JOINT WORKSESSION
CITY COUNCIL, EDA & PLANNING COMMISSION
WebEx

Monday, September 14, 2020
7:00 pm

Please be advised that the regular meeting location is the City Hall Training Room, located at 125 3rd Avenue North, South St. Paul. Pursuant to Minn. Stat. 13D021, under the current emergency declaration due to the COVID-19 health pandemic, some or all of the council members may participate in remote locations using WebEx. Any member of the public wishing to monitor the meeting may do so electronically by logging in as follows:

WebEx Meeting - Login for the Public:
Join by Phone: 1-312-535-8110
Access Code: 133 869 3501

AGENDA:

1. Cable Franchise Renewal with Comcast – Jodie Miller & Brian Grogan

2. Preliminary Planned Unit Development Concept – The Yards (Exchange/Grand - Beard Group)

3. Discussion on Possible DCC Funding Formula Modifications

4. Central Square Community Center – Continued Operational Discussion

5. 285 Hardman Avenue – Development Interest (South Park Corporation)

6. 2nd Quarter Financial Report

7. 2021 Budget Discussion

8. Council Comments/Questions
AGENDA ITEM:  Review of Comcast Cable Franchise Renewal

DESIRED MEETING OUTCOMES:  Review proposed Franchise Renewal Ordinance and resolve any concerns prior to 2nd Reading to be held on September 21, 2020

OVERVIEW:

The City Council is asked to consider adopting the Comcast Cable Television Franchise Ordinance (“Ordinance”) as recommended by the Northern Dakota County Cable Communications Commission (“Commission”) and approving a Summary of the Ordinance for publication in the newspaper of public record, and to consider authorizing the Commission to execute the mutually agreed-upon Side Letter with Comcast.

The current cable television franchise was adopted in 2000 and initially expired in 2015. In accordance with federal law, the franchise renewal process began in 2012. For a number of reasons including corporate mergers, application for a competing franchise by CenturyLink, and marketplace uncertainty caused by a new FCC Order, the renewal process was delayed several times, and multiple extensions of the current cable television franchise term were granted by the City.

The Commission is a Joint Powers Cooperative comprised of seven (7) Member Cities (Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul, Minnesota). The Commission is authorized to negotiate, recommend, enforce, and administer the cable television franchise on behalf of the Member Cities; however, each individual Member City adopts a cable television franchise as a City Ordinance according to its own ordinance procedures.

In July of 2020, the Commission and Comcast came to mutual agreement on terms and conditions of a renewal franchise. On August 5, 2020, the Commission passed a resolution recommending adoption of the renewal franchise with strong support of all commissioners in attendance. Comcast is in full support of the recommended ten-year renewal franchise and has agreed to execute the franchise as soon as all seven Member Cities have adopted the Ordinance.

On August 19th Member Cities management staff, IT staff, and City Attorneys attended a briefing presented by the Commission’s Executive Director, Jodie Miller, the Commission’s outside legal counsel, Brian Grogan of Moss & Barnett, and LMCIT-assigned litigation attorneys, John Baker and Katherine Swenson of Greene Espel. A summary of the presentation is included in the meeting materials.  (Note:  Jodie Miller and/or Brian Grogan will be present at Monday’s Work Session to review the details of the franchise renewal with the City Council.)
The ten-year renewal franchise provides the continuation of the 5% of gross revenues franchise fee, and improves PEG fee funding from the per subscriber, per month flat fee to a PEG fee in the amount of 2.25% of gross revenues. The renewal franchise maintains strong customer service and rights-of-way protections, and enforcement tools including a bond and a letter of credit security fund. Resources for local PEG programming including channels, technical support, and funding for capital purchases are retained, and High Definition (HD) channels are available within 90 days of enactment. Most importantly, the Commission and Comcast found a mutual solution to continuing many of the non-cash requirements in the current franchise. Important technical support items such as transmission of live signals from city halls, connections with other metro area stations to share programming, and cable TV service at city halls and the Commission’s office, will continue without the threat of a future deduction from franchise fee payments as allowed by the 2019 FCC “621 Order.” The “winding down” of the fiber I-Net that was used by cities, school districts, and other institutional users under the current franchise, is covered within the attached side letter.

The Commission will continue to receive the franchise fee and PEG fee revenues from Comcast on behalf of the Member Cities. Under the Joint Powers Agreement, the Commission remits an annual payment of 25% of the franchise fees to each Member City in its proportionate share of the total subscriber base. The Commission and Town Square Television utilize 75% of the franchise fees and the PEG fee revenues to provide PEG programming and franchise administration to the community on behalf of the Member Cities.

Cable television subscribership has gradually declined over the past few years with the changes in the marketplace and video viewing trends. This ten-year renewal franchise will provide some certainty and a stabilization of the PEG fee capital funding as Town Square Television and the Commission work on strategic planning for sustainability, assuming that the traditional cable video market transitions to an all-internet industry.

**ATTACHED MATERIALS:**

1. Resolution approved by the Commission at its August 5, 2020, meeting;
2. PowerPoint presentation provided by Brian Grogan, the Commission’s outside legal counsel;
3. Recommended Ordinance to be considered by the City;
4. Mutually agreed-upon side letter to be executed by the Commission and Comcast (“Side Letter”);

**SOURCE OF FUNDS:**

N/A
NORTHERN DAKOTA COUNTY CABLE COMMUNICATIONS COMMISSION

RESOLUTION NO. 8-5-2020-1

RESOLUTION RECOMMENDING RENEWAL OF A CABLE TELEVISION FRANCHISE WITH COMCAST OF ST. PAUL, INC.

WHEREAS, the Northern Dakota County Cable Communications Commission (the "Commission") is a Joint Powers Cooperative organized pursuant to Minnesota Statutes §238.08 and §471.59, as amended, and includes the following seven (7) municipalities: Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul, Minnesota (the "Member Cities"); and

WHEREAS, in the spring of 2000, the Member Cities enacted separate ordinances and entered into individual franchise agreements authorizing MediaOne of St. Paul, Inc. to provide cable service (collectively, the "Franchises"); and

WHEREAS, as a result of several transfers of the Franchises, Comcast of St. Paul, Inc. ("Comcast") currently holds the Franchises in the Member Cities; and

WHEREAS, the initial term of the Franchises has been extended multiple times by agreement of Comcast, the Commission, and the Member Cities; and

WHEREAS, the Commission has the authority to administer the Franchises on behalf of the Member Cities, including negotiating and recommending renewal of the Franchises; and

WHEREAS, the Commission and Comcast have informally negotiated the attached renewed cable television franchise (the "2020 Franchise") as contemplated by federal law at 47 USC § 546(h); and

WHEREAS, it is the finding of the Commission that adoption of the 2020 Franchise is in the best interests of the Member Cities and their residents.

NOW, THEREFORE, BE IT RESOLVED THAT, the Commission hereby recommends adoption of the 2020 Franchise by its Member Cities.

This resolution is passed and adopted by the Commission this 5th day of August, 2020.

NORTHERN DAKOTA COUNTY CABLE COMMUNICATIONS COMMISSION

By: [Signature]
Its: Chair

ATTEST:

[Signature]
Executive Director
ATTACHMENT 1

2020 Cable Television Franchise
Comcast Franchise Renewal

Northern Dakota County Cable Communications Commission (NDC4)

August 31, 2020

Brian T. Grogan, Esq.
(612) 877-5340
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What are we here to consider?

- After more than 5 years of effort
- NDC4 and Comcast agree on new cable franchise
- August 5, 2020
  - NDC4 unanimously recommends Member Cities approve cable franchise
- NDC4 recommends adoption of new cable franchise with Comcast
  - Approval to execute side letter with Comcast.
- Timing
  - Comcast to execute once all cities have adopted
  - “Effective Date” triggers certain new franchise obligations
  - Goal = identical franchise documents for all 7 member cities
Timeline – how did we get here?

- 2000 – Comcast is granted existing franchise
- 2012 – parties begin renewal proceedings
- 2014 – Comcast seeks to transfer franchise (Time Warner)
- 2015-2016 CenturyLink is granted franchise
- March 2015 – existing franchise extended – 6 total extensions
- Informal negotiations between parties
Comcast Formal Renewal

February 2018
- NDC4 directs staff to begin preparing “formal” renewal documents required under Cable Act
- NDC4 prepares a Needs Report, which includes:
  - Formal Needs Assessment Report
  - Request for Formal Renewal Proposal
  - Model Cable Television Franchise Ordinance

April 4, 2018 – Full NDC4 Cable Commission approves the Needs Report

August 15, 2018 - Comcast submits its Formal Proposal to NDC4 in response to the Needs Report
Comcast Formal Renewal

December 12, 2018

- NDC4 recommends that the Member Cities issue a preliminary assessment that the Comcast Formal Proposal should be denied and the Comcast Franchise should not be renewed

1st Quarter 2019

- Member Cities each vote to preliminarily deny Comcast’s Formal Proposal
- LMCIT – insurance trust – assigns John Baker as litigation attorney
- Administrative Law Judge assigned
- Informal settlement meetings continue to run parallel to formal legal process
FCC 621 Order

- **Order Adopted** – August 2, 2019
- **Effective Date** - September 26, 2019
- **Reinterprets** - 35 year old Cable Act
- **Appeal of FCC 621 Order**
  - NDC4 and many others are parties to legal challenge
  - Decision on appeal not expected until spring of 2021, or later
Non-monetary franchise obligations – potential deduction from Franchise Fees

Valued at “fair market value”

1. Free or discounted cable TV service
   - to schools and public buildings

2. PEG signal transport
   - “Maintenance and use” (Does not include cost of construction)

3. Institutional networks
   - Separate network serving cities and schools
   - Operator allowed to charge FMV
Side Letter Agreement

Service to public buildings
a) Impacted by FCC 621 Order
b) Comcast has option to charge schools and public buildings for cable service
c) If FCC Order is overturned by Court - then complimentary service is restored

Institutional Network
a) Comcast will wind down I-Net
b) Dark fiber through end of 2020
   i. 4 Inver Grove Heights sites; and
   ii. 2 West St. Paul sites.
c) Possible extension to 10/31/21
d) $330 per location for each additional month beyond the end of calendar year 2020
Key Terms of New Franchise

1. 10 year term

2. 5% Franchise Fee
   a) Strong definition of “Gross Revenues”
   b) Bundled services addressed
   c) Payments due within 30 days of end of quarter – along with report showing computation

3. Competitive Equity
   a) Protection for Comcast should cable service competitor enter market

4. City Code incorporated
   a) ROW protections
   b) Definition of “street”
   c) Minnesota Rules referenced to address utility protections for ROW
Key Terms of New Franchise

5. Performance Bond - $100,000
6. Letter of Credit - $25,000
7. Streamlined Enforcement Procedure
8. Strong Customer Service Standards
   a) FCC standards
   b) Franchise obligations
   c) Reporting obligations
      i. Trade secret/confidentiality
      ii. Subscriber statistics due 6 times per year (currently monthly)
      iii. Telephone Service Level (TSL) due quarterly (currently monthly)
Key Terms of New Franchise

9. 7 PEG Channels
   a) Channel #s 14, 15, 16, 18, 19, 20 and 21
   b) Within 90 days of effective date
      i. 5 SD and 2 HD PEG Channels provided
   c) 3rd HD PEG Channel provided January 1, 2022
      i. Retain 5 SD PEG channels
   d) Upon 5th anniversary
      i. Comcast can provide 90 days notice
      ii. Commission gives back 1 SD PEG Channel
      iii. Resulting in 4 SD and 3 HD PEG channels
   e) If Comcast terminates SD channels and services
      i. Comcast moves to all HD lineup
      ii. After 90 days written notice to Commission
      iii. Comcast will provide 4 HD channels
Key Terms of New Franchise

10. PEG Fee
   a) 2.25% of gross revenues
      i. Existing PEG fee started at $.83 – currently $1.99
   b) Payment due quarterly to NDC4
      i. PEG Fee is over and above 5% franchise fee
   c) PEG Fee to be used for PEG capital purposes
   d) Comcast can recoup additional PEG capital support, but separate from PEG fee line item
      i. Consistent with federal Cable Act and FCC regulations
Key Terms of New Franchise

11. PEG issues
   a) Transport and Interconnection
      i. Other Twin Cities PEG stations by Prisma and C-RAN
      ii. Satellite feeds
      iii. Fiber backhaul for city halls
      iv. Cable modem for truck
   b) Technical quality
   c) PEG monitoring – NDC4 office and 4 City Halls
Questions?

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CITY OF SOUTH ST. PAUL, MINNESOTA

ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE

TO

COMCAST OF ST. PAUL, INC.

September 8, 2020
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ORDINANCE NO. _____________

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF ST. PAUL, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF SOUTH ST. PAUL, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; TERMINATING THE PRIOR FRANCHISE

FINDINGS

1. The City of South St. Paul, Minnesota (“City”), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

2. Comcast of St. Paul, Inc., a Delaware corporation (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved on or about April 1, 2000.

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

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

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

6. 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 cable communications franchises, 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.

NOW, THEREFORE, THE CITY OF SOUTH ST. PAUL, MINNESOTA DOES ORDAIN that a franchise is hereby granted to Comcast of St. Paul, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

SECTION 1 DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
1.1 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

1.2 “Applicable Law(s)” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction.

1.3 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast, as set forth in Applicable Law, currently 47 U.S.C. § 522(3).

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

1.5 “Cable Service” means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service, as set forth in Applicable Law, currently 47 U.S.C. § 522(6). For the purposes of this definition, “other programming service” means information that a cable operator makes available to all Subscribers generally.

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

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

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

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

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

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

Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.
1.7 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

1.8 “City” means the City of South St. Paul, a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

1.9 “City Code” means the Municipal Code of the City of South St. Paul, Minnesota, as may be amended from time to time.

1.10 “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.

1.11 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.

1.12 “City Council” means the governing body of the City of South St. Paul, Minnesota.

1.13 “Day” means a calendar day, unless otherwise specified.

1.14 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

1.15 “Effective Date” means the date adopted by the last Member City Council, or the date executed by both parties in accordance with Section 17.6 herein, whichever is later.

1.16 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

1.17 “Franchise” means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.

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

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

1.20 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
1.21 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

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

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

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

(d) installation, disconnection, reconnection, change-in service, “snow-bird” fees;

(e) Advertising Revenues as defined herein;

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

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

(h) revenues from program guides and electronic guides;

(i) Franchise Fees;

(j) FCC regulatory fees;

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

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

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

(ii) “Gross Revenues” shall not include:

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

2. Public, Education and Government (PEG) Fees; and

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

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

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

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

(iii) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
1.22 “Member Cities” 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.

1.23 “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” must include some evening hours, at least one (1) night per week and/or some weekend hours.

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

1.25 “PEG” means public, education and government.

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

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

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

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

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

SECTION 2 FRANCHISE

2.1 Grant of Franchise. The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2
herein, this Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

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

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

2.4 Franchise Area. This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.7 herein.

2.5 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.18. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

2.6 Periodic Public Review of Franchise. The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee’s performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and
other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

2.7 **Transfer of Ownership.**

(a) A sale or transfer of this Franchise, including a sale or transfer by means of a “fundamental corporate change,” as defined in Minn. Stat. § 238.083 subd. 1, or the sale or transfer of stock in Grantee so as to create a new “controlling interest,” as defined in Minn. Stat. § 238.083 subd. 6, in the Cable System, shall require the written approval of the City. Grantee shall submit a written request to the City for the City’s approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness. The written approval of the City shall not be required under this section for internal corporate reorganizations involving Affiliates or pledges of the Franchise as collateral or security for any loan or other debt instrument.

(b) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.7. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

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

(e) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section. The City shall have thirty (30) days from receipt of an application for consent under this Section 2.7 in which to give notice of its intention to consider exercising such right.

