passage taking place on May 9.
- A letter would be sent out immediately notifying all property owners currently in the process of dealing with I/I compliance repairs of the City Council’s intent to modify the program as described above. Property owners will be told it will be their option whether to proceed at this time or hold off until the sale of their property to address the I/I compliance issue.
- Staff will work with the Met Council staff to develop a Memorandum of Understanding ensuring the acceptability of this approach without worry of subsequent surcharges until the City is substantively completed with I/I repairs.
- Staff will arrange opportunities, including the upcoming City Open House, West St Paul Days, and ROMA meetings, and utilize social media for informing and educating the community about the program changes and I/I generally.
- A communication strategy will be developed for informing the real estate community about this additional requirement as well as the County so that this new requirement is included with property transactions.
- Staff will work out a transition plan with SEH, allowing for current inspections to be completed and work transitioned to the City, as the new I/I Liaison joins the City organization and gets comfortable in his/her new role.
- Staff would proceed in acquiring the capital equipment necessary for undertaking the inspections. The most significant component of this will be the purchase of two cameras, which cost approximately \$10,000 each.
- Staff would continue in its recruitment efforts for a qualified individual for performing the inspection, liaison, and administrative activities involved with the program.

Fiscal impacts include: a fee paid to SEH in the amount of \$211,467 in 2015 for its work on conducting I/I inspections. The expected cost for an in-house inspection program would be approximately \$68,800 including salary/benefits and initial office setup expenses. Capital expenses relating to the purchase of two cameras would be approximately \$20,000. The first year annual savings could be approximately \$123,000.

Comments:

- Manager Fulton explained that in 2015 there were 750 inspections completed and 119 were found to be compliant; 505 were remaining to become compliant. We should review 400 to 500 properties each year until the project is complete. Total inspections to date are 1,300 properties. It is the plan that we would complete the project in 8 years.
- Clpn. Bellows offered further comment. This appears to be an inflow issue – connections or drainage – sump issues. If we do this as part of a sale requirement – any repairs or negotiations could be problematic, due to the timeline. We don't provide any assurance to our citizens that the person doing the work is reputable. Manager Fulton said due to the way the city was constructed, we will not review the sump pump and we will have to deal with drainage in a different way. We have an inflow issue. If you are selling your house there will be an additional burden, potentially, for the seller. Currently there are 46 parcels for sale.
- When people call here for an inspection, the mayor wants the city to get back to the homeowner in a timely manner (comment made in reference to a person wanting to list their home for sale). Is there any assurance to the citizens that the people doing the work are professionals? Mayor Meisinger would like the city to continue to do the inspections like we are doing; we should have two branches of this project. Manager Fulton said doing a sump inspection doesn't mean a person is compliant.
- Darrin Rezac is working with Dan on marketing pieces for easy public dialogue and disbursement of information; community education will explain what we are doing and why.
- Clpn. Napier wonders how this issue will affect home sales. There is an unknown now in West St. Paul. He is concerned about this and he wants to stay ahead of the internal inspections. A payment negotiation may have to be made in case of a sale. We will need to work with local realtors on these processes. Manager Fulton suggested getting volunteers to assist in working with realtor education.
- Clpn. Halverson is concerned about the public not wanting someone to go into their home. Discussion regarding how many people we need to hire. It is proposed that we are hiring a liaison and we have SEH. Mayor Meisinger suggested getting a proposal so council can review numbers. Manager Fulton said right now in 2015 we paid SEH \$215,000. The person we hire will be around \$70,000 and will do about 300 inspections. Every year we save over \$100,000. Clpn. Halverson believes we are doubling costs.
- Clpn. Iago shared a story about his neighbor and added we need to be proactive in how we deal with the public and realtors. Nothing presented is measurable. There is nothing in here that says we are improving or reducing anything. How do we know if we are gaining on this? Manager Fulton said over time meter readings should show the elimination problem is being corrected. Clpn. Iago asked have there been any readings from the work completed. Darin Rezac was not sure. Clpn. Iago is looking for something measurable – are we making any gains at all. Manager Fulton said we will need to make sure we are addressing this question.
- Clpn. Bellows agrees with Clpn. Iago. If we have a year-round person – do they need to work year round or part time due to most home sales happening part of the year? First of April to end of September. Manager Fulton said the person we hire will be busy year-round – in the spring with home sales and in the fall and winter with our reconstruction areas. We will encourage people in the area to get work done, not requiring, but rather encouraging.

- Mayor Meisinger we could get an intern for the initial inspection – sumps aren't hard to discern. Manager Fulton thinks the liaison we hire will be busy all year long. One thing that needs to change is the ordinance. We need to be able to enter the property for inspection. If the person makes an appointment and doesn't show up or is habitually negligent in notifications to staff, we should provide for a penalty. If someone fails to be home for a scheduled inspection they should be financially penalized.
- At what point did we get away from releasing SEH and bringing in a staff person and continuing this project in a different way. Manager Fulton said the Met Council supports the notion of stretching the correction process out over time. Also, it makes sense from a financial standpoint and customer service and inspection standpoint when doing this through a point of sale. A liaison makes good sense for our community. Discussion regarding the person working year-round continued. St. Paul has a similar program as we are considering.
- Since 40% of our housing is rental we would try to tie this into the licensing rules. The next license applied for would have 2 years to comply with our I/I ordinance and that would be a requirement of the license approval. It would be a financial responsibility of the business to fix this within 2 years. Same thing is true for commercial properties. Clpn. Bellows thinks 40% might be a little misleading and made comments about rental units versus apartment buildings.
- Discussion regarding the Golden Valley program and how ours would be similar. Council and staff continued discussion. Manager Fulton reviewed staff's proposal for the I/I program. We're not inspecting commercial properties with this proposal (most of Robert St. has been completed) they would do their own work and provide us information that it had been completed. Manager Fulton continued with excavation rule discussion. Contractors could go to the right-of-way and work from that point to the house and from that point to the street. From the curb line and to the main would be fixed by the homeowner. What possible cause would there be to the homeowner if the sewer line is damaged. This should be a city responsibility. Manager Fulton thinks it could go either way; there could be root issues and it takes damage issues off the street. We are recommending that the connection point would be assumed by the city. From the curb to the main we would do the work and assess it back to the property owner. We need to make sure people aren't excavating in the street.
- We would do a good communication campaign – more user friendly and take advantage of the city open house, ROMA meetings, any opportunity that presents itself.
- We may get pushback from residents who have completed costs repairs, especially street repairs. We may consider a reimbursement at a future date.
- Mayor Meisinger gave staff an RFP to review, that would go to the property owner if a need to fix was in order. He wants the residents to have an easy time and an “apple to apple” bid on work. The property owner would have an easier time hiring a contractor. Staff will inspect the work to make sure it's completed correctly. Manager Fulton said a follow-up inspection will be done by the liaison. SEH is currently doing the final inspection. From efficiency standpoint and cost standpoint, having the plumber inspect, would be sufficient. Manager Fulton said the plumber could give you a video and we would sign off that it's complete. Council not sure about this; discussion continued. There needs to be a requirement and this is a process item for staff to figure out, said Mayor Meisinger. Manager Fulton added comment about liners and dealing with roots and the inflow issues. Further discussion ensued. If a boulevard tree root causes an issue,

which has been fixed previously, this needs to be addressed. Clpn. Vitelli asked about mineral deposits in pipes. Manager Fulton said staff has seen this and is having property owners deal with the issues. We will review SEH's reports and direct staff to recommend "fixes" to the property owner. This is not a "one size fits all" solution because there are variables – could be variables.

- If there are boulevard trees causing issues in the pipe and an owner can't fix the issue because of city reconstruction or another city-related issue ... the new ordinance needs to offer a solution.
- These questions need to be answered with the new ordinance. A first reading of an ordinance could be done April 25. Manager Fulton will get Council questioned answer prior to this meeting.

Last week the U of M discovered we had 3 boulevard trees in the Butler Ave. area that are infected with Emerald Ash Borer. We have \$30,000 budgeted that will be used immediately to assist with the efforts in fixing this problem. The treatment is about \$100 per tree.

## **5. Adjourn**

The work session adjourned at 6:21 p.m.

David Meisinger  
Mayor  
City of West St. Paul

**City of West St. Paul  
City Council Meeting Minutes  
April 11, 2016 at 6:30 p.m.**

**1. Call to Order**

Mayor David Meisinger called the meeting to order at 6:00 p.m.

**2. Roll Call**

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

Others: City Manager Matt Fulton, Assistant City Manager and HR Director Sherrie Le, Attorney Korine Land, Finance Director Joan Carlson, Community Development Director Jim Hartshorn, Police Chief Manila Shaver, Public Works and Parks Director Ross Beckwith and City Clerk Chantal Doriott.

**3. Pledge of Allegiance**

**4. Adopt the Agenda**

Motion was made by Clpn. Napier and seconded by Clpn. Iago to adopt the agenda with the following change:

- Add under new business: independent muck audit tied to Robert Street project and SRF.
- All members present voted aye. Motion carried.

**5. OCWS Briefing**

Mayor Meisinger gave an update. The Council discussed the following during the work session held prior to this meeting:

- Closed session was held to discuss Robert Street easement acquisitions.
- Lengthy discussion regarding the I/I program and subsequent changes. This will be further discussed at the April 25 meeting and a public hearing held on May 9.

**6. Robert Street Review**

Public Works Director Beckwith gave an update:

- Closure of two southbound lanes.
- Thompson north – 2 contractors working and doing best on this work and trading off on work duties and lane switches. Be aware of the changes in this area.
- Northbound lanes open.
- Detour on Oakdale and Livingston is seeing a lot of traffic. Livingston and Wentworth – staff is meeting onsite to see if approvals can be made in this area. Having some delays is unexpected.

- Clpn. Napier asked if many accidents due to rerouting of traffic were seen. Chief Shaver said a couple but not like last year. Director Beckwith has made good suggestions but motorists need to be thoughtful and slow down and be aware of the signs.
- Intersection of Oakdale and Marie is also being addressed.
- Remember, fines double – they are \$300 in a construction zone. Drive carefully and be safe.

## **7. Citizen Comments**

No one present wished to speak on an item not on the agenda.

## **8. Council Comments**

Clpn. Vitelli said that Robert St. is a healthy Robert St. and this is healthy to West St. Paul. We are reinvesting millions of dollars on this project and he is confident our reinvestment will be rewarded in the future.

Clpn. Napier mentioned Arbor Day – the Environmental Committee and city have sponsored an event at Garlough on Friday May 18 at 5:30 p.m. Come and help plant a couple of trees in the park. It's a fun educational event. He also encourages people to take advantage of the space at Harmon Park.

Clpn. Iago said he has seen cross county teams warming up and they are running the streets of West St. Paul so please watch out for them.

Clpn. Armon reminded everyone that on April 23 it's clean-up day. Volunteers will meet at the west part of the Target parking lot by Panera from 9am to 11am. Wear gloves and be ready to collect garbage. There will be appetizers afterward. The Sunday paper had a story about more rental housing available downtown. There are people moving to housing 3 to 4 miles from businesses in West St Paul. This is a market that's new and our existing businesses can tap into. If you need assistance from Clpn. Armon – just ask and let him know what you think. This is the closest retail corridor to this new housing located downtown.

Clpn. Halverson said there are more people out running and walking and kids out on the streets. Please be careful.

Clpn. Bellows was surprised with a recent Robert St. article and a little dismayed that it stated that the Council and staff were not working as hard as they could on the Robert Street project. Be assured that the Council and staff are working as hard as we can on access issues and businesses communication. Secondly in the Sunday paper, the "bulletin board" had a nice article which he read out loud about a West St. Paul woman had made a withdrawal using the bank drive through window. Unfortunately, her money blew out of the container. Due to the good work of West St. Paul police, most of the money was recovered.

Mayor Meisinger gave the following updates:

- April 23 is our annual Shred It event at city hall in the parking lot from 9am to 12 noon. Bring all your shredable paper and shred for free.
- May 2 is the annual curbside appliance recycling event. Call JR's Advanced Recyclers for pickup of your old appliances at 651-454-9215
- Public event at Heritage Magnet School – open house for the marine team with hundreds of fresh and salt water creatures including a pair of bamboo spotted sharks. There are raffles and lots to see and do. This is also a nonperishable food drive.
- In the April Minneapolis / St. Paul magazine it listed city attorney Korine Land as one of the top female lawyers of the year – congratulations!
- Emerald ash borer – we have cataloged over 1300 trees and found 3 boulevard trees that will be treated for this progressive disease. Please contact Park Director Dave Schletty if you have questions or need additional information. [dschletty@wspmn.gov](mailto:dschletty@wspmn.gov)

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

There were no items to present.

## **10. Consent Agenda**

- A. City Council Meeting Minutes
- B. List of Claims April 11, 2016
- C. Council Report - City Licensing
- D. Police Equipment Grant, MN Department of Public Safety – Resolution No. 16-34

Motion was made by Clpn. Halverson and seconded by Clpn. Iago to approve the consent agenda items as outlined above. All members present voted aye. Motion carried.

## **11. Public Hearing**

There were no public hearings scheduled for this meeting.

## **12. New Business**

### **A. Call for Sale of Bonds**

Finance Director Joan Carlson gave an overview.

Motion was made by Clpn. Napier and seconded by Clpn. Iago to adopt Resolution No. 16-25 a resolution providing for the sale of \$5,110,000 General Obligation Utility Revenue Bonds, Series 2016A. All members present voted aye. Motion carried.

Motion was made by Clpn. Halverson and seconded by Clpn. Armon to adopt Resolution No. 16-35 a resolution authorizing the City to enter into a Credit Enhancement Program agreement with the Minnesota Public Facilities Authority. All members present voted aye. Motion carried.

### **B. Robert Street Muck Removal**

Councilmember Iago gave an overview of a soils condition on Robert Street. There is muck being hauled out adding huge costs to the project. He has a complete lack of confidence and does not trust their ability (consultant). He would like to hire an independent person to audit the tickets and make sure we are getting our true dollars' worth and then present the audit results to our city attorney to see if there should be a claim made on the errors and omissions insurance of SRF. Mayor Meisinger asked attorney Land if this work was necessary. Attorney Land said this is one piece of evidence we could consider in a potential claim with SRF's insurance. Clpn. Bellows said he would second and amend the inquiry to include knowing how much sand was brought in to replace the muck removed and also what the cost of the sand is. Clpn. Vitelli added he would consider the motion with a cap up to \$5,000 maximum on the cost for the audit review. Clpn. Armon wants to make sure the person hired is reputable and that the findings will be acceptable in a court of law, if it comes to that. This audit will confirm the \$600,000 we have spent on muck.

Motion was made by Clpn. Iago and seconded by Clpn. Bellows to hire an engineering and/or consulting firm in an amount not to exceed \$5,000.00 to review and audit the tickets related to muck removal and sand replacement for the Robert Street project. All members present voted aye. Motion carried.

### **13. Old Business**

#### **A. Rental License Hearing for 966/976 Robert St. (Blew Holdings LLC/101 Condos LLC/401 Condos LLC)**

Community Development Director Jim Hartshorn gave an overview.

Attorney Land said as you know this is a revocation hearing for 966/976 Robert Street and she submits evidence into the record which includes claims, and notice to revoke all 29 rental unit licenses. There are three separate legal entities. Question was brought up that what if we delay for sixty days due to the building sale. Attorney Land said we could delay until after the next Council meeting if there is a new owner; rental licenses are per building. The tenants would most likely need to vacate, if necessary, around the end of June.

Eldon Marier, 4660 Barbado Court said #101 condo unit is wholly owned by his son; #401 is owned by his spouse. Blew Holdings is held by him and a partner. They are hoping to close on this property May 2. They would like 60 days to have a smooth transition. Clpn. Vitelli asked if the new prospective owner was going to purchase other units because they would want to consider that – consider a vacation. Also, do you (Marier) have any relationship with the buyer – no, only as the seller said Mr. Marier.

Motion was made by Clpn. Vitelli and seconded by Clpn. Armon to adopt Resolution No. 16-37 to revoke all 29 rental licenses under the ownership of Blew Holdings LLC, 101 Condos LLC, 401 Condos LLC and to allow the tenants be notified and given notice to vacate by June 30, 2016, as well as social service resources to seek alternate living arrangements. All members presented voted aye. Motion carried.

#### **14. Adjourn**

Motion was made by Clpn. Bellows and seconded by Clpn. Armon to adjourn the meeting at 7:13 p.m. All members present voted aye. Motion carried.

