



CITY COUNCIL MEETING AGENDA

City of New Prague

Monday, September 18, 2023 at 6:00 PM

City Hall Council Chambers - 118 Central Ave N

OPTIONAL ONLINE CONNECTION. MEETINGS ARE IN PERSON.

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1. CALL TO ORDER

- a. Pledge of Allegiance

2. APPROVAL OF REGULAR AGENDA

3. CONSENT AGENDA

(The following agenda items are considered to be non-controversial and routine in nature. They will be handled with one motion of the City Council. Council members may request that specific items be removed from the Consent Agenda and be acted upon separately.)

- a. Meeting Minutes
 - i. September 5, 2023, City Council Meeting Minutes
 - ii. September 5, 2023, Special City Council Meeting Minutes (Closed)
- b. Claims for Payment: **\$451,538.29**

4. CITY ENGINEER PROJECTS UPDATE

- a. September 18, 2023

5. CITY ENGINEER PROJECTS UPDATE

- a. [Resolution #23-09-18-01](#) - Declaring Cost to be Assessed, Ordering Preparation of Proposed Assessment, and Calling for Hearing on Proposed Assessment

6. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA

(Speakers limited to 5 minutes.)

7. PUBLIC HEARING(S) – 6:00 PM

8. ORDINANCE(S) FOR INTRODUCTION

- a. [Ordinance #342](#) - Amending Chapter 93 of the Code of Ordinances to Administer and Regulate the Public Rights of Way in the Public Interest, and to Provide for the Issuance and Regulation of Right-of-Way Permits

9. ORDINANCE(S) FOR ADOPTION

- a. [Ordinance #340](#) - Granting a Cable Television Franchise to Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC

- [b.](#) Ordinance #341 - Amending Section 707 of the Zoning Ordinance Titled Screening Relating to Screening Requirements in the I-1 Light Industrial Zoning District

10. RESOLUTIONS

- [a.](#) Resolution #23-09-18-02 - Adopting 2023 Property Tax Levy for Taxes Payable in 2024
- [b.](#) Resolution #23-09-18-03 - MnDOT Transportation and Economic Development Program Application

11. GENERAL BUSINESS

- [a.](#) Schedule Budget Meeting #2

12. MISCELLANEOUS

- [a.](#) Meeting Minutes
 - i. Park
- [b.](#) Discussion of Items not on the Agenda

13. ADJOURNMENT

UPCOMING MEETINGS AND NOTICES:

September 25	3:30 p.m. Utilities Commission
September 25	4:00 p.m. Joint Powers Board – Fitness & Aquatic Center
September 26	6:30 p.m. Golf Board
September 27	6:30 p.m. Planning Commission
October 2	6:00 p.m. City Council
October 9	12:00 p.m. Community Center Board
October 10	6:00 p.m. Park Board
October 11	7:30 a.m. EDA Board
October 11	7:00 p.m. Cedar Lake Water & Sanitary Sewer District
October 16	6:00 p.m. City Council

CITY COUNCIL MEETING MINUTES



City of New Prague

Tuesday, September 05, 2023 at 6:00 PM

City Hall Council Chambers - 118 Central Ave N

1. CALL TO ORDER

Mayor Duane Jirik called the meeting to order at approximately 6:00 p.m.

PRESENT

- Mayor Duane Jirik
- Councilmember Shawn Ryan
- Councilmember Rik Seiler
- Councilmember Bruce Wolf

ABSENT

- Councilmember Maggie Bass

Staff present: City Administrator Josh Tetzlaff, Planning/Community Development Director Ken Ondich, Police Chief Tim Applen, and Public Works Director Matt Rynda

- a. Pledge of Allegiance

2. APPROVAL OF REGULAR AGENDA

Motion made by Councilmember Seiler, Seconded by Councilmember Wolf to approve the Regular Agenda.
 Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
 Motion carried (4-0).

3. SWEARING IN OF SERGEANT

- a. Sergeant Curtis Culbreth
 Sergeant Curtis Culbreth was sworn into the New Prague Police Department by Mayor Jirik.

4. CONSENT AGENDA

Motion made by Councilmember Wolf, Seconded by Councilmember Ryan to approve the Consent Agenda.
 Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
 Motion carried (4-0).

- a. Meeting Minutes
 - i. August 21, 2023, City Council Meeting Minutes
 - ii. August 21, 2023, Special Closed City Council Meeting Minutes
 - iii. August 29, 2023, Special City Council Meeting Minutes
- b. Claims for Payment: **\$90,583.10**
- c. LG220 MN Lawful Gambling Application for Exempt Permit for Scott Le Sueur Waterfowlers, Inc. on November 16, 2023, involving a raffle at The Park Ballroom, 300 Lexington Avenue South, New Prague
- d. LG220 MN Lawful Gambling Application for Exempt Permit for Ducks Unlimited New Prague Chapter 263 on October 14, 2023, involving a raffle at the Park Ballroom, 300 Lexington Avenue South, New Prague

- e. Le Sueur County Voter Account Agreement

5. CITY ENGINEER PROJECTS UPDATE

- a. September 5, 2023
City Engineer Chris Knutson provided a memo with updates from various projects taking place around the City. No action was taken.

6. 10TH AVENUE RRFB - RECOMMENDATION TO AWARD

- a. Bid Summary
- b. Resolution #23-09-05-01 - 10th Avenue SE RRFB Accepting Bids
After hearing from Engineer Knutson, motion for approval made by Councilmember Seiler, Seconded by Councilmember Wolf.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

7. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA

No members of the public spoke at this meeting.

8. PUBLIC HEARING(S) – 6:00 PM

- a. Granting a Cable Television Franchise to Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC
Mayor Jirik opened the public hearing. City Administrator Tetzlaff provided context. Motion made by Councilmember Seiler, Seconded by Councilmember Ryan to close the public hearing.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

9. ORDINANCE(S) FOR INTRODUCTION

Tetzlaff advised of corrections to the Ordinance numbers referenced on the agenda. They should read as follows:

Ordinance #339 - Amending Title XIII of the City Code by Creating a New Chapter 132 as to the Public Use of Cannabis and Hemp Products and the Smoking of Any Substance on Public Property

Ordinance #340 - Granting a Cable Television Franchise to Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC

Ordinance #341 - Amending Section 707 of the Zoning Ordinance Titled Screening Relating to Screening Requirements in the I-1 Light Industrial District

- a. ~~Ordinance #339~~ Ordinance #340 - Granting a Cable Television Franchise to Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC
Motion made by Councilmember Ryan to introduce Ordinance #340 as the First Reading, Seconded by Councilmember Seiler.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).
- b. Introduction of Ordinance Amending Section 707 of the Zoning Ordinance Titled Screening Relating to Screening Requirements in the I-1 Light Industrial Zoning District
Motion made by Mayor Jirik to introduce Ordinance #341 as the First Reading, Seconded by Councilmember Wolf.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

10. ORDINANCE(S) FOR ADOPTION

- a. Adoption of Ordinance Creating New Chapter 132 to the City Code Relating to Public Use of Cannabis and Hemp Products and the Smoking of Any Substance on Public Property
Motion made by Mayor Jirik, Seconded by Councilmember Seiler to adopt Ordinance #339.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

11. RESOLUTIONS

- a. Resolution #23-09-05-02 - Amending and Restating the Resolution Establishing the New Prague Golf Board
City Administrator Tetzlaff spoke on this item. Discussion was had and no action was taken.

12. GENERAL BUSINESS

- a. City Administrator Evaluation
Motion made by Mayor Jirik, Seconded by Councilmember Ryan to increase City Administrator Tetzlaff's salary from Step 3 to Step 4 on Grade 19 on the City Pay Matrix.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

13. MISCELLANEOUS

- a. Meeting Minutes
 - i. Planning
 - ii. Utilities

14. ADJOURNMENT

Motion made by Councilmember Seiler, Seconded by Councilmember Ryan to adjourn the meeting at approximately 6:50 p.m.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

ATTEST:

Duane J. Jirik
Mayor

Joshua M. Tetzlaff
City Administrator



SPECIAL CITY COUNCIL MEETING - CLOSED MINUTES

City of New Prague

Tuesday, September 05, 2023 at 6:00 PM

City Hall Council Chambers - 118 Central Ave N

Mayor Jirik called the Closed portion of the meeting to order at approximately 6:55 p.m.

PRESENT

- Mayor Duane Jirik
- Councilmember Shawn Ryan
- Councilmember Rik Seiler
- Councilmember Bruce Wolf
- City Administrator Josh Tetzlaff

ABSENT

- Councilmember Maggie Bass

1. **CLOSED SESSION:** Went into Closed session at 6:55 p.m. to conduct a closed City Council meeting to consider strategy for labor negotiations, including negotiation strategies or developments, or discussion and review of labor negotiation proposals.
2. **ADJOURNMENT:** Motion made by Councilmember Seiler, Seconded by Councilmember Ryan to adjourn the meeting at approximately 8:13 p.m.
Voting Yea: Mayor Jirik, Councilmember Ryan, Councilmember Seiler, Councilmember Wolf
Motion carried (4-0).

ATTEST:

Duane J. Jirik
Mayor

Joshua M. Tetzlaff
City Administrator

CITY OF NEW PRAGUE
 ACCOUNTS PAYABLE
 09/18/2023

Section 3, Item b.

VENDOR	DESCRIPTION	AMOUNT	TOTAL
FUND 101 - GENERAL FUND			
<u>RURAL FIRE - TO BE REIMBURSED</u>			
CENTERPOINT ENERGY	NATURAL GAS	\$45.20	
LAKERS NEW PRAGUE SANITARY	TRASH - RURAL	\$20.42	
MN STATE FIRE CHIEFS ASSN	FIRE CHIEFS CONFERENCE	\$525.00	
VERIZON WIRELESS	TABLETS	\$30.05	
TOTAL:			\$620.67
<u>OTHER - TO BE REIMBURSED</u>			
EARL F. ANDERSEN	SCHOOL SPEED SIGNS	\$690.00	
KENNEDY & GRAVEN CHARTERED	BRICK'S BOATWORKS	\$53.00	
TOTAL:			\$743.00
<u>LAWN MAINTENANCE - TO BE REIMBURSED</u>			
STEVE RYNDA CONSTRUCTION	LAWN MOWING - 104 2ND ST NE	\$429.50	
STEVE RYNDA CONSTRUCTION	LAWN MOWING - 304 SUNSET AVE N	\$161.06	
STEVE RYNDA CONSTRUCTION	LOT - LEXINGTON AVE & 7TH ST NE	\$268.44	
TOTAL:			\$859.00
<u>ESCROW REFUNDS</u>			
KA WITT CONSTRUCTION INC	ESCROW - 605 SUMMER AVE SE	\$1,500.00	
KA WITT CONSTRUCTION INC	ESCROW - 613 SUMMER AVE SE	\$1,500.00	
KA WITT CONSTRUCTION INC	ESCROW - 703 11TH ST NE	\$1,500.00	
SHIMOTA PROJECT MANAGEMENT	ESCROW - 1108 TIKALSKY ST SE	\$1,500.00	
SHIMOTA PROJECT MANAGEMENT	ESCROW - 1201 TIKALSKY ST SE	\$1,500.00	
TOTAL:			\$7,500.00
<u>COUNCIL</u>			
SUEL PRINTING	COUNCIL MINUTES/COMCAST	\$1,504.00	
TOTAL:			\$1,504.00
<u>ADMINISTRATION</u>			
SUEL PRINTING	CHECKS	\$83.29	
VETERAN SHREDDING	CONTRACTED SERVICES	\$8.50	
TOTAL:			\$91.79
<u>TECH NETWORK</u>			
GOVOFFICE	ANNUAL WEBSITE HOSTING FEE	\$2,995.00	
TYLER TECHNOLOGIES	INCODE SOFTWARE	\$3,624.83	
TOTAL:			\$6,619.83
<u>ATTORNEY</u>			
KENNEDY & GRAVEN CHARTERED	LEGAL SERVICES	\$5,034.30	
TOTAL:			\$5,034.30
<u>PLANNING</u>			
METRO SALES INC	COPIER LEASE	\$53.75	
SUEL PRINTING	LANDSCAPING ORD/ RENTAL UNIT	\$192.00	
TOTAL:			\$245.75
<u>GOVERNMENT BUILDING</u>			
AMAZON CAPITAL SERVICES	POWER SUPPLY	\$11.33	
CENTERPOINT ENERGY	NATURAL GAS	\$93.76	
JANI-KING OF MINNESOTA INC	CLEANING SERVICE	\$1,286.63	
LAKERS NEW PRAGUE SANITARY	TRASH - CITY HALL	\$87.81	
MEI TOTAL ELEVATOR SOLUTIONS	ELEVATOR MAINTENANCE	\$66.31	
TOTAL:			\$1,545.84

CITY OF NEW PRAGUE
 ACCOUNTS PAYABLE
 09/18/2023

Section 3, Item b.

VENDOR	DESCRIPTION	AMOUNT	TOTAL
<u>POLICE</u>			
AMAZON CAPITAL SERVICES	PHONE CASE /PROTECTORS	\$153.89	
ANCOM COMMUNICATIONS	BATTERIES/MIC	\$2,460.28	
AT&T MOBILITY	WIRELESS CELLS	\$541.26	
CENTRAL FIRE PROTECTION INC	FIRE EXTINGUISHER MAINTENANCE	\$97.00	
JEFF BELZER NEW PRAGUE FORD	LUBE, OIL, FILTER SERVICE #218	\$71.94	
MN COUNTY ATTORNEYS ASSOC.	WARRANT FORMS	\$22.00	
MOTOROLA SOLUTIONS, INC.	CHARGER	\$112.50	
PETERSON COUNSELING AND CONSULTING	CONSULTING SERVICE - AUGUST	\$255.00	
STREICHER'S	AMMO	\$421.92	
STREICHER'S	BADGES - SERGEANT	\$319.98	
VETERAN SHREDDING	CONTRACTED SERVICES	\$42.50	
TOTAL:			<u><u>\$4,498.27</u></u>
<u>FIRE</u>			
CENTERPOINT ENERGY	NATURAL GAS	\$45.20	
LAKERS NEW PRAGUE SANITARY	TRASH - FIRE	\$20.42	
MN STATE FIRE CHIEFS ASSN	FIRE CHIEFS CONFERENCE	\$525.00	
VERIZON WIRELESS	TABLETS	\$30.05	
TOTAL:			<u><u>\$620.67</u></u>
<u>BUILDING INSPECTOR</u>			
METRO SALES INC	COPIER LEASE	\$53.75	
TOTAL:			<u><u>\$53.75</u></u>
<u>STREET</u>			
ACE HARDWARE & PAINT	SUPER GLUE / PENCILS	\$9.95	
AMAZON CAPITAL SERVICES	ZIP TIES	\$24.69	
CENTERPOINT ENERGY	NATURAL GAS	\$65.00	
LAKERS NEW PRAGUE SANITARY	TRASH - STREETS	\$105.62	
METRO SALES INC	COPIER LEASE	\$53.75	
OESTREICH REPAIR	'13 FL TIRE REPAIR	\$38.95	
RIVER COUNTRY COOP	15W 40 OIL	\$936.01	
RIVER COUNTRY COOP	DIESEL FUEL	\$3,588.40	
STAR GROUP LLC.	'07 FL - PARTS	\$273.81	
STAR GROUP LLC.	OIL FILTER, SENSOR	\$51.36	
TONY KUBES	CHIPPING STUMPS	\$400.00	
US BANK EQUIPMENT FINANCE	COPIER LEASE	\$89.10	
WHITE CAP L.P.	MELTER & ROUTER RENTAL	\$6,050.00	
WM. MUELLER & SONS INC.	ASPHALT	\$70.65	
ZORO TOOLS INC.	BEACON LIGHTS	\$212.89	
TOTAL:			<u><u>\$11,970.18</u></u>
<u>PARKS</u>			
ACE HARDWARE & PAINT	SUPPLIES	\$500.48	
AMAZON CAPITAL SERVICES	FLAGS	\$52.90	
BOLTON & MENK, INC.	TREE SURVEY	\$14,429.00	
CENTERPOINT ENERGY	NATURAL GAS	\$35.38	
HERITAGE LANDSCAPE SUPPLY GROUP	SETTLER'S PARK PRAIRIE GRASS	\$548.40	
LAKERS NEW PRAGUE SANITARY	TRASH	\$331.79	
MCMaster-CARR SUPPLY COMPANY	FOUNTAIN PARTS	\$34.84	
MCMaster-CARR SUPPLY COMPANY	HOSE FITTINGS	\$188.39	
MCMaster-CARR SUPPLY COMPANY	MEMORIAL PARK FOUNTAIN - SCREWS	\$16.35	
PLAISTED COMPANIES	ATHLETIC MIX	\$1,776.70	
TRI-STATE BOBCAT	AUGER	\$4,465.00	
TRI-STATE BOBCAT	TOOLCAT REPAIR	\$1,697.76	
VERIZON WIRELESS	IPADS	\$10.02	
WM. MUELLER & SONS INC.	ASPHALT	\$70.65	
TOTAL:			<u><u>\$24,157.66</u></u>

CITY OF NEW PRAGUE
 ACCOUNTS PAYABLE
 09/18/2023

Section 3, Item b.