(f) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. 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.
2.8 **Expiration.** Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

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

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

(c) invite additional franchise applications or proposals;

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

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

2.9 **Right to Require Removal of Property.** At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

2.10 **Continuity of Service Mandatory.** It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the system in accordance with Section 2.7, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

**SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY**

3.1 **Use of Streets.**

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

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

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and professional manner in accordance with all applicable requirements of the City Code and Applicable Law. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

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

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

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

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

3.5 **Undergrounding.**

(a) Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:
(i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;

(ii) Grantee is unable to get pole clearance;

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

(iv) utilities are overhead but residents prefer underground (undergrounding provided at cost paid by benefitted residents).

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee’s cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

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

3.6 Maintenance and Restoration.

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

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

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

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

3.8 Relocation.

(a) Public Property. Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that the City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

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

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

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

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

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

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (I) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise or the City
Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Street to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Street, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

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

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, 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 Minn. Rules, Ch. 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 Bond toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

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

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

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

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

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

4.6 **System Maps and Layout.** In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Streets. Grantee shall make all maps available for review by the appropriate City personnel.

**SECTION 5 SYSTEM DESIGN AND CAPACITY**

5.1 **Availability of Signals and Equipment.**

(a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee’s headend to Grantee’s fiber nodes, tying into Grantee’s coaxial Cable System serving Subscribers. The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.

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

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

5.2 **Equal and Uniform Service.** Grantee shall provide access to equal and uniform Cable Service throughout the City consistent with Applicable Law.

5.3 **System Specifications.**

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

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS insofar as the City’s process is consistent with the Minnesota State Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan
containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.

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

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

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

(a) Initial proof of performance for any construction;

(b) Tests in response to Subscriber complaints; and

(c) Tests reasonably requested by the City to demonstrate Franchise compliance.

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

5.5 **Special Testing.**

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

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

SECTION 6 PROGRAMMING AND SERVICES

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

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

6.2 Changes in Programming Services. Grantee shall provide at least thirty (30) Days’ prior written notice to Subscribers and to the City of Grantee’s request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

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

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

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

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

(b) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, provide a quote identifying the costs and construction schedule associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event later than the date committed in the quote, excluding events covered by Section 17.9 herein. The Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

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

**SECTION 7 LOCAL PEG PROGRAMMING**

7.1 **Number of PEG Channels.**

(a) Upon the Effective Date of this Franchise, Grantee will continue to make available a minimum of seven (7) PEG Channels in Standard Definition (“SD”). Throughout the term of this Franchise Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, a high definition (“HD”) signal refers to a television signal delivering picture resolution of either 720p or greater, or such other resolution in the same range that Grantee commonly utilizes for other similar programming Channels.

7.2 **HD PEG Channels.**

(a) Within ninety (90) Days of the Effective Date of this Franchise, Grantee shall provide five (5) SD PEG Channels and two (2) HD PEG Channels to be shared by the Commission’s seven (7) Member Cities.
(b) By January 1, 2022, and after ninety (90) Days written notice to the Grantee, which notice Commission may send on or before October 1, 2021, Grantee shall provide five (5) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission’s seven (7) Member Cities. Following implementation of this Section 7.2(b), the Grantee shall provide a total of eight (8) PEG Channels ((5) SD / (3) HD).

(c) The HD PEG Channels may duplicate the SD PEG Channels or may be programmed with different “best of” content, based on Commission’s sole discretion.

(d) On or after the fifth (5th) anniversary of the Effective Date of this Franchise and after ninety (90) Days written notice to the Commission, Grantee may require that the Commission give back one (1) SD PEG Channel. Following implementation of this Section 7.2(d), the Commission will have four (4) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission’s seven (7) Member Cities.

(e) If Grantee terminates all SD Channels and SD Cable Services and provides all Cable Services to all Subscribers in HD only, and after ninety (90) Days written notice to the Commission, Grantee shall provide four (4) HD PEG Channels to be shared by the Commission’s seven (7) Member Cities.

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

(g) The Commission shall pay for and be responsible for all HD playback servers to be located at 5845 Blaine Avenue, Inver Grove Heights, MN (“Playback Facility”). Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties.

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

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

7.5 **PEG Channel Locations.**

(a) Grantee shall continue cablecasting PEG programming on the Cable System on the same Channel locations as such programming is cablecast within the City as of the Effective Date. Current SD PEG Channel locations as of the Effective Date as well as the location of the first two (2) HD PEG Channels to be provided under Section 7.2 are listed...
on Exhibit A. Grantee agrees not to change these PEG Channel locations more than two (2) times during the term of this Franchise unless required by law for other programmers with specific Channel number rights or pursuant to an overall Channel reorganization of the entire Channel lineup. In no event shall any PEG Channel relocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee’s control. If relocated, Grantee will work in good faith with the City to identify new Channel locations such that the PEG Channels will be located within reasonable proximity to other broadcast or news Channels where available Channel numbers allow.

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

(c) In the event Grantee requires relocation of a PEG Channel pursuant to Section 7.5(a), Grantee shall provide a rebranding reimbursement grant of One Thousand Five Hundred and No/100 Dollars ($1,500) per relocated Channel.

7.6 Navigation to PEG Channels and Electronic Programming Guide. Grantee agrees that if it utilizes any navigation interfaces under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Channels. Grantee will maintain the existing ability of the City to place PEG Channel programming information on the interactive Channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the PEG Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

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

7.8 PEG Monitoring. Grantee shall continue to provide the capability, without charge, for Commission representatives at the four (4) City Hall locations and the Commission’s master control facility listed in Exhibit C, to monitor and verify the audio and visual quality of PEG Channels received by Subscribers as well as the existing connections and equipment at the Commission’s master control facility. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the Commission to verify the accuracy of EPG listings for the PEG Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the Commission office to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e. Xfinity X1).
7.9 **PEG Transport.** During the term of this Franchise, Grantee will provide PEG transport as follows:

(a) The Commission may transmit signals for the PEG Channels in “real time” upstream from the four (4) City Hall locations listed in Exhibit C to the Commission’s playback facility currently located at 5845 Blaine Avenue, Inver Grove Heights, MN (“Playback Facility”) to Grantee’s hub and head-end using existing fiber connections without additional charge or offsets from Grantee. Grantee shall continue to provide without charge or offsets, fiber backhaul and transmitter/receiver equipment for live PEG programming from City Halls as is the practice on the Effective Date of this Franchise.

(b) Grantee shall provide the capability for the Commission, either through a fiber connection, DOCSIS cable modem solution, or other technology of Grantee’s choosing, to transmit live programming from additional locations of the Commission’s choosing, subject to the Commission providing or renting necessary modems, encoders, decoders or similar devices, configuring such equipment, and removing such equipment in the event of interference with Grantee’s delivery of Cable Service. To the extent a set of mobile DOCSIS cable modems (or such other devices as may replace DOCSIS modems during the term of this Franchise) are utilized, such modems shall be able to connect to the Subscriber network at permanent or temporary Drops, subject to two (2) weeks prior written notice to Grantee and use upstream capacity on the Subscriber network to transmit programming via the Subscriber network and the connections to the Playback Facility equal to or of better quality than the PEG signals transmitted to Subscribers.

(i) The Commission shall be responsible for purchasing high speed internet service for the transmission of live programming at market rates.

(ii) The Commission shall provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Playback Facility.

(iii) Grantee may request that the Commission remove an encoder, or similar device if it technically interferes with Grantee’s delivery of Cable Service.

(c) Grantee shall maintain the existing fiber paths/equipment and existing PEG connectivity to the locations listed in Exhibit C during the term of this Franchise, without additional charge (with no recurring, monthly costs or offsets, except that Grantee may invoice the Commission for any actual repair or maintenance costs which shall not exceed Five Thousand and No/100 Dollars ($5,000) per year and which shall be estimated to the Commission in advance whenever possible, and shall be documented and invoiced to the Commission for payment) to permit the Commission/City to transport PEG programming. This will allow the Commission to continue cablecasting PEG programming from the locations listed in Exhibit C and will maintain connections from the Commission’s master control to Grantee’s hub and head-end without additional charge or offsets.

7.10 **Interconnection with other Twin Cities PEG Stations.** Grantee shall continue to make the metro area fiber ring known as the PRISMA Ring available to the City, without charge, as long
as the PRISMA Ring remains serviceable. The City may use the PRISMA Ring (or its equivalent) to send and receive live and recorded programming to/from other Twin Cities PEG stations for as long as the network remains viable. Grantee shall provide City access to the PRISMA Ring at an agreed upon demarcation point. Grantee will provide use of and maintain the PRISMA Ring without charge, but Grantee will not be obligated to replace network equipment on the PRISMA Ring or for any equipment on the City’s side of the demarcation point. Grantee agrees to continue to provide, without charge or offsets, use of Grantee’s Converged Regional Area Network (C-RAN) for delivery of live and recorded programming to and from the entities listed on Exhibit B, limited to six (6) multi-cast IP Channels. This obligation shall terminate if Grantee no longer utilizes the C-RAN for its own business purposes. Grantee shall have no obligation to replace any network equipment currently located in its headend facility or at the City or Commission facility necessary to deliver or receive such programming over the C-RAN. Replacement of any decoding equipment necessary to receive the programming via the C-RAN will be the responsibility of the City and will require Grantee’s approval to ensure equipment compatibility. If there are incremental equipment and maintenance costs specific to the PEG use of the C-RAN, Grantee will notify the City of such costs and allow the City the option of reimbursing Grantee for such costs or to cease using the C-RAN. Grantee shall not be responsible for providing a specific performance level over the C-RAN or resolving any transmission issues caused by incompatibility of audio or video file formats with interconnected equipment.

7.11 Future PEG Transport. At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 7.9); or

(b) that the City desires to establish or change a location from which PEG programming is originated; or

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

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. After receipt of such notice by Grantee, Grantee and the City may enter into an agreement which compensates Grantee in accordance with Applicable Law, for new sites added or upgraded connections. After such an agreement has been executed, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said connection, as long as such connection does not interconnect with Grantee’s Cable System without Grantee’s consent or interfere with Grantee’s Cable System.

7.12 PEG Channel Carriage.

(a) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Channel use.
(b) The Grantee shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG programming. Grantee shall carry all components of the SD/HD PEG Channel(s) including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

7.13 PEG Programming Financial Support.

(a) During the term of the Franchise, Grantee shall pay quarterly to the Commission a PEG Fee in an amount equal to two and one-quarter percent (2.25%) of its quarterly Gross Revenues, for the duration of this Franchise. Payments pursuant to this subsection shall be paid to the Commission on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 16.1(a-c) of this Franchise.

(b) The PEG Fee may be used by City and Commission to fund PEG expenditures in accordance with Applicable Law.

(c) The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542, unless the PEG Fee is used by City or Commission in violation of Applicable Law. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws.

7.14 PEG Technical Quality and Support.

(a) Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering PEG Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in a PEG Channel signal from the point of origination upstream to the point of reception (hub or head-end) or downstream to the Subscriber on the Cable System.

(b) Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues. For urgent issues (such as signal problems during live programs) the Grantee will respond as soon as possible. For non-urgent tech support requests the Grantee will respond 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. The Commission agrees to use best efforts to verify that the issue is not on the Commission’s side of the demarcation point before a call is made to Grantee.
(c) Grantee agrees to continue its practice of providing to the Commission three (3) satellite feeds from Grantee’s headend facility and/or hub site locations directly to the Commission’s Playback Facility without charge to Commission. The Commission shall be responsible for obtaining any necessary carriage and license agreements for the programming aired on its PEG Channels to the extent the content providers require such agreements. The Commission shall pay any license fees, copyright fees and other costs of the programming provider. If Grantee receives a demand to cease and desist from providing any programming content to the Commission under this section or the source of the programming ceases to operate, Grantee may terminate such programming immediately without prior notice, but will provide notice that such programming has been terminated as soon as possible. If Grantee ceases to maintain the satellite reception facility through which the programming is received, Grantee will give the Commission sixty (60) days prior notice of the discontinuation to allow the Commission to obtain the programming from another source.

7.15 Change in Technology. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the PEG Channels, Grantee shall, at its own expense and without charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the PEG Channels in accordance with the requirements of the Franchise.

7.16 Relocation of Grantee’s Headend. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee’s cost so that all functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise without charge to the City or its designated entities.

7.17 Regional Channel Six. Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.

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

SECTION 8 REGULATORY PROVISIONS

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

8.2 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory authority wholly or in part to another governmental entity, including, but not limited to, an entity which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the Commission shall have
continuing regulatory jurisdiction and supervision over the Cable System and Grantee’s operation under the Franchise.

8.3 **Regulation of Rates and Charges.**

(a) Right to Regulate. The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

(b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days’ notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

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

SECTION 9 BOND

9.1 **Performance Bond.**

(a) Upon the Effective Date of this Franchise and at all times thereafter until the Grantee has liquidated all of its obligations under this Franchise, the Grantee shall furnish and file with Commission, on behalf of all Member Cities, a bond in the sum of One Hundred Thousand and No/100 Dollars ($100,000.00) in such form and with such sureties as shall be acceptable to the Commission (“Bond”). The Bond shall be conditioned upon the faithful performance by Grantee of this Franchise and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the Bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys’ fees and costs (with interest at prime rate plus two percent (2%)), up to the full amount of the Bond, and which Bond shall further guarantee payment by Grantee of all claims and liens against City, or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System.

9.2 **Rights.** The rights reserved by City with respect to the Bond are in addition to all other rights the City may have under this Franchise or any other law.
9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the Bond.

9.4 **Procedure to Draw on Bond.**

(a) The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any draw on the Bond.

(b) In the event this Franchise is terminated in accordance with the procedure set forth in Section 11, the City shall be entitled to collect from the Bond that amount which is attributable to any damages sustained by the City as a result of said violation.

(c) Grantee shall be entitled to the return of the Bond, or portion thereof, as remains one hundred and twenty (120) Days after the expiration of the term of the Franchise or termination for violation 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 violation.

(d) The rights reserved to the City with respect to the 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 Bond shall affect any other right the City may have.

**SECTION 10 SECURITY FUND**

10.1 **Security Fund.** Within thirty (30) Days of the Effective Date, Grantee shall establish and provide to the City or the Commission, on behalf of the City, as security for the faithful performance by Grantee of all provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or the Commission in the amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00) (“Security Fund”). Failure to post the Security Fund shall constitute a material violation of this Franchise. The Security Fund shall serve as security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The obligation to establish the Security Fund required by this paragraph is unconditional. If Grantee fails to establish the Security Fund as required, the City may take whatever action is appropriate to require the establishment of that Security Fund and may recover its costs, reasonable attorneys’ fees, and an additional penalty of Five Thousand Dollars ($5,000) in that action.

10.2 **Withdrawal of Funds.** The Security Fund shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the Security Fund for other purposes and shall not assign, pledge or otherwise use this Security Fund as security for any other purpose.

10.3 **Liquidated Damages.** In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following liquidated damages:
(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 10.3, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars ($500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the PEG Channels, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

10.4 Each Violation a Separate Violation. Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. However, to the extent City remains a Member City of Commission, liquidated damages under Section 10.3 for a violation of each Member City franchise shall be calculated by the Commission as one violation, and not as multiple violations (one violation for each individual Member City franchise). For example, liquidated damages per Day under section 10.3(a) would equal Two Hundred Fifty Dollars ($250.00), not One Thousand Seven Hundred Fifty Dollars ($1,750) (seven times the per Day liquidated damages amount).

10.5 Maximum Draw Per Violation. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand and No/100 Dollars ($25,000.00). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

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

10.7 Procedure for Draw on Security Fund. The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any withdrawal from the Security Fund.

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

10.9 Failure to Establish Security Fund. City may draw on said Security Fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys’ fees incurred by the City in so performing and paying. The failure to establish a Security Fund under section 10.1 may also, at the option of City, be deemed a violation by Grantee under this Franchise. The drawing on the Security Fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such violation.

10.10 Replenishment of Security Fund. If Commission or City exhaust the Security Fund under Section 10.5 during a given violation proceeding, Grantee shall have no obligation to replenish the Security Fund for such violation proceeding. However, Grantee must replenish the Security Fund as security for any future franchise violation. If the amount of the Security Fund established under Section 10.1 is not enough to secure the performance of the obligations described in Section 10.1, then the City or the Commission must resort to the Bond provided in Section 9 or other enforcement mechanisms provided under Section 11.