David Meisinger  
Mayor  
City of West St. Paul

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** April 25, 2016  
**SUBJECT:** List of Claims



City of West St. Paul

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**BACKGROUND INFORMATION:**

Invoices to be paid

**FISCAL IMPACT:**

\$1,083,532.94

**STAFF RECOMMENDATION:**

Approve payment of attached

**CITY OF WEST ST PAUL**

Summary of List of Claims  
Council Meeting of April 25, 2016

**PAYROLL CHECK REGISTER:**

Payroll Period	3/28/16 - 4/10/16	
Date Paid	4/15/2016	\$140,292.52
Direct Deposit		

Payroll Period		
Date Paid		
Direct Deposit		

**TOTAL NET PAYROLL**

**\$140,292.52**

**DISBURSEMENT CHECK REGISTER:**

Checks	121588 - 121696	\$725,088.26
EFTS	805 - 823	\$218,152.16

**TOTAL DISBURSEMENT CHECKS**

**\$943,240.42**

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

**\$1,083,532.94**

# Payment Register

From Payment Date: 4/11/2016 - To Payment Date: 4/25/2016

Number	Date	Payee Name	Transaction Amount
AP - Accounts Payable			
<u>Check</u>			
121588	04/19/2016	RAMSEY COUNTY WARRANTS	\$500.00
121589	04/19/2016	SIGNART COMPANY, INC	\$1,725.00
121590	04/25/2016	1SOURCE OFFICE & FACILITY	\$494.79
121591	04/25/2016	A B C RENTAL	\$63.90
121592	04/25/2016	ADVANCED ENGINEERING &	\$29,350.75
121593	04/25/2016	AIRTECH THERMEX	\$981.50
121594	04/25/2016	ALLIANCE FOR INNOVATION	\$3,600.00
121595	04/25/2016	ANCOM COMMUNICATIONS	\$415.00
121596	04/25/2016	APPLIED CONCEPTS, INC	\$113.50
121597	04/25/2016	AURORA INVESTMENTS	\$19,361.00
121598	04/25/2016	B T DESIGN	\$45.00
121599	04/25/2016	BATTERIES PLUS BULBS	\$79.95
121600	04/25/2016	BAUER BUILT INC	\$987.44
121601	04/25/2016	BCA CJTE	\$1,110.00
121602	04/25/2016	BENJAMIN FRANKLIN PLUMBING	\$7,650.00
121603	04/25/2016	BERGSTROM, TIM	\$941.25
121604	04/25/2016	BOLTON & MENK INC	\$500.00
121605	04/25/2016	BOYER FORD TRUCKS INC	\$395.87
121606	04/25/2016	CAPRA'S UTILITIES	\$11,471.00
121607	04/25/2016	CHIEF SUPPLY CORPORATION	\$126.19
121608	04/25/2016	CINTAS UNIFORMS	\$118.90
121609	04/25/2016	COMCAST	\$497.98
121610	04/25/2016	CORNWELL TOOLS	\$32.15
121611	04/25/2016	CORVAL CONSTRUCTORS, INC	\$210.00
121612	04/25/2016	CREATIVE PRODUCT SOURCING	\$529.30
121613	04/25/2016	CRYSTEEL DISTRIBUTING	\$1,302.50
121614	04/25/2016	CUB FOODS	\$95.86
121615	04/25/2016	CUSHMAN MOTOR COMPANY	\$570.00
121616	04/25/2016	DAKOTA COMMUNICATIONS	\$55,602.00
121617	04/25/2016	DAKOTA COUNTY REGIONAL	\$25.00
121618	04/25/2016	DEVOY, MIKE	\$525.00
121619	04/25/2016	DOWNTOWNER DETAIL CENTER	\$14.99
121620	04/25/2016	EHLERS & ASSOCIATES	\$4,657.50
121621	04/25/2016	EMERGENCY AUTOMOTIVE TECH	\$6,404.83
121622	04/25/2016	ESS BROTHERS & SONS INC	\$439.00
121623	04/25/2016	EUREKA CONSTRUCTION	\$116,500.55
121624	04/25/2016	EXPRESS AUTO PARTS	\$26.69
121625	04/25/2016	FASTSIGNS	\$31.55
121626	04/25/2016	FLYNN, LOUIS	\$452.25
121627	04/25/2016	GOPHER STATE ONE-CALL	\$275.50
121628	04/25/2016	GORDON/LUKE M	\$180.00
121629	04/25/2016	GRAFIX SHOPPE	\$1,090.00
121630	04/25/2016	GREEN/JOHN	\$192.90
121631	04/25/2016	HARDRIVES, INC	\$345.00
121632	04/25/2016	HEALTH EAST MEDICAL TRANSPORT	\$85.00
121633	04/25/2016	HOLIDAY STATION STORES	\$95.00
121634	04/25/2016	HOLZMER, CYNTHIA	\$251.25
121635	04/25/2016	INVER GROVE FORD	\$112.90
121636	04/25/2016	JIM MURR PLUMBING	\$5,410.15
121637	04/25/2016	JOSEPH E COMMERS LIMITED	\$2,100.00

# Payment Register

From Payment Date: 4/11/2016 - To Payment Date: 4/25/2016

121638	04/25/2016	KEEPRS, INC	\$1,530.11
121639	04/25/2016	KFD TRAINING & CONSULTATION	\$375.00
121640	04/25/2016	LANGUAGE LINE SERVICES	\$232.75
121641	04/25/2016	LEIRNESS, ALAN	\$8,920.02
121642	04/25/2016	LEVANDER, GILLEN & MILLER	\$47,642.50
121643	04/25/2016	LMCIT	\$925.46
121644	04/25/2016	LOGIS	\$2,878.00
121645	04/25/2016	LS BLACK CONSTRUCTORS	\$122,785.25
121646	04/25/2016	M T I DISTRIBUTING	\$662.76
121647	04/25/2016	MACQUEEN EQUIPMENT INC	\$1,230.00
121648	04/25/2016	MARCO, INC	\$585.66
121649	04/25/2016	MCQUILLAN BROS PLUMBING	\$15,147.00
121650	04/25/2016	MENARDS	\$1,456.24
121651	04/25/2016	METRO SALES	\$130.00
121652	04/25/2016	METROPOLITAN COUNCIL	\$138,214.18
121653	04/25/2016	MISTER CAR PARTNERS	\$121.52
121654	04/25/2016	MN DEPT-EMPL & ECON DEV	\$4,110.00
121655	04/25/2016	MN GLOVE	\$444.77
121656	04/25/2016	MN OFFICE OF ADMIN HEARINGS	\$252.00
121657	04/25/2016	MN OFFICE OF ENTERPRISE TECH	\$323.00
121658	04/25/2016	MN STATE TREASURER	\$1,063.83
121659	04/25/2016	NDC4 CABLE COMMISSION	\$11,387.00
121660	04/25/2016	NORTHERN SAFETY CO., INC	\$404.61
121661	04/25/2016	NORTHERN TOOL & EQUIPMENT	\$282.87
121662	04/25/2016	NYSTROM PUBLISHING CO INC	\$570.31
121663	04/25/2016	O'REILLY AUTOMOTIVE, INC	\$270.63
121664	04/25/2016	OFFICE DEPOT	\$116.07
121665	04/25/2016	OLSEN FIRE INSPECTION	\$235.00
121666	04/25/2016	P O S T BOARD	\$630.00
121667	04/25/2016	PETCO ANIMAL SUPPLIES	\$74.98
121668	04/25/2016	POWERPLAN/R D O EQUIPMENT	\$613.59
121669	04/25/2016	REGENCY OFFICE PRODUCTS	\$453.12
121670	04/25/2016	RESPONDER SERVICES	\$117.19
121671	04/25/2016	RICOH AMERICAS CORPORATION	\$195.88
121672	04/25/2016	RUMPCA EXCAVATING	\$456.96
121673	04/25/2016	SAM'S CLUB DIRECT	\$189.80
121674	04/25/2016	SELECTACCOUNT	\$145.59
121675	04/25/2016	SFDMG	\$6,448.05
121676	04/25/2016	SHORT ELLIOTT HENDRICKSON, INC	\$22,550.00
121677	04/25/2016	SKADRON ANIMAL HOSPITAL P A	\$382.34
121678	04/25/2016	SPEED PRINT INC	\$190.00
121679	04/25/2016	SPRWS	\$1,623.63
121680	04/25/2016	ST PAUL/CITY OF	\$1,050.00
121681	04/25/2016	STAPLES ADVANTAGE	\$38.55
121682	04/25/2016	STERNBERG LANTERNS, INC	\$10,200.00
121683	04/25/2016	STREICHER'S	\$656.99
121684	04/25/2016	SUBSCRIPTION SERVICES	\$250.00
121685	04/25/2016	TESSMAN SEED	\$1,796.00
121686	04/25/2016	THE MN TRANSPORTATION	\$110.00
121687	04/25/2016	TKDA	\$4,842.58
121688	04/25/2016	TWIN CITY GARAGE DOOR CO	\$135.00
121689	04/25/2016	TWIN CITY JANITOR SUPPLY	\$504.30
121690	04/25/2016	TWIN CITY SAW	\$120.99
121691	04/25/2016	TWIST OFFICE PRODUCTS	\$423.43

# Payment Register

From Payment Date: 4/11/2016 - To Payment Date: 4/25/2016

121692	04/25/2016	UNIFORMS UNLIMITED	\$7.91
121693	04/25/2016	VIKING ELECTRIC SUPPLY	\$351.10
121694	04/25/2016	WSB & ASSOCIATES	\$8,117.50
121695	04/25/2016	XCEL ENERGY	\$21,624.10
121696	04/25/2016	ZAN ASSOCIATES	\$406.25

Type Check Totals: \$725,088.26

## EFT

805	04/19/2016	ANCHOR BANK OF W. ST PAUL	\$47,305.08
806	04/19/2016	I C M A	\$150.00
807	04/19/2016	I C M A RETIREMENT TRUST-457	\$7,761.82
808	04/19/2016	MII LIFE --- VEBA	\$3,041.15
809	04/19/2016	MN DEPARTMENT OF REVENUE	\$9,575.77
810	04/19/2016	MSRS - 457	\$1,915.00
811	04/19/2016	MSRS HCSP	\$2,143.81
812	04/19/2016	PUBLIC EMPLOYEES RETIRMNT	\$43,935.52
813	04/19/2016	SW/WC SERVICE COOPERATIVE	\$89,273.50
814	04/19/2016	ANCHOR BANK OF W. ST PAUL	\$200.00
815	04/19/2016	SELECTACCOUNT	\$57.40
816	04/19/2016	SELECTACCOUNT	\$280.17
817	04/25/2016	US BANK CARDMEMBER SERVICES	\$5,000.00
818	04/25/2016	ANCHOR BANK OF W. ST PAUL	\$200.00
819	04/25/2016	MN UNEMPLOYMENT INSURANCE	\$2,347.95
820	04/25/2016	SELECTACCOUNT	\$290.65
821	04/25/2016	HIGHER STANDARDS INC	\$836.26
822	04/25/2016	MN STATE TREASURER	\$2,396.00
823	04/25/2016	US BANK CARDMEMBER SERVICES	\$1,442.08

Type EFT Totals: \$218,152.16

TOTAL CHECKS & EFT'S \$943,240.42

# CREDIT CARD PURCHASES 2/11/16-3/11/16

Transaction date	Card holder name	Expense Type	Vendor	Amount
02/17/16	Swenke, Matthew	K-9 supplies	Royal Canin	\$195.96
02/18/16	Swenke, Matthew	K-9 supplies	Cabela's	\$134.99
03/01/16	Swenke, Matthew	Range supplies	Range Systems	\$122.29
02/24/16	Sturgeon, Brian W	Pistol Instructor training- Sewald	Alexandria Tech College	\$700.00
03/07/16	Sturgeon, Brian W	Managing the mental health crisis	Mn Police Training	\$350.00
03/08/16	Sturgeon, Brian W	cellphone chargers	CellPhoneCases	\$39.90
02/09/16	Schletty, Dave	Supplies for Princess Party	Rhode Island Novelty	\$110.65
02/09/16	Schletty, Dave	Supplies for Princess Party	Fun Express	\$315.46
02/11/16	Schletty, Dave	Supplies for Princess Party	Discount School Supply	\$57.49
02/16/16	Schletty, Dave	Supplies for Princess Party	Party City	\$326.50
02/18/16	Schletty, Dave	Supplies for Princess Party	Walmart	\$43.41
02/18/16	Schletty, Dave	Supplies for Princess Party	Target	\$150.00
02/20/16	Schletty, Dave	Supplies for Princess Party	Office Max	\$47.90
02/23/16	Schletty, Dave	Refreshments	Cub Foods	\$26.65
02/24/16	Schletty, Dave	Deposit for Summer Trip	Anoka County P & R	\$100.00
03/01/16	Schletty, Dave	Shade Tree Short Course	Uof MN	\$195.00
02/10/16	Schneider, Duane F	shovel clips	Global Industrial	\$87.57
02/15/16	Schneider, Duane F	sales tax	Global Industrial	\$6.24
03/04/16	Schneider, Duane F	Phone clip	Amazon	\$23.56
03/07/16	Schneider, Duane F	training	MacQueen	\$350.00
03/07/16	Schneider, Duane F	Grease fitting	Lock & Lube	\$59.90
03/08/16	Schneider, Duane F	washer/bearing - snowblower	Jacks Small Engines	\$39.36
03/08/16	Schneider, Duane F	v-belt/traction v-belt	Jacks Small Engines	\$47.91
02/22/16	Doriott, Chantal M	Refreshments	Culvers	\$60.29
02/26/16	Doriott, Chantal M	Refreshments	Target	\$13.16
02/29/16	Doriott, Chantal M	silverware	Eco Products	\$415.10
02/29/16	Doriott, Chantal M	sales tax	Eco Products	\$29.57
03/10/16	Doriott, Chantal M	space heater	Amazon	\$39.83
03/10/16	Doriott, Chantal M	sales tax	Amazon	\$2.84
02/09/16	Shaver, Manila	supplies for annual dept mtg	Dollar Tree	\$10.71
02/16/16	Shaver, Manila	ETI Conference	Mn Chiefs of Police	\$410.00
02/17/16	Shaver, Manila	special program - homeless buy	Amazon	\$197.12
02/17/16	Shaver, Manila	sales tax	Amazon	\$3.99
02/24/16	Shaver, Manila	Congressperson Gifford's visit	Dollar Tree	\$4.29
02/25/16	Shaver, Manila	MAAG footlocker	Lowe's	\$79.98
02/25/16	Shaver, Manila	sales tax	Lowe's	\$5.70
03/01/16	Shaver, Manila	tactical officer school - McCarty	ACT*SOTA	\$250.00
02/11/16	Le, Sheryl L	membership	MAGC	\$75.00
02/12/16	Le, Sheryl L	Startribune subscription	StarTribune	\$35.25
02/22/16	Le, Sheryl L	Survey Monkey	Survey Monkey	\$24.00
02/24/16	Le, Sheryl L	Ads	Facebook	\$29.81
02/29/16	Le, Sheryl L	Volunteer ap	Volgistics	\$31.00
02/10/16	Boike, Benjamin A	meeting with developer	Panera Bread	\$2.24
02/10/16	Gade, Marc	parking	St Paul Public Works	\$2.75
03/02/16	Gade, Marc	steel retractable pull chain ID holder	Amazon	\$4.26
03/08/16	Gade, Marc	Horizontal Camea Mount	Amazon	\$46.97
03/08/16	Gade, Marc	Remote Shutter Release cable	Amazon	\$15.48
03/08/16	Gade, Marc	ID card reel/laptop car-charger	Amazon	\$78.26
02/09/16	Fulton, Matthew S	meeting with Sup't, MH & Chamber	Mendoberri Café	\$13.55
02/09/16	Sanders, Mike	toner cartridge	Office Max	\$89.98
02/09/16	Sanders, Mike	sales tax	Office Max	\$6.41
02/25/16	Sanders, Mike	wire deck, racking/utility frame	Northern Tool	\$309.93
02/25/16	Sanders, Mike	sales tax	Northern Tool	\$22.08



**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Joan Carlson, Finance Director  
**DATE:** April 25, 2016  
**SUBJECT:** March 2016 General Fund Budget Report



City of West St. Paul

---

**BACKGROUND INFORMATION:**

Attached is the March 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 25%. Actual revenues total 3% and expenditures total 20%. Total revenue will remain well below budget until July when the first half tax settlement is received.

All departments are near or below 25% with the following exceptions:

- Mayor/Council – 35% due to billing for 2016 audit services and Winter Fun Fest expenditures (these expenses were offset by donations).
- Information Technology – 28% due to some annual agreements paid in March
- Civil Defense – 43% due to annual membership fee paid in February.
- Human Resources – 33% due to annual sick leave conversion payout.

**FISCAL IMPACT:** None

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

**STAFF RECOMMENDATION:**

Approve the March 2016 General Fund Budget Report.