VENDOR	DESCRIPTION	AMOUNT	TOTAL
<u>PARK BOARD</u>			
MILLZ HOUSE	PAINT - BASKETBALL COURT	\$2,300.00	
TOTAL:			<u>\$2,300.00</u>
<u>LIBRARY</u>			
CENTERPOINT ENERGY	NATURAL GAS	\$30.71	
JANI-KING OF MINNESOTA INC	CLEANING SERVICE	\$743.27	
TOTAL:			<u>\$773.98</u>
<u>UNALLOCATED</u>			
SEH	CITY ROOF REPAIR	\$5,600.00	
TOTAL:			<u>\$5,600.00</u>
GENERAL FUND TOTAL:			<u>\$74,738.69</u>
FUND 233 - SPECIAL REVENUE - CRIME PREVENTION			
COAST TO COAST SOLUTIONS	CRAYONS	\$328.06	
CREATIVE PRODUCT SOURCE	BUCKLE UP LOLLIPOPS	\$294.00	
TOTAL:			<u>\$622.06</u>
FUND 317 - DEBT SERVICE - CIP 2015			
US BANK	2019A BOND PAYING AGENT FEE	\$550.00	
TOTAL:			<u>\$550.00</u>
FUND 421 - CAPITAL PROJECTS - CIP 2022			
HESELTON CONSTRUCTION LLC	2022 CIP PAY APP #5	\$170,403.21	
MAYO CLINIC HEALTH SYSTEM	2022 CIP	\$11,125.00	
TOTAL:			<u>\$181,528.21</u>
FUND 422 - CAPITAL PROJECTS - CIP 2023			
BRAUN INTERTEC	CIP 2023 - SUNRISE/SUNSET	\$3,461.00	
HOLTMEIER CONSTRUCTION INC	2023 CIP PAY APP #5	\$175,071.10	
TOTAL:			<u>\$178,532.10</u>
FUND 602 - ENTERPRISE - SANITARY SEWER			
1000BULBS.COM	BULBS	\$323.77	
ACE HARDWARE & PAINT	SUPPLIES	\$115.00	
CENTERPOINT ENERGY	NATURAL GAS	\$2,147.83	
CL BENSON CO. INC	MAU AIR FILTERS	\$3,871.44	
DEM-CON COMPANIES LLC	BIOSOLIDS DISPOSAL	\$26.17	
ELECTRIC PUMP	10 HP VFD	\$1,926.00	
ENVIRONMENTAL RESOURCE ASSOCIATES	TESTING	\$171.56	
GOPHER STATE ONE CALL	LINE LOCATES	\$42.52	
GRAINGER	RELAYS	\$34.60	
LAKERS NEW PRAGUE SANITARY	TRASH - WWTP	\$311.01	
MN VALLEY TESTING LABS	TESTING	\$118.58	
MOTION INDUSTRIES INC.	SEALS	\$256.72	
MUNICIPAL EMERGENCY SERVICE	O2 SENSOR	\$241.74	
PIRTEK	JETTER HOSE REPAIR	\$154.75	
RIVER COUNTRY COOP	PROPANE	\$35.42	
SALTCO	MONTHLY SALT FEE	\$1,947.95	
STAR GROUP LLC.	GEN #12 BATTERY	\$456.50	
STAR GROUP LLC.	V-BELTS	\$62.14	
US BANK EQUIPMENT FINANCE	COPIER LEASE	\$81.00	
UTILITY CONSULTANTS INC.	SAMPLES	\$1,553.33	
VERIZON WIRELESS	IPADS	\$10.02	
VETERAN SHREDDING	CONTRACTED SERVICES	\$8.50	
ZORO TOOLS INC.	FUSES	\$35.49	
TOTAL:			<u>\$13,932.04</u>

CITY OF NEW PRAGUE
 ACCOUNTS PAYABLE
 09/18/2023

Section 3, Item b.

VENDOR	DESCRIPTION	AMOUNT	TOTAL
FUND 606 - ENTERPRISE - STORM UTILITY			
GOPHER STATE ONE CALL	LINE LOCATES	\$42.53	
PIRTEK	JETTER HOSE REPAIR	\$154.76	
TYLER TECHNOLOGIES	INCODE SOFTWARE	\$1,238.92	
VERIZON WIRELESS	IPADS	\$10.02	
TOTAL:		<u>\$1,446.23</u>	<u>\$1,446.23</u>
FUND 651 - ENTERPRISE - AMBULANCE			
CENTERPOINT ENERGY	NATURAL GAS	\$45.19	
LAKERS NEW PRAGUE SANITARY	TRASH - AMBULANCE	\$20.42	
TYLER TECHNOLOGIES	INCODE SOFTWARE	\$123.35	
TOTAL:		<u>\$188.96</u>	<u>\$188.96</u>
TOTAL ACCOUNTS PAYABLE FOR COUNCIL APPROVAL:			\$451,538.29



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MEMORANDUM

TO: Mayor and City Council
Joshua Tetzlaff, City Administrator

FROM: Chris Knutson, PE (Lic. MN)

DATE: September 14, 2023

RE: Project Updates

See below for updates on current SEH Projects for the City of New Prague.

MAIN STREET (TH19) IMPROVEMENTS PROJECT

A draft change order has been created for review. This will be included in the project closeout.

2022 STREET AND UTILITY IMPROVEMENTS (COLUMBUS AVENUE)

We are continuing efforts to have turf established throughout this area. Seed has been spread, but watering efforts have not been made.

2023 STREET AND UTILITY IMPROVEMENTS

This project will have a substantial completion walkthrough and a punchlist provided to the contractor. With the exception of small adjustments identified in the punchlist, work is complete on the project for 2023 with final paving scheduled for 2024. Information for calling the assessment hearing is provided separately.

2024 STREET AND UTILITY IMPROVEMENTS PROJECT

The neighborhood meeting was held on September 13th with good attendance. A draft copy of the Feasibility Report will be provided to staff for review with copies for council anticipated for the first meeting in October in anticipation of calling a public hearing.

HSIP 10TH AVENUE SE-1ST STREET SE RRFB

The contractor has been notified of award and MnDOT submittals are being sent. A schedule is anticipated prior to the next meeting.

10TH AVENUE NE – WATERMAIN REPAIRS

A preconstruction meeting was held on September 14th and the Contractor provided a schedule to begin mobilizing on September 21st, including fusing water main pipe and setting up temporary water. Work on drilling new water main is scheduled for September 25th.

cdk

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MEMORANDUM

TO: MAYOR AND CITY COUNCIL
JOSHUA TETZLAFF, CITY ADMINISTRATOR

CC: MATT RYNDA, PUBLIC WORKS DIRECTOR
BRUCE REIMERS, UTILITIES GNERAL MANAGER

FROM: CHRIS KNUTSON, PE (Lic. MN)

DATE: SEPTEMBER 18, 2023

RE: 2023 STREET AND UTILITY IMPROVEMENT PROJECT
RESOLUTION: DECLARING COST TO BE ASSESSED, ORDERING PREPARTION
OF PROPOSED ASSESSMENT AND CALLING FOR HEARING ON PROPOSED
ASSESSMENT
SEH No. NEWPR 167774

PROPOSED ASSESSMENTS

The 2023 Street and Utility Improvements Project is now substantially complete. While exact final construction contract costs will not be known until closer to project closeout in 2024, the projected final construction costs are projected to be at or below the Contract Cost of **\$3,717,767.95**. With associated engineering and testing costs included, the overall project cost is projected at **\$4,395,512.95**. This includes improvements at both the reconstruction areas of the project and the new Business Park streets.

During the Feasibility phase of this project, a 5% increase to assessment rates was incorporated into the report due to expected construction costs from high inflation. As that increase in construction costs was not realized from the low bid, it is proposed that the rates on the 2022 Street and Utility Improvement project be carried over to this 2023 project. This will result in lower assessments for property owners on the 2023 project than was previously estimated.

The next step in the public improvement process (under MN Statute 429) is to prepare the assessment roll and order the public assessment hearing. The assessment roll has been prepared based on the City of New Prague assessment policy and the project specific assessment methodology presented in the Feasibility Study as well as at public hearings. The Assessment Hearing is proposed to be held as **6:00 p.m. on Monday, October 16, 2023**.

Notices of the public hearing will be published in the New Prague Times, and will be sent in the mail to the affected property owners, all in accordance with Minnesota Statutes 429.

Attached for City Council information and reference are the following:

1. Copy of an informational cover letter to be sent with the assessment notice.
2. Sample copy of the Notice of Hearing on Proposed Assessment to be mailed.

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 11 Civic Center Plaza, Suite 200, Mankato, MN 56001-7710

507.388.1989 | 877.316.7636 | 888.908.8166 fax | sehinc.com

SEH is 100% employee-owned | Affirmative Action–Equal Opportunity Employer

3. Copy of the Proposed Assessment Roll (Draft until adoption).
4. Resolution.

STAFF/ENGINEER RECOMMENDATION

Staff and SEH recommend that the City Council approve the attached Resolution DECLARING COST TO BE ASSESSED, ORDERING PREPARTION OF PROPOSED ASSESSMENT, AND CALLING FOR HEARING ON PROPOSED ASSESSMENT for the 2023 Street and Utility Improvement Project.

The Assessment Hearing is proposed to be held at **6:00 p.m. on Monday, October 16, 2023.**

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September 25, 2023

RE: City of New Prague, Minnesota
2023 Street and Utility Improvement
Project
Proposed Assessments and
Assessment Hearing
SEH No. NEWPR 167774 5.00

TO RESIDENT/PROPERTY OWNER:

Enclosed is information regarding the proposed assessments on this project, as well as the official notice of the assessment hearing, scheduled for the date and time listed in the Notice of Hearing.

The assessment hearing is the final step in the public improvement process (Minnesota Statutes Chapter 429).

PROJECT STATUS

The project is substantially complete with final inspections and some punch list and warranty work being done this fall. A spring warranty inspection will also be completed next year.

ASSESSMENTS

The information you will need to know about your proposed assessment is described in the enclosed Notice of Hearing on Proposed Assessment.

In short, the amount you owe is shown in the Notice of Hearing on Proposed Assessment. If the assessments are approved by the city council, you may make full payment during the 30 days following the assessment hearing without paying interest. If unpaid after the 30 days, interest on the assessment will accrue at the listed annual percentage rate beginning from the date of the assessment hearing. The unpaid assessment will then be certified to the county and be payable with your property taxes for the period of years listed on the notice.

Some commonly asked questions about assessments:

“Can I pay off the assessment early?” Certainly! You may at any time prior to certification of the assessment to the county auditor, pay the **entire assessment** on such property to the office of the city administrator. No interest will be charged if the entire assessment is paid within 30 days from the adoption of the assessment. You may at any time thereafter, pay to the county auditor the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. As **partial payment**, the City will accept no more than one (1) payment of at least \$500.00, before the City’s certification deadline for the assessment. The remaining assessment balance shall be paid with interest over the term as established by the City Council.

“What happens to the assessment if I choose to sell my house?” Assessments are typically settled at the time of the sale. Settlement of the assessment obligation is usually part of the negotiation process between the buyer and the seller.

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 11 Civic Center Plaza, Suite 200, Mankato, MN 56001-7710

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“Why are we being assessed, don’t my property taxes pay for this?”

The assessments only pay for a percentage of the cost of the project. Other funding from the city pays for the greatest share of the project cost. The benefiting property owners in a neighborhood all come together along with the city to “chip-in” and help fund a neighborhood project such as this.

Property taxes do not cover all capital improvement needs in the city. Assessments are a form of tax, but a tax where the payer actually receives a direct benefit from the money spent. Assessments also do not discriminate based on property value. The amount of an assessment, unlike property taxes, is not determined by property value, rather is distributed equally among all residents and equally throughout the city. The assessment rates used for this type of project are the same throughout the city based on property use.

“How are the assessment amounts determined?” New Prague’s assessment rates were established based on the assessments funding approximately 25% to 35% of average historical project costs for this type of project. A flat rate “Unit” assessment method was adopted so that every property is treated the same from project to project, from year to year. Again, assessments only pay for a percentage of the cost of the project. Funding from other city sources pays for the greatest share of the project cost.

“Are there provisions for deferment of the assessment?” Yes, the City of new Prague has adopted Resolution 12-10-22-02 pursuant to Minnesota Statutes Sections 435.193 to 435.195, wherein the council may, in its discretion, defer the payment of this special assessment for any homestead property owned by a person 65 years of age or older, one retired by virtue of a permanent and total disability, or a member of the National Guard or other reserves ordered to active military service for whom it would be a hardship to make the payments. As to a deferment based upon age or disability, the applicant must apply for the deferment not later than 14 days after the assessment is adopted by the City Council. Note: A deferment does not excuse an assessment nor the interest, it only defers the payment of the assessment until a later date or when a property is sold.

If you have any questions related to the project or about how the assessments were calculated, please contact me at 507.237.8383 or cknutson@sehinc.com. If you have questions related to the payment of the assessment, please call the City of New Prague at 952.758.4401 and speak with Joshua Tetzlaff, City Administrator.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



Chris Knutson, PE
Project Manager
(Lic. MN)

jb

Enclosure

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NOTICE OF HEARING ON PROPOSED ASSESSMENT

PROPERTY OWNER NAME
PROPERTY ADDRESS
NEW PRAGUE, MN 56071

Notice is hereby given that the New Prague City Council will meet at 6:00 p.m. on Monday, October 16, 2023, at New Prague City Hall, 118 Central Avenue North, to consider, and possibly adopt, the proposed assessment for the 2023 Street and Utility Improvement Project, which includes improvements on the following streets:

- Sunrise Avenue N from Main Street to 3rd Street NE
• Sunset Avenue N from Main Street to 2nd Street NE
• First Street NE from Lexington Avenue N east to Greenway Park
• Second Street NE from Sunset Avenue N east to Greenway Park
• Third Street NE from Sunrise Avenue N to 10th Avenue NE
• Trail improvements in Greenway Park
• 6th Avenue NW Street Extension
• 8th Avenue NW Street Extension

by construction of pavement replacement, partial and complete street reconstruction; sanitary sewer, water main, storm sewer, concrete curb and gutter, aggregate base, bituminous street surfacing, concrete walk, turf restoration, and miscellaneous items required to properly complete the improvements. Adoption by the council of the proposed assessment may occur at the hearing. The area proposed to be assessed for such improvements includes properties abutting such improvements.

The amount to be specially assessed against your particular lot, piece, or parcel of land, described as:

PARCEL NUMBER ABBREVIATED PROPERTY LEGAL DESCRIPTION

has been calculated as follows:

Table with 4 columns: Service Type, Unit, Rate, and Total. Rows include Residential Water Service, Sanitary Sewer Service, SF Residential Reconstructed Street, Commercial-Institutional-MF Reconstructed Street, and a bolded TOTAL ASSESSMENT of \$15,030.00.

Such assessment is proposed to be payable in equal annual installments extending over a period of 15 years, the first of the installments to be payable on or before the first Monday in January 2024, and will bear interest at a rate of X.XX percent per annum from the date of the adoption of the assessment resolution. To the first installment shall be added interest on the entire assessment from the date of the assessment resolution until December 31, 2024. To each subsequent installment when due shall be added interest for one year on all unpaid installments.

You may at any time prior to certification of the assessment to the county auditor, pay the entire assessment on such property to the office of the city administrator. No interest shall be charged if the entire assessment is paid within 30 days from the adoption of this assessment. You may at any time thereafter, pay to the county auditor the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year. If you decide not to prepay the assessment before the date given above the rate of interest that will apply is X.XX percent per year.

The proposed assessment roll is on file for public inspection at the city administrator's office. The total cost of the project is \$4,395,512.95. The total amount of the proposed assessment is \$694,913.02. Written or oral objections will be considered at the meeting. No appeal may be taken as to the amount of an assessment unless a written objection signed by the affected property owner is filed with the city administrator prior to the assessment hearing or presented to the presiding officer at the hearing. The council may upon such notice consider any objection to

the amount of a proposed individual assessment at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.

The city has adopted Resolution 12-10-22-02 pursuant to Minnesota Statutes Sections 435.193 to 435.195, wherein the council may, in its discretion, defer the payment of this special assessment for any homestead property owned by a person 65 years of age or older, one retired by virtue of a permanent and total disability, or a member of the National Guard or other reserves ordered to active military service for whom it would be a hardship to make the payments. As to a deferment based upon age or disability, the applicant must apply for the deferment not later than 14 days after the assessment is adopted by the City Council.

If an assessment is contested or there is an adjourned hearing, the following procedure may be followed:

1. The city will present its case first by calling witnesses who may testify by narrative or by examination, and by the introduction of exhibits. After each witness has testified, the contesting party will be allowed to ask questions. This procedure will be repeated with each witness until neither side has further questions.
2. After the city has presented all its evidence, the objector may call witnesses or present such testimony as the objector desires. The same procedure for questioning of the city's witnesses will be followed with the objector's witnesses.
3. The objector may be represented by counsel.
4. Minnesota rules of evidence will not be strictly applied; however, they may be considered and argued to the council as to the weight of items of evidence or testimony presented to the council.
5. At the close of presentation of evidence, the objector may make a final presentation to the council based on the evidence and the law. No new evidence may be presented at this point.
6. The council may adopt the proposed assessment at the hearing.