10.11 Collection of Funds Not Exclusive Remedy. The collection by City of any damages or monies from the Security Fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Security Fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages, that remedy shall remain the City’s exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.5.

SECTION 11 VIOLATION PROCEDURE

11.1 Basis for Violation. City or Commission shall give written notice to Grantee if City, in its sole discretion, determines that Grantee has:

   (a) Violated any material provision of this Franchise or the acceptance hereto;

   (b) Violated any law, ordinance, rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;

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

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

   (e) Made a material misrepresentation of fact in the application for or negotiation of this Franchise; or

11.2 Violation Procedure. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation.
(a) Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation (or if such violation is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City’s sole opinion, to cure such violation as soon as possible).

(b) Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time until the Commission or City issues final findings of fact with respect to the violation. However, all penalties shall accrue from the date of the notice of violation until the Commission or City issues final findings of fact with respect to the violation.

(c) The City or Commission shall hear Grantee’s dispute at the next regularly scheduled or specially scheduled meeting. Grantee shall have the right to speak and introduce evidence. The City or Commission shall determine whether Grantee has committed a violation and shall make written findings of fact relative to its determination.

(d) If after hearing the dispute, the violation is upheld by the City or Commission, then Grantee shall have thirty (30) Days within which to remedy the violation.

(e) If Grantee fails to cure the violation within thirty (30) Days, such violation shall be a substantial breach and City may elect to terminate the Franchise, or establish and draw on the Bond or Security Fund as provided in Sections 9 or 10.

(f) The City may place the issue of termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

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

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

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

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

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

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

SECTION 12 FORECLOSURE AND RECEIVERSHIP

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

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

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

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.
SECTION 13 REPORTING REQUIREMENTS

13.1 Quarterly Reports. Within thirty (30) Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment, a report showing the basis for computation of the Franchise Fee and PEG Fee payments signed by an authorized representative of Grantee in form and substance substantially equivalent to Exhibit D attached hereto. This report shall separately indicate Grantee’s Gross Revenues within the City including, but not limited to such items as listed in the definition of “Gross Revenues” at Section 1.22 of this Franchise. Nothing in the Franchise Fee payment worksheet form set forth in Exhibit D shall be construed to modify the definition of “Gross Revenues” set forth in Section 1.21 of this Franchise.

13.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Grantee shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted.

13.3 Monthly Subscriber Data Report. Every other month starting in January, Grantee shall provide the City with a Subscriber data report consistent with the format set forth in Exhibit E attached hereto. In the event technical or programming changes require changes to the format of the report, the City and Grantee shall work in good faith to make such changes without the need to amend this Franchise.

13.4 Other Reports. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, without charge, prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee’s need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.5 Confidential and Trade Secret Information. Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act (“MGDPA”) pursuant to Minn. Stat. Chapter 13. 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 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.

13.6 Communications with Regulatory Agencies.

(a) Upon written request (unless service of copies is otherwise mandated by Applicable Law) Grantee shall submit to City copies or online links to copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee’s Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City’s request. Grantee and City shall comply with
all Applicable Law governing confidential, privileged or proprietary rights to such documents.

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

SECTION 14 CUSTOMER SERVICE POLICIES

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

14.2 Customer Service Agreement and Written Information. Grantee shall provide to Subscribers access to their service agreement and the following information if not included in the service agreement:

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

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Converter/Subscriber terminal equipment policy.

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

(g) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A
copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

14.3 Customer Service Standards.

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

(b) Grantee shall provide City with information demonstrating Grantee’s compliance with each and every term and provision of Section 14.5.

(c) Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. The City reserves the right to enact additional consumer protection laws or requirements to the extent such requirements are not inconsistent with, and preempted by, the FCC’s customer service standards.

14.4 Local Office. Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

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

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

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

   (ii) The access line may be initially answered by an interactive voice response system but a Subscriber, under Normal Operating Conditions, shall have the option to speak to a trained Grantee representative during Normal Business Hours. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

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

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

(d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee’s compliance with this Section 14.5 as is the current practice.

14.6 Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.7(b).

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

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

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

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

14.7 Communications between Grantee and Subscribers.

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

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

(ii) The return of the equipment supplied by Grantee if Cable Service is terminated.
(b) Credits. Credits for Cable Service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

14.8 Billing:

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

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.

14.9 Subscriber Information.

(a) Grantee will provide Subscribers access to the following information at any time:

(i) Products and Services offered;

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

(iii) Installation and Service maintenance policies;

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

(v) How to find or purchase programming carried on the System;

(vi) Billing and complaint procedures, including the address and telephone number of the Commission’s office; and

(vii) A copy of its refund policy for Cable Services.

(b) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including contact information for the City and the Commission. Subscribers will be notified of any changes in rates or programming or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.9.

14.10 Notice of Rate or Programming Changes. Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the control of Grantee. For the purpose of this section a “Service change” shall not include channel additions or moves that do not impact rates. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change. When the change involves the deletion of Channels, each Channel deleted must be separately identified.
14.11 **Subscriber Contracts.** Grantee shall, upon written request, provide the Commission with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. Grantee shall provide City a list of Grantee’s current Subscriber rates and charges for Cable Service and a current Channel line-up showing all Channels available in the City. Grantee shall also provide on a monthly basis a copy of a sample Subscriber Bill to the Commission.

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

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

14.14 **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee’s Service or performance to the chief administrative officer of the City or the chief administrative officer’s designee, which may be a board or a commission of the City.

14.15 **Subscriber Bills.** Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

14.16 **Failure to Resolve Complaints.** Grantee shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of the Franchise.

14.17 **Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.2, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.18 **Subscriber Privacy.**

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

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for
permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(ii) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee’s business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(iii) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (ii) of this section.

14.19 Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15 SUBSCRIBER PRACTICES

15.1 Subscriber Rates. There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber’s service outlet, provided, however, that such disconnection shall not occur until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber’s Cable Service.
15.2 Refunds to Subscribers shall be made or determined in the following manner:

(a) If Grantee fails, upon request by a Subscriber, to provide any service then being provided to the Subscriber, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee’s responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability that may be available under Applicable Law.

(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS

16.1 Franchise Fees. During the term of the Franchise, Grantee shall pay quarterly to the City or its delegate a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling established by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of each quarter. Grantee shall include with each quarterly payment a Franchise Fee payment worksheet, in form and substance substantially similar to Exhibit D, signed by an authorized representative of Grantee. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall 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.

16.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee’s compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than twenty (20) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information
will be provided. All such documents pertaining to financial matters that may be the subject of an
inspection by the City shall be retained by the Grantee for a minimum period of seven (7) years,
pursuant to Minn. Stat. § 541.05. The Grantee shall not deny the City access to any of the Grantee’s
records on the basis that the Grantee’s records are under the control of any parent corporation,
affiliated entity or a third party. The City may request in writing copies of any such records or
books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30)
Days of the receipt of such request. One (1) copy of all reports and records required under this or
any other section shall be furnished to the City at the sole expense of the Grantee. If the requested
books and records are too voluminous, or for security reasons cannot be copied or removed, then
the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City
inspect them at the Grantee’s local offices or at one of Grantee’s offices more convenient to City
or its duly authorized agent. If any books or records of the Grantee are not kept in such office and
not made available in copies to the City upon written request as set forth above, and if the City
determines that an examination of such records is necessary for the enforcement of this Franchise,
then all reasonable travel expenses incurred in making such examination shall be paid by the
Grantee.

16.3 Review of Record Keeping Methodology. Upon request, Grantee agrees to meet with a
representative of the City or its designee to review its methodology of record-keeping, financial
reporting, computing Franchise Fee obligations, and other procedures the understanding of which
the City deems necessary for understanding the meaning of reports and records.

16.4 Audit of Records. The City or its authorized agent may at any time and at the City’s own
expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy
of Franchise Fees or PEG Fees paid to the City. Grantee and each parent company of Grantee
shall cooperate fully in the conduct of such audit. In the event it is determined through such audit
that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was
due the City, then Grantee shall reimburse the City for the entire cost of the audit within thirty (30)
Days of the completion and acceptance of the audit by the City.

16.5 Records to be reviewed. The City agrees to request access to only those books and
records, in exercising its rights under this section, which it deems reasonably necessary for the
enforcement and administration of the Franchise.

16.6 Indemnification by Grantee. Grantee shall, at its sole expense, fully indemnify, defend
and hold harmless the City and Commission, and in their capacity as such, the officers, agents and
employees thereof (collectively the “Indemnified Parties”), from and against any and all claims,
suits, actions, demands, liability and judgments for damage or otherwise except those arising
wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to
Persons or property, including loss of use of property due to an occurrence, whether or not such
property is physically damaged or destroyed, in any way arising out of or through or alleged to
arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or
contractors or to which Grantee’s or its officers, agents, employees or contractors acts or omissions
in any way contribute, and whether or not such acts or omissions were authorized or contemplated
by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages
for Grantee’s invasion of the right of privacy, defamation of any Person, firm or corporation, or
the violation of infringement of any copyright, trademark, trade name, service mark or patent, or
of any other right of any Person, firm or corporation; arising out of or alleged to arise out of
Grantee’s failure to comply with the provisions of any Applicable Law. Nothing herein shall be
deemed to prevent the Indemnified Parties from participating in the defense of any litigation by
their own counsel at such parties’ expense. Such participation shall not under any circumstances
relieve Grantee from its duty of defense against liability or of paying any judgment entered against
the Indemnified Parties.

16.7 **Grantee Insurance.** Upon the Effective Date, Grantee shall, at its sole expense take out
and maintain during the term of this Franchise public liability insurance with a company licensed
to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than “A-”
that shall protect the Grantee, City and its officials, officers, directors, employees and agents from
claims which may arise from operations under this Franchise, whether such operations be by the
Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee.
This liability insurance shall include, but shall not be limited to, protection against claims arising
from bodily and personal injury and damage to property, resulting from Grantee’s vehicles,
products and operations. The amount of insurance for single limit coverage applying to bodily
and personal injury and property damage shall not be less than Three Million Dollars ($3,000,000).
The liability policy shall include:

(a) The policy shall provide coverage on an “occurrence” basis.

(b) The policy shall cover personal injury as well as bodily injury.

(c) The policy shall cover blanket contractual liability subject to the standard universal
exclusions of contractual liability included in the carrier’s standard endorsement as to
bodily injuries, personal injuries and property damage.

(d) Broad form property damage liability shall be afforded.

(e) City and Commission shall be named as an additional insured on the policy.

(f) An endorsement shall be provided which states that the coverage is primary
insurance with respect to claims arising from Grantee’s operations under this Franchise
and that no other insurance maintained by the City will be called upon to contribute to a
loss under this coverage.

(g) Standard form of cross-liability shall be afforded.

(h) An endorsement stating that the policy shall not be canceled without thirty (30)
Days’ notice of such cancellation given to City.

(i) City reserves the right to adjust the insurance limit coverage requirements of this
Franchise no more than once every three (3) years. Any such adjustment by City will be
no greater than the increase in the State of Minnesota Consumer Price Index (all
consumers) for such three (3) year period.

(j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the
required insurance, as well as any necessary properly executed endorsements. The
certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City’s right to enforce the terms of Grantee’s obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee’s insurance coverage.

SECTION 17 MISCELLANEOUS PROVISIONS

17.1 Posting and Publication. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee’s filing of acceptance of this Franchise.

17.2 Guarantee of Performance. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

17.3 Entire Agreement. This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein.

17.4 Consent. Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

17.5 Prior Franchise Terminated. The cable television franchise originally granted by Ordinance No. 1098 is hereby terminated. Nothing herein shall serve to waive any rights the parties may have under Ordinance No. 1098 regarding: 1) the payment of franchise fees and PEG fees; and 2) Grantee’s compliance with all applicable City Code obligations governing Grantee’s facilities in Streets.

17.6 Franchise Acceptance. No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 16(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.7 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City’s exercise of its police powers.
17.8 **Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City’s administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

- **If to City:**  
  City Administrator  
  City of South St. Paul  
  125 Third Avenue North  
  South St. Paul, MN  55075

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

- **If to Grantee:**  
  General Manager  
  Comcast  
  10 River Park Plaza  
  St. Paul, MN  55107

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

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to program and price adjustment communications required under section 14.12. Such communication should be addressed and directed to the Person of record as specified above.

17.9 **Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

17.10 **Work of Contractors and Subcontractors.** Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee’s responsibility to ensure that contractors, subcontractors or other Persons
performing work on Grantee’s behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

17.11 **Governing Law.** This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.12 **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 unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Amended Joint and Cooperative Agreement between the parties.

17.13 **Nonenforcement by City.** Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

17.14 **Captions.** The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

17.15 **Calculation of Time.** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

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

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

17.18 **Survival of Terms.** Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However,
Grantee’s obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

17.19 Competitive Equity.

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.21 will apply.

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

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor’s franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee’s proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.
(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.21 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to grant a franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City’s legal authority, Grantee shall have the burden to demonstrate that such authority exists.

17.20 Treatment of negotiated provisions.

In consideration of the City and the Commission relinquishing any claim, title or right to certain obligations set forth in the cable television franchise originally granted by Ordinance No. 1098, Grantee agrees that for the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2(g), 7.5(c), 7.8, 7.9, 7.10, 7.12, 7.14, 7.15, 7.16, 13.1, 13.2, 13.3, and 13.4 shall be treated by Grantee as Grantee’s business expense and not a Franchise Fee under Sections 1.19 and 16.1 of this Franchise or as a PEG Fee under Section 7.13 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 7.13 of this Franchise, any PEG capital costs set forth in Section 7.2(g), 7.8, 7.9, 7.10, 7.11, 7.15 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this ____ day of ______________________ 2020.

ATTEST

CITY OF SOUTH ST. PAUL, MINNESOTA

By: ___________________________               By: ___________________________
Its: City Clerk                      Its: Mayor
ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

COMCAST OF ST. PAUL, INC.

Date: ___________________________  By: ___________________________

Its: ____________________________

SWORN TO BEFORE ME this ___ day of __________, 2020.

______________________________

NOTARY PUBLIC
**Exhibit A**  
SD/HD PEG Channel Numbers

<table>
<thead>
<tr>
<th>Channel Name</th>
<th>SD Channel #</th>
<th>HD Channel #</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Community</td>
<td>14</td>
<td></td>
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<tr>
<td>2. Public Access</td>
<td>15</td>
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</tr>
<tr>
<td>3. Multifaith Access</td>
<td>16</td>
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<tr>
<td>4. Government</td>
<td>18</td>
<td>799</td>
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<td>5. Government</td>
<td>19</td>
<td>859</td>
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<tr>
<td>6. Education</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>7. Community Bulletin Board</td>
<td>21</td>
<td></td>
</tr>
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</table>
Exhibit B
Delivery of live and recorded programming to and from below listed entities on C-RAN

1. MCN 6 (1 receive ch and 1 send ch)
2. St. Paul (2 receive ch and 1 send ch)
3. Eagan (3 receive ch and 1 send ch)
4. Burnsville (1 receive ch)
5. Bloomington (1 receive ch)
6. CCX (1 receive ch)
Exhibit C
PEG Monitoring

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
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</thead>
<tbody>
<tr>
<td>1. Inver Grove Heights City Hall</td>
<td>8150 Barbara Avenue, Inver Grove Heights, MN 55077</td>
</tr>
<tr>
<td>2. Mendota Heights City Hall</td>
<td>1101 Victoria Curve, Mendota Heights, MN 55118</td>
</tr>
<tr>
<td>3. NDC4 Commission and Town Square TV</td>
<td>5845 Blaine Avenue, Inver Grove Heights, MN 55076</td>
</tr>
<tr>
<td>4. South St. Paul City Hall</td>
<td>125 3rd Avenue, South St. Paul, MN 55075</td>
</tr>
<tr>
<td>5. West St. Paul City Hall</td>
<td>1616 Humboldt Avenue, West St. Paul, MN 55118</td>
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PEG Transport

<table>
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<tr>
<td>1. Inver Grove Heights City Hall</td>
<td>8150 Barbara Avenue, Inver Grove Heights, MN 55077</td>
</tr>
<tr>
<td>2. Mendota Heights City Hall</td>
<td>1101 Victoria Curve, Mendota Heights, MN 55118</td>
</tr>
<tr>
<td>3. NDC4 Commission and Town Square TV</td>
<td>5845 Blaine Avenue, Inver Grove Heights, MN 55076</td>
</tr>
<tr>
<td>4. South St. Paul City Hall</td>
<td>125 3rd Avenue, South St. Paul, MN 55075</td>
</tr>
<tr>
<td>5. West St. Paul City Hall</td>
<td>1616 Humboldt Avenue, West St. Paul, MN 55118</td>
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Exhibit D
Franchise Fee Payment Worksheet

**TRADE SECRET – CONFIDENTIAL**
***CONFIDENTIAL***

<table>
<thead>
<tr>
<th>Revenue Category</th>
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<tr>
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<tr>
<td>Limited Basic Video Service</td>
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<tr>
<td>Digital Video Service</td>
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<tr>
<td>Pay</td>
<td>$</td>
</tr>
<tr>
<td>PPV / VOD</td>
<td>$</td>
</tr>
<tr>
<td>Digital Video Equipment</td>
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<tr>
<td>Video Installation / Activation</td>
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<tr>
<td>Franchise Fees</td>
<td>$</td>
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<tr>
<td>Guild</td>
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<tr>
<td>Other</td>
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<tr>
<td>Late Fees</td>
<td>$</td>
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<tr>
<td>Write-offs / Recoveries</td>
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<td>Ad Sales</td>
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<tr>
<td>Home Shopping Commissions</td>
<td>$</td>
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<tr>
<td><strong>Total</strong></td>
<td>$</td>
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This statement represents your payment for the period listed above.