City of West St Paul  
 General Fund Budget to Actual Report  
 March 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	26,864	64,590	454,910	12%
Intergovernmental Revenues	484,500	53,342	103,110	381,390	21%
Charges for Services	639,205	38,729	159,102	480,103	25%
Fines & Forfeits	125,000	15,714	34,993	90,007	28%
Miscellaneous	231,908	5,555	26,093	205,815	11%
Other Financing Sources	688,000	-	-	688,000	0%
<b>REVENUE TOTALS</b>	<u>12,741,898</u>	<u>140,205</u>	<u>387,888</u>	<u>12,354,010</u>	3%
<b>EXPENSE</b>					
Mayor and Council	120,652	14,483	41,670	78,982	35%
Charter Commission	1,500	-	76	1,424	5%
City Manager / City Clerk	778,375	60,176	180,033	598,342	23%
Elections	28,575	47	47	28,528	0%
Finance	378,370	28,810	89,248	289,122	24%
Legal	360,000	45,159	78,415	281,585	22%
Planning & Comm Develop	317,275	12,151	44,836	272,439	14%
Recycling Dept	23,250	142	142	23,108	1%
Information Technology	437,225	48,263	122,038	315,188	28%
City Hall Building	205,610	19,976	43,366	162,244	21%
PW Facility	63,000	6,424	12,136	50,864	19%
Police	4,319,675	307,131	959,004	3,360,671	22%
Communications Center	638,065	56,801	156,883	481,182	25%
Fire	2,125,394	177,116	177,116	1,948,278	8%
Building Inspections	415,635	27,525	86,320	329,315	21%
Civil Defense	15,295	30	6,522	8,773	43%
Traffic Signs	23,900	643	929	22,971	4%
Animal Control	5,150	-	-	5,150	0%
Engineering	204,004	15,533	44,325	159,679	22%
Streets	1,201,698	109,067	309,173	892,525	26%
Street Lighting	132,025	9,658	20,330	111,695	15%
Human Resources	88,775	5,670	29,725	59,050	33%
Parks and Recreation	823,450	59,043	163,332	660,118	20%
Transfers Out	35,000	-	-	35,000	0%
<b>EXPENSE TOTALS</b>	<u>12,741,898</u>	<u>1,003,849</u>	<u>2,565,666</u>	<u>10,176,232</u>	20%
<b>General Fund Totals</b>					
<b>REVENUE TOTALS</b>	12,741,898	140,205	387,888	12,354,010	3%
<b>EXPENSE TOTALS</b>	12,741,898	1,003,849	2,565,666	10,176,232	20%
<b>General Fund Net</b>	-	(863,644)	(2,177,778)	2,177,778	

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Police Department  
**DATE:** April 25, 2016  
**SUBJECT:** City Business and Liquor Licenses



---

**BACKGROUND INFORMATION:**

Licensing Staff have reviewed the following business and liquor license applications and all requirements have been met.

All license holders must comply with all conditions placed on the property pursuant to any zoning approval.

2016 Business Licenses – No Background

Farmer Registration for St. Paul Growers to sell produce at Signal Hills Mall from June 17 through October 28, 2016.

2016 Business Licenses – Background Required

Application to Conduct Off-Site Gambling for South Robert Street Business Association, to be held at Harmon Park, 230 Bernard St W, on May 21, 2016. This activity is in conjunction with the Celebrate West St. Paul event.

Application for Exempt Gambling Permit (Raffle) for Kowalski's 4 Kids for an event to be held at Southview Country Club, 239 Mendota Rd E, on May 15, 2016.

**FISCAL IMPACT:**

Action	Fund	Department	Account	Amount
Other License Fee	101	30000	32199	115.00
Total:				115.00

**STAFF RECOMMENDATION:**

In processing this application staff found no notable concerns or issues. Staff does not foresee any special or reasonable conditions. Council needs to consider the application for approval.

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
Jim Hartshorn, Comm. Dev. Dir.  
**FROM:** Ben Boike, Assistant Comm. Dev. Dir.  
**DATE:** April 25, 2016  
**SUBJECT:** Interim Use Permit – 2001 Robert St.



City of West St. Paul

---

**BACKGROUND INFORMATION:**

On behalf of Jerry's Foods, Kent Dixon is requesting an Interim Use Permit to allow for the outdoor display of Horticultural Products (seasonal plants) and for a Food Stand in front of their storefront at 2001 Robert St (Cub Foods).

For more detailed information on the proposed Interim Use Permit please see the attached Planning Commission report.

Planning Commission

The Planning Commission met in regular session on April 19, 2016 and held a public hearing. The Commission voted 6-0 to recommend APPROVAL of the Interim Use Permit subject to the listed conditions below. No one from the public wished to speak on the item.

**FISCAL IMPACT:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the Interim Use Permit subject to the following conditions:

1. The applicant shall meet the provisions as outlined in Section 153.172 of the Zoning Code.
2. The Interim Use Permit shall be valid from the date of Council approval through December 31, 2016.
3. No more than two Food Stands shall be located on-site at any given time and hours of operation shall be limited to 7 a.m. to 10 p.m.
4. All Food Stands must be inspected by the State Health Department and must be located on the sidewalk fronting Cub Foods.
5. The applicant shall provide a clear path for pedestrians on the sidewalk adjacent to the display/sales area.

**TO:** Planning Commission  
**FROM:** Ben Boike, Assistant Comm. Dev. Dir.  
**DATE:** April 19, 2016  
**SUBJECT:** Interim Use Permit – 2001 Robert St.



**REQUEST:**

On behalf of Jerry's Foods, Kent Dixon is requesting an Interim Use Permit to allow for the outdoor display of Horticultural Products (seasonal plants) and for a Food Stand in front of their storefront at 2001 Robert St (Cub Foods).

**Attachments:**

*Application*  
*Notice*



**EXISTING LAND USES:**

The subject property consists of retail shopping center. Adjacent properties to the north, east and south consist of retail uses. Adjacent properties to the west consist of the Dakota County Service Center and multi-family housing.

**ZONING:**

The subject property is zoned B4, Shopping Center District. Adjacent properties to the north and east are zoned B-3, General Business. Adjacent properties to the south are zoned commercial (Inver Grove Heights). Adjacent properties to the west are zoned R-1, Single Family and R-4, Multiple Family.

**ANALYSIS:**

The B-4 Zoning District allows Interim Uses for the outdoor sale of Horticultural Products and Food Stands if the following conditions are met:

- (a) The sales area shall be Setback at least 300 feet from the Robert Street right-of-way and 150 feet back from any other street.
- (b) The sales area shall not reduce the required supply of off-street parking below the required number of spaces for the Principal Building and for the Interim Use.
- (c) Off-street parking required for the sales area shall be one space per 150 square feet of sales area.

Plants

As was requested in 2011-2015, the applicant is proposing to display flowers and plants under the pergola on the sidewalk fronting the Cub Foods store. The proposed area provide significant open sidewalk between the display area and the parking lot. Staff did not receive any complaints or have any issues with the previously approved interim permits and does not foresee any issues with the proposed area as it meets the requirements listed above.

Food Stand

As was requested in 2012-2015, the applicant is also requesting the ability to locate a Food Stand in the same location. In addition to the brat/hot dog stand, the applicant is also requesting the ability to have a second food stand on occasion for special events/promotions for some of their vendors.

Staff is recommending a condition of approval limiting the number of Food Stands to two at any given time and limiting the hours of operation for the food stands to 7 a.m. to 10 p.m. (Cub is open 24 hours). Staff is also recommending a condition of approval that all Food Stands be inspected by the State Health Department.



**STAFF RECOMMENDATION:**

Staff recommends APPROVAL of the INTERIM USE PERMIT to allow for the OUTDOOR DISPLAY OF HORTICULTURAL PRODUCTS and to allow a FOOD STAND subject to the following conditions:

1. The applicant shall meet the provisions as outlined in Section 23.5 of the Zoning Code.
2. The Interim Use Permit shall be valid from the date of Council approval through December 31, 2016.
3. No more than two Food Stands shall be located on-site at any given time and hours of operation shall be limited to 7 a.m. to 10 p.m.
4. All Food Stands must be inspected by the State Health Department and must be located on the sidewalk fronting Cub Foods.
5. The applicant shall provide a clear path for pedestrians on the sidewalk adjacent to the display/sales area.



# CITY OF WEST ST. PAUL

1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118-3972

MUNICIPAL CENTER 651-552-4100  
PARKS/RECREATION 651-552-4150  
FAX 651-552-4190

POLICE 651-552-4200  
FIRE 651-552-4176  
TDD 651-552-4222

## INTERIM USE PERMIT APPLICATION

Filing Fee: \$175.00

(OFFICE USE ONLY)

Escrow Amount: N/A

DATE RECEIVED 3/4/16

TOTAL FEES \$175.00

RECEIPT # \_\_\_\_\_  
60 DAY DATE 5/3/16

1. STREET ADDRESS OF PARCEL 2001 South Robert Street

2. NAME OF APPLICANT Kent Dixon Phone # 612-360-8218

3. ADDRESS OF APPLICANT 1358 White Oak Drive Email kdixon@jerrysfoods.com  
Chaska, MN 55318

4. NAME OF OWNER Jerry's Enterprises, Inc. Phone # 952-922-8335

5. ADDRESS OF OWNER 5101 Vernon Av So Email \_\_\_\_\_  
Edina, MN 55436

6. LEGAL/PID # \_\_\_\_\_

7. PRESENT ZONING \_\_\_\_\_

8. PROPOSED USE OF PARCEL Garden center and brat stand

9. ZONING SECTION AUTHORIZING IUP \_\_\_\_\_

10. WHAT WILL BE THE EFFECT OF THE PROPOSED USE ON THE HEALTH, SAFETY, & WELFARE OF THE OCCUPANTS IN THE SURROUNDING PARCELS? \_\_\_\_\_

11. WHAT WILL BE THE EFFECT ON EXISTING AND ANTICIPATED TRAFFIC CONDITIONS, INCLUDING PARKING FACILITIES ON ADJACENT STREETS? \_\_\_\_\_

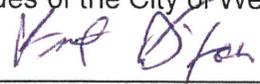
12. WHAT WILL BE THE EFFECT OF THE PROPOSED USE ON THE COMPREHENSIVE PLAN? \_\_\_\_\_

**EXHIBITS REQUIRED**

- A. An electronic copy as well as four (4) 22x34 and twenty (20) 11x17 paper copies, of a map or plat showing the property on which the Interim Use Permit is requested, and all parcel within 150 feet of the boundaries of the subject parcel.
- B. An electronic copy as well as four (4) 22x34 and twenty (20) 11x17 paper copies in sets and folded plans, showing application information as follows:
  - a. Proposed and existing topography, and drainage.
  - b. A complete plan prepared and signed by a registered Civil Engineer, Architect, and/or Landscape Architect showing:
    - i. The parking layout, access provisions, structure locations, landscaping, drainage, trees and shrubbery including types and locations, and sizes.
    - ii. Any fences, walls, or other screening, including height and type of material.
    - iii. All lighting provisions, including type, location, and lumens affecting the surrounding parcels and streets.
    - iv. Curb type and location on site.
    - v. Proposed plans for sidewalk to service, parking, recreation and service areas within the site.

**ACKNOWLEDGE AND SIGNATURE**

The undersigned hereby represents upon all penalties of law, for the purpose of inducing the City of West St Paul to take action herein requested, that all statements herein are true and that all work herein mentioned will be done in accordance with the Ordinances and all Codes of the City of West St Paul and the State of Minnesota.

  
\_\_\_\_\_  
Signature of Owner (Required)

E. V. P.

952-283-2581  
\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Signature of Applicant (If different)

\_\_\_\_\_  
Phone Number

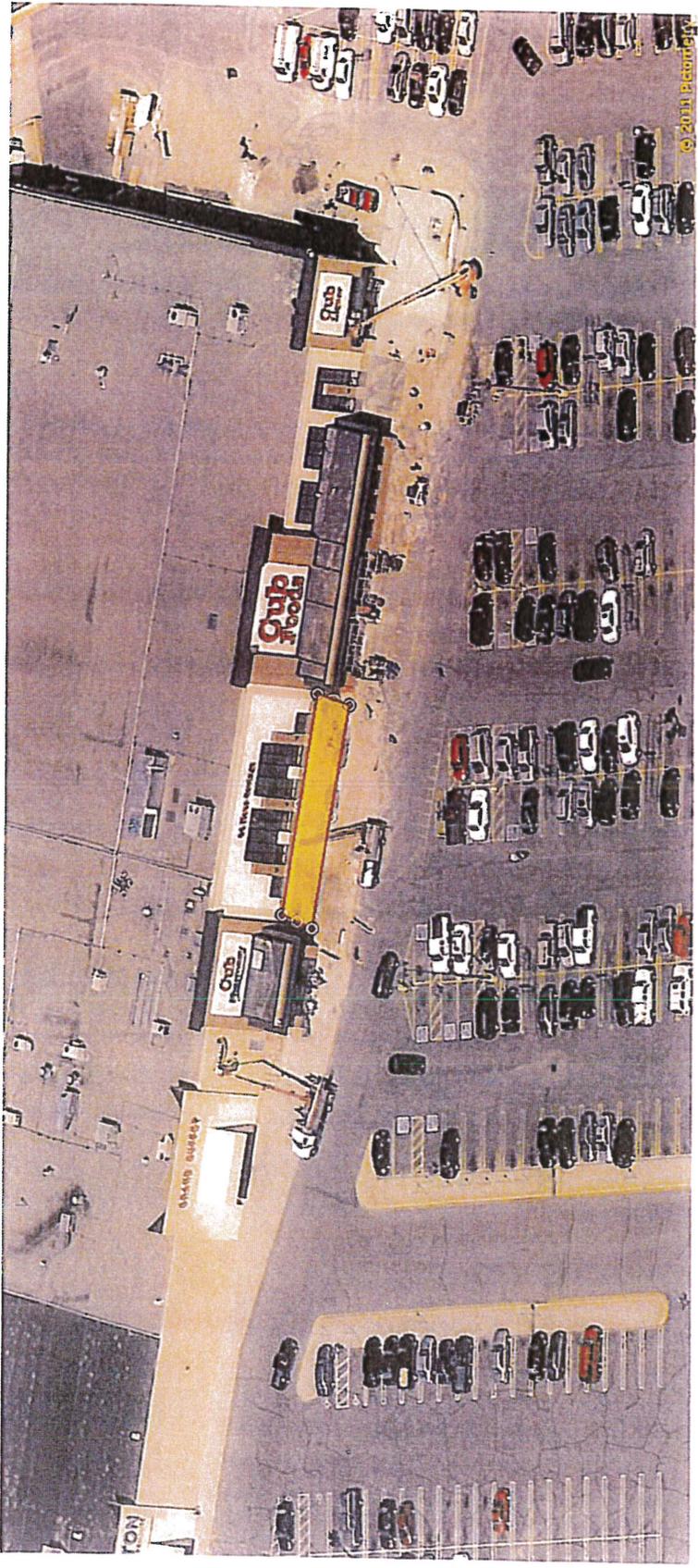
**NOTE: All Materials relevant to this Application must be filed on or before the dates listed on Operating Procedures for Applicants page. The Planning Commission holds its regular meeting at 7:00pm on the third Tuesday of each month.**

**LAPSE OF INTERIM USE PERMIT:**

An approved Interim Use Permit shall lapse and become null and void three months following the date on which the Interim Use Permit was approved if is not in use or otherwise approved for a later time.

**FEES**

1. The fees to be paid by each applicant for each zoning request shall be as prescribed by the City Council. Fees shall be payable at the time applications are filed with the Zoning Administrator and are not refundable unless the application is withdrawn prior to being sent for legal publication and notice. There shall be no fee in the case of applications filed in the public interest by the City Council or by the Planning Commission. Fees shall include application fee, filing fees, consultant, legal, planning, and engineering fees.
2. Applicants shall deposit with the City, together with the application filing fees, the sums required by Council resolution toward prepayment of the Consultants and Attorney's expenses and all costs to be billed and charged to the City. The prepayment amounts shall be a credit toward all reasonable fees and expenses charged by the Consultants to the City in the investigation report and recommendation to the City Council concerning the application. All reasonable expenses and fees in excess of the deposit, shall be paid by the applicant to the City within 30 days of final action on the matter by the City. If not paid within 30 days, the account shall be deemed delinquent. If the fees and expenses incurred by the City from the Consultants are less than the amount of deposit, such excess shall be returned to the applicant upon final action by the City in said manner.



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CITY OF

**WEST ST. PAUL**

City Hall  
1616 Humboldt Avenue  
West St. Paul, MN  
55118-3972  
651-552-4100  
FAX 651-552-4190  
TDD 651-322-2323  
[www.wspmn.gov](http://www.wspmn.gov)

CITY OF WEST ST. PAUL  
NOTICE OF PUBLIC HEARINGS

**TO WHOM IT MAY CONCERN:**

The listed item below will be a public hearing at the Planning Commission meeting on April 19, 2016 at 7:00 p.m. and a public hearing at the City Council meeting on April 25, 2016 at 6:30 p.m.:

CASE #16-03 – Applications for an Interim Use Permit to allow Outdoor Display/Sale of plants and a Food Stand at 2001 Robert St. – Cub Foods

Interested persons will be heard at these meetings. If you have any questions, please contact City Planner Ben Boike at 651-552-4134. If you need any type of accommodation to participate in the meeting, please contact the ADA Coordinator at 651-552-4102 at least 5 (five) business days prior to the meeting.

Chantal M. Doriott  
City Clerk  
City of West St. Paul

Published: April 10, 2016

**TO: MAYOR AND CITY COUNCIL**  
**THROUGH: CITY MANAGER**  
**FROM: COMMUNITY DEV. DIR.**  
**DATE: APRIL 25, 2016**



**City of West Saint Paul**

**SUBJECT:**

Resolution in support of a Minnesota Investment Fund Program (MIF) Application.