An owner may appeal an assessment to district court pursuant to Minnesota Statutes Section 429.081 by serving notice of the appeal upon the mayor and city administrator of the city within 30 days after the adoption of the assessment and filing such notice with the district court within ten days after service upon the mayor or administrator.

Joshua M. Tetzlaff
City Administrator

Parcel No.	Name	PropertyAddress	Residential Water Service Unit	Residential Water Service Assess.	Sanitary Sewer Service Unit	Sanitary Sewer Service Assess.	Residential Reconstructed Street Unit	Residential Reconstructed Street Assess.	Commercial-Institutional Reconstructed Street Footage	Commercial-Institutional Reconstructed Street Assess.	Total Assessment
240080320	Cynthia Giles		0	\$0.00	0	\$0.00	0.5	\$4,595.00	0	\$0.00	\$4,595.00
240080160	Neng Xi Zhang	104 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080150	Jennifer A Kajer	106 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080140	Brandon Johnson	108 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080130	Philip A & Karen Kallal	110 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090040	Nicholas S Folkerts	703 1st St NE	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090030	Angela Frances Speltz	206 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090020	Dean E & Ana D Podratz	208 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090010	Milton H & Denise Tikalsky	210 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	0.5	\$4,595.00	0	\$0.00	\$10,435.00
240080260	Nicholas Johnson	801 Main St E	0	\$0.00	1	\$2,490.00	0.5	\$4,595.00	0	\$0.00	\$7,085.00
240080190	Mark S Carlson	105 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080180	Michael Patrick Timmons	107 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080170	Steven Widdicombe	109 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090080	Lynn D Angell	801 1st St NE	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090070	Edmund R Pint	203 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090060	Francis G Pumper	205 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090050	Pamela Sue Hallum	207 Sunset Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080240	Mahowald Trust	100 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	0.5	\$4,595.00	0	\$0.00	\$10,435.00
240080230	Michael J & Jamie Bisek	104 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080220	Jared & Ashley Tinny	106 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080210	Sharon M Chromy	108 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080200	Michael P Busch	110 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090110	Nicholas Olson	803 1st St NE	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090100	Jacob Kartak	206 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090090	Susan M Martin	210 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110120	Douglas L & Mary S Amundsen	803 2nd St NE	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00

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Parcel No.	Name	PropertyAddress	Residential Water Service Unit	Residential Water Service Assess.	Sanitary Sewer Service Unit	Sanitary Sewer Service Assess.	Residential Reconstructed Street Unit	Residential Reconstructed Street Assess.	Commercial-Institutional Reconstructed Street Footage	Commercial-Institutional Reconstructed Street Assess.	Total Assessment
240110110	Cam J & Gwen E Case	302 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110100	James S Hurt	304 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110090	Steven Gregory	306 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	0.5	\$4,595.00	0	\$0.00	\$10,435.00
240080310	Kristi Millsap	101 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	0.5	\$4,595.00	0	\$0.00	\$10,435.00
240080300	Kenneth R & Annie V Mushitz	105 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080290	Susan E Kennedy	107 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080280	Eric Eide	109 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240080270	Colton A Devine	111 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090140	Michael A Zanovec	201 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090130	Robert J Bednar	205 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240090120	Barbara J Kavan	209 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110150	Darlene M Witt Irrevocable Trust	301 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110140	Stuart Schatz	303 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240110130	Jean A Bartusek	305 Sunrise Ave N	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240140070	Michael C Marzinske	901 3rd St NE	1	\$3,350.00	1	\$2,490.00	1	\$9,190.00	0	\$0.00	\$15,030.00
240330020	Community Baptist Church		0	\$0.00	0	\$0.00	0	\$0.00	378.55	\$60,303.02	\$60,303.02
240370010	Wallace J Kubes	1002 3rd St NE	0	\$0.00	0	\$0.00	1	\$9,190.00	0	\$0.00	\$9,190.00
240370020	Keith D & Ann M Johnson	1004 3rd St NE	0	\$0.00	0	\$0.00	1	\$9,190.00	0	\$0.00	\$9,190.00
240370030	Duane J & Amy J Jirik	1006 3rd St NE	0	\$0.00	0	\$0.00	1	\$9,190.00	0	\$0.00	\$9,190.00
240370040	Tyler Yearby	1008 3rd St NE	0	\$0.00	0	\$0.00	1	\$9,190.00	0	\$0.00	\$9,190.00
240370050	Angel Cortes-Rojas	1010 3rd St NE	0	\$0.00	0	\$0.00	0.5	\$4,595.00	0	\$0.00	\$4,595.00
240110080	Thomas J Musil	801 2nd St NE	0	\$0.00	0	\$0.00	0.5	\$4,595.00	0	\$0.00	\$4,595.00
240370070	City of New Prague	Greenway Park	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
240080080	Tess Marlys Magdalena Baker	701 1st ST NE	0	\$0.00	0	\$0.00	0.5	\$4,595.00	0	\$0.00	\$4,595.00
240080090	Jeffery L Johnson	117 Lexington Ave N	0	\$0.00	0	\$0.00	0.5	\$4,595.00	0	\$0.00	\$4,595.00
240370060	Whitney C Larson	300 10th Ave NE	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
	TOTAL		39	\$130,650.00	40	\$99,600.00	44	\$404,360.00	378.55	\$60,303.02	\$694,913.02



**CITY OF NEW PRAGUE
RESOLUTION #23-09-18-01**

**2023 STREET AND UTILITY IMPROVEMENT PROJECT
DECLARING COST TO BE ASSESSED,
ORDERING PREPARATION OF PROPOSED ASSESSMENT, AND
CALLING FOR HEARING ON PROPOSED ASSESSMENT**

WHEREAS, costs have been determined for the 2023 Street and Utility Improvement Project, for pavement replacement, partial and complete street reconstruction; sanitary sewer, water main, storm sewer, concrete curb and gutter, aggregate base, bituminous street surfacing, concrete walk, turf restoration, and miscellaneous items required to properly complete the improvements, and the estimated final contract prices for such improvements is estimated at \$3,717,767.95, and the estimated final expenses incurred or to be incurred in the making of such improvements amount to \$677,745.00, so that the estimated final total cost of the improvements will be \$4,395,512.95.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF NEW PRAGUE, MINNESOTA:

1. The costs will be assessed against benefited property owners per Minnesota Statutes Chapter 429.
2. The portion of the cost of such improvement to be paid by the city is hereby declared to be \$3,700,599.93, and the portion of the cost to be assessed against benefited property owners is declared to be \$694,913.02.
3. Assessment shall be payable in equal annual installments extending over a period of **15 years**, the first of the installments to be payable on or before the first Monday in January, 2024, and shall bear interest at the rate of **___ percent** per annum from the date of the adoption of the assessment resolution.
4. The City Administrator, with the assistance of the consulting city engineer, shall forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece, or parcel of land within the district affected, without regard to cash valuation, as provided by law, and he shall file a copy of such proposed assessment in his office for public inspection.
5. A hearing shall be held on the 16th day of October, 2023, in the Council Chambers of New Prague City Hall at 6:00 p.m., to pass upon such proposed assessment and at such time and place all persons owning property affected by such improvement will be given an opportunity to be heard with reference to such assessment.

State of Minnesota
Counties of Scott & Le Sueur
City of New Prague }

- 6. The City Administrator is hereby directed to cause a notice of the hearing on the proposed assessment to be published once in the official newspaper at least two weeks prior to the hearing and shall state in the notice the total cost of the improvement. The City Administrator shall also cause mailed notice to be given to the owner of each parcel described in the assessment roll not less than two weeks prior to the hearing.
- 7. The owner of any property so assessed may, at any time prior to certification of the assessment to the County Auditor, pay the whole of the assessment on such property with interest accrued to the date of payment, to the City Administrator, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of the assessment. The property owner may at any time thereafter, pay to the County Auditor the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.

Adopted by the City Council of the City of New Prague on this 18th day of September, 2023.

Duane J. Jirik
Mayor

ATTEST:

Joshua M. Tetzlaff
City Administrator



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: INTRODUCTION OF ORDINANCE #342 - RIGHT OF WAY ORDINANCE AMENDMENTS FOR SMALL WIRELESS FACILITIES
DATE: SEPTEMBER 14, 2023

As the City Council may be aware, 2017 Session Law amendments (MS 237.162 and 237.163) were approved that allowed the deployment of “small wireless facilities” in public right of way. The attached memo from Kennedy & Graven dated 7/19/17 and League publication dated 8/1/17 provide the details of the amendments.

The City’s current right of way management ordinance (Section 93.45 of the City Code) follows an older version of the League of Minnesota Cities model ordinance and was written a number of years ago. State law at the time this was written allowed telecommunication right of way users to install their facilities in a city’s right of way and also on whose facilities they are allowed to attach, subject to any local right of way permitting that might have been adopted. With the amendments approved by the state in 2017, the definition of a telecommunications right of way user has now been amended to include “wireless service” providers which was certainly not a technology considered when the city’s ordinance was originally approved.

Since the amendments were approved, the League of Minnesota Cities developed a model ordinance for cities to consider. City Staff reviewed the model ordinance and compared it to the City’s existing right of way ordinance and has incorporated suggested changes with the City Attorney’s assistance.

On March 28, 2018 the Planning Commission reviewed the draft ordinance and suggested that small cell wireless facilities should be conditional uses in both single family and historic zoning districts (staff did not suggest this) and that the City should require screening standards for small cell infrastructure. The topic did not receive any discussion until the City Council discussed and adopted small cell facility aesthetic standards by an April 15, 2019 deadline that was imposed by an FCC order. On April 15, 2019 the City Council adopted the “Small Cell Wireless Facility Design Guidelines Policy” which addressed the Planning Commission’s previously noted aesthetic concerns.

The reason the ordinance did not move forward after this time was ongoing lawsuits with the FCC regarding small cell facilities and then the Covid-19 pandemic hit which shifted staff’s priorities. Staff followed up with the City attorney recently and the drafted ordinance is now ready for introduction.

Attached is the amending ordinance that staff and the City attorney developed for consideration.

Staff Recommendation

Staff recommends that the City Council conduct a first reading and approve the introduction of the ordinance amendment.

Attachments:

1. Ordinance #342 Amending Chapter 93 Title Right-of-Way Construction Regulations – Draft 9/11/23
2. Small Cell Wireless Facility Design Guidelines Policy – Adopted 4/15/19
3. 2017 Memo from Kennedy & Graven and LMC regarding Small Wireless Facilities in ROW.

ORDINANCE NO. 342

CITY OF NEW PRAGUE

AN ORDINANCE AMENDING CHAPTER 93 OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS OF WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS.

THE CITY COUNCIL OF THE CITY OF NEW PRAGUE, SCOTT AND LESUEUR COUNTIES, MINNESOTA ORDAINS:

SECTION 1. Chapter 93 titled Right-of-Way Construction Regulations of the City of New Prague City code is amended by deleting the ~~stricken~~ material and adding the underlined material as follows:

RIGHT-OF-WAY CONSTRUCTION REGULATIONS-MANAGEMENT

§ 93.45 FINDINGS, PURPOSE, AND INTENT.

To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights of way, the city strives to keep its rights of way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights of way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights of way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights of way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

§ 93.456 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to ~~this chapter~~ Minn. Stat. 237.163 subd. 2(b) to manage rights-of-ways within its jurisdiction.

§ 93.467 ~~DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.~~

~~Minn. Rules Chapter 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 Subparts 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.~~

The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

(A) *Abandoned Facility.* A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

(B) *Applicant.* Any person requesting permission to excavate or obstruct a right-of-way.

(C) *City.* The city of New Prague, Minnesota. For purposes of § 93.73, city also means the City’s elected officials, officers, employees, and agents.

(D) *Collocate or Collocation.* To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

(E) *Commission.* The State Public Utilities Commission.

(F) *Congested Right-of-Way.* A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

(G) *Construction Performance Bond.* Any of the following forms of security provided at permittee’s option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

(H) Degradation. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

(I) Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

(J) Degradation Fee. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

(K) Department. The department of public works of the city.

(L) Director. The director of the department of public works of the city, or her or his designee.

(M) Delay Penalty. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

(N) Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

(O) Equipment. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

(P) Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

(Q) Excavation permit. The permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

(R) Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 93.57.

(S) Facility or Facilities. Any tangible asset in the right-of-way required to provide Utility Service.

(T) Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.

(U) High Density Corridor. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

(V) Hole. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

(W) Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

(X) Management Costs. The actual costs the city incurs in managing its rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 1.31 of this chapter.

(Y) Obstruct. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

(Z) Obstruction Permit. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

(AA) Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 93.57.

(BB) Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

(CC) Pavement. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

(DD) Permit. Has the meaning given "right-of-way permit" in Minn. Stat. § 237.162.

(EE) Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

(FF) Person. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

(GG) Probation. The status of a person that has not complied with the conditions of this chapter.

(HH) Probationary Period. One year from the date that a person has been notified in writing that they have been put on probation.

(II) Registrant. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

(JJ) Restore or Restoration. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

(KK) Restoration Cost. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

(LL) Public Right-of-Way or Right-of-Way. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights of way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

(MM) Right-of-Way Permit. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

(NN) Right-of-Way User. (1) A telecommunications right-of-way user as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

(OO) Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

(PP) *Service Lateral.* An underground facility that is used to transmit, distribute or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

(QQ) *Small Wireless Facility.* A wireless facility that meets both of the following qualifications:

(1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

(RR) *Supplementary Application.* An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

(SS) *Temporary Surface.* The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

(TT) *Trench.* An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

(UU) *Telecommunications Right-of-Way User.* A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

(VV) *Two Year Project Plan.* Shows projects adopted by the city for construction within the next two years.

(WW) *Utility Pole.* A pole that is used in whole or in part to facilitate telecommunications or electric service.

(XX) Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

(YY) Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

(ZZ) Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

§ 93.458 ADMINISTRATION.

The public works director is the principal city official responsible for the administration of the rights of way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

§ 93.459 UTILITY COORDINATION COMMITTEE.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

§ 93.4550 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.

(B) Registration Prior to Work.

No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

(C) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be

required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. ch. 216D, Gopher One Call Law.

§ 93.4551 REGISTRATION INFORMATION.

(A) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

(1) Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.

(2) The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the city;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

(d) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(f) The city may require a copy of the actual insurance policies.

(g) If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.

(h) A copy of the person’s order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

(B) Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

§ 93.4552 REPORTING OBLIGATIONS.

(A) Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights of way.

(B) The plan shall include, but not be limited to, the following information:

(1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “next-year project”); and

(2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).

(C) The term “project” in this section shall include both next-year projects and five-year projects.

(D) By January 1 of each year, the city will have available for inspection in the city’s office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(E) Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(F) Additional Next-Year Projects. Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

§ 93.4753 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate permit from the city.

(1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of- way described in the permit and to hinder free and open passage over the specified portion of the right- of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) *Small Wireless Facility Permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of- way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 Subpart 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be a fee as established from time to time by Council resolution, ~~as it may be amended from time to time.~~

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

Penalty, see § 10.99

§ 93.4854 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

~~(A) Submission of a completed permit application form, including all required attachments, sealed drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:-~~

~~(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.~~

~~(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.~~

~~(3) A certificate of insurance or self insurance:~~

~~(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self insurance acceptable to the Director;~~

~~(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right of way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right of way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;~~

~~(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;~~

~~(d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;~~

~~(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.~~

~~(4) The city may require a copy of the actual insurance policies.~~

~~(5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State.~~

~~(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.~~

~~(B) Payment of money due the city for:~~

~~(1) Permit fees as established from time to time by Council resolution, as may be amended from time to time, estimated restoration costs and other management costs;~~

~~(2) Prior obstructions or excavations;~~

~~(3) Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the city; or~~

~~(4) Franchise fees or other charges as established from time to time by Council resolution, as may be amended from time to time, if applicable.~~

(C) Registration with the city pursuant to this chapter.

(D) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(E) Payment of money due the city for:

(1) permit fees, estimated restoration costs, and other management costs;

(2) prior obstructions or excavations;

(3) any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the city;

(4) franchise fees or other charges, if applicable.

(F) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.

(G) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

§ 93.4955 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Director shall issue a permit.

(B) *Conditions.* The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

(C) *Small Wireless Facility Conditions.* In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other

installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(3) No wireless facility may extend more than 10 feet above its wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(5) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

(6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

(7) The City's Small Cell Wireless Facility Design Guidelines Policy shall be complied with.

(A) Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:

- (1) Up to \$150 per year for rent to collocate on the city structure.
- (2) \$25 per year for maintenance associated with the collocation;
- (3) A monthly fee for electrical service as follows:
- (4) \$73 per radio node less than or equal to 100 maximum watts;

- (5) \$182 per radio node over 100 maximum watts; or
- (6) The actual costs of electricity, if the actual cost exceeds the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

§ 93.5056 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

(A) *Deadline for Action.* The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

(B) *Consolidated Applications.* An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- (1) are located within a two-mile radius;
- (2) consist of substantially similar equipment; and
- (3) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

(A) *Tolling of Deadline.* The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- (1) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
- (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

(3) The city and a small wireless facility applicant agree in writing to toll the review period.

§ 93.5057 PERMIT FEES.

Permit fees shall be in an amount established from time to time by Council resolution, as it may be amended from time to time.