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

Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of “Gross Revenues” set forth in the Franchise.
## Exhibit E
MONTHLY SUBSCRIBER DATA REPORT

### Twin Cities NDC
Data is for fiscal month ending x/x/yyyy

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<thead>
<tr>
<th>House Data</th>
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<td>Penetration %</td>
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<table>
<thead>
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<th>Subscriber Data</th>
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<tr>
<td>Basic 1 (residential, includes EBUs)</td>
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</tr>
<tr>
<td>Basic 2 (residential, includes EBUs)</td>
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<table>
<thead>
<tr>
<th>Other Video Services</th>
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<tbody>
<tr>
<td>Digital Economy (Residential)</td>
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<tr>
<td>Digital Preferred</td>
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<td>Multilatino</td>
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<td>Sports Tier</td>
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<td>HBO</td>
<td>xxx</td>
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<tr>
<td>Starz</td>
<td>xxx</td>
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<tr>
<td>TMC</td>
<td>xxx</td>
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<table>
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<th>Equipment</th>
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<tr>
<td>Households with DVR Equipment</td>
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<tr>
<td>Households with HD Equipment</td>
<td>xxx</td>
</tr>
<tr>
<td>Households with DTA Equipment</td>
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<table>
<thead>
<tr>
<th>Pay Per View</th>
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<tbody>
<tr>
<td>Total # PPV Purchases</td>
<td>xxx</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Connects</th>
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<tbody>
<tr>
<td>Basic 1 Connects (Residential)</td>
<td>xxx</td>
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<tr>
<td>Basic 1 Disconnects (residential)</td>
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<tr>
<td>Net Gain/Loss</td>
<td>xxx</td>
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</table>

*EBUs - Equivalent Business Units*

![CONFIDENTIAL]
July 30, 2020

Northern Dakota County Cable Communications Commission
5845 Blaine Avenue
Inver Grove Heights, MN  55076

Dear Northern Dakota County Cable Communications Commission:

The purpose of this letter of agreement is to memorialize commitments between Comcast of St. Paul, Inc. (“Comcast”) and the Northern Dakota County Cable Communications Commission (“Commission”) that are in addition to the obligations contained in the renewal franchise agreement to be adopted by the Commission’s seven member cities (hereinafter collectively, “the Franchise”). These items set forth herein: 1) have been negotiated in good faith and mutually agreed to by the parties as part of the informal franchise renewal process pursuant to 47 U.S.C. 546(h); 2) are provided by Comcast in consideration of the grant of the Franchise by the City; and 3) specifically relate to unique community needs that exist in the Commission and its member cities. This letter of agreement shall become effective upon approval by the Commission.

1. **Complimentary Cable Service to Public Buildings/Schools**
   a. Comcast and the Commission agree that under the FCC Section 621 Order (currently pending appeal), complimentary accounts are not a condition of the renewed franchise. Comcast will itemize fair market value price for all former complimentary service locations (approximately 46 sites in Comcast’s current Franchise effective April 2000, attached as Exhibit A), which shall be at rates at or below the attached Comcast municipal pricing sheet at Exhibit C (Comcast’s municipal pricing sheet to be attached as Exhibit C), and shall be subject to Comcast’s regular, nondiscriminatory rate adjustments.
   b. Commission/City or former Complimentary Service recipients (schools, libraries, et al) have the right to choose to retain Cable Service at the rates listed on the municipal pricing sheet or terminate Cable Service to their Location.
   c. If the FCC Section 621 Order (*Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019*) (herein “621 Order”) is stayed or overturned by action of the FCC or through judicial review, and franchise-mandated complimentary services to public buildings are no longer considered to be “franchise fees” under 47 USC §542, then for the remaining Franchise term Commission/City may require Comcast to provide complimentary basic Cable Service to the former Complimentary Service Locations listed in Exhibit B.

2. **Institutional Network – I-Net**
   a. The I-Net is not a condition of the renewed cable franchise. Comcast will wind down its I-Net obligation as follows:
i. Comcast will provide existing dark fiber connections (former I-Net fiber), at no charge, from the Effective Date of the renewed franchise through the end of calendar year 2020 ("Termination Date"), to the following locations:

   (A) Four (4) Inver Grove Heights sites; and

   (B) Two (2) West St. Paul sites.

ii. Comcast will provide exactly what is in place today under the former franchise(s) (franchises adopted in the year 2000) to the above six (6) sites – no managed services required by the cities/sites.

iii. In the event the Cities should experience unavoidable fiber construction delays in 2020 (i.e. the COVID-19 crisis, weather, early winter frost, etc.) the Commission shall have the option to extend the Termination Date for any of the above locations. Any such extension of the Termination Date shall not extend beyond October 31, 2021. If such an extension is required, the Commission shall pay Comcast $330 per location for each additional month beyond the end of calendar year 2020.

iv. But for any unavoidable construction delays for the six sites noted above, Comcast is relieved of the obligation to serve all other existing I-Net sites as of January 1, 2021 and shall have no further obligation to provide I-Net services.

v. The parties agree that Comcast shall not treat any costs incurred in performing under this Paragraph 2 as franchise fees, and agree that this provision is a reasonable way to come into compliance with the 621 Order as contemplated in the FCC’s Order on Reconsideration of the 621 Order (¶5)(Released Feb. 11, 2020).

The terms and conditions of this letter agreement are binding upon the Commission and Comcast and their successors and assigns. In the event Comcast seeks to transfer the Franchise to another entity, Comcast agrees to require the new transferee to honor the terms of this side letter agreement as a condition of such transfer. Enforcement of the terms of this letter agreement shall be consistent with the enforcement procedures set forth in the Franchise.

Acknowledged and agreed to this ___ day of ____________, 2020.

Comcast of St. Paul, Inc.                     Northern Dakota County Cable Communications Commission

By: ________________________________       By: ________________________________
Its: ________________________________       Its: ________________________________
Date: ________________________________       Date: ________________________________
EXHIBIT A

NDC4 COMCAST FRANCHISE EXHIBIT B-1 Effective April 2000 to present

(FORMER) SERVICE TO PUBLIC AND PRIVATE BUILDINGS

Dakota County

IN NDC SYSTEM

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

Wentworth Library
199 East Wentworth Avenue
West St. Paul, MN  55118
Northern Service Center
(under construction)
5 West Mendota Road
**ISD #199**

Inver Grove Elementary School  
4100 East 66th Street  
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

South Grove Elementary School  
7650 Clayton Avenue  
Inver Grove Heights, MN  55076

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

**ALL IN ONE COMPLEX**

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

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

ISD #199 District Office  
2990 80th Street East  
Inver Grove Heights, MN  55076
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 Department  
2059 Upper 55th Street E  
Inver Grove Heights, MN  55077

IGH Fire Department  
7015 Clayton Avenue  
Inver Grove Heights, MN  55076

ISD #197

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

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

Heritage Middle School  
121 West Butler Avenue  
West St. Paul, MN  55118

Somerset Elementary School  
1355 Dodd Road  
Mendota Heights, MN  55118

Mendota Heights Elementary School  
1979 Summit Lane  
Mendota Heights, MN  55118

Moreland Elementary School  
217 West Moreland Avenue  
West St. Paul, MN  55118

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

West St. Paul

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

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

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

Wakota Arena (School)
141 East 6th Street
South St. Paul, MN  55075

South St. Paul Municipal Airport (Fleming Field)
520 Airport Road
South St. Paul, MN 55075
(shall be considered a subsequently designated building pursuant to Section 6(2) of this Franchise)

Lilydale

Lilydale City Hall
855 Sibley Memorial Hwy
Lilydale, MN  555118

Sunfish Lake

Sites to be determined

Mendota

Sites to be determined

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
South St. Paul Schools

South St. Paul High School
700 2nd St. N.
South St. Paul, MN  55075

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

ECFE
1549 5th Ave. So.
South St. Paul, MN  55075

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

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

ALC
151 6th St. E.
South St. Paul, MN  55075
Private Schools

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

Emanuel Lutheran School
115 Crusader Avenue
West St. Paul, MN  55118

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

St. John Vianney School
1815 Bromley Street
South St. Paul, MN  55075

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

St. Michael's School
335 E. Hurley Street
West St. Paul, MN  55118

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

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

Colleges

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

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>ADDRESS</th>
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<tbody>
<tr>
<td>City of IGH</td>
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</tr>
<tr>
<td>FIRE DEPT, INVER GROVE HTS</td>
<td>7015 CLAYTON AVE APT 1</td>
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<tr>
<td>FIRE DEPT, IGH 3</td>
<td>2059 UPPER 55TH ST E</td>
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<tr>
<td>FIRE DEPT, NEW STATION 2</td>
<td>9200 COURTHOUSE BLVD 55077</td>
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<td>CITY OF, INVER GROVE</td>
<td>8150 BARBARA AVE</td>
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<tr>
<td>ELEM SCHOOL, HILLTOP</td>
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<td>MIDDLE SCHOOL, IGH</td>
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<td>LIBRARY, WEST ST. PAUL</td>
<td>Wentworth Avenue</td>
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<td>CABLE COMM, NDC</td>
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<tr>
<td>CABLE COMM, NDC</td>
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<td>CITY HALL, LILYDALE</td>
<td>1011 SIBLEY MEMORIAL HWY</td>
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<td>City of Mendota Heights</td>
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<tr>
<td>CITY HALL, MENDOTA HEIGHTS</td>
<td>1101 VICTORIA CURV</td>
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<td>POLICE DEPT, MENDOTA HGTS</td>
<td>1101 VICTORIA CURV</td>
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<td>FIRE DEPT, MENDOTA HGTS</td>
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<td>HIGH SCHOOL, HENRY SIBLEY</td>
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<td>CENTER, KAPOSIA EDUCATION</td>
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<tr>
<td>POLICE DEPT, S ST PAUL</td>
<td>125 3RD AVE N APT B</td>
</tr>
<tr>
<td>MAINT BUILDING, S ST PAUL</td>
<td>400 RICHMOND ST W</td>
</tr>
<tr>
<td>LOCATION</td>
<td>ADDRESS</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>City of WSP</td>
<td></td>
</tr>
<tr>
<td>CITY HALL, W ST PAUL</td>
<td>1616 HUMBOLDT AVE APT A</td>
</tr>
<tr>
<td>FIRE FIGHTERS, INTL ASSN OF</td>
<td>1616 HUMBOLDT AVE APT B</td>
</tr>
<tr>
<td>POLICE, WEST ST PAUL</td>
<td>1616 HUMBOLDT AVE</td>
</tr>
<tr>
<td>PUBLIC WORKS, W ST PAUL</td>
<td>403 MARIE AVE E</td>
</tr>
</tbody>
</table>
## EXHIBIT C

<table>
<thead>
<tr>
<th>BUSINESS BASIC CABLE PRICING</th>
<th>BUSINESS SELECT CABLE PRICING</th>
<th>BUSINESS SERVICE EQUIPMENT &amp; FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently $24.60 - includes BTV Fee.</td>
<td>Currently $42.65 - includes BTV and RSN Fees.</td>
<td>$9.95 per piece of equipment (DTA or HD Box). $5.00 per account for HD Service</td>
</tr>
</tbody>
</table>
AGENDA ITEM: Beard Group Development on Concord Exchange North- Planned Unit Development Preliminary Review

DESIRED OUTCOMES:

- Review the Planned Unit Development (PUD) process.
- Review the design and performance standards that are in place in the Concord Gateway Mixed Use zoning district.
- Review a concept plan for a multi-family apartment project proposed by the Beard Group
- Planning Commission and City Council provide informal feedback to the Applicant regarding their project

OVERVIEW:

Background

The Beard Group, a Twin Cities-based real-estate development firm, has been working with the EDA to assemble a roughly 4-acre site on the northwest corner of Concord Exchange North and Grand Avenue for a large apartment project. The land currently hosts an old and mostly vacant office complex (201 and 205 Concord Exchange North) and two large City-owned parking lots.

Concord Exchange is the location of the City’s original downtown main street which was mostly torn down for redevelopment in the 1960’s/1970’s. There have been several redevelopment plans put in place since that time and the existing plan– the Concord Gateway Streetscape and Redevelopment Plan– dates back to 2003. The Concord Gateway Mixed Use (CGMU) zoning district was put in place in order to enshrine the aesthetic goals of the 2003 redevelopment plan in the Zoning Code. The goal of the 2003 plan was to essentially recreate a traditional main street along Concord Exchange. There has been very little development since the plan was adopted.

Why a Planned Unit Development?

The Applicant is proposing a 2-building apartment complex that will employ modern architecture and feature fairly “modern-looking” exterior building materials, primarily architectural metal panels, engineered wood, and decorative block. The CGMU zoning district rules require a more traditional look/feel and there is a requirement that building facades must be primarily brick, stone, and glass (at least 60%) with no more than 30% of the façade being decorative block and only very small amounts of metal being used as an accent material.

There has been minimal development along Concord Exchange in the years since the CGMU zoning district was created and the Kaposia Club is the only entirely new building that has been built in the district (in 2018). The Kaposia Club received a variance from the window coverage
requirements for commercial buildings in the CGMU district but otherwise largely adhered to the
design requirements.

Staff has advised the Applicant that this project will likely need to be reviewed as a Planned Unit
Development since several elements of their proposal do not conform to zoning rules and will
require flexibility. The PUD process allows the City to review a project holistically and approve
flexibility from the zoning code if the project is determined to be beneficial to the community.
The PUD process will likely be needed for this project because:

- The proposed buildings do not fully adhere to the design standards of the CGMU district
  (they do appear to adhere to most of the standards for site design but the exterior building
  materials are not consistent with the Code and it is unclear from the concept renderings
  whether some of the minor miscellaneous architectural requirements are met)

- There are some archaic rules for apartment buildings that are listed in Code Section 118-
  267. It is unclear whether these rules are supposed to apply to the CGMU district or any
  of the mixed-use areas along Concord or whether they are supposed to be applicable only
  in the City’s R-3 and R-4 multi-family residential zoning districts which are tucked into
  the neighborhoods “up the hill.” The City Attorney has advised that these rules should be
  waived through the PUD process.