**BACKGROUND INFORMATION:**

The EDA approved a similar resolution over a year ago to help fund Tapemark's expansion, but now the Minnesota Department of Employment and Economic Development (DEED) is asking for approval of a resolution approving the EDA's Resolution.

**EXPENSES:**

		Amount
Fund:		
Department:		
Account:	N/A	None

**STAFF RECOMMENDATION:**

Approve the attached Resolution.

**ATTACHMENTS:**

- Resolution approving the Minnesota Investment Fund Program Application.

**RESOLUTION NUMBER 16- \_\_**

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

**Local Government Resolution in Support of a Minnesota Investment Fund Program  
Application**

RESOLUTION REGARDING THE APPROVAL OF A MINNESOTA INVESTMENT FUND APPLICATION IN CONNECTION WITH the CITY of WEST St. PAUL EDA FOR TAPEMARK EXPANSION PROJECT.

WHEREAS, the City of West St. Paul, Minnesota desires to assist Tapemark, which is proposing to expand in the City; and,

WHEREAS, the City of West St. Paul understands that Tapemark, through and with the support of the City EDA, wishes to apply to the Minnesota Department of Employment and Economic Development's Minnesota Investment Fund Program for project financing; and,

WHEREAS, the City of West St. Paul held a City Council meeting on 4-25-2016, to consider this matter.

NOW, THEREFORE, BE IT RESOLVED that, after due consideration, Mayor and City Council of the City of West St. Paul, MINNESOTA, hereby express their approval of the Minnesota Investment Fund application from the City of West St. Paul EDA to assist with this project.

Sworn and Executed Under My Hand this 25 day of April, 2016.

---

Mayor, David Meisinger

ATTEST:

---

City Clerk, Chantal Doriott

**CITY OF WEST ST. PAUL**

**NOTICE OF PUBLIC HEARING**

**TO CONSIDER AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE**

**Notice is hereby given** that the City of West St. Paul City Council will meet at 7:00 p.m., or as soon thereafter as possible, on Monday, April 25, 2016 in the Council Chambers located at the City Municipal Center, 1616 Humboldt Avenue, West St. Paul, MN to consider a cable television franchise. The purpose of the public hearing is to permit interested person(s) and organization(s) to have the opportunity to be heard on the recommended cable television franchise for Qwest Broadband Services, Inc. d/b/a CenturyLink. A copy of the negotiated cable television franchise can be obtained from the City Municipal Center from City Clerk, Chantal Doriott.

Chantal Doriott

City Clerk

Published in the South-West Review April 10 and 17, 2016

## MEMORANDUM

To: Member Cities of the Northern Dakota County Cable Communications Commission

From: Brian Grogan, Esq.

Date: February 29, 2016

Re: Competition in Cable Communications Franchising

---

### **Executive Summary**

Northern Dakota County Cable Communications Commission (“Commission”) consists of the cities of Inver Grove Heights, Lilydale, Mendota, Mendota Heights, Sunfish Lake, South St. Paul, and West St. Paul, Minnesota (“Member Cities”). The Commission and its Member Cities are considering the grant of a competitive cable franchise to Qwest Broadband Services, Inc., d/b/a CenturyLink (“CenturyLink”) in a service area for which Comcast holds an existing franchise. This memorandum is intended to assist the Commission and its Member Cities consider the proposed CenturyLink Cable Television Franchise Ordinance (“CenturyLink Franchise”) by summarizing the legal issues surrounding its terms that relate to competition in the cable communications industry.

### **Details**

The Commission previously conducted a public hearing regarding CenturyLink’s application and qualifications to provide cable communications services to residents of the Member Cities. Commission staff was thereafter directed to negotiate with CenturyLink to seek mutually acceptable terms for the CenturyLink Franchise. Those negotiations are now complete and have resulted in the proposed CenturyLink Franchise enclosed as Exhibit 1. Commission staff has also prepared suggested written “findings of fact,” enclosed as Exhibit 2, setting forth

the factual and legal basis for the grant of the CenturyLink Franchise and the impact of relevant State and federal competitive cable franchise laws and regulations.

### **Build-out**

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

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

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

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<sup>1</sup> 47 U.S.C. § 541(a)(1).

<sup>2</sup> 621 Order at ¶ 35.

The 621 Order did not prohibit all build out requirements, but instead provided examples of unreasonable build out requirements - and of reasonable ones, such as a small initial deployment and required expansion triggered by market success.<sup>3</sup>

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

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

### **Competitive Equity**

The Minnesota cable communications statutes also contain a general level-playing-field (i.e., "competitive equity") provision that requires that an additional franchise include no terms or conditions "more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3)

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<sup>3</sup> Id. at ¶ 89-90.

<sup>4</sup> Minn. Stat. § 238.084, subd. 1(m).

<sup>5</sup> 621 Order at ¶ 7, cited in letter dated April 15, 2015

<sup>6</sup> CenturyLink Franchise §§ 2.8 and 2.10.

franchise fees.”<sup>7</sup> Minnesota courts have interpreted this provision as requiring “substantially similar” - rather than identical - terms.<sup>8</sup> Several attempts have been made to ensure that the CenturyLink Franchise is substantially similar to Comcast’s existing franchise: first, the Comcast franchise served as the base document for negotiation of the CenturyLink Franchise; second, the franchise fee percentage required by the CenturyLink Franchise is identical to that required by Comcast’s franchise; third, the geographic area (after complete build-out) of the CenturyLink Franchise matches the area specified in Comcast’s franchise; and fourth, the CenturyLink Franchise requires CenturyLink to require substantially similar—if not greater—public, educational, and governmental access.

### **Findings of Fact**

As previously indicated, whether the Commission and Member Cities ultimately grant or deny the proposed CenturyLink Franchise, it must examine all of the evidence presented to it, weigh the facts, and apply the correct legal standards. Enclosed as Exhibit 2 are draft findings of fact generally supporting a decision to approve the CenturyLink Franchise. With the caveat that best practices dictate that the final findings of fact should respond to any evidence or argument against approval, the attached findings of fact may serve as a useful starting point if a Member City elects to grant the CenturyLink Franchise.

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<sup>7</sup> Minn. Stat. § 238.08, subd. 1(b).

<sup>8</sup> See *WH Link, LLC v. City of Otsego*, 664 N.W.2d 390, 396 (Minn. Ct. App. 2003).

**EXHIBIT 1**  
**CenturyLink Franchise**

**EXHIBIT 2**  
**Findings of Fact**

**CITY OF WEST ST. PAUL, MINNESOTA**  
**RESOLUTION NO. \_\_\_\_\_**

**Regarding an Ordinance Granting a Competitive Cable Franchise  
to Qwest Broadband Services, Inc., d/b/a CenturyLink**

**RECITALS:**

**WHEREAS**, the City of West St. Paul, Minnesota makes the following FINDINGS OF FACT:

1. In February 2015, Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. (“CenturyLink”) requested that the City of West St. Paul, Minnesota (“City”) initiate proceedings to consider awarding it a franchise to provide cable communications services in the City (“Service Territory”).
2. Comcast of St. Paul, Inc. (“Comcast”) holds a non-exclusive cable communications franchise for the Service Territory (“Comcast Franchise”).
3. The Comcast Franchise, which the City last renewed on or about April 1, 2000, is currently the only cable communications franchise for the Service Territory.
4. The monopoly held by a sole cable communication provider in a particular market is a barrier to entry for additional providers, which does not have a captive market but must instead “win” every subscriber.<sup>1</sup>
5. The presence of a second cable operator in a market improves the quality of service offerings and drives down prices by approximately fifteen percent (15%).<sup>2</sup>
6. On March 8, 2015 and March 15, 2015, the Northern Dakota County Cable Communications Commission (“Commission”), which the City is a member of, published a Notice of Intent to Franchise a Cable Communications System (“Notice”) in the South-West Review, a newspaper of general circulation in the Service Territory.
7. The Notice indicated that the Commission was soliciting franchise applications and provided information regarding the application process, including that applications were required to be submitted on or before March 31, 2015 and that a public hearing to hear proposals from applicants would be held by the Commission on April 15, 2015 at 7:00 PM.
8. The Commission also mailed copies of the Notice and application materials to CenturyLink and Comcast.<sup>3</sup>

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<sup>1</sup> *In the Matter of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311, at ¶ 138 (Rel. Mar. 5, 2007) (“621 Order”).

<sup>2</sup> *Id.* at ¶¶ 2, 50.

9. On March 31, 2015, the Commission received an application from CenturyLink (the “CenturyLink Application”). The Commission did not receive any other applications.
10. As provided by the Notice, on April 15, 2015 the Commission held a public hearing during the Commission’s regularly scheduled meeting to consider CenturyLink’s application and qualifications.
11. On April 15, 2015, Comcast submitted a letter to the City setting forth its position regarding the CenturyLink Application (“Comcast Letter”).<sup>4</sup>
12. The Comcast Letter expresses concern about CenturyLink’s proposal and how CenturyLink will be held to particular provisions of the existing Comcast Franchise.<sup>5</sup>
13. The Comcast Letter also summarizes Comcast’s position regarding build-out requirements and other proposed terms related to competition in the cable industry.<sup>6</sup>
14. During the April 15, 2015 hearing, CenturyLink presented its proposal and all other interested parties were provided an opportunity to speak and present information to the Commission regarding the CenturyLink Application.
15. Following the hearing, the law firm of Moss & Barnett, a Professional Association prepared a report, dated May 29, 2015 (“Franchise Report”), reviewing and analyzing the applicable franchising procedures, the CenturyLink Application and other information provided by CenturyLink in connection with the April 15, 2015 public hearing.<sup>7</sup>
16. The Franchise Report identifies and discusses federal and state legal requirements relevant to the City’s consideration of the CenturyLink Application, including laws pertaining to franchising procedures and competition between providers.<sup>8</sup>
17. The Franchise Report also analyzes information provided by CenturyLink to establish its qualifications to operate a cable communications franchise in the Service Territory.<sup>9</sup>

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<sup>3</sup> Notice by the Northern Dakota County Cable Communications Commission of Its Intent to Consider An Application for a Franchise and Request for Proposals - Official Application Form.

<sup>4</sup>See, April 15, 2015 letter from Emmett V. Coleman to Jodie Miller, Executive Director for the Commission, regarding CenturyLink Video Franchise Application.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> Report to the Northern Dakota County Cable Communications Commission Regarding Qwest Broadband Services, Inc. d/b/a/ CenturyLink – Proposal for a Cable Communication Franchise, May 29, 2015.

<sup>8</sup> Franchise Report at 2-9.

<sup>9</sup> *Id.* at 11-12.

18. At its meeting on June 3, 2015, the Commission considered the Franchise Report, along with the information and documentation it had received regarding the CenturyLink Application, and adopted a resolution finding and concluding that the CenturyLink Application complied with the requirements of Minn. Stat. § 238.081 and that CenturyLink is legally, technically, and financially qualified to operate a cable communications system within the Service Territory.
19. As a result of its determination that CenturyLink complied with all application requirements and is a qualified applicant, the Commission authorized Commission staff to negotiate with CenturyLink to attempt to reach mutually acceptable terms for such a franchise.
20. On February 23, 2016 the Commission considered and recommended an ordinance granting a cable communications franchise to CenturyLink and authorized Commission staff to provide the recommended franchise to the Commission's Member Cities for consideration and action.
21. In Minnesota, both State and federal law govern the terms and conditions of an additional cable communications franchise in an already-franchised service area.<sup>10</sup>
22. The franchising authority may not grant an exclusive franchise or unreasonably refuse to award an additional competitive franchise.<sup>11</sup>
23. The franchising authority must allow an applicant reasonable time to become capable of providing cable service to all households in the service area.<sup>12</sup>
24. The franchising authority may grant an additional franchise in an already-franchised service area if the terms and conditions of the additional franchise are not "more favorable or less burdensome than those in the existing franchise" regarding the area served, the PEG access requirements, and franchise fees.<sup>13</sup>
25. The additional franchise must also include, among other things, "a schedule showing . . . that the construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise."<sup>14</sup>
26. In order to ensure that any additional franchise granted to CenturyLink would contain substantially similar service area, PEG access requirements, and franchise fees to the Comcast Franchise, the Commission used the Comcast Franchise as the base document for its negotiations.
27. On [ date ], the City Council gave notice that it intended to introduce an ordinance granting a cable communications franchise to CenturyLink.

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<sup>10</sup> See 47 U.S.C. § 541(a)(1); Minn. Stat. §§ 238.08, .084; see also Franchise Report at 2-8.

<sup>11</sup> 47 U.S.C. § 541(a)(1).

<sup>12</sup> 47 U.S.C. § 541(a)(4).

<sup>13</sup> Minn. Stat. § 238.08, subd. 1(b).

<sup>14</sup> Minn. Stat. § 238.84, subd. 1(m).

28. Copies of the CenturyLink Franchise were made available to the public, including Comcast, on [\_\_date\_\_].
29. On [\_\_date\_\_], the City Council introduced Ordinance No. \_\_\_\_\_, an Ordinance of the City of West St. Paul, Minnesota Granting a Cable Communications Franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink Franchise”).
30. The CenturyLink Franchise encompasses the same Service Territory encompassed by the Comcast Franchise.<sup>15</sup>
31. The franchise fee percentage required by the CenturyLink Franchise is identical to that required by the Comcast Franchise.<sup>16</sup>
32. The PEG access requirements in the CenturyLink Franchise mandate certain obligations, such as HD channel capacity for all PEG channels that go beyond the commitments made in the Comcast franchise.<sup>17</sup>
33. The City recognizes that CenturyLink, which currently offers no cable communications services in the Service Territory, cannot justify a large initial deployment because it “realistically cannot count on acquiring a share of the market similar to Comcast’s share . . . [and] must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.”<sup>18</sup>
34. The CenturyLink Franchise therefore requires CenturyLink’s initial deployment to be capable of serving at least fifteen percent (15%) of the living units in the Service Territory within two (2) years. CenturyLink is further required to commit a significant portion of its initial investment to areas below the median income within the City.<sup>19</sup>
35. The CenturyLink Franchise permits the City to monitor CenturyLink’s progress and compliance with build-out requirements via quarterly meeting and accelerates the build-out schedule if CenturyLink has market success, with the goal and expectation that build-out will be substantially complete before the CenturyLink Franchise’s five (5) year term expires.<sup>20</sup>
36. During its regularly scheduled meeting on [\_\_date\_\_], the City Council will hold a public hearing at which all interested parties are provided an opportunity to speak and present information regarding the proposed CenturyLink Franchise.

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<sup>15</sup> CenturyLink Franchise §2.7; Comcast Franchise § 2.8.

<sup>16</sup> CenturyLink Franchise §8.3; Comcast Franchise § 8.3.

<sup>17</sup> CenturyLink Franchise §6 and Exhibit A; Comcast Franchise § 6 and Exhibit B.

<sup>18</sup> 621 Order at ¶ 35.

<sup>19</sup> CenturyLink Franchise §2.8.

<sup>20</sup> CenturyLink Franchise §2.9- 2.10.

**WHEREAS**, the City has considered these facts and the cable-related needs and interests of the community:

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

1. The foregoing findings are adopted as the official findings of the City Council and made a part of the official record.
2. The City has authority to adopt an ordinance granting a cable communications franchise to CenturyLink for the Service Territory.
3. The City may not unreasonably refuse to award a competitive cable communications franchise to CenturyLink.
4. The City and its residents will benefit from adoption of the CenturyLink Franchise, which will introduce facilities-based competition into the cable communications market in the Service Territory and thereby reduce costs to consumers and increase the quality and availability of services.
5. CenturyLink is legally, technically, and financially qualified to operate a cable communications system in the Service Territory and has complied with all application requirements.
6. The City has complied with all franchise application requirements imposed by State and federal law, including those identified herein or in the Franchise Report.
7. The terms and conditions of the CenturyLink Franchise pertaining to service area, a PEG access requirement, and franchise fees are not more favorable or less burdensome than the corollary terms of the Comcast Franchise.
8. The CenturyLink Franchise's initial deployment requirement of fifteen percent (15%) within two (2) years and five (5) year timeline for substantially completing build-out provides a reasonable period of time for CenturyLink to become capable of reaching full deployment and is therefore consistent with both State and federal law.
9. The Ordinance Granting a Cable Communications Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink is formally and finally adopted.
10. The City finds and concludes that its actions are appropriate, reasonable, and consistent in all respects with the mandates set forth in Chapter 238 of Minnesota Statutes and applicable provisions of federal law, including 47 U.S.C. § 541(a).