(A) *Excavation permit fee.* The city shall ~~establish~~ impose an excavation permit fee as ~~established from time to time by Council resolution, as may be amended from time to time,~~ in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall ~~establish~~ impose the obstruction permit fee as ~~established from time to time by Council resolution, as may be amended from time to time, and shall be~~ in an amount sufficient to recover the city management costs.

(C) *Small Wireless Facility Permit Fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (1) management costs, and;
- (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

~~(D)~~ *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

~~(E)~~ *Non-refundable.* Permit fees ~~as established from time to time by Council resolution, as may be amended from time to time,~~ that were paid for a permit that the Director has revoked for a breach as stated in § 93.5867 are not refundable.

~~(F)~~ *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

~~(G)~~ *Consistent with Minnesota Rules.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.

§ 93.5158 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the city restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

(3) *Degradation Fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. ~~The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.~~

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Director, shall correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

~~(F) — *Degradation fee in lieu of restoration.* — In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established from time to time by Council resolution, as may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.~~

§ 93.59 JOINT APPLICATIONS.

(A) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(B) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(C) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

§ 93.5260 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 93.61 OTHER OBLIGATIONS.

(A) *Compliance with Other Laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(B) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(C) *Interference with Right-of-Way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

§ 93.5362 DENIAL OR REVOCATION OF PERMIT.

(A) *Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

(B) *Procedural Requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

§ 93.5463 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 93.67 subd. 2 of this ordinance.

§ 93.5564 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

(B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If proof has not been presented within the required time, the Director may revoke the permit pursuant to § 93.5867.

§ 93.5665 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each ~~person registrant~~ with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The ~~owner~~ registrant of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the ~~owner~~ registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each ~~facility owner~~ registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the ~~person~~ registrant whose facilities occasioned the emergency.

(B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 93.5766 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Director of the accurate information as soon as this information is known.

§ 93.5867 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.5564.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

(D) *Cause for Probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

(E) Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, permittee’s permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

(F) Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city’s reasonable costs, including restoration costs and the costs of collection and reasonable attorneys’ fees incurred in connection with the revocation.

§ 93.5968 MAPPING DATA; INFORMATION REQUIRED.

~~Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.~~

(A) Information Required. Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city’s electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

(B) Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:

(1) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and

(2) city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

§ 93.6069 LOCATION AND RELOCATION OF FACILITIES.

(A) Compliance required. Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they

may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign a specific area within the right-of-way, specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

(C) *Nuisance.* One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

(D) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 93.6170 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of Minn. Stat. 216D.01-.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

§ 93.6171 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant’s facilities to protect it, the Director shall notify the local representative as early as is reasonably possible ~~and placed as required~~. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each ~~facility owner~~

registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. ~~Each facility owner~~ registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city’s response to an emergency occasioned by that ~~owner’s~~ registrant’s facilities.

§ 93.6272 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant’s rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 93.6373 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250, as it may be amended from time to time.

**§ 93.6474 ~~ABANDONED AND UNUSABLE FACILITIES; REMOVAL OF~~
~~ABANDONED FACILITIES.~~**

~~Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Director.~~

(A) *Discontinued Operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant’s obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

(B) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

§ 93.6575 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; or believes that the fees imposed are ~~invalid~~ not in conformity with Minn. Stat. § 237.163, subd. 6; or disputes a determination of the director regarding §93.68, subd.2 of this ordinance, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 93.6676 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

§ 93.77 SEVERABILITY.

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

~~§ 93.67 [RESERVED]~~

~~§ 93.68 [RESERVED]~~

~~§ 93.69 [RESERVED]~~

§ 93.708 RIGHT-OF-WAY ENCROACHMENTS.

(A) *Purpose.* The public welfare requires that the public rights-of-way within the city, including highways, roads, streets and alleys, be reserved for public uses. Public use of the full width of the rights- of-way is necessary to public safety and the proper and efficient maintenance of the rights-of-way. However, it is recognized that limited private use or encroachment onto the rights-of-way is not necessarily inconsistent with public use. It is the purpose of this section to provide for lawful private use of public rights-of-way not inconsistent with public use.

(B) *Permit to encroach.*

(1) *Permit required.* The right to use public rights-of-way within the city for any private use or purpose other than the primary purpose of public travel, whether the use constitutes a substantial or incidental use, may be acquired only through issuance of a permit pursuant to this section.

(2) *Application for permit.* Any person may apply to the City Administrator or his or her designated representative for a permit to construct, install or locate and maintain private property or improvements within a publicly-owned right-of-way. The application shall be in writing and must describe with specificity the private property or improvement and right-of-way involved and the nature and extent of the requested encroachment. The applicant shall further provide a handmade drawing (to scale) or survey drawing showing the location of the proposed encroachment within the right-of-way. The permit shall become effective upon an associated encroachment agreement being duly recorded at the offices of the County Recorder. The city shall be the party responsible for recording the encroachment agreement at the offices of the County Recorder.

(3) *Application fee.* Each application for a license required by the provisions of this section shall be accompanied by an application fee in an amount established by resolution of the City Council, which fee shall be retained by the city whether or not a license is issued.

(4) *Issuance of permit; conditions.* The City Administrator or his or her designated representative may grant the permit and draft an encroachment agreement if it is determined that the encroachment applied for is not inconsistent with safe and efficient public use of the public right-of-way. However, no permit will be issued until the landowner has agreed in writing to waive any right to recover from the city for damage occurring to the item of encroachment within the right-of-way. The landowner must also agree to hold the city harmless from any claim of damage or liability against the city arising out of the encroachment.

(5) *Revocation of permit.* The city reserves the right to revoke any permit and encroachment agreement granted under this section as may be required by the public interest.

(C) *Unlawful encroachments.* Any privately-owned property located within or encroaching upon public rights-of-way which has not been authorized in accordance with this section shall be unlawful and be subject to removal by the city at the owner's expense.

(D) *Exemptions from provisions.* The use of the public right-of-way for the placement of the following items shall be exempt from the permit requirements of this section:

(1) Mailboxes with the following conditions:

(a) The mailbox is positioned or clustered according to specific directions of the city and/or United States Postal Service;

(b) Mailboxes servicing a planned unit development (PUD) are positioned or clustered within the platted portion of the PUD;

(c) The location of the mailbox or mailboxes does not interfere with the city's maintenance of the right-of-way.

(2) Grass, ground cover, or flowers that do not extend more than two feet in height from the ground (trees and shrubs shall not be allowed).

(3) Sprinkler systems with an approved lawn sprinkler permit.

(Ord. 219, passed 4-16-07)

SECTION 2. This Ordinance shall take effect and be in force upon its publication, in accordance with Section 3.13 of the City Charter.

Introduced to the City Council of the City of New Prague, Minnesota, the ___ day of ___, 2023.

The required 10 days posted notice was completed on the City Website and City Hall Bulletin Board on or before September 19, 2023.

Passed by the City Council of the City of New Prague, Minnesota, the 2nd day of October, 2023 and to be published on the 12th day of October, 2023.

Duane J. Jirik, Mayor

Joshua M. Tetzlaff, City Administrator

CITY OF NEW PRAGUE

SMALL CELL WIRELESS FACILITY DESIGN GUIDELINES POLICY

(Adopted 4/15/2019)

I. PURPOSE AND COMPLIANCE

In implementing City Code, Chapter 93 and applicable law and regulations related to use and management of public right-of-ways, the City Council of the City of New Prague (the “City”) finds that in order to protect the public health, safety and welfare of its citizens and to reasonably manage and protect the public rights-of-way (the “ROW”) and its uses in the City, it is in the best interest of the City and its residents and businesses to establish a Small Wireless Facility Design Guidelines Policy (the “Guidelines”) to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the City through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the City effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities in the ROW and ongoing use of the ROW for such purposes. These Guidelines are established pursuant to City Code, Chapter 93 and applicable law. These Guidelines are administered through the permitting process contained therein as conducted by the City of New Prague Public Works Department and Utilities Department.

Placement or modification of a small wireless facilities and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are required to comply with City Code, Chapter 93 and applicable law and regulations.

II. DEFINITIONS

The definitions contained in Minn. Stat. § 237.162 are incorporated into this policy by reference as though fully set forth herein.

III. APPLICATION REQUIREMENTS

Prior to placing, installing, modifying, relocating or removing a small wireless facility or wireless support structure in the ROW, or to collocating a wireless facility on an existing wireless support structure in the ROW, the operator shall apply for and receive a permit from the City. In addition to the application requirements established in City Code, Chapter 93 and applicable law and regulations, the information identified in this Section III must be included for the application to be

considered complete, except that where such information is already in the City’s possession from previous applications, or where the applicant previously filed information and specifications for standard materials that are being utilized in the new application, such information shall be referenced but need not be resubmitted. The City may require additional information as reasonably necessary to evaluate the application and the impact of the proposed installation(s) on the public health, safety and welfare or on use or management of the ROW.

A. PROOF OF AGENT DESIGNATION (IF APPLICABLE):

If the applicant is serving as an agent of a small wireless operator, the applicant must provide written documentation of the agent designation signed by the operator.

B. MAP

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the small wireless facility is proposed to be attached, or from which a small wireless facility is proposed to be removed.

C. PHOTO SIMULATIONS

For all applications to locate small wireless facilities in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

D. CONSOLIDATED APPLICATIONS

An applicant seeking to construct, modify, collocate or replace more than one small wireless facility or more than one wireless support structure within the City may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of small wireless facilities or substantially the same type of wireless support structures. (Note: The City may treat each request individually during application review and processing and when issuing a determination or applying these guidelines.)

E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED

The applicant must include a full description of the number and dimensions of all small wireless facilities proposed to be installed and the wireless support structure, either new or

existing, to be utilized for each small wireless facility. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

G. OWNER'S AUTHORIZATION

For any application to attach a small wireless facility to a wireless support structure that is not owned by the City, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application.

IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES

A. ANTENNAS

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with the wireless support structure with the height of the side mounted antenna being at a location on the wireless support structure noted in the application and approved by the City, but at least 10 feet above ground level at its lowest point.
4. Tree "topping" or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the ROW must be noted in the application and must be approved by the City.

B. CABLES AND WIRES

All cables, wires and connectors related to the small wireless facility must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.

C. COLORS

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

D. EQUIPMENT ENCLOSURES/CONCEALMENT

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the City. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the City.
3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS

1. Signage: The small wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g. radio-frequency (RF) ground notification signs) or the City. If no cabinet exists, the signage shall be placed at the base of the pole.
2. Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a street light pole.
3. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the City. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. Cooling Fans: In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

V. LOCATION REQUIREMENTS

A. MOST PREFERABLE LOCATIONS

The following are the most preferred areas for new small wireless facilities in the order of preference (1 being most preferable):

1. *Industrial Districts* if not adjacent to a park, residential district or historic district.
2. *Highway Rights of Way* areas if not adjacent to a park or residential district.
3. *Retail and Commercial Districts* if not adjacent to a park or residential district.

B. COLLOCATION PREFERENCE

It is the City's strong preference that whenever an applicant proposes to place a new small

wireless facility that the applicant collocate the same on existing wireless support structures.

C. LEAST PREFERABLE LOCATIONS

The following are the least preferred areas for new small wireless facilities in the order of preference.

1. *Downtown Central Business District (B-1)*
2. *Residential Districts*
3. *Parks*

D. CONSIDERATION OF ALTERNATE LOCATIONS

The City reserves the right to propose an alternate location for a small wireless facility and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location or within a distance that is equivalent to the width of the ROW in or on which the small wireless facility and/or wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

E. GUIDELINES ON PLACEMENT

The City desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent City poles, and of the surrounding area adjacent to their location, except that wooden poles shall not be considered.

Small wireless facilities are strongly discouraged from locating within the central business district, as defined by the City’s zoning ordinance.

The following additional guidelines on placement shall apply:

1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.
5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the City Code, Chapter 93, applicable law and regulations, or these Guidelines.

6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.
8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.
9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the City where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

Figure 1 – Example of Acceptable Location Between Residential Homes:

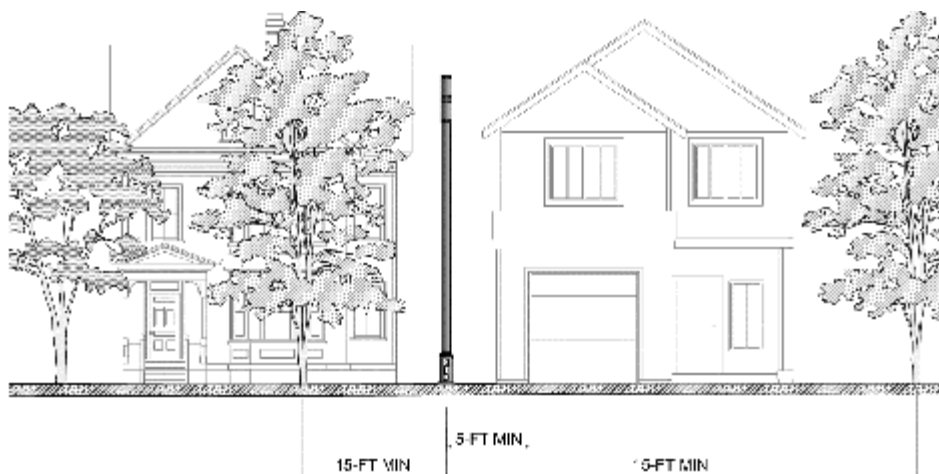
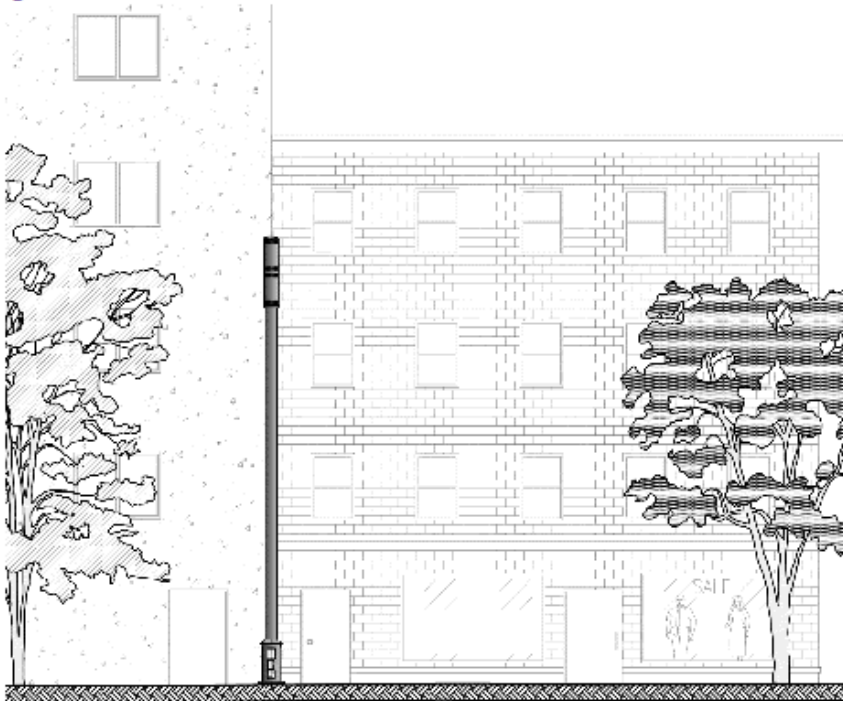


Figure 2 – Example of Acceptable Location Between Commercial Buildings



VI. LIMITATIONS

While the City fully intends to apply the guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In these case, City staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

VII. EFFECTIVE DATE OF POLICY

This Policy will be effective as of the 15th of April, 2019. Modifications of the Policy will be effective on the date said modifications are approved by the City Council.



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MEMORANDUM

TO: Clients
FROM: Bob Vose, Jim Strommen, and Andrew Biggerstaff
DATE: July 19, 2017
RE: Right-of-Way (“ROW”) Ordinance Amendments; Small Wireless Facilities

Attached to this memorandum are the proposed amendments to the League of Cities Model (“ROW”) Ordinance that is likely to be substantially similar to your city’s ROW ordinance – but not identical. Therefore, each city must conform the changes we provide to its ROW ordinance.

The ROW Ordinance amendments incorporate verbatim or slightly modified language from Minnesota Statutes, Sections 237.162 and 237.163 (“Act”) as expanded in the 2017 Legislative Session to allow the deployment of “small wireless facilities” in the ROW. We have also included the Session law changes to the Act, and reference the statutory cite in the ROW Ordinance amendments.

As you know, state law gives “telecommunications right of way users” the right to install facilities in the ROW and use the ROW for the delivery of their services. This right is subject to local governmental authority to manage the ROW by permitting. Local governments must affirmatively elect to manage the ROW by adopting a ROW ordinance, and we assume that your city has previously opted to utilize the Act, as required under Section 237.163, subd. 2 (b). Under such ROW ordinances, use of the ROW may be conditioned or denied if necessary to protect public health, safety, or welfare, and that broad protection remains applicable to small wireless facilities. Moreover, many of the Minnesota Rules governing utility ROW use found in Minn. R. ch. 7819 will apply to small wireless facilities.