- The Applicant is proposing to provide roughly one (1) dedicated parking stall per
  bedroom and their buildings will primarily contain 1-bedroom and studio units. They will
  also be providing a generous amount of guest/public parking, some of which is proposed
  to be created by granting the City additional right-of-way to construct angled street
  parking along Concord Exchange. The City Code currently requires two (2) dedicated
  parking stalls per unit regardless of how many bedrooms there are. The City was studying
  the parking ordinance back in 2019 and was moving towards revising the parking
  requirement for multi-family buildings to be based on number of bedrooms. This study
  was suspended when former city planner Peter Hellegers left and then delayed by the
  Covid-19 pandemic and other projects. Staff is planning to complete the study later this
  year.

CGMU Architectural Standards

The following relevant architectural standards are in place in the CGMU zoning district for
apartment buildings:

- Any exterior building wall adjacent to or visible from a public street, public open space,
or abutting property may not exceed 50 feet in length without significant visual relief.

- Building facades shall be divided into similar bays of roughly equal width between 20
  and 40 feet in width.

- All buildings containing residential uses on the ground floor shall have a first-floor
elevation at least two and one-half feet above the adjacent street level in the front yard.
At least 60% of the building façade must be brick, stone or glass. Up to 30% of the building façade may be integrally colored decorative block or stucco. Up to 10% of the façade may be “accent materials” such as decorative metal.

Attachment B of this memo is a graphic that shows the site design and architectural standards that are in place in the CGMU zoning district.

**Preliminary PUD Review**

The City’s PUD ordinance states that Planned Unit Developments are to be reviewed in two steps:

**Step 1:** An informal “preliminary review” where Staff reviews a concept plan and provides the Applicant with written feedback on their plan. The Applicant is not allowed to apply for a Conditional Use Permit for a Planned Unit development unless they have gone through this concept plan review and gotten the “go-ahead” from City Staff.

**Step 2:** A formal application for a Conditional Use Permit for a Planned Unit Development and site plan approval. The Applicant must have formal plans drawn up and their application is reviewed by the Planning Commission (with a public hearing) and the City Council (for a formal approval/denial decision).

For a large project with a lot of moving parts, Staff typically involves the Planning Commission and the City Council in the preliminary review. This way, any issues with the development concept can be identified early and the Applicant can be given feedback that will help them prepare a formal submittal that is more likely to receive City Council approval.

**ACTION NEEDED**

No formal action is needed. The Planning Commission and City Council are asked to provide informal feedback to the Applicant regarding their preliminary plans and their intention to request PUD flexibility for architectural standards and parking. If the Council is not comfortable with the proposed exterior building materials and wants to require that the Applicant adhere to the CGMU standards, that should be communicated at this time.

**SOURCE OF FUNDS:** N/A

**ATTACHMENTS**

A--site_location_map
B-site_design_standards_for_cgmuzoning_district
C-cgmuzoning_district_rules
D-applicant’s_concept_plan
ATTACHMENT A
SITE LOCATION MAP
ATTACHMENT B
SITE DESIGN STANDARDS FOR CGMU ZONING DISTRICT

Concord / Grun & Avenue Gateway Streetscape and Redevelopment Plan

(Figure 6-2)
Architectural Design Standards
(Figure 6-3)
Site Design Standards

- Building Occupies Min. 60% Lot Frontage
- Screening of Parking / Service Areas
- 0-10' Build to Line
- Screen Parking at Street Frontage
- 150 s.f. Min Parking Lot Islands
- 10% of Parking Lot Must be Green Landscaped Area
- 20' Rear Setback
- Screening of Exterior Trash Receptacles
- Single Use Must be Less than 10,000 s.f. In Area, Except by CUP
- Drive Through Lanes in Rear or Side not in Front

South St. Paul, Minnesota
ATTACHMENT C
CGMU ZONING DISTRICT RULES

Sec. 118-125. - CGMU, Concord Gateway mixed-use district.

(a) Purpose. The purpose of the Concord Gateway mixed-use (CGMU) district is to provide an area for compact, mixed-use development made mutually compatible through a combination of careful planning, urban design and coordinated public and private investment. The mixture of land uses within the district is essential to establishing the level of vitality and intensity needed to support retail and service uses. The placement of building edges and the treatment of building, parking, landscaping, and pedestrian spaces is essential to creating the pedestrian-friendly environment envisioned for the CGMU. The standards in this section are intended to implement and effectuate the principles and relationships established in the city's Concord Gateway Framework Plan, a copy of which is on file in the office of the city clerk, which will be carried out through specific standards related to site planning, signage, architecture, building materials, and landscaping. The CGMU is divided into two subdistricts, CGMU-1 and CGMU-2, as depicted on the official zoning map.

(b) Permitted uses. Within either the CGMU-1 or CGMU-2 subdistricts, no structure or land may be used except for one or more of the following uses, provided such use is less than 10,000 square feet in gross floor area:

1. Accessory store, apparel.
2. Altering, pressing and repair of wearing apparel.
3. Appliance store.
4. Art gallery.
5. Bakery.
6. Banks and other financial institutions without drive-through facilities.
7. Barbershop.
8. Beauty shop.
9. Body art establishment (pursuant to licensing requirements).
11. Cafe, cafeteria, restaurant, or delicatessen, without drive-through facilities.
12. Camera store.
13. Candy, nut or confectionery store.
14. Club or lodge, private.
15. Copy service or printing service.
16. Department store.
17. Flower shop.
18. Furniture store.
19. Gift, novelty, or souvenir store.
20. Grocery store.
21. Hardware store.
22. Hotel or motel.
24. Laundromat or dry cleaning.
25. Library.
26. Locksmith.
(27) Luggage store.
(28) Machines, business sales and service.
(29) Magazine stand or newsstand.
(30) Massage therapy (licensed pursuant to article XII of chapter 18 of the City Code).
(31) Meat market for retail sale to the public.
(32) Medical or dental office or clinic (for humans only).
(33) Museum.
(34) Musical instrument and musical recordings store.
(35) Notions store.
(36) Office.
(37) Optician.
(38) Painting, wallpaper and decorating store for retail sales and service.
(39) Pet store.
(40) Repair and servicing of items the sale of which is permitted in this district.
(41) Residential multifamily dwelling units, if within a structure containing at least four units.
(42) Shoe store.
(43) A small wireless facility, as defined in section 54-402, that is located in the right-of-way, as long as all provisions of sections 54-400–54-429 have been met.
(44) Sporting goods store.
(45) Stationery store.
(46) Tanning salon.
(47) Tobacco store.
(48) Toy store.
(49) Variety store.
(50) Video sales and rental.

(c) Accessory uses. Within the CGMU-1 or CGMU-2 subdistricts, the following uses shall be permitted accessory uses:

(1) Off-street parking of automobiles for patrons or employees of a permitted use.
(2) Off-street loading areas as regulated herein.
(3) Signs, fences, and decorative landscape features as regulated herein.
(4) Customary uses incidental to the principal use as determined by the city council.

(d) Conditional uses, CGMU-1. Within the CGMU-1 subdistricts, no structure or land may be used for any of the following uses except by conditional use permit:

(1) On-sale and off-sale liquor establishments as regulated by this Code.
(2) Amusement or entertainment, as defined and regulated by this Code.
(3) Church.
(4) Medical uses (for animals).
(5) Residential dwelling units within the same building as nonresidential uses, if provisions for parking, security, noise, odors, and other related issues affecting the residential units can be shown to be handled adequately and in keeping with the best interests of the residents.

(6) Theaters.

(7) Schools, public or private.

(8) Parking ramps or parking garages.

(9) Buildings in excess of 50 feet in height, if such buildings will not block significant views from existing uses or views to significant features within the CGMU district, and if such buildings can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.

(10) Any permitted use or any other conditional use, if 10,000 square feet or more in gross floor area, if such use can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.

(11) Other uses determined by the city council to be similar in purpose and character to other permitted or conditional uses in this district.

(e) Conditional uses, CGMU-2. Within the CGMU-2 subdistricts, no structure or land may be used for the following uses, except by conditional use permit:

(1) Any conditional use allowed in the CGMU-1 subdistrict.

(2) Automobile and truck service uses.

(3) Equipment and vehicle rental.

(4) Gasoline service stations, auto repair, sales, and storage.

(5) Automobile car wash.

(6) Screened outdoor storage.

(7) Drive-through facilities for a permitted use, if provisions for vehicle stacking, vehicle maneuvering, outdoor speaker devices, appearance and lighting of outdoor menu boards, and other related matters can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.

(f) Lot area, lot width, and yard requirements. The following standards apply to both the CGMU-1 and CGMU-2 subdistricts:

(1) Principal structure setback standards shall be as follows:

<table>
<thead>
<tr>
<th>Yard Type</th>
<th>Minimum Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front yard</td>
<td>Build-to line (0—10 feet)</td>
</tr>
<tr>
<td>Side yard/interior</td>
<td>0 feet minimum</td>
</tr>
<tr>
<td>Side yard/corner</td>
<td>Build-to line (0—10 feet)</td>
</tr>
<tr>
<td>Rear yard</td>
<td>20 feet minimum</td>
</tr>
</tbody>
</table>

(2) Accessory structure setback standards shall be as follows:
Front yard: 20 feet minimum
Side yard: 0 feet minimum
Side yard (street): 20 feet minimum
Rear yard: 5 feet minimum

(3) Parking setback standards shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front yard</td>
<td>5 feet</td>
</tr>
<tr>
<td>Side yard</td>
<td>5 feet</td>
</tr>
<tr>
<td>Side yard (street)</td>
<td>5 feet</td>
</tr>
<tr>
<td>Rear yard</td>
<td>5 feet</td>
</tr>
</tbody>
</table>

(4) In the CGMU district in the front yard, a build-to line is established which provides a minimum and maximum front setback for buildings and other structures, from the right-of-way or property line. The minimum front building setback shall be zero feet, and the maximum shall be ten feet from the right-of-way or property line, for all properties on streets within the CGMU-1 subdistrict.

(5) For parking, different minimum setbacks apply, but there is no maximum.

(6) For all properties within the CGMU district, the required setbacks to Concord Street shall follow the rear yard setbacks above.

(7) In the CGMU-1 subdistrict, at least 60 percent of the street frontage of any lot shall be occupied by building facades meeting the build-to line. Other portions of a building beyond the 60 percent may be set back farther than required by the build-to line.

(8) In the CGMU-2 subdistrict, at least 40 percent of the street frontage of any lot shall be occupied by building facades meeting the build-to line. Other portions of a building beyond the 40 percent may be set back farther than required by the build-to line. The length of the building facade shall be measured as the maximum width of the building projected to the front lot line on lines perpendicular to the front lot line.

(9) On lots with more than one street frontage, the build-to line shall apply on each side fronting a street.

(10) The build-to line may be met either with an enclosed building or an arcade constructed with a permanent roof of the same materials as the remainder of the building.

(11) At least the first and second floor must meet the build-to-line. Arcades at street level and terracing of building facades above the second floor are encouraged.
(12) At a minimum, the first 50 feet of the lot frontage on either side of a street intersection must be occupied by buildings meeting the build-to line. Parking or other space open to the sky is not allowed within this first 50 feet.

(13) Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements to a minimum height of two and one-half feet and a maximum height of three and one-half feet above the level of the parking lot at the build-to line.

(14) New parking structures (including garages) shall maintain a setback equal to the setbacks required in this section for other structures, except that where such parking structure is adjacent to other parking in a side or rear yard condition, the parking structure may have a zero setback. Where a new parking structure is adjacent to an existing use in a side or rear yard condition, the parking structure must maintain at least a ten-foot setback.

(15) Drive-through or drive-in lanes are not allowed within the build-to line or in front of any building; they must be located to the side or rear of a building.

(16) "Building height" means the vertical distance from the average elevation of the adjoining ground level or the established grade, whichever is lower, to:
   a. The top of the cornice of a flat roof;
   b. The top of a mansard roof;
   c. A point directly above the highest wall of a shed roof;
   d. The uppermost point of a round or other arch-type roof; or
   e. The mean distance from the eave line to the peak of the highest gable on a pitched or hip roof.

(17) The maximum height of buildings in the CGMU district shall be 50 feet, except as allowed by conditional use permit. The minimum height shall be 24 feet in the CGMU-1 subdistrict and 16 feet in the CGMU-2 subdistrict.

(g) Parking.

(1) Parking for residential units in the CGMU district shall be provided on site, and shall be calculated as required under article VII of this chapter. The residential parking spaces shall be specifically reserved for the use of residents and visitors only, separate from any commercial, office, or other uses on site or nearby, and shall not be counted as part of any shared parking or joint parking arrangement. Parking in driveways at the rear of townhomes may be counted towards the requirements of this regulation if it does not interfere with other traffic movement.

(2) Parking for nonresidential uses shall be as required under article VII of this chapter. If present, on-street parking directly in front of a given building or lot shall count toward fulfilling the total parking requirement.

(3) On-grade parking is prohibited in the front yard directly in front of a building. Parking shall be provided to the side or rear of buildings in midblock areas.

(4) In the CGMU-1 subdistrict where parking fronts a public street, the maximum parking lot width shall be 65 feet measured at the lot frontage.

(5) In the CGMU-2 subdistrict where parking fronts a public street, the maximum parking lot width shall be 130 feet, measured at the lot frontage.

(6) Parking shall be prohibited within 50 feet of the intersection of any public streets within the CGMU district.

(h) Building and architectural provisions.

(1) All buildings shall be designed to accomplish the goals and policies of the comprehensive plan and the framework plan. Building materials shall be attractive in appearance, durable with a
permanent finish, and of a quality that is consistent with the standards and intent of the framework plan. Where appropriate, buildings shall carry over materials and colors of adjacent buildings, with the exception of prohibited materials.

(2) All buildings shall include the following elements:
   a. Accent materials, which shall be wrapped around walls that are visible from a public street or open space;
   b. Buildings containing office and retail uses shall maintain 40 percent minimum window coverage on each first floor front that faces a street or public open space;
   c. Complimentary major material colors;
   d. A combination of vertical and horizontal pattern designs in the building facade.

(3) Any exterior building wall adjacent to or visible from a public street, public open space, or abutting property may not exceed 50 feet in length without significant visual relief consisting of one or more of the following:
   a. The facade shall be divided architecturally by means of significantly different materials or textures;
   b. Horizontal offsets of at least four feet in depth;
   c. Vertical offsets in the roofline of at least four feet; or
   d. Fenestration at the first floor level that is recessed horizontally at least one foot into the facade.

(4) Building facades shall be divided into similar bays of roughly equal width between 20 and 40 feet in width.

(5) Exterior building materials shall be classified primary, secondary, or accent materials. Primary materials shall cover at least 60 percent of the facade of a building. Secondary materials may cover no more than 30 percent of the facade. Accent materials may include door and window frames, lintels, cornices, and other minor elements, and may cover no more than ten percent of the facade. Allowable materials are as follows:
   a. Primary exterior building materials may be brick, stone, or glass. Bronze-tinted or mirror glass are prohibited as exterior materials.
   b. Secondary exterior building materials may be decorative block or integrally-colored stucco.
   c. Synthetic stucco may be permitted as a secondary material on upper floors only.
   d. Accent materials may be wood or metal if appropriately integrated into the overall building design and not situated in areas that will be subject to physical or environmental damage.
   e. All primary and secondary materials shall be integrally colored.
   f. Decorative block shall be colored only by means of a pigment integral to the block material, not applied to the surface.
   g. All primary and secondary materials shall be earth tones, compatible with and complimentary to the natural stone and brick of existing historic buildings in the district.
   h. Sheet metal, corrugated metal, asbestos, iron, shingles, and plain flat concrete block (whether painted or integrally colored or not) are not acceptable as exterior wall materials on buildings within the Concord Gateway district.

(6) All mechanical equipment, whether roof-mounted or ground-mounted, shall be completely screened from ground-level view of adjacent properties and public streets, or designed to be compatible with the architectural treatment of the principal building.
(7) All exterior trash enclosures or other accessory structures shall be constructed of the same materials and colors as the principal building.

(8) Consistent interior window treatments are required for windows that are visible from a public street or open space in offices and multiple residential complexes.

(9) All buildings containing nonresidential uses on the ground floor shall meet the following standards:
   a. The building shall have entrances to a street or public open space spaced no more than 100 feet apart.
   b. Entrances shall be oriented conveniently to the street frontage and to on-street and off-street parking serving the use.