**PASSED AND ADOPTED** in regular session of the City Council of the City of West St. Paul, Minnesota this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Mayor of the City of West St. Paul, Minnesota

\_\_\_\_\_  
Printed Name

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Printed Name

**CABLE TELEVISION FRANCHISE ORDINANCE**

**FOR**

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

**CITY OF WEST ST. PAUL, 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.....	21
SECTION 6.	LOCAL CHANNELS AND NETWORK DROP PROVISIONS.....	26
SECTION 7.	INSTITUTIONAL NETWORK (I-NET) PROVISIONS.....	29
SECTION 8.	OPERATION AND ADMINISTRATION PROVISIONS.....	29
SECTION 9.	GENERAL FINANCIAL AND INSURANCE PROVISIONS.....	31
SECTION 10.	SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.....	37
SECTION 11.	PROTECTION OF INDIVIDUAL RIGHTS.....	40
SECTION 12.	UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.....	40
SECTION 13.	MISCELLANEOUS PROVISIONS.....	41
SECTION 14.	PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.....	43
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. 16-XX**

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURLINK (“GRANTEE”) TO CONSTRUCT, OPERATE, AND MAINTAIN A COMPETITIVE CABLE COMMUNICATIONS SYSTEM IN THE CITY OF West St. Paul, 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 West St. Paul, 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.



- h. “City Code” means the Municipal Code of the City of West St. Paul, Minnesota, as may be amended from time to time.
- i. “City Council” means the governing body of the City of West St. Paul, 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.

13. **Multiple Dwelling Units.** Grantee shall ensure that rates charged by Grantee to residents of multiple dwelling unit buildings do not exceed the charges paid by residents of single family homes. Grantee may not condition provision of services to multiple dwelling unit buildings on any requirement not imposed on other Subscribers. Grantee may not condition provision of services to multiple dwelling unit buildings on an exclusive service agreement with Grantee. Grantee may offer a building owner the option of a long-term agreement in return for installation of internal wiring or other telecommunications improvements unique to the building, but Grantee must offer the alternative of a no term agreement to building owners who wish to contract directly for installation by a contractor approved by Grantee and in accordance with Grantee's generally applicable technical standards. The foregoing does not restrict, condition, or inhibit Grantee's ability to negotiate longer-term right of entry agreements prior to offering service to multiple dwelling unit building residents for the purpose of maintaining Grantee's on-site signal and facilities. For purposes of this section, a "right of entry agreement" means an agreement that permits Grantee access to the building to extend its distribution cable from the Cable System in the Right-of-Way or public easement to the utility closet or other Demarcation Point in the multiple dwelling unit building.

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

If to City:                      City Manager Matt Fulton  
    City of West St. Paul  
    1616 Humboldt Avenue  
    West St. Paul, MN 55118

If to Commission:          Executive Director  
    Northern Dakota County Cable Communications Commission  
    5845 Blaine Avenue  
    Inver Grove Heights, MN 55076

If to Grantee:                      CenturyLink  
    Attn: Public Policy  
    200 S 5<sup>th</sup> Street 21<sup>st</sup> Floor  
    Minneapolis, MN 55402

With a courtesy  
copy to:                              CenturyLink  
    Attn: Public Policy

1801 California St. Room 1000  
Denver, CO 80202

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.

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## 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. **Non-voice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for non-voice 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 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 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, it 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**

11. **Summary Publication, Effective Date.** Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

On \_\_\_\_\_, 2016, the City of West St. Paul, Minnesota (“City”) adopted an Ordinance granting a Cable Television Franchise to CenturyLink. The Ordinance serves two purposes. First, it is intended to provide requirements for the provision of cable television services with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable franchise to CenturyLink to operate, construct and maintain a cable system within the City.

The Ordinance includes the following: 1) requires CenturyLink to have a bandwidth capable of providing the equivalent of a typical 750 MHz cable system; 2) imposes on CenturyLink a franchise fee of five percent (5%) of CenturyLink’s annual gross revenues; 3) establishes a franchise term of five (5) years with the option for the City to extend for an additional 5 years; 4) provides a list of schools and public buildings entitled to receive complimentary cable service; 5) requires CenturyLink to dedicate channel capacity for public, educational and governmental programming and provides financial support of such channels; 6) mandates customer service

standards regarding CenturyLink's provision of cable services; and 7) requires a performance bond and security fund to enforce CenturyLink's compliance with the Ordinance.

The Effective Date of this Franchise shall be the date set forth in the definition Section 1, Paragraph 2 (o).

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

ATTEST:

CITY OF WEST ST. PAUL, MINNESOTA

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

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

Name: Chantal Doriott  
PRINTED/TYPED NAME

Name: David Meisinger  
PRINTED/TYPED NAME

Its: City Clerk  
TITLE

Its: Mayor  
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.**

- e. 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.

- f. 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.
- g. 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.
- h. 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).
- i. 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.
- j. 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.

- k. 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.
- l. 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).
- m. 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.
- n. 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				
TOTAL SUBSCRIBERS				
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 West St. Paul, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

**WITNESSETH:**

**WHEREAS**, the City of West St. Paul has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of West St. Paul; 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 WEST ST. PAUL

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

Name: David Meisinger  
PRINTED/TYPED NAME

Its: Mayor  
TITLE

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

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

**TO:** Mayor and City Council  
**FROM:** Matt Fulton, City Manager  
**DATE:** April 25, 2016  
**SUBJECT:** Public hearing and second reading of Ordinance granting Cable Communication franchise to Century Link.

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**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. The City Council held the first reading of the proposed Ordinance granting a Cable Communication Franchise to Qwest, DBA CenturyLink at its March 28 meeting

**DISCUSSION :** After considerable discussion with Centurylink representatives, NDC4 staff and legal counsel have negotiated recommended terms and conditions for a competitive cable franchise. The 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 requested this evening to hold the public hearing on this issue and consider its approval.

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.

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

**STAFF RE QUEST FOR CONSIDERATION**

Hold the public hearing and consider approval of Ordinance granting a cable communication franchise to Centurylink.

**TO: Mayor and City Council**  
**FROM: Matt Fulton, City Manager**  
**DATE: April 25, 2016**  
**SUBJECT: First Reading- Amendments to City Code Chapter 50, Section 50.08 regarding discharge of prohibited clear water drainage; Sump Pumps.**

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**BACKGROUND INFORMATION :** The City Council had the opportunity to discuss the I/I program in detail at its April 11, 2016 worksession. The purpose of this memo is to review the recommended changes and introduce the amended ordinance for implementing the changes. The intent behind these changes is to handle I/I responsibly and consistent with Metropolitan Council expectations to remove I/I from the public and private sanitary sewer collection systems in the community. The changes should also result in a less onerous and financially burdensome project for those property owners who need to correct I/I areas of non-compliance. The City Code amendments and changes to the I/I program are proposed to become effective on July 1, 2016

**DISCUSSION :** Met Council staff has recognized the challenges that WSP is currently experiencing in attempting to correct all I/I issues over a relative short timeframe of several years. The age of much of the community's housing stock and the historical building methods used in handling clear water has resulted in a very challenging, and cumbersome project. In addition, many corrective measures required excavation into the community's already aging street infrastructure, creating, in many cases, an even worse driving surface.

And of course, dealing with I/I is a new topic for most households, which can make it a very confusing and challenging problem to deal with, especially when the financial costs for any repair work is added into the equation.

Because of the cumulative nature of the issues confronted during the past year, with City Council input, staff is recommending, and has Met Council staff support, changes to the I/I the program as follows:

- Effective July 1, 2016, change the I/I program to be something that is required to be dealt with at the time of selling a owner-occupied residential property. An I/I compliance inspection would need to occur prior to the sale of the property. This inspection would be conducted at no expense, provided an access point is made available and service line roots do not impede the ability to inspect the sanitary sewer service line. Any areas of non-compliance would need to be corrected within 12 months of the sale of the property. The owner/buyer would need to negotiate who's responsibility it is to correct any non-compliance areas.
- During the City's annual street repair program, inspections would be conducted on properties adjacent to the construction work so that any problems at the sanitary sewer main can be identified and planned for. Impacted property owners will be encouraged, but not required, to address I/I issues during the street improvement project and to work collaboratively as a neighborhood, to take advantage of the road being opened which possibly could save property owners money.
- Effective July 1, 2016, bringing rental properties into compliance would become a requirement for receiving a rental license to operate in the City. Rental properties would be required to bring the licensed facility into compliance within 24 months of receiving their next annual rental license. I/I compliance would need to be verified every 12 years. Rental properties would be responsible for identifying and correcting all internal I/I issues. The City would only inspect the service line(s) connecting to the sanitary main.

- Effective July 1, 2016, Commercial properties and Homeowner Associations would be required to become compliant within 24 months of the ordinance being approved. . I/I compliance would need to be verified every 12 years after receiving first notice of compliance. The City would only inspect the service line(s) connecting to the sanitary main.
- Street excavation for correcting I/I non-compliance issues would be prohibited, except under unique circumstances as approved by the City Engineer. Any required I/I repairs within the right of way area would need to be done from outside of the right of way and not come any closer than two feet from the Sanitary Sewer main.
- The City would address any needed sanitary service line connection repairs at the time of undertaking sanitary sewermain improvements. Any repairs to the service line connection during such a project would be the financial responsibility of the City.
- Monthly surcharges for not correcting I/I non-compliance areas within the allowed timeframes would be implemented and enforced.
- Staff would recommend the I/I program be brought in house and managed through the City's Public Works Department. The City Council has already approved the hiring of an I/I liaison, who would now also be the person undertaking the inspections as well. This approach will save the City significant resources and help ensure accountability, customer friendliness, and quality of the program, including helping residents and businesses get through the process. Inspections would be scheduled through the City.
- The City would continue its current process of reimbursing 15% of all I/I repair costs for an individual property up to \$5,000 as well as provide the opportunity to have remaining I/I repair costs special assessed to the property and paid for over a ten year period at a very low interest rate. Given the "point of sale" nature of the program, the number of special assessments used for correcting I/I should be fewer as property equity is used to cover repair costs. Deferred assessments for income qualifying seniors would also continue to be provided.
- Staff would also propose a significant community educational campaign to help property owners understand the changes to the program and importance of correcting I/I issues.

The program, as proposed, would result in around 400-500 annual inspections. The Met Council is aware, and is comfortable with a longer time frame for eliminating I/I, provide the City continues to make concerted progress.

Should the City Council endorse this suggested approach, the following steps would be immediately taken:

- Introduce the amended I/I ordinance and set the public hearing date and final passage for May 9, 2016.
- A letter would be sent out immediately notifying all property owners currently in the process of dealing with I/I compliance repairs of the City Council's intent to modify the program as described above. Property owners will be told it will be their option whether to proceed at this time or hold off until the sale of their property to address the I/I compliance issue. The proposed letter is attached.
- Staff will work with the Met Council staff to develop a Memorandum of Understanding ensuring the acceptability of this approach without worry of subsequent surcharges until the City is substantively completed with I/I repairs.
- Staff will arrange opportunities, including the upcoming City Open House, West St Paul Days, and ROMA meetings, and utilize social media for informing and educating the community about the program changes and I/I generally.
- A communication strategy will be developed for informing the real estate community about this additional requirement as well as the County so that this new requirement is included with property transactions. The new regulation will be placed on the St Paul Area Association of Realtors (SPAAR) website.

- Staff will work out a transition plan with SEH, allowing for current inspections to be completed and work transitioned to the City, as the new I/I Liaison joins the City organization and gets comfortable in his/her new role.
- Staff would proceed in acquiring the capital equipment necessary for undertaking the inspections. The most significant component of this will be the purchase of two cameras, which cost generally \$10,000 ea.
- Staff would continue in its recruitment efforts for a qualified individual for performing the inspection, liaison, and administrative activities involved with the program.

### **FISCAL IMPACT**

SEH was paid \$211,467 in 2015 for its work on conducting I/I inspections. The expected cost for an in-house inspection program would be approximately \$68,800 including salary/benefits and initial office setup expenses. Capital expenses relating to the purchase of two cameras would be approx. \$20,000.

First year annual savings would be approximately \$123,000.

### **STAFF REQUEST FOR CONSIDERATION**

Staff is recommending that the City Council approve the changes to the I/I program as proposed, hold the first reading of the amended ordinance to City Code Chapter 50, Section 50.08 regarding Discharge of Prohibited Clean Water Drainage; Sump Pumps and set public hearing for Monday, May 9, 2016.

**ORDINANCE NO. \_\_\_\_\_**  
**CITY OF WEST ST. PAUL**  
**DAKOTA COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 50, SECTION 50.08 OF THE WEST ST. PAUL CITY CODE REGARDING DISCHARGE OF PROHIBITED CLEAR WATER DRAINAGE; SUMP PUMPS**

The City Council of West St. Paul does ordain:

**SECTION 1.** West St. Paul City Code Chapter 50, Section 50.08 relating to the Discharge of Prohibited Clear Water Drainage; Sump Pumps, is hereby amended as follows:

§ 50.08 DISCHARGE OF PROHIBITED CLEAR WATER DRAINAGE; SUMP PUMPS.

(A) ~~(A)~~ *Definition.* **CLEAR WATER DRAINAGE**, for the purpose of this section, is defined as stormwater, natural precipitation, ground water or flow from roof runoff, surface runoff, subsurface drainage, down spouts, eave troughs, rainspouts, yard drains, sump pumps, foundation drains, yard fountains, ponds, cistern overflows or water discharged from any nonresidential air conditioning unit or system.

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(B) *Ownership.* The property owner shall own and be responsible for the maintenance of the sanitary sewer service lateral between the city's sanitary sewer main within the street and the building being served, including the connection to the main.

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(C) ~~(B)~~ *Prohibited discharges.* No person shall directly or indirectly discharge, or permit to be discharged any clear water drainage into the city's sanitary sewer system.

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(D) ~~(C)~~ *Prohibited connections.* No person shall make or maintain a connection between any conductor used to carry clear water drainage and the city's sanitary sewer system.

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(E) ~~(D)~~ *Sump pumps.* Dwellings and other buildings and structures that require a sump pump system to discharge excess water because of the infiltration of water into basements, crawl spaces and the like shall obtain a permit and have a permanently installed discharge line that complies with the following:

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(1) It shall not any time discharge water into the city's sanitary sewer system;

(2) It shall provide for year-round discharge capability to either the outside of the dwelling, building or structure, to the city's storm sewer system;

(3) It shall consist of a rigid discharge line inside the dwelling or building, without any connections for altering the path of discharge, and if connected to the city's storm sewer line must include a check valve; and

(4) Must be directed toward the front or rear yard so as not to trespass or discharge on to adjoining properties.

~~(F)~~ ~~(E)~~ *Inspections.* The City shall conduct inspections of single-family owner-occupied properties to ensure compliance with this section. Failure to have an inspection as required in this section is a violation of the city code. Inspection shall be conducted pursuant to § 10.17.

(1) Except as set forth in § 50.08 (F)(3), inspections are required when the following occurs:

a. The property is offered for sale or conveyance by deed or contract for deed;

b. The city orders a street reconstruction project and the property is adjacent to a street in the project area;

(2) Inspections shall be conducted pursuant to §10.17. In addition to the inspection requirements in §10.17, owners shall be required to comply with the following:

a. Provide sufficient access to the sanitary sewer service lateral within the dwelling, building or other structure, including removal of any obstacles so that the sanitary sewer service lateral is completely accessible to the inspector;

b. Clear the sanitary sewer service lateral of any root intrusions or any other intrusions to allow clear televising of the sanitary sewer service lateral from the dwelling, building or other structure to its connection with the city's sanitary sewer main.

(3) Inspections shall not be required under the following circumstances:

a. It is a newly constructed dwelling and title to the property is transferred to the first owner;

b. It is the sale or other transfer of title of any property with a dwelling that is being conveyed to a public body;

c. It is the sale or transfer of title of any property that contains a dwelling that will be demolished;

d. It is the sale or conveyance of any property that contains a dwelling by a sheriff or other public or court officer in the performance of their official duties. This exception does not apply to the sale by a person appointed by a probate court.

(4) The city shall complete its inspection reports within 10 business days from the date of the inspection and immediately send the report to the property owner. The

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reports shall indicate all deficiencies discovered in sufficient detail to identify the obstructions and the specific section(s) of the sanitary sewer service lateral that must be repaired.

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(G) *Certificates of Inflow and Infiltration ("I/I") Compliance.* If a property is in compliance with this section, the city shall issue a Certificate of I/I Compliance. No new inspections or certificates for single-family owner occupied properties shall be required until one of the events in section 50.08(F)(1) occurs. Certificates of Compliance for residential rental properties and commercial, industrial and HOA properties are valid for a period of 12 years.

(H) *Residential rental properties.* For residential rental properties, the property owner is required to obtain an independent inspection and submit an inspection report to the city upon submission of a new or renewal rental license application. The inspection report shall indicate that the property is free from prohibited discharges and prohibited connections, including illegal sump pumps. If there are any violations discovered, the property owner shall have 24 months from the date of this ordinance to correct any deficiencies and provide a corrected inspection report. The city shall conduct a reinspection to verify compliance. Upon verification, the city shall issue a Certificate of I/I Compliance.

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(I) *Commercial, Industrial and HOA Properties.* For commercial and industrial properties and residential properties with a homeowners' association, property owners are required to obtain an independent inspection and submit an inspection report to the city. The inspection report shall indicate that the property is free from prohibited discharges and prohibited connections, including illegal sump pumps. If there are any violations discovered, the property owner shall have 24 months from the date of this ordinance to correct any deficiencies and provide a corrected inspection report. The city shall conduct a reinspection to verify compliance. Upon verification, the city shall issue a Certificate of I/I Compliance.