It is important to note that the 2017 Session Law amendments were the product of negotiations between wireless and cable industry representatives, representatives of municipalities and organizations including the League – much of it at the end of the Session. So while our recommended changes attempt to “track” the resulting statutory amendments closely to avoid future disputes, in some cases, the statutory amendments are ambiguous or unclear. Thus, some of our recommended changes reflect our interpretation regarding the scope of municipal authority the legislature has granted vis-à-vis “small wireless facilities.” For questions, please contact Bob Vose (612-337-9275), Jim Strommen (612-337-9233) or Andrew Biggerstaff (612-337-9276).

Summary of Statutory Amendments Re: Small Wireless Facility Deployment in the Right-of-Way

1. Governed by Minnesota ROW Law

The term “telecommunications right-of-way user” has now been amended to include persons deploying facilities to provide “wireless service,” a newly defined term. This and other changes generally entitle wireless providers to use ROW.

- Wireless providers may deploy a “small wireless facility” or a “wireless support structure” in the ROW. These are both newly defined terms.
 - In order to be “small,” the proposed deployment must meet statutorily-limited size requirements- each antenna must be no more than six cubic feet, and all associated equipment, excluding certain types of equipment (back-up generator, for example), must either be concealed or less than 28 cubic feet.
 - In order to be an authorized support structure, any proposed new pole cannot exceed the tallest of 50 feet or 10 feet above an existing pole that is being replaced unless the LGU allows a greater height.
- LGUs may deny permits for new small cell facilities or wireless support structures based on reasonable health, welfare and safety concerns.
- One of the wireless industry’s primary goals was to require that poles or similar structures owned by the LGU in the ROW (light poles, for example) be made available for the attachment of small wireless facilities. The new amendments, however, do not make all LGU-improvements in the ROW a part of the ROW available for private use. The law instead expressly allows an LGU to determine whether a particular pole or other structure in the ROW was designed to support proposed wireless equipment or is capable of doing so. The LGU may deny a wireless provider access to a particular facility based on this determination or other public health, safety or welfare concerns.
- An LGU may also condition a permit on health, welfare and safety concerns, on “reasonable accommodations for decorative wireless support structures or signs,” or upon “any reasonable restocking, replacement, or relocation requirements” for a new wireless support structure in the ROW.
- LGUs may also impose separation requirements (distance minimums) between new poles or other wireless support structures.
- Municipal electric utility poles and facilities are exempt from the bill. About 125 cities have municipal utilities.

2. Zoning

- Another primary industry goal was to require that small wireless facilities be made a Permitted use in all ROWs regardless of the underlying zoning district in which the ROW is located. The statutory amendments make small wireless facilities and associated wireless support structures a permitted use in all ROWs, but LGUs may make such facilities or structures a special or conditional use in ROW located “in a district or area zoned for single-family residential use or within a historic district.”
- LGUs are prohibited from adopting a moratorium on the processing and issuance of small wireless facility permits. This provision is effective immediately except that it becomes effective on January 1, 2018 for any LGU that had not enacted a ROW ordinance as of May 18, 2017.

3. Application Process

- LGUs may require permits for placement of new wireless structures or collocation of small wireless facilities in the ROW.
- An LGU has 90 days to issue or deny a permit. The failure to timely act results in the permit being “deemed approved” and “the permit is automatically issued.” The deadline can be extended for 30 days if:
 - the LGU receives applications for 30 or more sites within a 7 day period, or:
 - The application is incomplete and the LGU delineates the missing information within 30 days of receipt.

Written notice of any extension must be provided to the applicant.

- Applicants may file up to 15 permit applications simultaneously as long as the requested sites are within a 2 mile radius, consist of substantially similar equipment, and are to be placed on similar structures. LGUs may approve or deny applications individually or collectively.
- A denial must be in writing and state the basis for denial. The LGU must notify the applicant in writing within 3 business days of the decision. The applicant may cure the deficiencies noted and reapply. If such re-application is made within 30 days of denial no additional fee may be imposed and a further decision must be made within 30 days of receipt.
- LGUs may not require wireless providers to supply information provided in an earlier application for a small wireless facility if such info is specifically referenced in the current application. LGUs also may not require information “not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations” or demonstrate compliance

with applicable FCC regulations “governing radio frequency exposure,” or otherwise demonstrate compliance with the new law.

4. Rent and Fees

- The wireless industry’s most important goal was to obtain the right to use LGU-owned facilities in the ROW for little or no rent. The legislature did not agree, however, and the new amendments allow the imposition of rent of up to \$150 annually, plus \$25 for maintenance, for each site. Additional fees may be imposed if the wireless provider uses LGU-purchased electricity rather than separately metering. This payment arrangement would presumably be reflected in an attachment agreement governing the provider’s attachments to the LGU’s facilities.
- LGUs remain entitled to recover ROW management costs, a defined term, from wireless providers using the ROW via permit fees. However, “unreasonable fees of a third-party contractor” cannot be recovered. Such fees barred as unreasonable include “any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for a local government unit.”

5. NO PUC Rules or Dispute Resolution

- The PUC has promulgated rules governing underground installation of telecommunications and other utility infrastructure in the ROW. The PUC is authorized to administratively adjudicate disputes arising out of an LGU’s interpretation or application of these rules.

The new amendments do not explicitly authorize the PUC to promulgate new rules regarding installation of wireless facilities in the ROW including, particularly, how attachments to LGU facilities must be made. Thus, we do not believe that the PUC will have any adjudicative role regarding wireless installations in ROW, as it does involving the ROW users established in the original Act.

- LGUs are authorized to require separate agreements with wireless providers governing attachments to the LGU’s poles or other facilities. The new law provides:

No later than six months after the effective date of this act or three months after receiving a small wireless facility permit application from a wireless service provider, a local government unit that has elected to set forth terms and conditions of collocation in a standard small wireless facility collocation agreement shall develop and make available an agreement that complies with the requirements of this section and section 237.162. A standard small wireless facility collocation agreement shall be substantially complete...

We understand that the League is working on a template agreement which will be made readily available on the League’s website.

Steps Required to Implement New Law

The work our clients will need to do to accommodate the new small cell wireless law depends, in part, on the terms of the local ROW ordinance, zoning provisions, ROW application process, and standard practices. But it is apparent that a number of steps will need to be taken. These likely include:

1. Amendment of the ROW ordinance to include provisions specific to the installation of wireless facilities on existing poles or similar facilities, and addressing the potential installation of new “wireless support structures;” i.e. poles. (Amendments included with this document)
2. Amendment of the zoning ordinance or code to make small wireless a permitted use in all ROW but, potentially, a conditional use in ROW located in residential zones. (Such amendments are not included with this document)
3. Preparation of a template agreement governing attachment of wireless facilities to municipal poles or other infrastructure in the ROW. The rent and the maintenance fee requirements will be addressed in this template agreement. (The League is preparing a model template agreement)



2017 Telecommunications Right-of-Way User Amendments Permitting Process for Small Wireless Facilities

Publication Date: August 1, 2017

(For information on related federal laws see LMC Information Memo “[Cell Towers, Small Cell Technologies, and Distributed Antenna Systems](#)”)

Introduction:

On May 30, 2017, Gov. Dayton signed into law a bill¹ amending Minnesota’s Telecommunications Right-of-Way User Law². The amendments cleared up any confusion about whether wireless providers are treated the same as other telecommunications right-of-way users under state law, but created a separate, streamlined permitting system for placement of small wireless facilities on city-owned structures in rights of way. Most of the bill provisions became effective on May 31, 2017, with the exception that the prohibition on moratoria does not take effect until January 1, 2018 for those cities that did not have a right-of-way ordinance in place on or before May 18, 2017, to give those cities an opportunity to enact an ordinance regulating their public rights-of-way. Also, the amendments allow cities to enter collocation agreements with telecommunications right-of-way users, if they choose, as long as the collocation agreement for small wireless facilities is made available in a substantially complete form no later than six months after the effective date of this act or three months after receiving a small wireless facility permit application from a wireless service provider.

Where can I read the new law?

Until revisions of the state statute occur to include bills passed this session, cities can find the amendments at [2017 Laws, Chapter 94](#).

Does the law require cities to do anything differently when regulating wireless providers attaching their equipment to city structures in the rights of way?

Yes, the amendments create a separate permit process for small wireless facilities. The below checklist was prepared to serve as a guide for cities to use when amending existing telecommunications ordinances, but does not necessarily cover all nuances of the new law and should not replace working with city attorneys to draft or amend existing ordinances.

What is the purpose of Minnesota’s Telecommunication Right-of-Way User Law?

¹ Chapter 94, Article 9 of the 2017 Regular Session, effective May 31, 2017.

² Minn. Stat. §§ 237.162, 237.163.

In 1997, the Minnesota Legislature recognized the need for a state law providing local government units with the authority to regulate the use of public rights of way by telecommunications right-of-way users. The resulting Minnesota Telecommunications Right-of-Way User Law allows telecommunications right-of-way users to construct, maintain, and operate conduit, cable, switches (and now small wireless facilities), and related appurtenances and facilities along, across, upon, above, and under any public right of way, but subjects those users to local regulations by cities to manage their rights of way and to recover management costs.

Can a city manage its right of way without doing anything?

No, the city must adopt an enabling ordinance. A local government unit is not required to manage its rights of way, but most want to do so. As such, the local government authority must pass an ordinance exercising this authority. Many cities find that having a separate telecommunications right-of-way user ordinance (in addition to a general right-of-way ordinance) allows for better regulation of cell towers, small cell and other telecommunications equipment.

Did the amendments in the 2017 laws impact all telecommunications right-of-way users?

Some of the amendments impacted cities' regulations on all telecommunications right-of-way users, but the amendments also created a distinct set of regulations specifically for placement of small wireless facilities. With respect to the regulations that apply to all telecommunications right-of-way users, the law:

- ✓ Requires all telecommunications right-of-way users seeking to excavate or obstruct a public right of way to obtain a right-of-way permit to do so.
- ✓ Requires a telecommunications right-of-way user using, occupying, or seeking to use or occupy a public right of way for providing telecommunications services to register with the local government unit by providing the local government unit with specific information (set forth in the statute), and including authorization for periodic updates.
- ✓ Requires telecommunications right-of-way users to submit plans for construction and major maintenance, to provide reasonable notice of projects that may require excavation and obstruction of public rights of way.
- ✓ Provides for restoration by the telecommunication right-of-way user after excavation occurs, either in the form of doing the restoration work or reimbursing the local governmental unit for the cost of the restoration work.
- ✓ Allows recovery of right-of-way management costs through a fee for registration, a fee for each right-of-way permit or, when appropriate, a fee applicable to a telecommunications right-of-way user when that user causes the local government unit to incur costs because of actions or inactions of that user.

Can a city charge a fee for using the right of way?

Yes, because when cities manage rights of way, they incur costs. However, when cities charge right-of-way users, the fees must be calculated on a competitively neutral basis, and based on the actual costs incurred by the city in managing the public right of way. A fee for the cost of managing the right-of-way should reflect an allocation among all users of the public right-of-way, including the city itself.

Can a city charge rent if a right-of-way user places equipment in the right of way?

Yes. Nothing in the law prohibits a city from charging rent for the placement of technology or equipment by a telecommunications right-of-way user on a city owned structure. However, cities are limited in the amount

of rent they can charge for collocation of small wireless facilities on city-owned structures. Fee limitations are described in the statute.

If a city does not have an ordinance, can it pass a moratorium on processing any applications it receives until it can pass an ordinance?

Probably not. The law prohibits cities from establishing a moratorium with respect to filing, receiving, or processing applications for right-of-way or small wireless facility permits, or for issuing or approving right-of-way or small wireless facility permits. However, for cities that did not have an ordinance enabling it to manage its right-of-way before or on May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

Can a city still deny applications for siting of telecommunications equipment in its right of way?

Generally, yes, however, any denial or revocation of either a right-of-way permit or a small wireless facility permit must be done in writing and must document the basis for the denial, including the health, safety and welfare reasons for the denial. The local government unit must notify the telecommunications right-of-way user, in writing, within three business days of the decision to deny or revoke a permit. If the city denies a permit application, the telecommunications right-of-way user may cure the deficiencies identified by the local government unit and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, the city may not charge an additional filing or processing fee. The local government unit must approve or deny the revised application within 30 days after the submission of the revised application, or it is deemed granted.

Can cities treat the siting of all cell equipment the same?

It depends. If the city plans to regulate cell sitings and require telecommunications right-of-way users to get permits, then the 2017 amendments to the law create a separate permit system for small wireless facility technology that places additional limitations on a city’s ability to regulate those specific types of technology.

Does the new law mean our city cannot enter into a separate agreement with telecommunications right-of-way users who want to place equipment on city owned structures?

The amendments do not require cities to have separate agreements, and some cities may choose to put these provisions in their ordinance or permit instead. For cities that want a separate ‘collocation agreement’ in place, they must develop and make that collocation agreement available no later than six months after May 31, 2017 (the effective date of the act) or three months after receiving a small wireless facility permit application from a wireless service provider. “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit. The template of the agreement must be made available in a substantially complete form. The parties to the separate small wireless facility collocation agreement always may incorporate additional mutually agreed upon terms and conditions. Also, the law now clearly classifies any small wireless facility collocation agreement between a local government unit and a wireless service provider as public data accessible to the public under Minnesota’s Data Practices Law.

What type of equipment is subject to the special requirements on small cell technology?

The statute defines type of equipment, which include:

“Small wireless facility”:

(1) A wireless facility that meets both following qualifications:

(i) Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet.

(ii) All other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume.

(2) A micro wireless facility.

“Wireless support structure” means a new or existing structure in a public right of way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

“Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

What additional requirements must cities consider to comply with Minnesota’s Telecommunications Right-of-Way User Law, as amended?

The law sets forth specific requirements related to placement of small wireless facilities or installation of new wireless support structures. The below information highlights items cities will want to consider when drafting an ordinance or amending an existing ordinance. Again, cities should work with their city attorneys to ensure full compliance with the law.

NEW STATE LAW REQUIREMENTS

GOVERNING PLACEMENT OF SMALL WIRELESS FACILITIES IN RIGHTS OF WAY

If a city decides to regulate or require permits for placement of a new wireless support structure or collocation of a small wireless facility, then the city should be aware that:

Small wireless facilities and wireless support structures are a permitted use, except that in districts zoned as single-family residential use or district identified as historic (either by federal law or ordinance), a local government unit can require a conditional use permit.

- Cities must not require an applicant for a small wireless facility permit to provide any information that the applicant previously had provided to the city in a different application for a small wireless permit (which the applicant must identify by specific reference number).
- Cities must not require an application to provide information that is not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations, or to demonstrate compliance with applicable Federal Communications Commission regulations governing radio frequency exposure, or other information required by this section.
- Permits for small cell facility collocation or placement of a new wireless support structure must specify that the term of a small wireless facility permit equals the length of time that small wireless facility is in use, unless the permit is revoked under this section.
- The total application fee for a small wireless facility permit must comply with the statutory requirement regarding costs related to the permit.
- The city must allow applicants for small wireless facility permits to file a consolidated permit application to collocate up to 15 small wireless facilities (or a greater number if agreed to by a local government unit), provided that all the small wireless facilities in the application are located within a two-mile radius, consist of substantially similar equipment, and are to be placed on similar types of wireless support structures.
- The city has 90 days after the date a small wireless facility permit application is filed to issue or deny the permit, or the permit is automatically issued.
- To toll the 90-day clock, the city must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, identifying all missing documents or information, and providing the applicant with a time to cure that complies with the statute³.
- If the city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the city may extend the 90-day deadline by an additional 30 days. If a city elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.
- A city cannot require placement of small wireless facilities on any specific wireless support structure other than the one proposed in the permit application.
- A city must not limit the placement of *small wireless facilities*, either by minimum separation distances between small wireless facilities or maximum height limitations, except that each wireless support structure installed in the right of way after the effective date of this act shall not exceed 50 feet above ground level (unless the local government unit agrees to a greater height).

³Minn. Stat. §237.163, Subd. 3c(b).

- A city can set forth in its ordinance separation requirements for placement of wireless support structures in relation to other wireless support structures.
- A city still may deny permit for health, safety, and welfare reasons or for noncompliance with decorative wireless support structures or signs.
- A city cannot require a person to pay a small wireless facility permit fee, obtain a small wireless facility permit, or enter into a small wireless facility collocation agreement solely in order to conduct routine maintenance of a small wireless facility; replace a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading; or install, place, maintain, operate, or replace micro wireless facilities suspended on cables strung between existing utility poles in compliance with national safety codes.
- A city cannot require an applicant to apply for or enter any individual license, franchise, or other agreement with the local government unit or any other entity, other than the optional standard small wireless facility collocation agreement.
- A city may require notice of any work that will obstruct a public right of way.

OPTIONAL PROVISIONS FOR SMALL WIRELESS FACILITIES

- A city is not required to have a separate agreement, but can choose to enter collocation agreements with applicants locating small wireless facilities onto city owned structures to address terms and conditions of the use of the structures. If a city chooses to do so, then it must make the agreement available to the public in a substantially complete format no later than six months after the effective date or three months after receiving a small wireless facility permit application from a wireless service provider.
- A city may elect to charge each small wireless facility attached to a wireless support structure owned by the local government unit a fee (rental fee), in addition to other fees or charges allowed under the law, consisting of: (1) up to \$150 per year for rent to occupy space on a wireless support structure; (2) up to \$25 per year for maintenance associated with the space occupied on a wireless support structure; and (3) an additional monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate set forth in the statute.⁴

⁴ Minn. Stat. 237.163, Subd. 6 (d).