(10) All buildings containing residential uses on the ground floor shall have a first floor elevation at least two and one-half feet above the adjacent street level in the front yard.

(11) All trash, recyclable materials, and equipment for handling them, including compactors, shall be totally screened from eye-level view from public streets and adjacent properties, whether in the front, side or rear, either by being stored within the principal structure or stored within an accessory structure enclosed by a roof and readily served through swinging doors or an overhead door on tracks.

(12) Loading docks shall not be located in the front yard and shall be completely screened from eye-level view of public streets and public open spaces by means of landscaping which is at least 90 percent opaque year-round within two years after planting, or by a screen wall of the same materials and colors as the principal building.

(13) All landscaping shall comply with the following provisions:
   a. All land area not occupied by buildings, parking, driveways, sidewalks, or other hard surface shall be sodded or mulched and landscaped with city-approved ground cover, flowers, shrubbery and trees.
   b. At least ten percent of the total land area within the perimeter of private parking and driveway areas shall be landscaped. Landscaped areas provided within the build-to line may be credited toward this ten percent landscaping requirement on a square-foot-for-square-foot basis, for up to half of the ten percent requirement, or five percent.
   c. Parking lot landscaped islands shall be a minimum of 150 square feet in area and include at least one overstory or evergreen tree meeting the requirements of this article.
   d. Where parking abuts the site perimeter there shall be provided at least one overstory tree per 25 feet of site perimeter.
   e. At least one overstory tree shall be provided for every 500 square feet of landscaped area on the entire site.
   f. The landscape plan shall include a full complement of overstory, ornamental and evergreen trees, shrubbery, and ground covers that are hardy and appropriate for the locations in which they are planted, and which provide year-round color and interest.
   g. Plant selection shall be as follows:
      1. The following trees may not be used to satisfy the landscaping requirement of this section:

<table>
<thead>
<tr>
<th>Acer negundo</th>
<th>Box elder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer saccharinum</td>
<td>Silver maple</td>
</tr>
<tr>
<td><em>Catalpa speciosa</em></td>
<td>Northern catalpa</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td><em>Elaeagnus</em></td>
<td>Russian olive</td>
</tr>
<tr>
<td><em>Ginkgo Biloba</em></td>
<td>F. Ginkgo (female prohibited, male permitted)</td>
</tr>
<tr>
<td><em>Morus alba</em></td>
<td>Mulberry</td>
</tr>
<tr>
<td><em>Populus deltoides</em></td>
<td>Cottonwood</td>
</tr>
<tr>
<td><em>Populus species</em></td>
<td>Poplars</td>
</tr>
</tbody>
</table>

2. The following trees may be used to satisfy the landscaping requirement of this section, but only in areas that are reasonably protected from winter wind conditions:

<table>
<thead>
<tr>
<th><em>Picea pungens glauca</em></th>
<th>Colorado blue spruce</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Pinus alba</em></td>
<td>White pine</td>
</tr>
<tr>
<td><em>Pinus resinosa</em></td>
<td>Red pine</td>
</tr>
</tbody>
</table>

3. The following trees may be used to satisfy the landscaping requirement of this section, but only in areas that are not on or immediately adjacent to a public street boulevard:

<table>
<thead>
<tr>
<th><em>Tilia cordata</em></th>
<th>Little leaf linden</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Fraxinus mandshurica mancana</em></td>
<td>Mancana ash</td>
</tr>
</tbody>
</table>

(14) Reserved.

(15) Lighting in the CGMU district shall be subject to the following:

a. All exterior lighting in the CGMU district shall be downcast cutoff type fixtures and shall follow the styles and types identified in the framework manual. No light source may be more than 16 feet above the ground, except by conditional use permit for buildings more than 20 feet in height.
(12) At a minimum, the first 50 feet of the lot frontage on either side of a street intersection must be occupied by buildings meeting the build-to line. Parking or other space open to the sky is not allowed within this first 50 feet.

(13) Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements to a minimum height of two and one-half feet and a maximum height of three and one-half feet above the level of the parking lot at the build-to line.

(14) New parking structures (including garages) shall maintain a setback equal to the setbacks required in this section for other structures, except that where such parking structure is adjacent to other parking in a side or rear yard condition, the parking structure may have a zero setback. Where a new parking structure is adjacent to an existing use in a side or rear yard condition, the parking structure must maintain at least a ten-foot setback.

(15) Drive-through or drive-in lanes are not allowed within the build-to line or in front of any building; they must be located to the side or rear of a building.

(16) “Building height” means the vertical distance from the average elevation of the adjoining ground level or the established grade, whichever is lower, to:
   a. The top of the cornice of a flat roof;
   b. The top of a mansard roof;
   c. A point directly above the highest wall of a shed roof;
   d. The uppermost point of a round or other arch-type roof; or
   e. The mean distance from the eave line to the peak of the highest gable on a pitched or hip roof.

(17) The maximum height of buildings in the CGMU district shall be 50 feet, except as allowed by conditional use permit. The minimum height shall be 24 feet in the CGMU-1 subdistrict and 16 feet in the CGMU-2 subdistrict.

(g) Parking.

(1) Parking for residential units in the CGMU district shall be provided on site, and shall be calculated as required under article VII of this chapter. The residential parking spaces shall be specifically reserved for the use of residents and visitors only, separate from any commercial, office, or other uses on site or nearby, and shall not be counted as part of any shared parking or joint parking arrangement. Parking in driveways at the rear of townhomes may be counted towards the requirements of this regulation if it does not interfere with other traffic movement.

(2) Parking for nonresidential uses shall be as required under article VII of this chapter. If present, on-street parking directly in front of a given building or lot shall count toward fulfilling the total parking requirement.

(3) On-grade parking is prohibited in the front yard directly in front of a building. Parking shall be provided to the side or rear of buildings in midblock areas.

(4) In the CGMU-1 subdistrict where parking fronts a public street, the maximum parking lot width shall be 65 feet measured at the lot frontage.

(5) In the CGMU-2 subdistrict where parking fronts a public street, the maximum parking lot width shall be 130 feet, measured at the lot frontage.

(6) Parking shall be prohibited within 50 feet of the intersection of any public streets within the CGMU district.

(h) Building and architectural provisions.

(1) All buildings shall be designed to accomplish the goals and policies of the comprehensive plan and the framework plan. Building materials shall be attractive in appearance, durable with a
**MATERIAL KEY**

- **S1**: LP SMART SIDE BOARD AND BATTEN
- **S2**: LP SMART SIDE HORIZONTAL LAP SIDING
- **S3**: PROFILIT BACKLIT GLASS
- **S4**: LP SMART SIDE BOARD AND BATTEN ACCENT COLOR
- **M1**: CMU BLOCK
- **M2**: LIMESTONE VENEER
- **MP1**: METAL PANEL ALUCOBOND OR SIMILAR PRODUCT
- **MP2**: METAL FLASHING UNICLAD

**PHASE ONE BUILDING ELEVATIONS**

**SOUTH ST. PAUL MULTI-FAMILY**

203 Concord Exchange N, South St. Paul, MN 55075

09/08/20
Perspective from Phase 2 Building Entry
AGENDA ITEM:  Review & Comment on Proposed Modifications to DCC Funding Formula

DESIRED MEETING OUTCOMES:

Provide input to Council Member Hansen regarding proposed changes to the Dakota Communications Center’s funding formula for her DCC Board of Directors meeting to be held on September 17, 2020.

OVERVIEW:

The funding formula for the DCC has been under review by the member organizations for a while now. Currently, the formula is based on the three-year average of calls for service as recorded by the Computer Aided Dispatch (CAD) system. For a city such as South St. Paul with a high “calls for service” factor, we end up paying a disproportionate amount of the costs for DCC versus other possible options such as population or tax base.

A Funding Task Force was convened to review the formula and suggested possible modifications. (Chief Messerich was a member of this Task Force.) After a number of meetings, considerable research, and much discussion, the Task Force recommended that Dakota County assume between 50% and 100% of the fixed costs of DCC (estimated at $2 million of the proposed 2021 total membership fees of $9.1 million) while maintaining the current three-year rolling average of CAD events to the variable cost components.

In the DCC Board of Directors meeting held on August 20th, the topic of DCC funding and requested member discussion on the draft recommendation took place. The DCC Board asked for comments on the proposed funding revision from member jurisdictions in for their September 17, 2020 meeting.

The Dakota County Board has reviewed this recommendation and is willing to continue discussions. However, County Manager Matt Smith did present them with financial impacts of a phased in approach to reach the 100% over five years versus the specific recommendation of the DCC Funding Task Force.

While this is not an ideal option from SSP’s standpoint, Staff’s recommendation is to support this change as it is a move in the right direction. (A copy of the Task Force’s recommendation is attached to this memo.)

SOURCE OF FUNDS:

N/A
To: DCC Board of Directors  
From: DCC Financial Funding Task Force  
CC: Tom Folie, Executive Director  

**RECOMMENDATION**

Allocate [50%-100%] “Fixed Costs” of DCC Budget to Dakota County while maintaining current three year rolling average CAD event cost allocation to remaining “Variable Costs” to each party in the Joint Powers Agreement beginning in the 2022 budget cycle. The nonmember small cities’ and townships’ would receive an appropriate DCC budget cost allocation.

**Basis of Support**

- DCC is a county-wide physical asset existing regardless of County size or call volume.
- DCC provides a service, measurable as a CAD event, similar to a utility charge for members.
- DCC fiscal agent (City of Lakeville) conducted an analysis of the current annual budget with a draft categorization of “Fixed” or “Variable” cost identifying 21% of fixed costs, totaling $1,997,043. *Exhibit 1*
- Fixed Costs provides the County the best opportunity at this time to increase its contribution as an acknowledgement that the DCC is a County-wide physical asset.
- Membership fee scenario at County paid [50%-100%] of “Fixed Costs” results in a [11.4%-22.8%] reduction in city fees. *Exhibit 2*
- A 2021 Budget implementation, while possible, was considered burdensome to County budget goals and staff to fully absorb [50%-100% $1,997,043]. The 2022 Budget [or phased timing] appears to be more obtainable.

**Investigation and Other Possible Recommendation Discussion**

1. Maintain current funding allocation. (Not supported)  
   a. Recognition the DCC is a county-wide physical asset and an adjustment is reasonable.  
   b. Establishment of the Financial Funding Task Force to provide a recommendation change.

2. Move current DCC budget and operation to County. (Not supported)  
   a. General belief cities would support but County Board does not support full budget impacts and operations.  
   b. Phased transition plan available (Executive Committee recommendation)  
      i. Three year transition option available  
      ii. Five year transition option available  
   c. Investigated multiple funding arrangements.  
      i. Property valuation assessment to county residents-similar to County run PSAPs  
      ii. Public Service Levy – See # 3 below for additional findings

3. Public Service Levy by County (funding of County costs, not full operation - Open)  
   a. Funding of County allocated costs-open for County to pursue on its own.  
   b. Requires State Legislation  
      i. Current use by Anoka County is for a fixed time and specific equipment
ii. Dakota County request could be for ongoing operational and capital expense

4. Public Service Levy by County Hybrid (DCC budget and operation to County - Open)
   a. Option I Funding of all DCC costs
      i. Requires State Legislation
      ii. Open to County to pursue with member city agreement
   b. Option II Funding of County costs with member city fee to County
      i. Requires State Legislation
      ii. Open to County to pursue with member city agreement funding

5. Member Fee Allocation – Call Volume Formula alternatives (Not Supported)
   a. DCC location analysis indicated CAD event distribution Exhibit 3
      i. 58% Other-Public building, traffic stops, parks
      ii. 28% Residential
      iii. 14% Business
      iv. Other allocation able to be assigned to members by GIS location or CAD Events.
   b. Tax Capacity Exhibit 2
      i. 2019 Taxation information for members
      ii. Reallocation based on working copy of proposed 2021 budget
      iii. Not tied to CAD events
   c. Population Exhibit 2
      i. 2018 estimate information for members.
      ii. Reallocation based on working copy of proposed 2021 budget
      iii. Head count allocation, slants toward residential over business
      iv. True up of counts occurs with census every 10 years

Acknowledgement

The Financial Funding Task Force acknowledges and appreciates the information, efforts and assistance from the County’s Office of Performance and Analysis, Dakota County GIS, DCC Fiscal Agent-City of Lakeville, Chief Bill Messerich and the DCC staff including Executive Director Tom Folie.

The DCC Funding Task Force
- Commissioner Mike Slavik (County Board)
- Commissioner Mary Liz Holberg (County Board)
- George Tourville, Inver Grove Heights (DCC Board)
- Jeff Weisensel, Rosemount (DCC Board)
- Michelle Volk, Lakeville (DCC Board)
- Logan Martin, Rosemount (DCC Exec Comm.)
- Matt Smith, Dakota County (DCC Exec Comm.)
- Justin Miller, Lakeville (DCC Exec Comm.)
- Sheriff Tim Leslie (Law & Fire Ops)
- Chief Bill Messerich (Law & Fire Ops)
- Chief Justin Elvestad (Law & Fire Ops)
AGENDA ITEM:  Central Square Community Center - Continued Operational Discussion

DESIRED MEETING OUTCOMES:

Discuss the current and future operation of Central Square Community Center (CSCC) in accordance with the Management Agreement.

OVERVIEW:

The city council began discussions in June 2020 related to the future operation of Central Square as a Community Center and the city’s role in the existing Management Agreement that governs operation of the facility in partnership with Special School District 6. As a follow-up to the initial discussion, staff has presented the current considerations and budgetary concerns to the Special School District Board of Education in July, and at separate meetings in August with the school district’s administrative staff and the Central Square Board. As a result of these discussions, staff requests direction on the next steps of operation of Central Square Community Center for 2021.

Current Operation and Considerations:
Memberships:
The core operation of CSCC is dependent upon membership and program revenue. Memberships hit a peak in 2013 at 1,002 and has been steadily in decline. 2019 concluded with 692 memberships, a 31% decrease in membership from the all-time high. Memberships in 2020 continue to decline along with market pressure increasing, which was a factor early in the year and compounded by the COVID-19 pandemic and facility closure from March 14 – July 5, 2020. At the conclusion of August, membership has continued to decline to 533 memberships.

The Senior Center:
The City Administrator recently received notice from Special School District 6 that they will continue to honor the existing Senior Center Agreement for the rest of this calendar year. Under the Agreement, the school district’s community education budget pays approximately 33% ($2,407 per month) of one Recreation Supervisor’s salary. It is unknown whether the existing Agreement will continue into 2021. Both city and school staff and the CSCC Board agree to make the continued operation of the Senior Center a priority, regardless of location and which organization oversees its administration and budget in the future.

2021 CSCC Budget:
The annual operating budget for Central Square’s operation, which exists outside of the city’s General Fund, has not yet been created for 2021. The financial reality is that a deficit will occur in 2020, requiring payment by both parents to split the projected deficit 50/50 per the Management Agreement. The deficit payment for 2020 will likely range from $15,000 to $25,000 per organization ($30,000-$50,000 operating deficit total) according to staff estimates. Almost certainly there will be another deficit at the conclusion of 2021 that will require the parents to again split the cost of the deficit 50/50 per the Management Agreement. We cannot estimate what the 2021 deficit will be, however will have a better idea closer to the end of this fiscal operating
year in December to make a projection. If either parent is unwilling to subsidize Central Square’s operation moving forward, knowing that a payment of 50% of the deficit will have to be made in 2020, 2021 and possibly beyond, we will not be able to operate under the Management Agreement as it currently is. In order to continue operation in 2021, the city council will have to be willing to approve a deficit budget for Central Square’s operation for the city’s 2021 fiscal year, that will require a deficit payment of 50% at the conclusion of 2021 in addition to the deficit payment at the conclusion of 2020.

Both parent organizations are under financial stress for the remainder of 2020 and into fiscal year 2021. While CSCC revenue continues to decline, operating costs will continue to incrementally increase due to inflation and regular hard costs. To sustain the future of CSCC, increased taxpayer subsidy will be needed from both parent organizations to continue to operate.

Options for Discussion:

Option A – CSCC continues to traditionally operate for 2021 under the existing Management Agreement.