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(J) ~~(F)~~ *Violations.*

(1) *Violations discovered at time of sale.*

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a. *Seller Responsibilities.* When the inspector determines that there has been a violation of any provision of this section, ~~the inspector will give notice of the violation to the owner and occupant in writing and allow up to 180 days to correct the violation, unless more time is granted by the City Council.~~ prior to the sale, the seller is responsible for correcting the violations, unless the buyer has assumed such responsibility as provided in subsection b. below. ~~Failure of a seller to disclose to a buyer that there are uncorrected violations of this section is a violation of the city code. When correcting the violations, all necessary permits shall be obtained from the city. Upon completion of the corrections, the city shall reinspect the property to verify compliance.~~

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b. Buyer Responsibilities. If a seller cannot correct the violations prior to the sale the buyer must assume the responsibility for correcting the violations. The buyer shall sign a written acknowledgement from the city that includes:

1. The buyer's acceptance and assumption of responsibility for correcting the violations within one year after closing on the property;
2. That the buyer understands that a reinspection is required to verify the corrections have been completed;
3. That the buyer holds the city harmless from liabilities and claims if the buyer occupies the dwelling prior to corrections of the violations.
4. That failure to correct violations or deficiencies is a violation of the city code and subjects the buyer to penalties as stated in §50.08 (K), (M), and (N)

(2) Violations and corrections under the roadway. When the inspector determines that there has been a violation of any provision of this section and the violations are under the roadway, the city will perform the repairs, except as stated in subsection (3) below. A property owner shall not excavate in the roadway without permission from the City Engineer.

(3) Non-excavation violations and corrections within two feet from the main. When the property owner is correcting violations of the sanitary sewer service lateral between the street and the building and the corrections only involve lining of the sanitary sewer service lateral, the owner shall stop all repairs at a distance of two feet from the city's sanitary sewer main. The city shall perform any repairs within two feet from the main.

~~(K) - (G) Surcharge.~~

(1) A monthly surcharge of \$50 for single-family properties and a surcharge of \$300 for all other properties shall be added to each sewer and water bill if:

(a) An owner fails to complete an inspection pursuant to §50.08(F), (H) and (I);

(b) An owner whose property was found in violation of this section did not make the necessary changes and furnish proof of those changes to the city within ~~180 days or such other time frame as stated in the notice of violation~~ the time frames required by this section;

~~(a)(c)~~ An owner fails to allow an inspection or reinspection to verify compliance; or

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~~(b)(d)~~ There has been a reconnection of a previously disconnected prohibited discharge. If a property is certified in compliance with this section and the same owner is later found to have reconnected to the municipal-city's sanitary sewer system, the property owner will be subject to the surcharge for all months between the last two inspections. ~~If there has been a change in ownership, then the new owner shall be given a notice of violation and allowed up to 180 days to comply.~~

(2) The surcharge shall be added for every month during which the property is not in compliance.

~~(L)~~ ~~(H)~~ *Temporary waiver.* The ~~Public Works Director~~City Engineer may allow or require a temporary waiver from the provisions of this section when strict enforcement would cause a threat of damage to other property, the environment or public safety because of circumstances unique to the individual property. A written request for a temporary waiver must be first submitted to the ~~Public Works Director~~City Engineer specifying the reasons for the request. If a waiver is required or granted, the property owner must pay an additional fee for sanitary sewer services based on the number of gallons discharged into the sanitary sewer system, as estimated by the ~~Public Works Director~~City Engineer. The ~~Public Works Director~~City Engineer may terminate the waiver upon a failure to comply with any conditions imposed in the temporary waiver or may take appropriate legal action to enforce those conditions. After expiration or termination of a temporary waiver, the property owner must comply with the provisions of this section.

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~~(M)~~ ~~(I)~~ *Public nuisance.* An owner or occupant who fails to have an inspection, who has done work that does not comply with this section, who reconnects to a previously disconnected prohibited discharge, who fails to pay the surcharge or who has failed to do the work required by this section within the specified time limit given by the inspector, will be deemed to have created a public nuisance subject to abatement and assessment, as provided in Chapter 94.

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~~(N)~~ ~~(J)~~ *Remedies.* The remedies provided in this section do not limit the right of the city to pursue any other available legal remedy

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**SECTION 4. SUMMARY PUBLICATION.** Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance amendment provides new triggering events when homeowners have to comply with inflow and infiltration deficiencies. For single family owner-occupied homes, the inspections will be conducted by city inspectors at the time of sale or at the time of a street reconstruction project. If the property is being sold, any deficiencies may be repaired by the seller or buyer. If the buyer elects to complete the repairs, the buyer has one year after the sale to do it. If there is a street reconstruction project and the issues are between the curb and the city main, the city will perform the repairs. Rental properties will be required to have an inspection at the time the owners apply for or are

renewing a rental license, but must do so within 24 months after the ordinance is adopted. Commercial, industrial properties and those properties with a homeowners' association will be required to obtain independent inspections and complete any repairs within 24 months after the ordinance is adopted. After the city has verified compliance, a Certificate of I/I Compliance will be issued.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect ~~from and after its passage and publication according to law on July 1, 2016.~~

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

Ayes:

Nays:

Attest:

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

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

**TO:** Mayor and City Council  
**THROUGH:** City Manager  
**FROM:** PW & Parks Dir./City Engineer  
**DATE:** April 25, 2016  
**SUBJECT:** Approve Consultant Contract for Lift Stations 3, 5 & 6  
Programming and SCADA Implementation City Project 16-2



City of West St. Paul

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**BACKGROUND INFORMATION:**

On March 14, 2016 City Council authorized the City's consultant, AE2S to prepare plans and specifications and solicit bids for the replacement of lift stations 5 and 6. The project is currently advertised with a bid opening date of May 4, 2016.

Once the two new lift stations are constructed, the new controllers require operational programming so the lift stations know how and when to run. The controllers also have to be tied into our Supervisory Control And Data Acquisition (SCADA) system. SCADA is responsible for remote monitoring and alarm transmittal. These are two very critical steps which occur after construction.

Engineering, Public Works and IT staff have been involved in the design and modifications needed to run these new systems and AE2S has been a great partner in going through every detail and decision in the planning phase. When it comes to hiring a company to do the actual programming and SCADA implementation, having the company that designed everything is typically an advantage. Therefore, AE2S was asked to submit a proposal to program the controls and implement our SCADA system to the new lift stations. AE2S is familiar with the intricacies of our system and network making them the preferred client.

Lift Station 3 has a \$40,000 line item in the CEP for new controls, programming and SCADA implementation based on the age of the current equipment. For economies of scale, this work is being combined with the \$2.1M Lift Station 5 and 6 project.

In AE2S's preliminary probable cost breakdown for the Lift Station 5 and 6 project there was a line item of \$40,000 for programming the controls and integrating the SCADA system. So, the proposal amount of \$39,350 for Lift Stations 3, 5 and 6 fits within initial projections and the CIP budget.

**FISCAL IMPACT:**

Combining the Lift Station 5 and 6 project (\$2.1M) with the Lift Station 3 (\$40K) CEP amount totals \$2.14M. The cost of this proposal is \$39,350 and fits within the programmed amount.

		<b>Amount</b>
<b>Fund:</b>	<b>602</b>	
<b>Department:</b>	<b>49450</b>	
<b>Account:</b>	<b>40530</b>	<b>\$39,350</b>

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve a contract with AE2S, Inc. for programming and SCADA implementation of Lift Stations 3, 5 and 6 for a not-to-exceed contract amount of \$39,350.

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
**FROM:** Community Development Department  
**DATE:** April 25, 2016  
**SUBJECT:** Rental License Applications – NET Ministries Inc.



City of West St. Paul

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## **BACKGROUND INFORMATION:**

The recently approved rental ordinance changes require all non-homesteaded properties obtain a rental license, regardless if rent is being collected or not. Previous to the ordinance change, NET Ministries was not required to obtain rental licenses for their three single-family homes since they were not collecting rent. As a result, Staff informed NET Ministries that they were now required to obtain rental licenses for each property. On October 23, 2015, NET Ministries complied with the request and submitted rental license applications for three single-family homes.

In addition to requiring rental licenses for the properties, Staff also informed NET Ministries that their most recent purchase/use of 1924 Bidwell was in violation of the City's Ordinance, specifically the Rental Dwelling Ordinance and the definition of Family, which only allows a maximum of three non-related individuals to reside in any one dwelling unit (currently have eight residents residing at the property). Although the homes at 1990 Stryker and 76 Crusader both have more than three residents, they are not in violation as the Zoning Ordinance does allow housing structures for up to 10 residents on church property for religious purposes (or contiguous to the property in the case of 1990 Stryker).

It was Staff's understanding that prior to the purchase of 1924 Bidwell, NET Ministries relied on the following definition which allows a congregate of up to 10 residents:

**Dwelling Unit.** A Building or portion thereof which contains living Facilities including provisions for sleeping, eating, cooking and sanitation for not more than one family or a congregate residence for ten or less persons.

As a result, NET Ministries purchased the property and began using it for their operation.

## **PROPOSED RESOLUTION**

Staff has had several meetings with NET Ministries in attempt to find a resolution to the non-compliant Use of 1924 Bidwell. The attached resolution, which NET Ministries has agreed to, approves all three Rental Licenses with the following conditions as outlined:

1) Licenses for 1990 Stryker and 76 Crusader:

A. Finding 1: The above-stated clauses were relied upon when making the Council's decision and are incorporated herein.

Finding 2: The Crusader Property and the Stryker Property may each have up to 10 occupants as on-site residential housing related to a religious function, as provided in City Code Section 153.050 (D) as long as the conditions below are followed.

B. The Council adds the following conditions:

1. The Owner must apply for the renewal of the annual Rental Licenses in a timely manner,
2. The Owner must maintain the Properties up to the following Maintenance Standards:
  1. Building Code
  2. Housing Code
  3. Animal Ordinance
  4. Fire Prevention Code
  5. Repeat Nuisance Service Calls
  6. Parked or Stored Motor Vehicles
  7. Public Nuisance Ordinance
3. The Owner must maintain the Properties so that there are no compliance letters for noxious matter, long grass and weeds, keeping sidewalks clear of snow and ice, or dumping or leaving of garbage/rubbish or junk.
4. There must not be any Repeat Nuisance Service Call Fees.
5. The Owner must complete phase one to three of the Crime Free Rental-Housing Training before the next rental license renewal.
6. The Owner must work with the City in resolving any issues or concerns that arise that are disruptive to the peace and harmony of the neighborhood.
7. No more than four vehicles may be parked outside on the Properties at any given time per City Ordinance.

2) License for 1924 Bidwell:

A. The Owner will exercise the option to purchase the property at 2010 Stryker when offered by the owner in accordance with the terms of the option agreement.

B. Upon closing with the owner of 2010 Stryker, the Owner will:

1. Apply for, and if Owner meets all requirements in the City Code for approval of a rental license, the City will grant a rental dwelling license for the property under the same terms and conditions as the 1990 Stryker Property.
2. Within a reasonable time, not longer than six (6) months, sell the Bidwell Property or reduce the number of occupants at that location to comply with the City Code; and

3. Petition the City to vacate that portion of Stryker Ave fronting 1990 Stryker and 2010 Stryker in order to directly connect both properties to the NET Ministries Campus at 110 W. Crusader. The City and Owner agree that prior to vacation, the access to both Stryker properties will be improved to City standards at City's cost.

C. Until such a time as Owner acquires title to the 2010 Stryker property and has obtained a rental license for 2010 Stryker, Owner will be allowed up to 10 occupants at the Bidwell property as long as the occupants are related to a religious function at NET Ministries and as long as the Owner complies with all the conditions of its license.

D. The Owner must apply for the renewal of the annual Rental License in a timely manner.

E. The Owner must maintain the property up to the following Maintenance Standards:

1. Building Code
2. Housing Code
3. Animal Ordinance
4. Fire Prevention Code
5. Repeat Nuisance Service Calls
6. Parked or Stored Motor Vehicles
7. Public Nuisance Ordinance

F. The Owner must maintain the property so that there are no compliance letters for noxious matter, long grass and weeds, keeping sidewalks clear of snow and ice, or dumping or leaving of garbage/rubbish or junk.

G. There must not be any Repeat Nuisance Service Call Fees.

H. The Owner must work with the City in resolving any issues or concerns that arise that are disruptive to the peace and harmony of the neighborhood.

I. No more than four vehicles may be parked outside on the property at any given time per City Ordinance.

**FISCAL IMPACT:**

No fiscal impact.

Application Fees Received:		Amount:
Fund:	101	
Department:	30000	
Account:	32170	\$680 (rental fees and inspection fees)

**STAFF RECOMMENDATION:**

Staff is recommending that the Council adopt the attached Resolution Approving all three Rental Licenses with Conditions.

On Motion of

Seconded by

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

**RESOLUTION NO. 16-**

**RESOLUTION IMPOSING CONDITIONS ON THE  
RENTAL DWELLING LICENSES  
FOR 1924 BIDWELL ST., 1990 STRYKER AVE AND 76 CRUSADER  
WEST ST. PAUL**

**WHEREAS**, NET Ministries Inc., (the “Owner”), located at 110 W. Crusader, West St. Paul, (“NET Ministries Campus”) is the owner of three single-family residential properties, one of which is located at 1924 Bidwell St. (“Bidwell Property”), one of which is located at 76 Crusader (“Crusader Property”) and one of which is located at 1990 Stryker Ave. (“Stryker Property”), West St. Paul (collectively, the “Properties”), all of which are located in the R1A zoning district; and

**WHEREAS**, West St. Paul City Code Section §153.050 (D) allows as Church as a permitted use in the R1A zoning district and specifically provides for on-site residential housing as follows:

Churches, including those related structures located on the same site which are an integral part of the church property, such as convents or homes for persons related to a religious function on the same site with the following conditions:

- (1) No church building shall be located within 50 feet of any lot line of an abutting lot in an R District; and
- (2) No more than ten persons shall reside on the site;

and

**WHEREAS**, because the Crusader Property is located on the NET Ministries Campus, Owner has used the Crusader Property as on-site residential housing related to a religious function and has allowed up to ten people to reside within the residence, pursuant to City Code Section 153.050 (D); and

**WHEREAS**, the Owner acquired the Stryker Property in 2006 and the City deemed it to be contiguous to the NET Ministries Campus, due to its close proximity, which is located directly across a public street from the NET Ministries Campus; and

**WHEREAS**, as a result of being contiguous to the NET Ministries Campus, the City allowed Owner to use the Stryker Property as on-site residential housing related to a religious function and allowed up to ten people to reside within the residence, pursuant to City Code Section 153.050 (D); and

**WHEREAS**, the Owner acquired the Bidwell Property in 2014 and has indicated that it relied on representations made by City Staff prior to the purchase, as well as relied on the definition of “Dwelling Unit” which previously stated as follows:

*DWELLING UNIT.* A building or portion thereof which contains living facilities including provisions for sleeping, eating, cooking and sanitation for not more than one family or a congregate residence for ten or less persons;

and

**WHEREAS**, Owner immediately began to use the single-family residence as a “congregate residence” for 10 person or less; and

**WHEREAS**, the City Council later passed an ordinance that limited the number of unrelated occupants allowed in a Dwelling Unit as follows:

*FAMILY.*

- (1) An individual or two or more persons legally related by blood, marriage, foster care or adoption in a linear relationship such as spouses, grandparents, parents, children, grandchildren and siblings, but not aunts, uncles or cousins; or
- (2) A group of not more than three persons not related by blood or marriage living together in a dwelling unit,

which is codified at City Code Section 150.036; and

**WHEREAS**, City informed Owner that it was not in compliance with the City Code Section because it had more than 3 unrelated persons in the Bidwell Property in violation of City Code Section 150.036, a violation that Owner has continuously disputed; and

**WHEREAS**, the Owner identified the discrepancy between City Code Section 153.004 “Dwelling Unit” definition, upon which they relied for the occupancy requirements of the Bidwell Property and City Code Section 150.036 “Family” definition; and

**WHEREAS**, the City Council passed an ordinance amendment on February 22, 2016, that eliminated the “congregate residence” language from City Code Section 153.004 “Dwelling Unit” definition; and

**WHEREAS**, City Staff has met with the Owner on numerous occasions to attempt to find a reasonable resolution to the occupancy issue at the Bidwell Property; and

**WHEREAS**, there is a property immediately to the south and adjacent to the Stryker Property, located at 2010 Stryker Ave. (“Option Property”) that could also be used as on-site residential housing for Owner; and

**WHEREAS**, the Owner has obtained an option to the purchase of 2010 Stryker Ave. when the owner is prepared to sell it; and

**WHEREAS**, on October 23, 2015, the City received completed rental dwelling applications for the Properties; and

**WHEREAS**, on April 25, 2016, the City Council considered the Rental Dwelling Applications for the Properties, during which the City presented its evidence and the Owner was given an opportunity to be heard; and

**WHEREAS**, Owner is a well-respected and valued national organization within the City and neither the NET Ministries Campus nor its associated properties have been the subject of complaints regarding the use of its properties; and

**WHEREAS**, City staff and Owner have had discussions about how to accommodate the longer term business and housing needs of Owner on its campus and on its properties; and

**WHEREAS**, following the testimony, the City Council supports the approval of the rental licenses at the Properties, but due to the higher number of occupants residing at the Properties, desires to add reasonable conditions to the approval of the licenses.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council approves the rental dwelling license applications of NET Ministries for the properties located at 76 Crusader and 1990 Stryker Ave. and makes the following findings and the subsequent conditions:

A. Finding 1: The above-stated clauses were relied upon when making the Council's decision and are incorporated herein.

Finding 2: The Crusader Property and the Stryker Property may each have up to 10 occupants as on-site residential housing related to a religious function, as provided in City Code Section 153.050 (D) as long as the conditions below are followed.