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JOSHUA TETZLAFF, CITY ADMINISTRATOR
SUBJECT: COMCAST CABLE FRANCHISE AGREEMENT
DATE: SEPTEMBER 11, 2023

At its meetings on September 5, 2023, the City Council held a public hearing to take comment on a potential franchise agreement with Comcast. There were no members of the public that shared their opinion. After discussion, the City Council voted unanimously (5-0) to approve the Ordinance on first reading.

Previous memo language:

When I started with the City, one of the items I started pursuing was updating the franchise agreements with CenterPoint Energy and Comcast. Last year, the City entered into a franchise agreement with CenterPoint Energy and once that was completed, I started working with Bob Vose from Kennedy & Graven to negotiate an agreement with Comcast.

Working off the previous agreement, and discussing industry norms with Mr. Vose, we went back and forth with Comcast to negotiate the continued distribution of cable and internet service within New Prague.

Some of the more meaningful things that Comcast has agreed to are as follows:

- This agreement has a term of ten (10) years).
- Language that requires the undergrounding of infrastructure, similar to how the New Prague Utilities Department is undergrounding all of their infrastructure.
- Language that requires removal of infrastructure that isn't being used.
- Language that requires access to at least one public access channel, should the City wish to use it. There is also language that allows the City to collect a fee for the equipment needed to broadcast.

After reviewing this agreement, both internally and with Kennedy-Graven, I believe this to be a solid franchise agreement, fair to both the City and to Comcast.

Recommendation

Staff recommends approval of the second reading of the Comcast Cable Franchise Agreement.

CITY OF NEW PRAGUE, MINNESOTA

ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE

TO

**COMCAST OF ARKANSAS/LOUISIANA/MINNESOTA/MISSISSIPPI/
TENNESSEE, LLC**

September 18, 2023

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ORDINANCE NO. #340

AN ORDINANCE RENEWING A FRANCHISE TO COMCAST OF ARKANSAS/LOUISIANA/MINNESOTA/MISSISSIPPI/TENNESSEE, LLC TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NEW PRAGUE MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; TERMINATING PRIOR FRANCHISE

RECITALS

The City of New Prague, 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.

Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC, 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 186.

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

The City reviewed the legal, technical and financial qualifications of Grantee and has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.

NOW, THEREFORE, THE CITY OF NEW PRAGUE DOES ORDAIN that a franchise is hereby granted to Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC to operate and maintain a Cable System in the City upon the following terms and conditions:

SECTION 1 DEFINITIONS

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

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

(b) “Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.

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

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

(e) “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.

(f) “Cable Service” shall be defined as set forth in Applicable Law, currently 47 U.S.C. § 522 (6), and currently defined as (a) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, “other programming service” is information that a cable operator makes available to all Subscribers generally.

(g) “Cable System” or “System” shall have the meaning specified for “Cable System” in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

(h) “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.

(i) “City” shall mean the City of New Prague, a municipal corporation in the State of Minnesota.

(j) “City Code” means the Municipal Code of the City of New Prague, Minnesota, as may be amended from time to time.

(k) “Connection” means the attachment of the Drop to the television set of the Subscriber.

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

(m) “Council” shall mean the governing body of the City.

- (n) “Day” unless otherwise specified shall mean a calendar day.
- (o) “Drop” shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.
- (p) “Effective Date” shall mean sixty (60) Days from date of the City’s approval of this Franchise.
- (q) “Expanded Basic Service” means the next tier of service above the Basic Cable Service tier excluding premium or pay-per-view services.
- (r) “FCC” means the Federal Communications Commission, or a designated representative.
- (s) “Franchise” shall mean the right granted by this Franchise Ordinance and conditioned as set forth herein.
- (t) “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- (u) “Franchise Fee” shall mean the fee assessed by the City to Grantee, 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).
- (v) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
- (w) “Gross Revenues” means any and all compensation in whatever form, from any source, derived directly or indirectly by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service within the Franchise Area. Gross Revenues shall not be net of: (1) any operating expense or other expenditure; (2) any prior actual or claimed overpayment of Franchise or PEG Fees, or; (3) any accrual, including without limitation, for commissions. Gross Revenues includes, by way of illustration and not limitation:
 - (i) monthly fees for Cable Services regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels, and video-on-demand Cable Services);
 - (ii) installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair or similar charges associated with Subscriber Cable Service levels;

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

(iv) Converter, remote control, and other Cable Service equipment rentals, leases, or sales;

(v) Payments for prepaid Cable Services and/or equipment;

(vi) Advertising revenues as defined herein;

(vii) Fees including, but not limited to:

1. late fees, convenience fees, administrative fees and other multiservice revenues, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the Franchise Area;

2. revenues from program guides;

3. Franchise Fees;

4. FCC regulatory fees;

5. Except as provided in subsection (ix) below, any fee, tax, including without limitation, the City’s utility tax, or other charge assessed against Grantee by City, which Grantee chooses to pass through and collect from its Subscribers; and

6. 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.

(viii) “Gross Revenues” shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee’s Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates.

(ix) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the Franchise Area 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 the 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.

(x) “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 Grantee revenues within the Franchise Area;
2. Public, Educational and Governmental (PEG) Fees; and
3. unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(xi) 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 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, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee’s calculations.

(xii) Grantee reserves the right to change the allocation methodologies set forth in paragraph (x) above to meet the standards mandated 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 as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to subparagraph (xii) below.

(xiii) 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 FASB, EITF and/or the SEC. Notwithstanding the forgoing, 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.

(xiv) Subject to the provisions of subsection xiii, nothing in this definition of Gross Revenues shall in any way serve to waive the City’s right to receive the maximum five percent (5%) Franchise Fee as set forth in 47. U.S.C. Section 542, irrespective of whether the City chooses to receive its compensation in cash or in in-kind services, to the extent “in-kind” services are considered part of the 5% Franchise Fee cap under Applicable Law. Neither the Grantee nor the City waive any rights either party may have regarding enforcement of all rights set forth in 47. U.S.C. Section 542.

(x) “Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. Chapter 238, as may be amended.

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

(z) “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.

(aa) “PEG” means public, educational and governmental.

(bb) “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.

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

(dd) “Subscriber” means a Person who lawfully receives Cable Service.

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

SECTION 2 FRANCHISE

2.1 Grant of Franchise. The City hereby authorizes Grantee to occupy or use the City’s Streets to construct and operate a Cable System 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. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law; or The City

hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

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

2.3 Franchise Term. The term of the Franchise shall be ten (10) years from the Effective Date, unless extended by mutual written consent in accordance with Section 16.7 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 16.22. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

2.6 Periodic Public Review of Franchise. Within sixty (60) Days of the third (3rd) and sixth (6th) annual anniversary of the Effective Date of this Franchise, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not

operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise.

2.7 Transfer of Ownership.

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

(b) City may determine that a public hearing is necessary due to potential adverse effect on Grantee’s Subscribers resulting from the sale or transfer.

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

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

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

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

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

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

2.8 Expiration. Upon expiration of the Franchise, the City may, subject to Grantee’s rights under Section 626 of the Cable Act:

- (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 is deemed appropriate in compliance with Applicable Law.

2.9 Right to Require Removal of Property. At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System 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 to the extent Grantee has authority under Applicable Law to maintain facilities in the Streets, and subject to Grantee’s obligation to apply for and secure a right-of-way permit from the City, if applicable.

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

SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Streets.

(a) Grantee may, subject to the terms of this Franchise 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 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 Laws. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3.2 Construction or Alteration. 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 to be at cost paid by benefited 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. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

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

3.6 Maintenance and Restoration.

(a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement, Grantee shall, at its own cost and expense and in accordance with the requirements of 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, but not to exceed ninety (90) Days. If Grantee fails, neglects or refuses to make restorations as required under this section, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City Streets pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the 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, public right-of-way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

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

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

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

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

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

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise, 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 the Street or other public places in the City from which the System has been removed in accordance with all requirements of the City Code and Section 2.9 herein. 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, acceptable to the City, who holds such authorization.

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

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written

notice of City's demand for removal is given, City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the Cable System to be in 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.

(a) 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:

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

(ii) 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.

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

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

4.6 System Maps and Layout. 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. City agrees keep the information confidential to the extent permitted by Applicable Law as set forth in Section 12.3 of this Franchise if it is designated so by Grantee.

**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 is currently passing a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be capable of providing to Subscribers at least two hundred (200) or more activated minimum

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 the requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

5.2 System Specifications.

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

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS 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 at least at two (2) hours’ duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System and in such manner that the Cable System shall not interfere with any installations of the City.

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

- (a) Tests required by the City to demonstrate Franchise compliance; and
- (b) Written records of all system test results performed by or for Grantee shall be maintained as required by FCC regulations, and shall be available for City inspection upon request.

5.4 Special Testing.

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

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

SECTION 6 PROGRAMMING AND SERVICES

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

- (a) Local Broadcast (subject to federal carriage requirements)
- (b) Public Broadcast
- (c) News and Information
- (d) Sports
- (e) General Entertainment
- (f) Arts/Performance/Humanities
- (g) Science/Technology
- (h) Children/Family/Seniors
- (i) Foreign Language/Ethnic Programming

- (j) PEG Access Programming (to the extent required by the Franchise)
- (k) Movies

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 Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes, in accordance with Applicable law.

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 Connection of Public Facilities.

(a) The parties acknowledge that as of the Effective Date of this Franchise, Grantee continues to provide Complimentary Services to certain schools, libraries and public institutions within the Franchise Area as set forth in Exhibit A.

(b) In the event Grantee elects, to the extent permitted by Applicable Laws, to deduct the cost of Complimentary Services from Franchise Fees, the Grantee agrees that it will do so only after providing City with ninety (90) days prior written notice. The charges shall be consistent with Applicable Law, at the time of this writing defined as the "marginal cost." Grantee will disclose in writing the amount it calculates to be due under Applicable Law and shall arrange with City for deductions from the Franchise Fee. Charges may include those for services and equipment, if any, at each location and all applicable fees and taxes and shall be subject to adjustment at a time consistent with Grantee's retail adjustments. City may remove locations or change the level of cable service indicated on Exhibit A with 30-days written notice to Grantee.

(c) Grantee agrees not to unfairly or unreasonably discriminate against the City with respect to other Minnesota served local franchising authorities, with respect to the costs to be imposed for Complimentary Services.

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

6.7 Line Extension.

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

(b) Where the density is less than specified above, Grantee shall inform Persons requesting Service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost. Grantee shall at all times implement such line extension policy in a nondiscriminatory manner throughout the City.

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

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

SECTION 7 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 Number of PEG Access Channels.

(a) Grantee will make available a minimum of one (1) PEG Access Channels for the Franchise term in standard definition (“SD”) format. Grantee shall provide the PEG Access Channel on the Basic Cable Service tier.

(b) PEG Access Channels and programming may be delivered by City to Grantee in SD or high definition (“HD”) format as set forth herein. Grantee shall provide all necessary transmission equipment from the demarcation point and throughout Grantee’s distribution system, in order to deliver the PEG Access Channels to Subscribers. PEG Access Channel signals delivered in HD format to Grantee shall not require Grantee to deliver such HD signals to Subscribers except as set forth in this Section 7.

(c) Grantee will continue to carry the PEG Access Channel in SD format as long as there are SD Channels in Grantee’s Basic Cable Service tier. If Grantee discontinues carriage of SD Channels, all of the PEG Access Channels shall be carried in HD format.

7.2 High Definition PEG Access Channels.

(a) After the Effective Date, and upon sixty (60) Days' written notice from the City and the satisfaction of the requirement in Section 7.2(b) Grantee shall provide the City with one (1) PEG Access Channel in HD. The HD PEG Access Channel will be carried on the Cable System without degradation. Following implementation of the HD PEG Access Channel as set forth in this Section 7.2 (a), Grantee will maintain the one (1) SD PEG Access Channel required by Section 7.1 resulting in one (1) SD PEG Access Channel and one (1) HD PEG Access Channel.

(b) Included in the City's notice required in Section 7.2(a), the City must attest that it has local, noncharacter generated programming available in HD format so as to provide content of value to viewers and not have a blank HD channel.

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

(d) Any costs of end-user equipment associated with the delivery of SD PEG channels in HD format beyond the demarcation point shall be borne by the City.

(e) The City is responsible for acquiring all equipment necessary to produce programming in HD.

(f) Grantee shall have the right to use any technology to deploy or deliver HD signals (including selection of compression, utilization of IP and other processing characteristics) so long as it produces signal quality for the consumer that is reasonably comparable (from the viewer's standpoint) and functionally equivalent to similar commercial HD signals carried on the cable system.

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

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

7.5 PEG Access Channel Locations.

(a) PEG Access Channels shall be carried on the Basic Cable Service tier as set forth in Section 7.1 herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service. Grantee shall make every reasonable effort to coordinate cablecasting PEG Access programming on the Cable System on the same Channel designations as such programming is cablecast within the City as of the Effective

Date. In no event shall any PEG Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee’s reasonable control. The PEG Access Channels are presently located on Channels 14 and 15.

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

(c) Grantee shall make reasonable efforts to minimize Channel movements for PEG Access Channels and shall make reasonable efforts to locate PEG Access Channels in its lineup in a manner that is easily accessible to Subscribers. The HD Access Channel shall be assigned a number near other HD local broadcast stations, or, if such location is unavailable, near HD news/public affairs programming. In the event a PEG Access Channel is moved, Grantee, at Grantee’s expense, will place City’s notices of the PEG Access Channel change on its regular monthly billings, upon City’s request.

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

7.6 Navigation to PEG Access Channels/Electronic Programming Guide. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. Grantee will continue to make available to City the ability to place PEG Access Channel programming information on the interactive channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access 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 is not technically possible for all PEG Access programming, and that Grantee is not responsible for operations of the EPG provider.

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

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

7.9 PEG Transport. Grantee shall maintain all existing System connections or paths for PEG transport in the City. Such transports are listed in Exhibit A attached hereto. To the extent specifically authorized by Applicable Law, Grantee shall have the right to recoup the marginal cost of maintaining the PEG transport as set forth in this Section 7.9. Grantee may begin invoicing the City for such maintenance costs in accordance with the terms of Section 6.5(b) herein.

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

7.11 Future Fiber Return Lines for PEG.

- (a) At such time that the City determines:
 - (i) 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
 - (ii) that the City desires to establish or change a location from which PEG programming is originated; or
 - (iii) that the City desires to upgrade the connection to Grantee from an existing signal point of origination,

the City may elect to give Grantee written notice detailing the point of origination and the capability sought by the City. The cost estimate shall not exceed the fair market value of the requested facility. After an agreement to reimburse Grantee for Grantee’s out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber. Grantee agrees that it shall not impose any recurring charge for the use of connections/ facilities.

7.12 PEG Access Channel Carriage.

- (a) Grantee shall provide all necessary transmission equipment, at no cost to the City, from the demarcation point and throughout Grantee’s distribution system in order to deliver the PEG Access Channels. Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG Access Channels/ signals leave the City’s designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any PEG Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional PEG Access Channel when the cumulative time on all the existing PEG Access Channels combined meets the following standard: whenever one (1) of the PEG Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, PEG Access Channel for the same purpose; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

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

(d) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

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

7.13 PEG Fee.

(a) The City, upon a vote of the City Council, may elect to require Grantee to pay to the City a one-time lump sum not to exceed four thousand three hundred fifty six dollars (\$4,356.00), that may be inflated by 3% annually beginning on the effective date of this Franchise, to be used only for PEG capital purchases (“PEG Payment”). In the event the City requires the PEG Payment, the Grantee may collect an amount itemized on customer invoices as a “PEG Fee” to reimburse Grantee for the PEG Payment. In no case shall the PEG Fee exceed One Dollar (\$1) per Subscriber per month provided, however, that if the City does not exercise its option to require a PEG Payment within the first three (3) years following the Effective Date the City acknowledges that the Grantee’s collection of the PEG Fee may extend beyond the expiration of this Franchise so that Grantee may fully recoup the PEG Payment.

(b) The PEG Payment may be used by City for PEG Capital purchases in accordance with Applicable Law.

(c) The PEG Payment is not part of the Franchise Fee and, so long as it is used in accordance with Applicable Law, instead falls within one or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of

Franchise Fees under Section 16.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present, or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

PEG Technical Quality.

a) Grantee will deliver the SD/HD PEG Access Channel to Subscribers so that it is viewable without degradation, provided that it is not required to deliver a PEG Access Channel at a resolution higher than the highest resolution used in connection with the delivery of local broadcast signals to the public. Grantee may implement SD/HD carriage of the PEG Access Channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality comparable (meaning indistinguishable to the viewer) to broadcast SD/HD channels carried on the Cable System.

b) Within eight (8) hours of a written or e-mailed request from City to the Grantee identifying a technical problem with a PEG Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

c) If changes in the technology used by the Grantee require additional equipment for reception of PEG Access Channels, the Grantee shall make such equipment available free of charge and at no cost to the City.

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

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

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

SECTION 8 REGULATORY PROVISIONS

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

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

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

SECTION 9 SECURITY FUND

9.1 Security Fund. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Ten Thousand and No/100 Dollars (\$10,000.00). In no event shall Grantee fail to post a Ten Thousand and No/100 Dollar (\$10,000.00) letter of credit within thirty (30) Days receipt of a notice of Franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged

noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance, and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Two Thousand Dollars (\$2,000) in that action.