Pros: Membership services are not disrupted. Re-opening phases continue to reintroduce activities, classes, programs, and rentals to the facility as COVID-19 guidelines allow. Staffing positions remain intact.

Cons: Revenue recovery for 2021 and beyond will likely not surpass expenditures, resulting in a deficit budget that will be charged to both parent organizations. Future operation of CSCC is not sustainable without annual taxpayer subsidy from both parent organizations. The existing Capital Fund of $49,155 will eventually deplete if reallocated to operations, leaving no auxiliary funding mechanism for building or capital improvements. Certain fitness machines are scheduled for replacement in 2021, while deferment is an option, continued wear on the machines beyond their useful life will result in increased repair and maintenance expenditures. Parks & Recreation Department resources will continue to be limited in support of the operation of Doug Woog Arena.

Option B – Parks & Recreation Department continues operation of CSCC until June 30, 2021.

Pros: Timeline aligns with school district’s fiscal year. Members and staff are provided a substantial transition timeline. Current services continue for nine more months, in accordance with COVID-19 guidelines. The school district is afforded time to conduct a building study and community engagement regarding the future operation of CSCC and the building/property. 50% less operating budget will be required for 2021. Parks & Recreation Department relocates to Doug Woog Arena to support operation in July 2021.

Cons: 50% operating budget will be required for 2021, likely resulting in a deficit payment from both parent organizations for the six months of operation under the Management Agreement. Members being notified of impending operational change may cancel memberships before the transitional end date, further decreasing revenue. Membership purchase structure will have to be modified to accommodate abbreviated operating year. Parks & Recreation Department is not able to relocate to Doug Woog Arena to support arena operation for 2020-21 hockey and skating season.

Option C – Parks & Recreation Department continues operation of CSCC until December 31, 2020.

Pros: Timeline aligns with city’s fiscal year. No CSCC operating budget for 2021 helps both parent organizations financially by incurring a deficit payment for 2020 only. Parks & Recreation Department relocates to Doug Woog Arena to support operation for the 2020-21 hockey and skating season.

Cons: Members and staff are provided a transition timeline of three months. Refunds for pre-paid memberships will be issued, which will increase revenue deficit for 2020. The school district has
an abbreviated timeline to conduct a building study and community engagement regarding the future operation of CSCC and the building/property. Doug Woog Arena’s former CLC space has limited time to be readied for Parks & Recreation Department relocation.

**Option D – Anytime Fitness operates the fitness aspects of CSCC under a hybrid lease agreement.**

*Note: the local Anytime Fitness franchise owner has proposed relocating operation in South St. Paul by leasing space at CSCC as soon as November 2020. The owner is currently in discussion with Special School District 6.*

Pros: Fitness services are not disrupted; membership fees remain the same for one year. Lease revenue supports ongoing building maintenance and operation for the school district. Anytime Fitness has proposed to fund $150,000-$200,000 of facility improvements. School district activities and building use continue through public/private partnership. Low risk for the two parent organizations. Depending upon Senior Center operation and staffing, Parks & Recreation Department relocates to Doug Woog Arena to support arena operations.

Cons: The City of South St. Paul is not involved in the exploration and negotiation of this option/proposal. The school district facility study and public engagement may recommend alternative building uses and not support a private/public partnership. Current membership may not support the transition/change of the fitness operation to a private entity.

**Other Considerations for Discussion:**

- The options prescribed assume that the fitness operation at Central Square will no longer exist. The school district may decide to assume operation of the fitness aspects if the current Management Agreement ceases.
- If the Management Agreement ceases, it does not necessarily mean Central Square’s doors will be closed to the public. The school district may create a new purpose for the building that allows for public access and use beyond swim and gymnastic team functions and physical education classes.
- Any deficit created by CSCC beyond 2020 will have to become part of the city’s budgeted expenses, otherwise will have to come out of reserves to pay the 50% of the deficit owed.
- CSCC-owned assets will have to be divided up between the two parent organizations per the Management Agreement if it ceases. An addendum of the Management Agreement lists CSCC-owned assets.
- Staff will be affected by ceasing the Management Agreement. Depending upon services offered by a relocated Parks & Recreation Department, most CSCC part-time and specialty staff will no longer be needed. This assumes the school district will no longer operate the building as a community center.
- If the Parks & Recreation Department relocates to the former CLC space at Doug Woog Arena, potential lease revenue will be lost and interior remodeling will be needed for offices, such as connection to the city network for computers and communication. Parks & Recreation does not have to occupy the entire former CLC space, a large portion could remain available for rent or lease.
- The school district has provided preliminary indication that their facility study of the future use of the Central Square building will take approximately two months.
- If notice is to be given to cease the Management Agreement, a 90-day notice is required. If the earliest option to cease operation by December 31, 2020 is recommended, notice would have to be provided no later than October 2, 2020.

The Parks & Recreation Department is proud of the 18-year history of operating Central Square Community Center and the relationship with Special School District 6. Staff seeks direction
regarding the continuing operation of Central Square Community Center, especially if directed to create a CSCC operating budget for 2021.

**SOURCE OF FUNDS:**

N/A
AGENDA ITEM:  285 Hardman Avenue – Development Interest

DESIRED OUTCOMES:

- Generate consensus response to business/developer interest in a proposed real estate transaction involving 285 Hardman Avenue and 1019 Concord Street North for South Park Corporation

OVERVIEW:

Staff has had ongoing dialogue with Erick Schmidt, owner of South Park Corporation (1019 Concord Street North), as he looks into relocation options for South Park Corporation. South Park is a local specialty machine shop that manufactures specialty Fire Truck/Firefighting Hardware and has been located in South St. Paul since the 1930s. South Park is entering a period of growth and have determined that their existing facilities on North Concord and in leased space at the BridgePoint Office Condominium (at Hardman/Bridgepoint Drive) are not sustainable solutions for the efficient and effective operation of their business. Mr. Schmidt has drafted a letter of intent to purchase the vacant EDA-owned property at 285 Hardman Avenue, and would like for the EDA to entertain acquisition of his real estate interests on North Concord Street in partial exchange (his position being that the North Concord Property is of higher value than the Hardman Property) for the Hardman Avenue property.

Staff is looking for the Council’s feedback and preferred strategy for responding to this potential opportunity.

BACKGROUND OF THE DEVELOPMENT SITE:

285 Hardman Avenue was a part of a larger property that was acquired by the Housing and Redevelopment Authority of South St. Paul (HRA) over 25 years ago. Historically, the property was a part of the much larger Armour complex which fronted the Mississippi River. The property has remained vacant and zoned “Industrial” (now “Light Industrial”) for the entire time that the HRA/EDA have owned it. 285 Hardman Avenue is the last of four lots, each approximately 2 acres in size, that the HRA platted for light industrial/office development as part of the “Mississippi Landing” Plat process that subdivided the massive former Armour Property into a variety of 2 – 6 acre industrial sites. The EDA will recall recent sales to AVM Group LLC (121 Hardman Court) and Cobra Holdings LLC (235 Hardman Avenue) for the development of approximately 20,000 square foot light industrial facilities on similar lots.

Upon its acquisition, the HRA conducted significant predevelopment due diligence on the site, including Phase I and Phase II environmental assessments and environmental mitigation activities, site grading and the establishment of a stormwater management area straddling the
property line between the 285 Hardman Avenue property and 121 Hardman Court (now owned by AVM). In addition, the HRA conducted soil surcharging, generally to accommodate an approximately 22,000 square foot building footprint on the 285 Hardman Avenue site. In essence, these steps have left the site in a nearly “shovel-ready” condition for development, except that per Minnesota Pollution Control Agency Commissioner’s Certificate of Completion of Environmental Actions for the site, a vapor mitigation system will need to be integrated into the construction of the building.

Currently, the Dakota County Office of Property Taxation and Records (PTR) lists an Estimated Market Value of $256,300 for 285 Hardman Avenue.

**SUMMARY OF PROPOSED PURCHASE/DEVELOPMENT APPROACH:**

South Park Corporation currently owns/occupies the property located at 1019 Concord St. North, within an approximately 5,000 square foot building situated on a 10,000 square foot lot. South Park is also currently leasing approximately 7,000 square feet in the BridgePoint Business Park office condo at Hardman and Bridgepoint. In addition, South Park’s ownership owns an approximately 6,500 square foot surface parking lot at the northwest corner of Bryant Avenue and Concord Street, immediately south of the 1009 Hall. Mr. Schmidt has shared an appraisal, completed on his behalf in October 2019, for the North Concord Street properties that suggests a fair market value of $500,000 for the property. Dakota County PTR assigns an estimated market value of $455,000 for the North Concord Street properties.

Mr. Schmidt has asked if the EDA would be open to a “land swap” whereby he would acquire the vacant 2.1 acre site at 285 Hardman Court (at the Dakota County Value), which he would acquire for the construction of a 20,000 SF production/office/warehouse facility for South Park Corporation. At the other end of the swap, the EDA would acquire his properties on North Concord Street (at the Dakota County Value) for long-term land assembly and redevelopment.

Mr. Schmidt has asked whether the EDA would consider extending loan financing towards the acquisition of the 285 Hardman Avenue property, including an interest-only period and/or forgiveness of the loan in the future if certain conditions are met. Staff would suggest this approach warrants further exploration if the EDA is supportive in concept of the “swap”.

**OPTIONS FOR DISCUSSION AND DIRECTION:**
Staff is requesting feedback from Council on the following response options:

- **Option 1**: Pursue the proposed Real Estate Transaction with South Park Corporation, including environmental assessments, title/survey work, and structuring a purchase, development, and loan agreement.

- **Option 2**: Advise South Park Corporation that EDA is not interested in a “swap” arrangement but is interested in selling 285 Hardman for development of their new facility at negotiated terms.
• **Option 3:** Advise South Park Corporation that EDA is neither interested in acquisition of the North Concord properties nor in selling 285 Hardman for the proposed Use.

**FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:**
The EDA-owned property is currently exempt from property taxes, and has been for at least 25 years. Using existing comparable development as a barometer, it is estimated that an office/warehouse development of about 20,000 square feet would generate over $45,000 per year in total property tax payments beginning in Pay 2023 (assuming late 2021 completion).

If the EDA were interested in pursuing acquisition of the properties currently controlled by South Park, the EDA has a development fund that may be sourced for some or all of the acquisition, with the balance likely needing to come from the Concord Street TIF District.

**ATTACHMENTS:**
Orientation Maps
Concept Plan – 285 Hardman Avenue
Proposed “Swap” Property (South Park Owned)

EDA-Owned Property
AGENDA ITEM:  2020 Second Quarter Financial Report

DESIRED MEETING OUTCOMES:

Discussion on the 2020 Second Quarter Financial Report

OVERVIEW:

The second quarter of 2020 is completed and financial results are available. The Acting Finance Director prepared the attached second quarter financial report for Council review. The following items are important to note when reviewing the report:

- The Benchmark is roughly 50% and is based on a fluid calendar year of operations.
- Many of the variances result from seasonality and not all financial transactions occur evenly throughout the year. Some are one time or periodic activities that do not occur in each quarter.
- Investment income is recorded and allocated to the funds on a semi-annual basis.
- Large revenue sources (i.e. tax settlements and LGA) are received in May, July and December, which underscores the importance of a strong fund balance as a tool to avoid General Fund borrowing for operations.

Finance has not noted any worrisome variances in the operating funds for the second quarter. The variances that have occurred are noted in the attached report. The attached financial report includes budget revisions that affect several departments and funds:

- Revenue budget adjustments were made for amounts that will not be realized in 2020, primarily due to COVID-19 affected programs, e.g., school liaison, outdoor pools, summer and fall recreation activities in the General Fund; ice rentals in the Doug Woog Arena; rentals and other fees in the Library.
- Reductions in expenditure budget amounts have been made for positions that were vacant during 2020 in Finance, Engineering, and Code Enforcement. In addition, adjustments were made for voluntary furloughs taken by staff in Recreation and Library.
- Reductions in expenditure budget amounts in Recreation due to the closing of facilities and cancellation of activities due to COVID-19.
- Other reductions in expenditure budget amounts were made based on department’s evaluation of changes in training and travel for the remainder of the year.

The second quarter financial report will be placed on consent for formal council action at the September 21, 2020 meeting.

SOURCE OF FUNDS:

N/A
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<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
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### GENERAL OPERATING FUND

#### GENERAL FUND - REVENUES

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#### GENERAL FUND - EXPENDITURES

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<td>Streets, Alley’s and Blvd’s</td>
<td>1,860,522.00</td>
<td>1,860,522.00</td>
<td>907,159.84</td>
<td>48.76%</td>
</tr>
<tr>
<td>Buildings</td>
<td>258,147.00</td>
<td>258,147.00</td>
<td>128,747.35</td>
<td>49.87%</td>
</tr>
<tr>
<td>Parks Facilities and Maintenance</td>
<td>1,022,067.00</td>
<td>1,022,067.00</td>
<td>468,104.56</td>
<td>45.80%</td>
</tr>
<tr>
<td><strong>Total Public Works</strong></td>
<td><strong>3,625,821.00</strong></td>
<td><strong>3,577,565.00</strong></td>
<td><strong>1,707,345.13</strong></td>
<td><strong>47.72%</strong></td>
</tr>
<tr>
<td>City Planner</td>
<td>170,293.00</td>
<td>170,293.00</td>
<td>74,381.33</td>
<td>43.68%</td>
</tr>
<tr>
<td>Code Enforcement</td>
<td>558,906.00</td>
<td>529,007.00</td>
<td>238,731.75</td>
<td>45.13%</td>
</tr>
<tr>
<td><strong>Total Community Development</strong></td>
<td><strong>729,199.00</strong></td>
<td><strong>699,300.00</strong></td>
<td><strong>313,113.08</strong></td>
<td><strong>44.78%</strong></td>
</tr>
<tr>
<td>Parks Administration</td>
<td>439,594.00</td>
<td>424,619.00</td>
<td>210,138.46</td>
<td>49.49%</td>
</tr>
<tr>
<td>Splash Pool</td>
<td>76,854.00</td>
<td>30,249.00</td>
<td>9,418.44</td>
<td>31.14%</td>
</tr>
<tr>
<td>Northview Pool</td>
<td>99,654.00</td>
<td>51,049.00</td>
<td>8,449.40</td>
<td>16.55%</td>
</tr>
<tr>
<td>Recreation Programs</td>
<td>169,323.00</td>
<td>115,736.00</td>
<td>49,616.40</td>
<td>42.87%</td>
</tr>
<tr>
<td>Community Affairs</td>
<td>118,669.00</td>
<td>118,669.00</td>
<td>58,322.80</td>
<td>49.15%</td>
</tr>
<tr>
<td><strong>Total Leisure Services</strong></td>
<td><strong>904,094.00</strong></td>
<td><strong>740,322.00</strong></td>
<td><strong>335,945.50</strong></td>
<td><strong>45.38%</strong></td>
</tr>
<tr>
<td>Contingencies</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Transfers out</td>
<td>20,000.00</td>
<td>20,000.00</td>
<td>10,002.00</td>
<td>50.01%</td>
</tr>
<tr>
<td><strong>Total Nondepartmental</strong></td>
<td><strong>20,000.00</strong></td>
<td><strong>20,000.00</strong></td>
<td><strong>10,002.00</strong></td>
<td><strong>50.01%</strong></td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>16,631,741.00</strong></td>
<td><strong>16,305,533.00</strong></td>
<td><strong>8,345,477.20</strong></td>
<td><strong>51.18%</strong></td>
</tr>
<tr>
<td><strong>Revenues Over (Under) Expenditures</strong></td>
<td><strong>(13,500.00)</strong></td>
<td><strong>94,108.00</strong></td>
<td><strong>(2,702,845.99)</strong></td>
<td><strong>45.38%</strong></td>
</tr>
</tbody>
</table>
### OTHER OPERATING FUNDS

#### LIBRARY FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>823,942.00</td>
<td>819,257.00</td>
<td>409,866.54</td>
<td>50.03%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>823,942.00</td>
<td>800,801.00</td>
<td>371,041.54</td>
<td>46.33%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>0.00</td>
<td>18,456.00</td>
<td>38,825.00</td>
<td></td>
</tr>
</tbody>
</table>