B. The Council adds the following conditions:

(1) The Owner must apply for the renewal of the annual Rental Licenses in a timely manner,

(2) The Owner must maintain the Properties up to the following Maintenance Standards:

- (1) Building Code
- (2) Housing Code
- (3) Animal Ordinance
- (4) Fire Prevention Code
- (5) Repeat Nuisance Service Calls
- (6) Parked or Stored Motor Vehicles

(7) Public Nuisance Ordinance

- (3) The Owner must maintain the Properties so that there are no compliance letters for noxious matter, long grass and weeds, keeping sidewalks clear of snow and ice, or dumping or leaving of garbage/rubbish or junk.
- (4) There must not be any Repeat Nuisance Service Call Fees.
- (5) The Owner must complete phase one to three of the Crime Free Rental-Housing Training before the next rental license renewal.
- (6) The Owner must work with the City in resolving any issues or concerns that arise that are disruptive to the peace and harmony of the neighborhood.
- (7) No more than four vehicles may be parked outside on the Properties at any given time per City Ordinance.

**NOW THEREFORE, BE IT FURTHER RESOLVED** that the City Council approves the rental dwelling license application of NET Ministries for the property located at 1924 Bidwell St. with the following conditions:

- A. The Owner will exercise the option to purchase the property at 2010 Stryker when offered by the owner in accordance with the terms of the option agreement.
- B. Upon closing with the owner of 2010 Stryker, the Owner will:
  - (1) Apply for, and if Owner meets all requirements in the City Code for approval of a rental license, the City will grant a rental dwelling license for the property under the same terms and conditions as the 1990 Stryker Property.
  - (2) Within a reasonable time, not longer than six (6) months, sell the Bidwell Property or reduce the number of occupants at that location to comply with the City Code; and
  - (3) Petition the City to vacate that portion of Stryker Ave fronting 1990 Stryker and 2010 Stryker in order to directly connect both properties to the NET Ministries Campus at 110 W. Crusader. The City and Owner agree that prior to vacation, the access to both Stryker properties will be improved to City standards at City's cost.
- C. Until such a time as Owner acquires title to the 2010 Stryker property and has obtained a rental license for 2010 Stryker, Owner will be allowed up to 10 occupants at the Bidwell property as long as the occupants are related to a religious function at NET Ministries and as long as the Owner complies with all the conditions of its license.
- D. The Owner must apply for the renewal of the annual Rental License in a timely manner.

E. The Owner must maintain the property up to the following Maintenance Standards:

- (1) Building Code
- (2) Housing Code
- (3) Animal Ordinance
- (4) Fire Prevention Code
- (5) Repeat Nuisance Service Calls
- (6) Parked or Stored Motor Vehicles
- (7) Public Nuisance Ordinance

F. The Owner must maintain the property so that there are no compliance letters for noxious matter, long grass and weeds, keeping sidewalks clear of snow and ice, or dumping or leaving of garbage/rubbish or junk.

G. There must not be any Repeat Nuisance Service Call Fees.

H. The Owner must work with the City in resolving any issues or concerns that arise that are disruptive to the peace and harmony of the neighborhood.

I. No more than four vehicles may be parked outside on the property at any given time per City Ordinance.

Adopted by the City Council of the City of West St. Paul this 25<sup>th</sup> day of April, 2016.

Ayes:

Nays:

Attest:

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David Meisinger, Mayor

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Chantal Doriott, City Clerk

**TO:** Mayor and City Council  
**THROUGH:** Matt Fulton, City Manager  
Jim Hartshorn, Comm. Dev. Dir.  
**FROM:** Ben Boike, Assistant Comm. Dev. Dir.  
**DATE:** April 25, 2016  
**SUBJECT:** Provisional Rental License Update – 218 W. Annapolis & 966/976 Robert (1234 Properties LLC)



City of West St. Paul

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### **BACKGROUND INFORMATION:**

As discussed at the December 15, 2015 Council Meeting, 1234 Properties LLC has owned and operated a licensed 5-unit rental at 218 Annapolis Ave W. since September of 2014. Tenants residing at the property receive services from One Life Health Services, including Independent Living Skills training (ILS) and 24-hour Emergency Assistance. Last summer, 1234 Properties LLC purchased three units (#103, #105, and #208) at 966/976 Robert St. with the intent to provide similar services to tenants at this location. 1234 Properties LLC submitted rental applications for the three new units at 966/976 Robert, conducted all required inspections and paid all required fees.

At the January 25, 2016 meeting, due to excessive police calls at both properties, Council converted the licensed property at 218 Annapolis St. W. to a provisional license and approved the three new applications for the units at 966/976 Robert St. as provisional licenses.

### **PROVISIONAL LICENSE REVIEW:**

#### Police Department

Only one valid call has been received for the four rental licenses since the Provisional Licenses were established on January 25, 2016:

966 #208 – 1 Valid Call (see attached)  
976 #103 – 0 Valid Calls  
976 #105 – 0 Valid Calls  
218 Annapolis (5-units) – 0 Valid Calls

#### Code Enforcement

Two compliance letters have been issued since the Provisional Licenses were established on January 25, 2016. The two compliance letters were issued on April 18, 2016, one for unsheltered storage at 218 Annapolis and one for a fence in disrepair at 218 Annapolis (see attached). The Owner corrected the unsheltered storage violation by the April 18 compliance date. There is some discrepancy as to which property the fence is located, 218 Annapolis or the neighbor. Staff will work

with the Owner to figure this out. If it is determined to be on 218 Annapolis, Staff will require compliance in a timely fashion.

### **MITIGATION PLAN REVIEW:**

The following is a mitigation plan established by the City Council at the January 25, 2016 meeting with an update each of the mitigation measures seen in bold.

1. The Owner will provide a plan describing steps proposed in order to reduce or eliminate the number of police calls to both properties, i.e. city code violations, crime-free lease addendum violations or other crimes. Said plan shall be submitted to the police department within 20 days of Council approval.  
**Completed - plan received February 12, 2016 (see attached).**
2. One of the units at 218 Annapolis must be occupied by an on-site housing manager who is not a client who is receiving services. **The Owner has stated that an on-site manager is living in unit 1 and that the manager does not receive services. Staff to verify during re-inspections on 4/25 (day of meeting).**
3. The owner will maintain Star Level II participation of the Star Program and adhere to the following requirements. Should the Owner fail to abide by the following requirements, the Owner may be fined with a Star Violation.
  - All adult persons living at the Owner's units must sign a lease and any required addendum. No more than three unrelated persons may reside in any unit; **Ongoing**
  - The Owner will utilize and enforce a Crime-Free Lease addendum. All residents must sign this addendum including an acknowledgment that a substantial violation of this addendum is grounds for eviction; **A crime free/drug free housing addendum has been added to all leases.**
  - Upon request, the Owner will provide the results of any rental criminal background check on his tenants to the police department; **Ongoing**
  - Upon request, the Owner will provide the City with a current copy of any lease used for the Properties; **Ongoing - The Owner has been cooperative with any city staff requests**
  - The Owner will actively pursue the eviction of non-compliant tenants; **Ongoing – The Owner has evicted two non-compliant tenants since the January 25, 2016 meeting.**
  - The Owner will have no unresolved code violations; **One Pending Code Compliance case (fence issue)**
  - Within 12 months of joining the Star Program, the Owner or a designated Manager shall complete phase 2 and phase 3 of the crime free rental-housing program; **Ongoing – Property owner has not yet completed any phases of the crime free rental housing program.**

- The Owner or a designated Manager shall attend 50% of ROMA meetings.  
**The Owner has designated on-site manager to attend ROMA meetings.**
4. The Owner shall properly enforce all lease agreements. If a tenant is in violation of a lease agreement the Owner shall resolve the issue accordingly, including trespassing of problem tenants. In addition, the Owner will also contact other agencies involved should a tenant be in violation, i.e. Dakota County for Section 8 Voucher recipients. **Ongoing**
  5. The Owner shall not relocate nuisance tenants or previously evicted tenants from other rental properties owned by Owner to the Properties, to the Annapolis Property or to any other rental properties within West St. Paul that Owner subsequently acquires. **Ongoing**
  6. The Owner shall comply with the Rental License Ordinance, including timely obtaining all required rental licenses prior to renting units and timely submitting renewal applications of rental licenses. **Ongoing**
  7. The Owner will maintain the property to the following ordinances and standards: **Ongoing; Re-inspections are scheduled for 4/25 of all units at 218 Annapolis. Staff will provide update at the meeting.**
    - Building Code
    - International Property Maintenance Code
    - Animal Ordinance
    - Fire Prevention Code
    - Parked or Stored Motor Vehicles
    - Public Nuisance Ordinance
  8. In addition to the above, the Owner will maintain the Properties so as not to receive compliance letters for noxious matter, long grass and weeds, garbage, rubbish or junk, and sidewalks not being kept clear of snow and ice; **As mentioned above, two compliance letters were issued on April 12, 2016 – see attached. The outdoor storage violation has been corrected. The landlord was provided 30 days to complete the fence repairs should it be his fence.**
  9. The Owner will operate the Properties so as not to receive any Repeat Nuisance Service Call Fees; **Ongoing – none to date.**
  10. The Owner will cooperatively work and meet with City staff in resolving any currently unidentified issues or concerns that may be disruptive to the peace and harmony of the neighborhood resulting from activity at the Properties. **Ongoing**
  11. A security video system, meeting the police department's requirements for security and monitoring, will be installed and remain functional as long as the Owner operates under a City-issued rental license at this location. In addition, upon reasonable request, the police department will be provided access to inspect the security system and receive security recordings of specifically requested time periods and locations in a timely manner; **The Owner stated**

**that the security system will be installed the week of April 18<sup>th</sup>. Staff to verify during inspection of the property on 4/25.**

12. In addition to the regular license fee, the Owner will pay an additional \$1,000 for cover the cost of this mitigation plan. The \$1,000 fee will be invoiced and payable 60 days from the date of this resolution. **Fee has been paid.**
13. The term of the provisional license will extend until the next designated renewal date for all four licenses. **Ongoing**
14. The Owner shall schedule an inspection with the City of the building (218 Annapolis) and all units within 30 days. **Initial inspections were completed, all units required corrections. Re-inspections are scheduled for 4/25.**

**FISCAL IMPACT:**

		<b>Amount:</b>
<b>Fund:</b>	<b>101</b>	
<b>Department:</b>	<b>30000</b>	
<b>Account:</b>	<b>32170</b>	<b>*\$1000</b>

*\*mitigation plan fee per condition 12*

**STAFF RECOMMENDATION:**

The purpose of this information is for update purposes. Depending on the status of the required security system and scheduled re-inspections, Staff recommends no action by Council at this time as Condition 13 of the mitigation plan extends the provisional license until the next renewal date (early 2017 per the new renewal calendar). Pending anything significant happening prior, Staff will provide another update in 90 days. Should Council desire to modify the mitigation plan or consider different action, a license hearing will need to be scheduled for a future date.

**ATTACHMENTS:**

Valid Police Call Info

Code Compliance Letters

Approved Council Resolution adopting the Provisional Licenses

Owner's Plan to mitigate issues

## CAD Activity Report

Date Range: 2/4/2016 12:00:00 AM - 2/4/2016 11:59:59 PM

Badge(s):

Address(s): 966 Robert

Dispo(s):

CAD #:	WS160204002073	Location:	966 ROBERT ST S	Type:	DISTURBING PEACE/D
Rpt #:		Apt #:	208	Dispo:	DIST
Create:	02/04/2016 7:50:14 PM	RP Name:	[REDACTED]	Unit #:	2642
Dispatch:	02/04/2016 7:51:15 PM	RP Addr:	[REDACTED]	Officer:	SEWALD, TIM M
Arrive:	02/04/2016 7:54:30 PM	RP Phone:	[REDACTED]		
Clear:	02/04/2016 8:06:05 PM				

### Comments:

Incident Initiated By: EM/MAURER, M  
Original Location : S OF 633 ROBERT ST S A  
Primary Event: MAIN Opened: 16/02/04 19:50  
BEHIND THE ADDRESS BY THE GARAGE  
PARTIES FROM AP 208  
MALE FEMALE YELLING  
MALE IS TRYING TO LEAVE FEMALE IS YELLING FOR SOMEONE TO POLICE  
VERBAL ONLY  
VULNERABLE ADULTS  
MALE CALLING FEMALE "BITCH" AND YELLING AT HER  
FEMALE TRYING TO STOP THE HUSBAND FROM "TAKING CONVICTS" IN THE VEHICLE  
LOC INFO REVIEWED: C  
STILL IN THE LOT  
MALE JUST LEFT IN A TRUCK WITH A TOPPER  
BLACK IN COLOR  
UNKNOWN IF THE VEH LEFT OR IS STILL IN THE LOT  
FEMALE STILL IN PARKING LOT  
W/F HEAVY SET - DARK CLOTHING - WALKING INTO BLDG NOW LIVES IN 208  
SIMON IS THE CASE MANAGER NOT ONSITE  
1600481.  
9271 RENTAL PROPERTY. SEE RPT.  
Route Closed: MAIN DIST  
Incident Closed: 16/02/04 20:06

*End of Report*

West St. Paul  
Disposition: Inactive

# INCIDENT

Case Number: 16000481  
Title: Disturbance

16000481

Needs Follow-up: No

Incident Type: Other

Citation Issued: No

Investigation Needed: No

CAD #: 16002093

Admin Review Needed: No

How Initiated: Dispatch

Drug Related: No

Gang Related: No

Domestic Related: Yes

## OFFICER INFORMATION

Name	Agency	Badge	Type
Joseph Sass	West St. Paul	2639	Assisting
Tim Sewald	West St. Paul	2642	Primary

## EVENT DATES

Reported	On Scene	Cleared
2016-02-04 19:50	2016-02-04 19:51	2016-02-04 20:05

## INCIDENT DETAILS

Address: 966 Robert Street S; West St. Paul, MN 55118; Dakota US

Location Type: PARKING LOT/GARAGE

Location Description:

Start Date: 2016-02-04 19:50

End Date: 2016-02-04 20:05

## SYNOPSIS

A male and female got into a verbal argument in the parking lot. The male was gone when officers arrived. The female said that nothing happened.

## Domestic Shelter Information

HRO/OFP Violation: No    Assault: No    Dangerous Weapon Used: No  
Injuries Occured: No    Offender GOA: No    # of children present during incident: 0    Primary Home Language: English  
Living Together: Yes    Relationship: Boyfriend/Girlfriend

## Parties Involved

### PERSON 1

Role(s): Mentioned

Last: Cramsie    First: Nicolette    Middle: Joyce    Suffix:

Date of Birth: 1957-12-27    Age: 58    Is Juvenile: No

Residence: 966 Robert Street S APT 208; West St Paul, MN 55118; Dakota US

Residence Type: APARTMENT

Cell Phone: (651)855-8422

Description:

Sex: Female    Height: 500    Weight: 234 lbs    Hair: Brown    Eyes: Blue  
Race: White    Ethnicity: Not Hispanic/Latino    Build: Medium    Complexion: Light

## EMPLOYMENT INFORMATION

Occupation: Unknown

Shift:

Incident Report

# INCIDENT

## STATEMENT

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On 2016-02-04 at 19:50 hours, Officers were dispatched to 966 Robert Street South on a report of a male and female arguing in the parking lot. The caller reported that the it was verbal only and that the male left in a pickup truck. The caller also advised that the people arguing lived in apartment 208.

Upon my arrival, I made contact with a female standing in the parking lot. The female was identified as Nicolette Joyce Cramsie 1957-12-27. Cramsie said that nothing happened and that her boyfriend left. Cramsie said that her boyfriends name was Sean Smith and that he was 46 years old. I could not locate Cramsie on the MYBCA website. I advised Cramsie that creating a disturbance will cause someone to call the police. I confirmed that Cramsie lived in apartment 208 and advised her to go inside.

I did not see any security guards on duty in the area.

Nothing further.



# CITY OF WEST ST. PAUL

City Hall  
1616 Humboldt Avenue  
West St. Paul, MN 55118  
651-552-4100  
[www.wspmn.gov](http://www.wspmn.gov)

RE: West St. Paul Code Section(s):  
150.23 (A & B) ADDITIONAL PROPERTY  
MAINTENANCE STANDARDS.