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

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

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

- (a) Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

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

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

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

9.8 Procedure for Draw on Security Fund.

- (a) Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may

require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(b) City shall hear Grantee’s dispute at a regularly scheduled or specially scheduled Council meeting within sixty (60) days of receipt of such dispute. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(c) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may begin to draw on the security fund.

9.9 Time for Correction of Violation. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to collect the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

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

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

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

SECTION 10 DEFAULT

10.1 Basis for Default. City shall give written notice of default to Grantee if City determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;
- (b) Attempted to evade any material provision of this Franchise or the acceptance hereof;
- (c) Practiced any fraud or deceit upon City or Subscribers;
- (d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.

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

- (a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.
- (b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.
- (c) If, after notice is given and an opportunity to cure, at Grantee’s option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

10.3 Mediation. If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Mutually agreed upon mediation shall stay other enforcement remedies of the parties for a period of ninety (90) Days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator’s fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

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

10.5 Compliance with the Laws.

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

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

SECTION 11 FORECLOSURE AND RECEIVERSHIP

11.1 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.

11.2 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 12 REPORTING REQUIREMENTS

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

12.2 Reports. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City 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 and as such information may be maintained in the ordinary course of business. City shall agree to maintain the continuing confidentiality of such records as provided in Section 12.3 herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

12.3 Public Records

(a) Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Minnesota Government Data Practices Act (“MGDPA”) pursuant to Minn. Stat. Chapter 13. Grantee is responsible for becoming familiar with and understanding the provisions of the MGDPA.

(b) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the MGDPA. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as “Confidential” prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the City that specifically identifies the applicable exemption under the MGDPA, and stating the reason(s) Grantee believes the information is exempt from public inspection. After reviewing the Grantee’s request for confidentiality, and determining whether the identified exemptions are applicable, the City shall take reasonable steps to protect the confidential nature of any such information, consistent with the MGDPA, including only disclosing such information to employees, representatives, and agents thereof that have a need to know or in order to enforce the provisions of this Franchise.

(c) Within five (5) working days of receiving a public records request to inspect any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to

provide a written response to the City, before the City may disclose any of the requested, confidential information. If the City determines that it will be necessary to reveal the information, the City shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released. The City shall retain final discretion to determine whether to release the requested information in response to any public records request, as recognized under the MGDPA.

12.4 Communications with Regulatory Agencies.

(a) Upon written request, Grantee shall submit to City copies of any communications to any federal, state or local courts, regulatory agencies and other government bodies if such documents are directly relate to the operation of Grantee’s Cable System or Grantee’s provision of Cable Services within the Franchise Area. Grantee shall submit such communications to the City no later than thirty (30) Days after such communications have been filed. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under Applicable Law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency or as a request for confidential treatment is pending. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee’s Cable System within the Franchise Area, Grantee shall make such documents available to City upon City’s written request.

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

12.5 Open Records. Grantee shall manage all of its operations in accordance with a policy of keeping its records open and accessible to the City. The City, upon reasonable notice, shall have the right to inspect all records of the Grantee and affiliated entities necessary to determine compliance by Grantee with its obligations under this Franchise. Such inspection shall take place at any time during Normal Business Hours at a Grantee business operations site within the Twin Cities of Minnesota. Grantee shall not deny the City access to Grantee’s records on the basis that Grantee’s records are under the control of an affiliated entity or a third party, rather than the Grantee. In the case of affiliated entities not under common control with Grantee, Grantee shall not be subject to the remedies set forth in Section 11 if such Affiliate does not permit inspection of its records, and Grantee has;

(a) made available for inspection all of its records relevant to the determination of compliance; and

(b) exercised all reasonable efforts to persuade such affiliated entity to make such records available for inspection.

SECTION 13 CUSTOMER SERVICE POLICIES

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

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

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Converter/Subscriber terminal equipment policy.
- (g) Breach of Franchise specification.
- (h) How complaints are handled including Grantee’s procedure for investigation and resolution of Subscriber complaints.
- (i) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.

13.3 Reporting Complaints.

(a) The requirements of this Section 13.3 shall be subject to federal law regarding Subscriber privacy. Consistent with the way such information is maintained in the ordinary course of business, Grantee shall maintain customer service performance data available for City inspection. Subscriber data shall include the date, name, address, and telephone number of Subscriber complaints made to the City as well as the subject of the complaint, date and type of action taken to resolve the Complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

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

13.4 Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. Grantee shall, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee’s compliance with each and every term and provision of this Section 13.4. 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 no inconsistent with the FCC’s customer service standards.

13.5 Cable System Telephone Availability.

Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week for responses to customer complaints or inquiries in accordance with the FCC’s customer service standards.

13.6 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.

13.7 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.

13.8 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.

13.9 Subscriber Information.

(a) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(i) Products and Services offered;

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

(iii) Installation and Service maintenance policies;

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

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

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

(b) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the

change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 13.9.

13.10 Notice or Rate Programming Change. In addition to the requirement of this Section 13.10 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. No notice is required when a channel addition or deletion does not result in a rate change. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

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

13.12 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.

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

13.14 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 Commission of the City.

13.15 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. Notwithstanding anything to the contrary in Section 13.8, above, Grantee may, in its sole discretion, consolidate costs on Subscriber's bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

13.16 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.

13.17 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 13.11, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to Subscribers 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.

13.18 Subscriber Privacy.

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

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

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

13.19 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 14 SUBSCRIBER PRACTICES

14.1 Subscriber Rates. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber’s service outlet, provided, however, that such disconnection shall not be effected until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber’s Cable Service.

14.2 Refunds.

(a) Refunds to Subscribers shall be made or determined in the following manner:

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

(ii) 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;

(iii) If any Subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Grantee.

SECTION 15 COMPENSATION AND FINANCIAL PROVISIONS

15.1 Franchise Fees.

(a) During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling 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. In the event Grantee bundles or combines Cable Service subject to the Franchise Fee with non-Cable Service so that Subscribers pay a single fee for more than one class of service resulting in a discount, Grantee shall, for purposes of calculation of the Franchise Fee, allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed based on the

published charge for each service in the bundled or combined classes of services when purchased separately.

(b) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter. In accordance with Section 16 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as Exhibit B, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(c) 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.

(d) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

15.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. The production of such records shall be subject to Section 12.3 herein. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of seven (7) 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, Affiliate 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.

15.3 Review of Record Keeping Methodology. Upon request, Grantee agrees to meet with a representative of the City 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.

15.4 Audit of Records. The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee 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.

15.5 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.

15.6 Indemnification by Grantee. Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence or willful misconduct on the part of the City or its employees; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the City, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the City, its officers, or its employees. The City shall give the Grantee written notice of its obligation to indemnify within a reasonable time not to exceed thirty (30) business days of receipt of a claim or action pursuant to this subsection.

15.7 Grantee Insurance. Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles,

products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000). The liability policy shall include:

- (a) The policy shall provide coverage on an “occurrence” basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee’s operations under this Franchise and that no other insurance maintained by the 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 16 MISCELLANEOUS PROVISIONS

16.1 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.

16.2 Entire Agreement. This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein.

16.3 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.

16.4 Prior Franchise Terminated. The cable television franchise originally granted by Ordinance 186 is hereby terminated.

16.5 Franchise Acceptance. No later than sixty (60) 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 accept this Franchise, or fails to provide the required documents, this Franchise may, upon Council action, be rescinded. 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.

16.6 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.

16.7 Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

16.8 Notice.

(a) Any notification that requires a response or action from a party to this Franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this Franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City: City Administrator
City of New Prague
118 Central Ave. N.
New Prague, MN 56071

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

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

16.9 Rights of Individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. Section 551, Protection of Subscriber Privacy.

16.10 Rights Reserved to City. In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of this Franchise.

16.11 Severability. If any provision of this Franchise is held by any governmental authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such governmental authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (30) Days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

16.12 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.

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

16.14 Abandonment of System. Grantee may not abandon the System or any portion thereof during the term of this Franchise, and thereafter without having first given three (3) months written notice to City and conforming to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. To the extent required by Minn. Stat. § 238.084, Subd. 1 (w), Grantee shall compensate City for damages resulting from the abandonment.

16.15 Removal After Abandonment. In the event of Grantee’s abandonment of the System, City shall have the right to require Grantee to conform to Section 405 of the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. If Grantee has failed to commence removal of the System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City’s demand for removal consistent with Section 405 of the City Code and Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given City shall have the right to require provision of the security fund provided for herein and draw and apply all such funds toward removal, and declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

16.16 Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

16.17 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.

16.18 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.

16.19 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.

16.20 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.

16.21 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

16.22 Competitive Equity.

(a) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Streets in order to provide Cable Services or similar video programming service within the City in accordance with Applicable Law (hereinafter “Lawful Franchise”). If the City grants a Lawful Franchise containing material terms and conditions that differ from Grantee’s material obligations under this Franchise, or if the City declines to require a Lawful Franchise where it has the legal authority to do so, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this section, be amended to include any material terms or conditions that are imposed upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are no more favorable or less burdensome. “Material terms and conditions” include, but are not limited to: Franchise Fees and Gross Revenues; complementary services; insurance; System build-out requirements consistent with Applicable Law; security instruments; PEG Access Channels and PEG Fees; customer service standards; required reports and related record keeping; audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are no more favorable or less burdensome.

(b) The modification process of this Franchise as provided for in Section 16.22(a) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee’s notice shall address the following: (1) identifying the specific terms or conditions in the competitive Lawful Franchise that are materially different from Grantee’s obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this Section 16.22(a), should any entity

whose Lawful Franchise triggered the amendments under this section cease to provide such services within the City, the City may provide ninety (90) Days written notice to Grantee of such fact, and the City and Grantee shall enter into good faith negotiations to determine which of the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective. It is the intent of the parties that the original terms, conditions and obligations of this Franchise shall be reinstated in the absence of a competitive entity.

(c) Upon receipt of Grantee’s written notice as provided in Section 16.22(b), 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 one hundred twenty (120) 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.

(d) In the alternative to Franchise modification negotiations as provided for in Section 16.22(a), or if the City and Grantee fail to reach agreement in negotiations as provided for in Section 16.22(c), Grantee may, at its option, elect to replace this Franchise by opting into the Lawful Franchise, with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the Lawful Franchise, so as to ensure that the regulatory and financial burdens on each entity are no more favorable or less burdensome. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the Lawful Franchise.

(e) Notwithstanding anything contained in this Section 16.22(a) through (d) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming services available for purchase by Subscribers or customers under its franchise agreement with the City.

Passed and adopted this ___ day of September, 2023.

CITY OF NEW PRAGUE, MINNESOTA

Duane J. Jirik, Mayor

ATTEST:

Joshua M. Tetzlaff, City Administrator

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

COMCAST OF ARKANSAS/
LOUISIANA/MINNESOTA/
MISSISSIPPI/TENNESSEE, LLC

Date: _____, 2023

By: _____

Its: _____

SWORN TO BEFORE ME

this__ day of _____, 2023.

_____ Notary Public

Exhibit A

PEG Transport Lines

- New Prague City Hall, 118 Central Ave N, New Prague, MN, to Comcast Hub
- New Prague High School, 221 12th Street NE., New Prague, MN, to Comcast Hub

Complimentary Cable Service to Public Buildings

- City Hall, New Prague: 118 Central Ave. N., New Prague, MN
- Fire Department, New Prague: 118 Central Ave. S., New Prague, MN
- Library, New Prague: 400 Main Street E., New Prague, MN
- Municipal, New Prague: 300 Main Street E., New Prague, MN
- Elementary, New Prague: 1200 Columbus Ave N., New Prague, MN
- Middle School, New Prague: 721 Central Ave. S., New Prague, MN
- High School, New Prague: 221 12th Street NE., New Prague, MN
- School, Wenceslaus: 227 Main Street E., New Prague, MN
- Elementary, Raven Stream: 300 11th Ave. NW., New Prague, MN
- Junior High, New Prague: 405 1st Ave. NW., New Prague, MN

Exhibit B

Franchise Fee Payment Worksheet

*****CONFIDENTIAL*****



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

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

[Empty box for signature or stamp]

This statement represents your payment for the period listed above.

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



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
KYRA CHAPMAN, PLANNER
SUBJECT: ADOPTION OF ORDINANCE #341 AMENDING SECTION 707 OF THE ZONING
ORDINANCE TITLED SCREENING RELATING TO SCREENING
REQUIREMENTS IN THE I-1 LIGHT INDUSTRIAL ZONING DISTRICT
DATE: SEPTEMBER 6, 2023

Earlier this year, there were screening complaints of a property in the I-1 Light Industrial Zoning District adjacent to TH21. Under the current zoning ordinance, there are only specific screening requirements for commercial, industrial, or institutional uses that abut residentially zoned properties. The ordinance does not account for industrial properties adjacent to commercial, industrially zoned properties or major roadways. Over the past few months, the Planning Commission has been drafting up a revised ordinance with language that outlines specific opacity, fencing, escrow, warranty, tree spacing, diameter, and height requirements for various locations of industrial uses which previously would be individually determined during a conditional use permit review process only.

The Planning Commission held the required public hearing on the zoning ordinance amendment on August 23rd, 2023 and received no public comments during the hearing. During the meeting, the Planning Commissioners suggested making some modifications to the warranty and escrow section in regard to the amount of escrow and escrow forfeiture. Since their last meeting, this section has been expanded upon noting an escrow being required in the amount of 125% of the cost of the landscaping to ensure the escrow would ensure the work could be completed by the city if necessary. The Planning Commission motioned (4-0) to forward the zoning ordinance amendment to the City Council.

The City Council introduced and conducted the first reading the ordinance at their meeting on September 5th, 2023.

Recommendation

Staff recommends that the City Council conduct a second reading and adopt ordinance #341.

ORDINANCE NO. 341

CITY OF NEW PRAGUE

**AN ORDINANCE AMENDING SECTION 707 OF THE ZONING ORDINANCE
TITLED SCREENING RELATING TO SCREENING REQUIREMENTS IN THE I-1
LIGHT INDUSTRIAL DISTRICT**

The City of New Prague Ordains:

SECTION 1. Section 707 of the Zoning Ordinance titled Screening is amended by deleting the ~~stricken~~ material and adding the underlined material as follows:

707 Screening

1. Commercial, Industrial, or Institutional Uses Abutting Residential Districts

Where any commercial, industrial or institutional uses are adjacent to property zoned for residential use, that business or industry shall provide screening along the boundary of the residential property. Screening shall also be provided where a business or industry is across the street from a residential zone, but not on that side of a business or industry considered to be the front as determined by the Zoning Administrator. Landscape screening required under this section shall not be allowed within public drainage and utility easements. Screening is not required within any site triangle required under Section 723(6) of this Ordinance. Screening shall consist of a 20 foot wide green belt strip as provided below:

- A. A green belt planting strip shall consist of staggered rows of evergreen trees, or deciduous trees and plants, or shrubs each spaced at a maximum of 12.5' and consist of a sufficient density to provide a visual screen and reasonable buffer of at least an 80% opacity year round once trees are mature. This planting strip shall be designed to provide visual screening to a minimum height of six eight feet at all times and a minimum tree diameter of 2.5" measured six inches above the ground level. The grade for determining the height shall be the grade elevation of the building or use for which the screening is providing protection. The planting plan and type of plantings shall require the approval of the Zoning Administrator.
- B. A fence may also be installed, but not in lieu of the green belt planting strip. The fence shall be visually appealing and cohesive with the exterior of the principal structure constructed of masonry, brick, vinyl, or wood. The fence must be located within the interior of the lot such that the green belt plantings are visible from adjacent property.
- C. For any use allowed via a conditional use permit, additional requirements may be added to the above requirements in order to mitigate the impact on the adjacent residential properties and if adjacent to roads classified as major collectors and higher, such as berms, more opacity or other requirements not listed herein.

2. Industrial Uses Abutting Commercial or Industrial Districts

All industrial properties abutting commercial or industrially zoned districts must follow the

provisions below:

- A. A single row of deciduous or evergreen trees is required and must be a minimum height of 8' with a minimum diameter of 2.5" measured six inches above the ground level. Tree spacing shall be 40' around the perimeter of the property abutting commercial or industrial districts. Follow § 717 of the Zoning Ordinance for landscaping requirements for parking lots.
- B. If fencing is erected on the property, the fence must be visually appealing and cohesive with the exterior of the principal structure.

3. Industrial Uses Along Arterial Roadways

- A. If a proposed industrial use abuts a roadway classified as an arterial roadway or higher, the applicant must obtain a conditional use permit to ensure that the property and use is adequately screened from the arterial roadway which may include additional landscaping/screening requirements beyond those found in Section 1 and 2 above as well as include additional requirements related to tree spacing, opacity, fencing, etc.

4. Warranty and Escrow

- A. The City shall collect a cash escrow specifically for the screening requirements before any building permit is issued. The escrow shall be at an amount equal to a minimum of 125% of the estimated screening expenses and shall be refunded to the party who deposited the escrow when all the following are completed and approved by the City:
 - 1. Required screening trees are installed and alive at the end of the 1 year warranty time period.
 - 2. Sites that are completed between October 15th and before May 15th shall have until July 1st to plant the required trees but will only be issued a temporary certificate of occupancy until that time.
 - 3. If the property owner fails to complete the landscaping and screening requirements by the deadline, the City may finish the work with the cash escrow. Any additional fees or expenses accrued in association with the City finishing the work will also be invoiced to the property owner.