#### DOUG WOOG ARENA

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>1,088,104.00</td>
<td>1,065,780.00</td>
<td>483,715.22</td>
<td>45.39%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>838,573.00</td>
<td>777,573.00</td>
<td>391,764.86</td>
<td>50.38%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>249,531.00</td>
<td>288,207.00</td>
<td>91,950.36</td>
<td></td>
</tr>
</tbody>
</table>

#### AIRPORT OPERATING FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>1,217,242.00</td>
<td>1,199,042.00</td>
<td>736,292.59</td>
<td>61.41%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>1,127,742.00</td>
<td>1,115,042.00</td>
<td>468,183.19</td>
<td>41.99%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>89,500.00</td>
<td>84,000.00</td>
<td>268,109.40</td>
<td></td>
</tr>
</tbody>
</table>

#### CENTRAL SQUARE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>386,478.00</td>
<td>386,478.00</td>
<td>123,996.83</td>
<td>32.08%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>378,022.00</td>
<td>384,837.00</td>
<td>154,192.54</td>
<td>40.07%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>8,456.00</td>
<td>1,641.00</td>
<td>(30,195.71)</td>
<td></td>
</tr>
</tbody>
</table>

#### STORM WATER UTILITY FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Revenues and Grants</td>
<td>1,329,490.00</td>
<td>1,329,490.00</td>
<td>251,104.92</td>
<td>18.89%</td>
</tr>
<tr>
<td>Expenditures - Operating</td>
<td>1,432,692.00</td>
<td>1,432,692.00</td>
<td>307,842.18</td>
<td>21.49%</td>
</tr>
<tr>
<td>Transfers - Capital</td>
<td>134,500.00</td>
<td>134,500.00</td>
<td>29,242.33</td>
<td>21.74%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>(237,702.00)</td>
<td>(237,702.00)</td>
<td>(85,979.59)</td>
<td></td>
</tr>
</tbody>
</table>

#### STREET LIGHT UTILITY FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>290,865.00</td>
<td>290,865.00</td>
<td>98,130.44</td>
<td>33.74%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>276,103.00</td>
<td>276,103.00</td>
<td>99,558.33</td>
<td>36.06%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>14,762.00</td>
<td>14,762.00</td>
<td>(1,427.89)</td>
<td></td>
</tr>
</tbody>
</table>

#### WATER AND SEWER UTILITY FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>486,056.00</td>
<td>486,056.00</td>
<td>28,125.56</td>
<td>5.79%</td>
</tr>
<tr>
<td>Water Utility</td>
<td>2,363,416.00</td>
<td>2,363,416.00</td>
<td>703,368.09</td>
<td>29.76%</td>
</tr>
<tr>
<td>Sewer Utility</td>
<td>3,685,500.00</td>
<td>3,685,500.00</td>
<td>1,278,799.71</td>
<td>34.70%</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>6,534,972.00</td>
<td>6,534,972.00</td>
<td>2,010,293.36</td>
<td>30.76%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>486,506.00</td>
<td>486,506.00</td>
<td>237,675.56</td>
<td>48.85%</td>
</tr>
<tr>
<td>Water Utility</td>
<td>993,575.00</td>
<td>993,575.00</td>
<td>449,867.35</td>
<td>45.28%</td>
</tr>
<tr>
<td>Sewer Utility</td>
<td>3,326,557.00</td>
<td>3,326,557.00</td>
<td>1,816,880.30</td>
<td>54.62%</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>4,806,638.00</td>
<td>4,806,638.00</td>
<td>2,504,423.21</td>
<td>52.10%</td>
</tr>
<tr>
<td>Transfers</td>
<td>770,056.00</td>
<td>770,056.00</td>
<td>44,148.11</td>
<td>5.73%</td>
</tr>
<tr>
<td>Water Utility</td>
<td>100,000.00</td>
<td>100,000.00</td>
<td>65,905.06</td>
<td>65.91%</td>
</tr>
<tr>
<td>Total Transfers</td>
<td>870,056.00</td>
<td>870,056.00</td>
<td>110,053.17</td>
<td>12.65%</td>
</tr>
<tr>
<td>Net Income (Loss)</td>
<td>858,278.00</td>
<td>858,278.00</td>
<td>(604,183.02)</td>
<td></td>
</tr>
</tbody>
</table>

#### CENTRAL GARAGE - INTERNAL SERVICE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>2020 Original Budget</th>
<th>2020 Amended Budget</th>
<th>Actual thru June 2020</th>
<th>Benchmark Percent of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>1,448,880.00</td>
<td>1,448,880.00</td>
<td>733,822.54</td>
<td>50.65%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>1,420,022.00</td>
<td>1,420,022.00</td>
<td>1,003,284.68</td>
<td>70.65%</td>
</tr>
<tr>
<td>Net Income (Loss)</td>
<td>28,858.00</td>
<td>28,858.00</td>
<td>(269,462.14)</td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>2020 Original Budget</td>
<td>2020 Amended Budget</td>
<td>Actual thru June 2020</td>
<td>Benchmark 50% Percent of Budget</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>----------------------</td>
<td>---------------------</td>
<td>-----------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td><strong>ECONOMIC DEVELOPMENT AUTHORITY</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>313,329.00</td>
<td>313,329.00</td>
<td>119,900.59</td>
<td>38.27% A</td>
</tr>
<tr>
<td>Expenditures</td>
<td>313,329.00</td>
<td>313,329.00</td>
<td>139,435.04</td>
<td>44.50%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>0.00</td>
<td>0.00</td>
<td>(19,534.45)</td>
<td></td>
</tr>
<tr>
<td><strong>EDA - HOUSING (HRA LEVY)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>303,211.00</td>
<td>303,211.00</td>
<td>125,637.73</td>
<td>41.44% A</td>
</tr>
<tr>
<td>Expenditures</td>
<td>303,211.00</td>
<td>303,211.00</td>
<td>70,791.19</td>
<td>23.35%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenditures</td>
<td>0.00</td>
<td>0.00</td>
<td>54,846.54</td>
<td></td>
</tr>
<tr>
<td><strong>HRA - PUBLIC HOUSING</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>1,986,855.00</td>
<td>1,986,855.00</td>
<td>706,372.76</td>
<td>35.55% S</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>1,840,049.00</td>
<td>1,840,049.00</td>
<td>670,430.53</td>
<td>36.44%</td>
</tr>
<tr>
<td>Capital Expenses</td>
<td>0.00</td>
<td>0.00</td>
<td>198,011.40</td>
<td></td>
</tr>
<tr>
<td>Net Income (Loss)</td>
<td>146,806.00</td>
<td>146,806.00</td>
<td>(162,069.17)</td>
<td></td>
</tr>
</tbody>
</table>
Tickmark Explanations for Budget VS Actual Variances

A. Taxes will be received in May/July and December/January
B. 2nd quarter Franchise fees come in July
C. LGA is received in July and December, recycling grant not received in 2020 yet
D. Interest earnings are posted semi-annually and other minor revenues are unpredictable; interest for first half higher than expected
E. Recycling costs lag as we are billed by WSP quarterly, and composite site costs occur May-October
F. Paid 3 quarterly payments through June
G. Outdoor pools will be closed in 2021
H. Summer recreation programs cancelled, no part-time employees for the summer
I. Ice time rentals picking up since re-opening
J. Certain revenues come in at the start of the year at the Airport (land leases)
K. Transfer from water to cover deficit will not be posted until the end of the year
L. Utility revenues are based on service delivery, bills issued in Jan, Feb, Mar of 2020 are accrued back to the 2019 books as they are for services delivered in 2019. This is a regular & routine occurrence.
M. Sewer has 7 months of MCES charges
N. Transfers to capital projects and utility administration to cover deficit will not be posted until the end of the year
O. Transfer for sewer portion of bond payment (2019A) made in January
P. Vehicle purchases are not uniform throughout the year
Q. Payments for projects are not uniform throughout the year
R. Paid 5 months of utility services through June
S. Activity from management company has not been updated for 2020
AGENDA ITEM: 2021 Preliminary Budget & Levy

DESIRED MEETING OUTCOMES:

Discussed and provide guidance on proposed Preliminary Levy for 2021 Budget.

OVERVIEW:

After discussions at our last work session, the proposed preliminary levy increase for the 2021 Budget stands at 4.44% (see Summary Levy Sheet attached). The proposed levy increase has been reduced from the 5.5% presented in the initial draft. This percentage increase is also below the average for the 11 Dakota County municipalities as indicated in the chart below:

<table>
<thead>
<tr>
<th>City</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apple Valley</td>
<td>4.30%</td>
</tr>
<tr>
<td>Burnsville</td>
<td>7.50%</td>
</tr>
<tr>
<td>Eagan</td>
<td>5.40%</td>
</tr>
<tr>
<td>Farmington</td>
<td>4.90%</td>
</tr>
<tr>
<td>Hastings</td>
<td>4.20%</td>
</tr>
<tr>
<td>Inver Grove Heights</td>
<td>6.10%</td>
</tr>
<tr>
<td>Lakeville</td>
<td>6.50%</td>
</tr>
<tr>
<td>Mendota Heights</td>
<td>4.32%</td>
</tr>
<tr>
<td>Rosemount</td>
<td>3.30%</td>
</tr>
<tr>
<td>South St. Paul</td>
<td>4.44%</td>
</tr>
<tr>
<td>West St. Paul</td>
<td>6.15%</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>5.71%</strong></td>
</tr>
</tbody>
</table>

While additional opportunities may exist to reduce the levy further, staff’s recommendation is any additional revenue enhancements or expenditure savings should be allocated to the infrastructure fund to help build an on-going source of dollars for infrastructure needs. We would also recommend that we allocate the unused Excess Tax Increment funds to the Infrastructure Fund with the understanding that in a worse case scenario, we could pull those funds back to address budget shortfalls resulting from the loss of LGA or other factors as the Council deems appropriate.

As has been stated earlier, staff believes a near term goal should have us generating between $3.5 to 5.0 million a year to address street and other infrastructure needs. This number is based more
on internal capacity to create/manage projects than on actual infrastructure needs. However, it
gives us a nice starting point to help fund needed projects while not precluding the ability to
continue to build additional capacity.

Based on factors known today, here is a rough approximation of revenue sources to help us move
toward that goal:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concord TIF District (2025)</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Excess TIF (now)</td>
<td>$240,000</td>
</tr>
<tr>
<td>MSA (now)</td>
<td>$550,000</td>
</tr>
<tr>
<td>Debt Levy Reduction (2027)</td>
<td>$463,329</td>
</tr>
<tr>
<td>Assessments (lots of side yards)</td>
<td>??</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$2,253,329</td>
</tr>
<tr>
<td>Current Infrastructure Levy</td>
<td>$122,130</td>
</tr>
<tr>
<td>Adding $120,000/yr. for 6 yrs.</td>
<td>$720,000  (from 2022 thru 2027)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$3,095,459</strong></td>
</tr>
</tbody>
</table>

Note: Utility funds were not included in this calculation at this time as the capacity in this area is
still limited.

So, by 2027, we would have on-going revenues of almost $3.1 million per year with minimal
increases to taxpayers. This could be used to fund projects on a “pay as you go” basis or to fund
debt service payments to undertake larger projects depending on needs and timing
considerations.

Subject to comments/direction from the City Council, staff will be presenting a 4.44% increase at
our next regular Council Meeting.

**SOURCE OF FUNDS:**

N/A
## SPENDING AND TAXES
### ALL TAX LEVY SUPPORTED FUNDS

<table>
<thead>
<tr>
<th></th>
<th>Revised Budget 2019</th>
<th>Revised Budget 2020</th>
<th>Preliminary Budget 2021</th>
<th>20 TO 21 CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAXES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>$9,761,865</td>
<td>$10,150,834</td>
<td>$10,796,719</td>
<td>$645,885</td>
</tr>
<tr>
<td>Library</td>
<td>783,448</td>
<td>814,442</td>
<td>820,098</td>
<td>5,656</td>
</tr>
<tr>
<td>Doug Woog Arena</td>
<td>330,954</td>
<td>322,954</td>
<td>322,954</td>
<td>-</td>
</tr>
<tr>
<td>Capital Program</td>
<td>-</td>
<td>122,130</td>
<td>122,130</td>
<td>-</td>
</tr>
<tr>
<td>Debt Service</td>
<td>1,336,711</td>
<td>1,566,612</td>
<td>1,490,611</td>
<td>(76,001)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$12,212,978</td>
<td>$12,976,972</td>
<td>$13,552,512</td>
<td>$575,540</td>
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<tr>
<td><strong>SPENDING</strong></td>
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<tr>
<td>General Fund</td>
<td>$16,156,941</td>
<td>$16,631,741</td>
<td>$17,167,517</td>
<td>$535,776</td>
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<tr>
<td>Library</td>
<td>790,848</td>
<td>823,942</td>
<td>826,598</td>
<td>2,656</td>
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<tr>
<td>Doug Woog Arena</td>
<td>931,025</td>
<td>838,573</td>
<td>893,659</td>
<td>55,086</td>
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<tr>
<td>Capital Program</td>
<td>943,209</td>
<td>1,173,556</td>
<td>1,321,422</td>
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<tr>
<td>Debt Service</td>
<td>1,336,711</td>
<td>1,566,612</td>
<td>1,490,611</td>
<td>(76,001)</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$20,158,734</td>
<td>$21,034,424</td>
<td>$21,699,807</td>
<td>$665,383</td>
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</tbody>
</table>

Increased Taxes for:
- Operations: 5.03%
- Infrastructure Replacement: 0.00%
- Debt Service: -0.59%

**Total Increase:** 4.44%
### 2021 BUDGET SUMMARY

**ALL LEVY SUPPORTED FUNDS**

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>Revised</th>
<th>General</th>
<th>Library</th>
<th>Doug Woog Arena</th>
<th>Capital Programs</th>
<th>Debt</th>
<th>Total Budget</th>
<th>2020 Budget</th>
<th>2020 to 2021 Change</th>
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<tr>
<td><strong>REVENUES</strong></td>
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<tr>
<td>Property Tax Levy:</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Property Taxes</td>
<td>10,796,719</td>
<td>820,098</td>
<td>322,954</td>
<td>122,130</td>
<td>1,490,611</td>
<td>13,552,512</td>
<td>12,976,972</td>
<td>575,540</td>
<td>4.44%</td>
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</tr>
<tr>
<td>Total Property Taxes</td>
<td>10,796,719</td>
<td>820,098</td>
<td>322,954</td>
<td>122,130</td>
<td>1,490,611</td>
<td>13,552,512</td>
<td>12,976,972</td>
<td>575,540</td>
<td>4.44%</td>
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<td>-</td>
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<td>-</td>
<td>-</td>
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<td>1,806,785</td>
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<td>772,153</td>
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<td>729,000</td>
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<td>-</td>
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<td>2,546,269</td>
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<td>-</td>
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<td>190,000</td>
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<td>-</td>
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<td>13,500</td>
<td>(13,500)</td>
<td>-100.00%</td>
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<td><strong>TOTAL REVENUES</strong></td>
<td>17,167,517</td>
<td>826,598</td>
<td>1,051,954</td>
<td>1,321,422</td>
<td>1,490,611</td>
<td>21,858,102</td>
<td>21,406,085</td>
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<td>General Government</td>
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<td>9,042,461</td>
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<td>-</td>
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<td>3,625,821</td>
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<td>893,659</td>
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<td>-</td>
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<td>2,447,940</td>
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<td>-</td>
<td>260,000</td>
<td>100.00%</td>
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<tr>
<td>Debt Service (external)</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>1,490,611</td>
<td>1,566,612</td>
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<td>(20,000)</td>
<td>-100.00%</td>
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</tr>
<tr>
<td><strong>TOTAL APPROPRIATIONS</strong></td>
<td>17,167,517</td>
<td>826,598</td>
<td>893,659</td>
<td>1,321,422</td>
<td>1,490,611</td>
<td>21,699,807</td>
<td>21,034,424</td>
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</table>