## COMPLIANCE LETTER

Date: Apr 12, 2016

From:  
Terrie Sauer  
Building Inspections  
(651) 552-4142

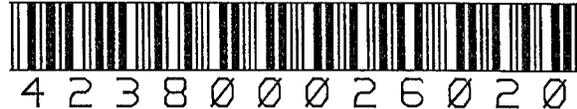
An inspection was conducted at your residence or business that revealed the following violations of the West St. Paul City Code. Your attention is respectfully directed to section Property Maintenance of the West St. Paul Municipal Code.

To:  
1234 PROPERTIES LLC  
% CHRISTINE NSAJJA  
6430 CITY WEST PKWY UNIT 5302  
EDEN PRAIRIE, MN 55344-

**Compliance Date: 05/12/16**

Case Number:  
CE20160000180

Location Address:  
218 ANNAPOLIS ST W, WEST ST PAUL, MN 55118  
423800026020



**Section and Description:** **STATUS: Open**  
150.23 (A & B) ADDITIONAL PROPERTY MAINTENANCE STANDARDS.

### Detailed Description:

(A) Fence maintenance. Fences must be maintained in good condition both in appearance and in structure. Wood material, other than decay resistance varieties, must be protected against decay by use of paint or other preservatives.

(B) Retaining walls.

(1) Permit required. No person may erect or construct a retaining wall which is not a part of a building and which is 48 inches or more in height, without first obtaining a permit from the Building Official. No permit shall be required for any such retaining wall less than 48 inches unless:

(a) The wall contains footings;

(b) The wall is constructed in conjunction with or adjacent to a fence;

(c) The wall is intended to provide support for a structure; or

(d) The wall is constructed of solid masonry building material such as building block, cinder block, brick, stone, marble, granite, cement, concrete or material deemed similar by the Building Official. An applicant for the issuance of a permit may be required to furnish a plan or drawing showing the construction of the wall and containing such data as reasonably deemed necessary by the Building Official.

(2) Construction requirements. All retaining walls shall be designed according to the State Building Code. All masonry walls other than poured concrete or solid masonry units shall be protected with an approved coping. No retaining wall may be constructed in a manner so as to provide shelter for rodents.

(3) Retaining wall maintenance. Retaining walls must be maintained in a structurally sound, safe and secure manner. A retaining wall is deemed not in compliance with this section when it has substantially shifted or moved from its intended position, or it is no longer plumb.

(4) Encroachment into public property. No portion of any retaining wall may encroach upon or project into any street, boulevard, alley, park or other public property without the owner first obtaining approval from the City Council. The owner of any such retaining wall that projects or encroaches upon any public property must remove any part or all of the encroaching portions of the wall upon being ordered to do so by the City Council.

**Fence is in disrepair**

**Corrections: Must repair, replace or remove fence by May, 12, 2016.**

Please review the aforementioned ordinance and correct any noncompliance conditions by May 12, 2016 , after which a compliance inspection will be performed.

Thank you for your prompt cooperation. If you have any questions, concerns or special needs, please feel free to contact me at the telephone number listed above.

Failure to comply with this notice by the compliance date indicated will result in the issuance of an administrative citation with a minimum fine of \$200 and/or criminal citation requiring a court appearance and the possible imposition of jail and/or fines.



# City of West St Paul

City Hall  
1616 Humboldt Avenue  
West St. Paul, MN 55118  
651-552-4100  
[www.cityofwesp.org](http://www.cityofwesp.org)

RE: West St. Paul Code Section(s):  
94.18 UNSHELTERED STORAGE OF JUNK AND/OR  
INOPERABLE/ABANDONED MOTOR VEHICLES

## COMPLIANCE LETTER

Date: Apr 12, 2016

From:  
Terrie Sauer  
Building Inspections  
(651) 552-4142

An inspection was conducted at your residence or business that revealed the following violations of the West St. Paul City Code. Your attention is respectfully directed to section Nuisance of the West St. Paul Municipal Code.

To:  
1234 PROPERTIES LLC  
% CHRISTINE NSAJJA  
6430 CITY WEST PKWY UNIT 5302  
EDEN PRAIRIE, MN 55344-

**Compliance Date: 04/18/16**

**Case Number:**  
CE20160000179

Location Address:  
218 ANNAPOLIS ST W, WEST ST PAUL, MN 55118  
423800026020



4 2 3 8 0 0 0 2 6 0 2 0

**Section and Description:**

**STATUS: Open**

94.18 UNSHELTERED STORAGE OF JUNK AN/OR INOPERABLE/ABANDONED MOTOR VEHICLES

**Detailed Description:**

(A) General.

(1) Purpose. The purpose of this section is to declare the unsheltered storage of inoperable, abandoned or junked automobiles and any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer used for the purposes for which it was manufactured or made to be a danger to the public health and safety. The use of tarps shall not be considered an acceptable form of shelter.

(2) Declaration. The unsheltered storage of these property items throughout the city tend to impede traffic in the streets, interfere with the enjoyment of and reduce the value of public and private property, invite plundering, create fire hazards and other safety and health hazards to children as well as adults, interfere with the comfort and well-being of the public, and create, extend and aggravate urban blight. The Council declares that, in order to protect the public health, safety and welfare from such conditions, these conditions must be regulated, abated and prohibited.

(B) Prohibition of unsheltered storage.

(1) General rule. No person may place, permit, store, allow, maintain or leave machinery, implements, equipment, junk or personal property of any kind, which is no longer used for purposes for which it was manufactured or made, upon an open space area of any premises located anywhere in the city.

(2) Definition. For purposes of this section, JUNK means worn out or discarded material that is no longer used for the purposes for which it was manufactured or made, including but not limited to, household appliances or parts, tools, building materials, tin cans, glass, furniture, mattresses, box springs, crates, cardboard, tires or any other unsightly debris, brush or materials, the accumulation of which may have an adverse effect upon the neighborhood or property values, health, safety or general welfare of the public.

(3) Public nuisance. A person who creates, maintains, permits or allows a condition on property in violation of this section will be deemed to have created a public nuisance subject to abatement as provided in City Code § 94.15 and other penalties described in this code.

(C) Prohibition of inoperable or abandoned vehicle.

(1) No person may place, park, permit to remain, store or leave upon an open space area of any premises located anywhere in the city any inoperable or abandoned vehicle for more than seven days.

(2) Exceptions.

(a) In a residential zoned district, inoperable or abandoned vehicles may not be placed, parked, permitted to remain, stored or left for more than seven days unless the vehicle is kept entirely within an enclosed building.

(b) In a business or industrial zoned district, inoperable or abandoned vehicles may not be placed, parked, permitted to remain, stored or left for more than seven days unless adequately screened, or three days on a business or industrial property that is not an auto repair establishment. Adequate screening will require the keeping of the vehicles within a building, tight fence at least five feet in height, or within an earth-toned or neutral colored opaque cover that was specifically designed and manufactured for that purpose and which completely encloses such vehicle. Any inoperable or abandoned vehicle legally kept in a business or industrial zoning district for more than seven days must be at least 100 feet from a public highway or residential building.

(3) Definition. For purpose of this section, an INOPERABLE OR ABANDONED VEHICLE has the following meaning:

(a) A vehicle that does not have valid current vehicle license and registration;

(b) A vehicle that lacks essential parts that would render it operable; or

(c) A vehicle that is in a rusted, wrecked, extensively damaged, partially dismantled or junked condition.

(4) Notice. If a vehicle fails to meet any of the above requirements, the owner or possessor of the vehicle will be responsible to remove the vehicle to a duly licensed junkyard or other authorized place of deposit or storage within ten business days of receipt of a written demand by the city. In the event the owner or possessor of the vehicle cannot be located, then it will be the responsibility of the owner of the premises to remove the vehicle to a duly licensed junkyard or other authorized place of deposit or storage within ten working days of receipt of the written demand by the city.

(5) Impoundment of vehicles. The city may take into custody and impound any vehicle or vehicles in violation of this section, following the expiration of the notice.

(6) Disposition of impounded vehicles. In all cases of impoundment described above, the city will serve a notice on the owner of the property, by registered or certified mail or by personal service, informing the owner of the right to reclaim the vehicles within 15 days of the date of the notice, and stating that in the event the owner does not reclaim the vehicle, the city may dispose or sell the vehicle. The owner or lienholder may reclaim the vehicle upon payment of all towing, storage and administrative costs by the city. If the vehicle is not reclaimed, it may be disposed of at auction or sale. The city will be reimbursed for towing, storing and administrative costs from the proceeds of the sale. Any remainder must be held for 90 days and then will be deposited in the city's General Fund.

**Random items left in the back yard. Shopping cart, baby seats, tires and rims, lots of brush and branches.**

**Corrections: Must remove shopping cart, baby seats, tires/rims, brush and branches and any other random items left in the backyard by April 18, 2016.**

Please review the aforementioned ordinance and correct any noncompliance conditions by the following date of April 18, 2016, after which a compliance inspection will be performed.

Thank you for your prompt cooperation. If you have any questions, concerns or special needs, please feel free to contact me at the telephone number listed above.

Failure to comply with this notice by the compliance date indicated will result in the issuance of an administrative citation with a minimum fine of \$200 and/or criminal citation requiring a court appearance and the possible imposition of jail and/or fines.

In addition, if you do not comply with this notice the City may perform the work at your expense. If work is performed, you will be sent an invoice. If not paid within 30 days after you are billed, the City will assess these costs against your property.

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

**RESOLUTION NO. 16-14**

**RESOLUTION CONVERTING THE RENTAL LICENSE  
OF 1234 PROPERTIES, LLC AT 218 ANNAPOLIS ST. W.  
TO A PROVISIONAL LICENSE AND APPROVING THREE NEW RENTAL LICENCES  
AT 966/976 ROBERT AS PROVISIONAL LICENSES AND ADOPTING  
A MITIGATION PLAN**

**WHEREAS**, 1234 Properties, LLC (the “Owner”) owns a licensed 5-unit rental apartment located at 218 Annapolis St. W. (purchased on 9/19/14) and three unlicensed condominium units located at:

- 976 South Robert Street Unit 103 ( purchased on 5/13/15)
- 976 South Robert Street Unit 105 (purchased on 5/12/15)
- 966 South Robert Street Unit 208 (purchased on 8/19/15)

(collectively the “Property” or “Properties”); and

**WHEREAS**, it was discovered on or about August 26, 2015 that the Owner had recently purchased the three units at 966/976 Robert St. and that he was renting all three units; and

**WHEREAS**, the Owner did not have rental licenses for any of the three units at 966/976 Robert St. at the time of the discovery; and

**WHEREAS**, the rental license for the Annapolis Property is currently licensed and was renewed on 3/24/15; and

**WHEREAS**, there have been 9 public nuisance violations at the Annapolis Property in the past 12 months, including numerous arrests for outstanding warrants, as well as calls for theft, trespassing, suspicious persons, disturbing the peace, stalking, assault, drug activity, and excessive drinking; and

**WHEREAS**, the Council is concerned about the Owner’s ability to manage rental properties based on the volume of calls for service in the short period of time for which he has owned both Properties; and

**WHEREAS**, on August 28, 2015, the City issued an Administrative Citation for renting the Properties without rental licenses and required the Owner to apply for and obtain rental licenses; and

**WHEREAS**, the Owner submitted rental license applications for the three units at 966/976 Robert St., conducted the required inspections, and paid all required fees; and

**WHEREAS**, the City provided notice to the Owner that due to excessive police calls and nuisance activity associated with tenants occupying rental units at both Properties that pursuant to City Code Section 1005.25 the Council would consider taking action against the Owner's Licenses including suspension, revocation, adding conditions or converting the Licenses to Provisional Licenses; and

**WHEREAS**, on January 25, 2016, the City Council held a hearing and considered the Licenses under the ownership of 1234 Properties LLC, during which the City presented its evidence and the Owner was given an opportunity to be heard; and

**WHEREAS**, following the hearing, after considering all evidence presented, the Council desires convert the License at 218 Annapolis St. W. to a Provisional License and approve the three applications for units at 966/976 Robert St. as Provisional Licenses and adopt an appropriate mitigation plan.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council converts the rental dwelling license under the ownership of 1234 Properties LLC at 218 Annapolis St. to Provisional License and approves the three applications at 966/976 Robert St. as Provisional Licenses with the following mitigation plan:

1. The Owner will provide a plan describing steps proposed in order to reduce or eliminate the number of police calls to both properties, i.e. city code violations, crime-free lease addendum violations or other crimes. Said plan shall be submitted to the police department within 20 days of Council approval.
2. One of the units at 218 Annapolis must be occupied by an on-site housing manager who is not a client who is receiving services.
3. The owner will maintain Star Level II participation of the Star Program and adhere to the following requirements. Should the Owner fail to abide by the following requirements, the Owner may be fined with a Star Violation.
  - All adult persons living at the Owner's units must sign a lease and any required addendum. No more than three unrelated persons may reside in any unit;
  - The Owner will utilize and enforce a Crime-Free Lease addendum. All residents must sign this addendum including an acknowledgment that a substantial violation of this addendum is grounds for eviction;
  - Upon request, the Owner will provide the results of any rental criminal background check on his tenants to the police department;
  - Upon request, the Owner will provide the City with a current copy of any lease used for the Properties;
  - The Owner will actively pursue the eviction of non-compliant tenants;

- The Owner will have no unresolved code violations;
  - Within 12 months of joining the Star Program, the Owner or a designated Manager shall complete phase 2 and phase 3 of the crime free rental-housing program;
  - The Owner or a designated Manager shall attend 50% of ROMA meetings
4. The Owner shall properly enforce all lease agreements. If a tenant is in violation of a lease agreement the Owner shall resolve the issue accordingly, including trespassing of problem tenants. In addition, the Owner will also contact other agencies involved should a tenant be in violation, i.e. Dakota County for Section 8 Voucher recipients.
  5. The Owner shall not relocate nuisance tenants or previously evicted tenants from other rental properties owned by Owner to the Properties, to the Annapolis Property or to any other rental properties within West St. Paul that Owner subsequently acquires.
  6. The Owner shall comply with the Rental License Ordinance, including timely obtaining all required rental licenses prior to renting units and timely submitting renewal applications of rental licenses.
  7. The Owner will maintain the property to the following ordinances and standards:
    - Building Code
    - International Property Maintenance Code
    - Animal Ordinance
    - Fire Prevention Code
    - Parked or Stored Motor Vehicles
    - Public Nuisance Ordinance
  8. In addition to the above, the Owner will maintain the Properties so as not to receive compliance letters for noxious matter, long grass and weeds, garbage, rubbish or junk, and sidewalks not being kept clear of snow and ice.
  9. The Owner will operate the Properties so as not to receive any Repeat Nuisance Service Call Fees.
  10. The Owner will cooperatively work and meet with City staff in resolving any currently unidentified issues or concerns that may be disruptive to the peace and harmony of the neighborhood resulting from activity at the Properties.
  11. A security video system, meeting the police department's requirements for security and monitoring, will be installed and remain functional as long as the Owner operates under a City-issued rental license at this location. In addition, upon reasonable request, the police department will be provided access to inspect the security system and receive security recordings of specifically requested time periods and locations in a timely manner;

12. In addition to the regular license fee, the Owner will pay an additional \$1,000 for cover the cost of this mitigation plan. The \$1,000 fee will be invoiced and payable 60 days from the date of this resolution.
13. The term of the provisional license will extend until the next designated renewal date for all four licenses.
14. The Owner shall schedule an inspection with the City of the building and all units within 30 days.

Adopted by the City Council of the City of West St. Paul this the day of January 25, 2016.

Ayes: ~~4~~ 5 Nays: 0  
cd

Attest:

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

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

**One Life Health Services, LLC Mitigation Plan**  
**February 12, 2016**

In addition to the January 25, 2016 Approved Resolution, 1234 Properties will adhere to the following procedures to mitigate the number of Nuisance calls to the City of West Saint Paul:

1. Mr. Brooks has implemented a zero tolerance policy for nuisance calls;
2. Mr. Brooks has included the Crime Free/Drug Free housing addendum to all leases;
3. All Tenants are provided with the 245 D Policies and Procedures which includes contact information for all service providers, emergency contacts and where they may report grievances;
4. Mr. Brooks has evicted at least two (2) “problem” tenants since the January 25, 2016 City Council Meeting;
5. Mr. Brooks has designated Simon Mukasa to attend ROMA meetings (or Alice Kegler in his place);
6. A Security System is in the process of being installed for security and monitoring;
7. Mr. Brooks has already employed a caretaker to oversee the 5 rental units at 218 Annapolis Ave. W., West Saint Paul, MN specifically between the hours of 10 pm and 7am nightly to mitigate to number of nuisance calls to the West Saint Paul Police Department and to remove individuals who are not allowed on the premises. Additionally, this individual lives on site 24/7. ;
8. There is a 24 hour emergency line for emergency assistance available to all clients, a staff member can be on site within 15 minutes;
9. Staff has daily meetings to discuss any issues/concern they may have at the complexes;
10. Program Coordinators have weekly meetings to discuss any issues/concern they may have at the complexes;
11. Mr. Brooks has hired an additional staff member for Quality Assurance purposes, to ensure all tenants needs are being met.