SECTION 2. This ordinance shall take effect and be in force after its passage and upon its publication, in accordance with Section 3.13 of the City Charter.

Introduced to the City Council of the City of New Prague, Minnesota, this 5th day of September, 2023.

The required 10 days posted notice was completed on the City Website and City Hall Bulletin Board on September 6th, 2023.

Passed by the City Council of the City of New Prague, Minnesota, the 18th day of September, 2023, and to be published on the 28th day of September, 2023.

Duane J. Jirik, Mayor

State of Minnesota)

)ss.

(CORPORATE ACKNOWLEDGMENT)

County of Scott & Le Sueur)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2023.

Notary Public

ATTEST: _____
Joshua M. Tetzlaff, City Administrator

State of Minnesota)

)ss.

(CORPORATE ACKNOWLEDGMENT)

County of Scott & Le Sueur)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2023.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Kyra J. Chapman
City of New Prague
118 Central Ave. N.
New Prague, MN 56071
(952) 758-4401



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JOSHUA TETZLAFF, CITY ADMINISTRATOR
SUBJECT: SET 2023 PRELIMINARY, NOT TO EXCEED PROPERTY TAX LEVY
DATE: SEPTEMBER 15, 2023

Each year, the Council is required to set its proposed property tax levy and certify that levy to the county auditor (Minn Stat. 275.065.1). City Council met for a workshop on August 29th to discuss the budget for 2024, which is directly linked to the proposed tax levy.

At the workshop, staff shared a first draft of the general fund budget. Staff shared a summary of the changes within the areas of personnel costs, operations, maintenance, and capital when comparing the 2024 proposed budget compared to 2023 adopted budget. Coming out of the meeting, staff informed Council they would be bringing a preliminary levy amount of \$5,114,295 for taxes payable in 2024. This would be a 6% increase over 2023.

As a reminder, this is not a final approval of the tax levy. This is a proposed tax levy that, over the next few months, will be refined. The purpose of this approval is to set the max increase for 2023 payable 2024. This proposed levy increase may not be exceeded in December when the final property tax levy is set.

Recommendation

Staff recommends approval of Resolution #23-09-18-02, setting the 2023 payable 2024 Proposed Property Tax Levy at \$5,114,295 and scheduling the public hearing to set the 2023 payable 2024 Final Tax Levy for December 4, 2023.

State of Minnesota
Counties of Scott & Le Sueur
City of New Prague }
}

**CITY OF NEW PRAGUE, MINNESOTA
RESOLUTION #23-09-18-02**

**RESOLUTION ADOPTING 2023 PRELIMINARY PROPERTY TAX LEVY FOR
TAXES PAYABLE IN 2024**

BE IT RESOLVED, by the City Council of the City of New Prague, Counties of Scott and Le Sueur, Minnesota that the 2023 Levy, for Taxes Payable 2024 (preliminary tax levy) be set at \$5,114,295 for Net Tax Capacity (NTC) and for a total preliminary levy amount of \$5,114,295. The levied amount includes all necessary debt service payments and any other bond payments have sufficient funds to cover debt requirements.

BE IT FURTHER RESOLVED, that the City Administrator is hereby instructed to forward copies of this resolution to the Auditors of Scott and Le Sueur Counties.

BE IT FURTHER RESOLVED, that the date for the 2023 Levy, for Taxes Payable 2024 Truth in Taxation Hearing is hereby established for December 4, 2023 at 6:00 p.m. and the continuation hearing (if necessary) is hereby established for December 18, 2023 at 6:00 p.m.

Adopted by the City Council of the City of New Prague on this 18th day of September, 2023.

Duane J. Jirik
Mayor

ATTEST:

Joshua M. Tetzlaff
City Administrator

**PAYABLE 2024 "TRUTH IN TAXATION"
PROPOSED LEVY CERTIFICATION**

Expenditure Category	Gross Certified NTC Levy (A)	Property Tax Aid		Net Certified NTC Levy (A-B=C) (C)
		LGA (B)		
General Revenue	\$ 4,039,295.00	\$ 1,183,527.00		\$ 2,855,768.00
Road & Bridge				\$ -
Debt Service Total*	\$ 1,000,000.00			\$ 1,000,000.00
Other (EDA)	\$ 75,000.00			\$ 75,000.00
				\$ -
Total	\$ 5,114,295.00	\$ 1,183,527.00		\$ 3,930,768.00

* provide breakdown of certified levy by individual bond on attached sheet

Market Value Based Referenda Levy	\$ -
--	------

- (A)-Levy Requirement..... Amount needed to fund services
- (B)-LGA (Local Government Aid).....) This aid is certified to the taxing district by the Department of Revenue. It can be used to reduce any single levy item or a combination of levy requirements.
- (C)-Certified Levy..... Levy certified to the taxation department. **ROUND TO THE NEAREST WHOLE DOLLAR. DO NOT CERTIFY PENNIES.** The Taxation Department will deduct Fiscal Disparities from all certified levies.

(You must submit your resolution with this certification)

PLEASE NOTE: All debt must be accounted for in your resolution whether it is a part of your levy or not. If the amount levied is less than the required amount from the payment schedule for the bond, you must pass a resolution stating that you have sufficient funds for that bond. This can be included in the same resolution with your levy. Scott County will be verifying the levy requirements based on the payment schedule in our Bond Register.

Before signing, please verify the following:

- * MAKE SURE THAT ALL LINES ADD ACROSS AND ALL COLUMNS ADD DOWN TO THE TOTAL LINE
- * BREAKDOWN OF DEBT SERVICE LEVY BY INDIVIDUAL BOND HAS BEEN PROVIDED
- * AMOUNTS REPORTED MATCH ANY OTHER SUPPORTING DOCUMENTATION

Signature of person completing this form

952-758-4401
Phone number on Proposed Tax Notice

City Administrator
Title

9/18/2023
Date

SPECIAL TAXING DISTRICTS and CITIES OF 500 OR LESS POPULATION ONLY:

Check this box if you stipulate that your final property tax levy is the same as the proposed levy certified on this form. If you check this box, no further certification of your final levy will be required.....

**THIS FORM MUST BE RETURNED TO THE SCOTT COUNTY PROPERTY & TAXATION SERVICES DEPARTMENT BY:
OCTOBER 2, 2023 FOR ALL TAXING DISTRICTS**

2024 LEVY CERTIFICATION
Net Tax Capacity Debt Service Schedule

NAME OF TAXING DISTRICT

City of New Prague

PLEASE NOTE: All debt must be accounted for in your resolution whether it is a part of your levy or not. If the amount levied is less than the required amount from the payment schedule for the bond, you must pass a resolution stating that you have sufficient funds for that bond. This can be included in the same resolution with your levy. Scott County will be verifying the levy requirements based on the payment schedule in our Bond Register. You must submit your resolution with this certification form.

Bond Description	General Obligation Bond (Y or N)	Required Levy amount per Bond Schedule (A)	***Amount funded by NTC Debt Levy (B)	Amount funded by Other Sources	List other funding source
				(A - B = C) (C)	
G.O. Bonds, Series 2009A (Improvement & Equipment)		\$ 37,022.84	\$ 15,417.00	\$ 21,605.84	
2010 Phillips Square		\$ 11,000.00	\$ 11,550.00	\$ (550.00)	
G.O. Refunding Bonds, Series 2011A		\$ 32,985.23	\$ -	\$ 32,985.23	
G.O. Refunding Bonds, Series 2013B		\$ 391,419.00	\$ 266,595.00	\$ 124,824.00	
G.O. Bonds, Series 2014A		\$ 68,092.21	\$ 68,092.00	\$ 0.21	
G.O. Bonds, Series 2015A		\$ 13,053.26	\$ 2,291.00	\$ 10,762.26	
G.O. Bonds, Series 2016A		\$ 10,031.18	\$ -	\$ 10,031.18	
G.O. Bonds, Series 2019A		\$ 241,172.82	\$ 188,095.00	\$ 53,077.82	
G.O. Refunding Bonds 2020A; Refunds 2010A, 2012A, 2012B, 2013A		\$ 260,274.41	\$ 113,159.00	\$ 147,115.41	
G.O. Bonds, Series 2021A		\$ 287,331.72	\$ 27,110.00	\$ 260,221.72	
G.O. Bonds, Series 2022A		\$ 112,981.40	\$ 28,246.00	\$ 84,735.40	
G.O. Bonds, Series 2023A		\$ 141,170.38	\$ 141,170.38	\$ -	
Capital Equipment Fund		\$ -	\$ 138,274.62	\$ (138,274.62)	
		\$	\$	\$	
Total G.O. Debt		\$ 1,606,534.45	\$ 861,725.38	\$ 744,809.07	
Total Non-G.O. Debt			\$ 138,274.62	\$ (138,274.62)	
Debt Service Total		\$ 1,606,534.45	\$ 1,000,000.00	\$ 606,534.45	

***The amount funded by levy must match total of debt on levy certification form (if any)



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION FOR MNDOT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM APPLICATION
DATE: SEPTEMBER 14, 2023

Earlier this year, city staff submitted an interest form to MnDOT for the Transportation and Economic Development Program for a roundabout improvement at the intersection of TH21/6th Street NW/7th Street NW and was selected to submit a full application which is due on Friday September 22nd.

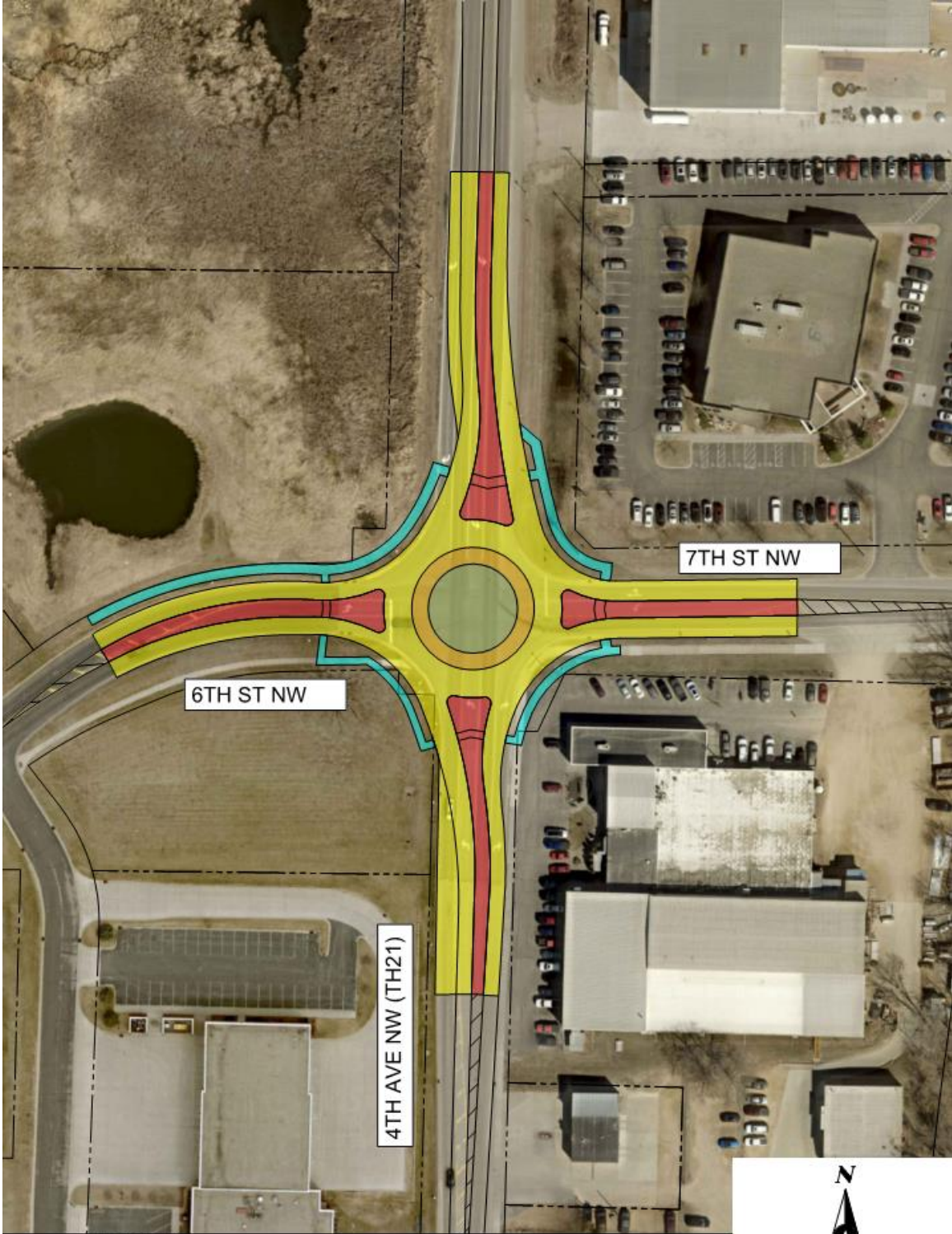
The reason for this project is related to concerns city staff has fielded about visibility (particularly for east bound traffic), pedestrian crossing concerns and general concerns from businesses in the area about the safety of the intersection (including speeds through the intersection). Also, in 2015 when the EDA platted the current phase of the industrial park and concept planned an additional 80 acres to the north, a traffic impact study was completed which recommended a signalization or roundabout improvement at this intersection upon the completion of a second phase in the industrial park. While expansion of the industrial park is not planned by the City at this point, the land remains guided for such development and the city actively receives industrial development inquiries which will lead to the necessary completion of this improvement.

Staff is nearing completion of the application which proposes a roundabout at the intersection to be constructed beginning in 2025 at a cost of approximately \$2,000,000 (see the attached schematic drawing). The TED program can fund up to 70% or \$1,400,000 with a \$600,000 local match required. This local match can utilize the City’s state aid dollars. The City can also seek other funds or grants to supplement the project for a local match.

As part of the application process, a resolution (see attached) is required to be approved by the City Council before submittal.

Recommendation

Staff recommends that the City Council approve the attached resolution



6TH ST NW

7TH ST NW

4TH AVE NW (TH21)

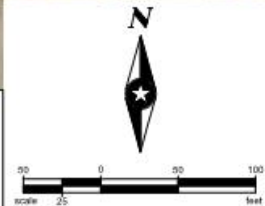


PROJECT NO.

DATE:
7/21/23

**CONCEPTUAL ROUNDABOUT
TH21-6TH ST NW
NEW PRAGUE, MINNESOTA**

FIGURE
NO. 1



CITY OF NEW PRAGUE
RESOLUTION #23-09-18-03

**LOCAL GOVERNMENT RESOLUTION FOR
TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM APPLICATION**

BE IT RESOLVED that the City of New Prague act as the legal sponsor for the TH21 / 6th Street NW / 7th Street NW Roundabout and Pedestrian Improvements project and requests funding from the Transportation Economic Development (TED) Program of the Minnesota Department of Transportation.

BE IT FURTHER RESOLVED that the City of New Prague has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to ensure matching funds and adequate construction of the proposed project.

BE IT FURTHER RESOLVED that the City of New Prague has not violated any Federal, State or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED that upon approval of its application by the state, the City of New Prague, may enter into an agreement with the State of Minnesota for the above-referenced project(s), and that it will comply with all applicable laws and regulations as stated in all contract agreements.

BE IT FURTHER RESOLVED that, the City of New Prague, has committed \$600,000 towards the local match requirement.

BE IT FURTHER RESOLVED that, the City of New Prague confirms if the project cost increases above the amount listed in the Application, the City of New Prague will provide or secure all additional funds necessary to complete the project.

The City of New Prague certifies that it will comply with all applicable laws, regulations, and rules of the Application.

BE IT FURTHER RESOLVED that the sources and uses, private investors, equity, and other financing commitment represented in the attached document are accurate.

NOW, THEREFORE BE IT RESOLVED that Duane J. Jirik and Joshua M. Tetzlaff, or their successors in office, are hereby authorized to execute such agreements, and amendments thereto, as are necessary to implement the project(s) on behalf of the applicant.

I CERTIFY THAT the above resolution was adopted by the

WITNESSED:

____ City Council of
the City of New Prague on
_____(Date).

SIGNED:

Duane J. Jirik, Mayor

(Signature) _____

(Date) _____

Joshua M. Tetzlaff, City Administrator

(Signature) _____

(Date) _____

SEPTEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4 Holiday	5 Council	6	7	8	9
10	11	12 Park	13 EDA	14	15	16
17	18 Council	19	20	21	22	23
24	25 Utility	26 Golf	27 Planning	28	29	30

OCTOBER						
SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Council	3	4	5	6	7
8	9	10 Park	11 EDA	12	13	14
15	16 Council	17	18	19	20	21
22	23	24 Golf	25 Planning	26	27	28
29	30 Utility	31				

**Meeting Minutes
New Prague Park Board
Tuesday, September 12, 2023
6:00 PM**

Due to lack of quorum, the meeting was cancelled.

Respectfully Submitted,



Kyra J. Chapman
Planner