



AGENDA OF THE REGULAR MEETING OF  
THE CITY COUNCIL  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
March 9, 2021  
7:00 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding is appreciated during this process.

**CALL TO ORDER**

**In light of the Governor’s Executive Order regarding social-distancing and restrictions on gatherings, the City of Birchwood Village City Council is conducting its February meeting using interactive web-based technology. Pursuant to Minnesota Statutes, Chapter 13D. 021 Subdivision 1(1) the City of Birchwood is declaring that, “an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...”**

**The meeting will be conducted using the Zoom meeting platform and the details of that are directly below for participating. If you plan to attend it is suggested that you familiarize yourself with the technology in advance. If you plan to participate than you must either 1) send your name, topic you plan to speak on, and the phone number you will be calling from to City Hall by noon the day before the meeting; or 2) join the meeting no later than 6:45pm to coordinate with the Moderator.**

**The Moderator of the meeting shall be City Administrator Andy Gonyou and all participants, except Council Members, shall have their microphones muted unless recognized by the Mayor. Public Forum shall be honored using this technology and the meeting will be broadcast via the Cable Commission like other meetings.**

The City of Birchwood Village is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/82592455875?pwd=ektiRkNMOFIDY3RRaEJRMnpaTmJuZz09>

Meeting ID: 825 9245 5875

Passcode: 384079

Phone: +1 312 626 6799 US

\* Denotes items that have supporting documentation provided

**PLEDGE OF ALLEGIANCE**

**APPROVE AGENDA**

**OPEN PUBLIC FORUM**

**ANNOUNCEMENTS**

- A. We are social, follow us on Facebook at @BirchwoodCityHall or Twitter at @CityofBirchwood
- B. Canoe/kayak rack reservations open.

**ADMINISTRATIVE PRESENTATION**

- A. Sheriff Report\* (pp. 5 – 7)
- B. NYFS Annual Report for 2020\* (p. 9)
- C. Subdivision Study Task Force Meeting Minutes\* (p. 11)
- D. Planning Commission Meeting Minutes\* (p. 13 – 14)

**CITY BUSINESS – CONSENT AGENDA**

- A. Approve Treasurer’s Report\* (pp. 15 – 25)
- B. Approve Regular Meeting Minutes from February 9, 2021\* (pp. 27 – 32)
- C. Approve Resolution 2021-07\* (p. 33)

**CITY BUSINESS – REGULAR AGENDA**

- A. Suburban Cable Commission Presentation\* (pp. 35 – 104)
  - I. Presentation
  - II. 1<sup>st</sup> reading of Ordinance 2021-03-01

*Time Budget 20 Minutes*
- B. Planning Commission Updates\* (pp. 105 – 107)
  - I. Undersized Lot Regulations (Sec. 301.050, 302.015, 300.020.34)
  - II. Fence Ordinance (Sec. 302.070)
  - III. Impervious Surface (Sec. 302.050)

*Time Budget 10 Minutes*
- C. Planning Commission Vacancy
  - I. Discuss Chairperson John Lund Resignation
  - II. Approve Posting Vacancy Notice & Request Letters of Interest

*Time Budget 5 Minutes*
- D. 2021 Local Board of Appeal and Equalization + Open Book Meeting April 13<sup>th</sup>\* (p. 109)
  - I. Council Deliberation
  - II. Change Regular City Council Meeting Date

*Time Budget 5 Minutes*
- E. Uniform Maintenance Code\* (p. 111)
  - I. Council Deliberation

*Time Budget 15 Minutes*
- F. Interim-City Administrator Check-in\* (p. 113)

I. Council Deliberation on City Staffing

*Time Budget 5 Minutes*

G. City Attorney Reports

- I. Husnik Homes
- II. Mahtomedi Water Agreement

*Time Budget 5 Minutes*

H. Councilmember Reports

- I. Mayor Wingfield
  - i. 2040 Comp Plan Refund Update
  - ii. Subdivision Task Force Update & Request for Engineering Review of First Draft
  - iii. Historical Signage Updates
    - 1. Village hall
    - 2. Polly's Park Entrance
  - iv. South Side of Hockey Rink Arborvitaes Planting?
  - v. Bike Interface with Mahtomedi Final Review

*Time Budget 10 Minutes*

I. City Administrator Report

- I. Village Hall Siding
- II. Music in The Park

*Time Budget 5 Minutes*

**ADJOURN**



# MEMORANDUM



**TO:** Birchwood Village City Council  
**FROM:** Andy Gonyou, City Administrator  
**SUBJECT:** Sheriff Report  
**DATE:** March 2, 2021

Dear Mayor & City Council Members: Below is a reporting of law enforcement incidents and citations for February 2021:

**Incident Summary Report** PUBLIC

From:2/1/2021 12:00:00 AM To:2/28/2021 11:59:59 PM

**WASHINGTON COUNTY SHERIFFS OFFICE**



**BIRCHWOOD VILLAGE - 66**

2/1/2021 12:12:15 AM	WC21004894	1-199 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/1/2021 8:28:28 AM	WC21004918	70XXX-715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/2/2021 3:45:10 AM	WC21005062	54XXX-558 IRIS ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/2/2021 1:33:44 PM	WC21005119	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/2/2021 9:25:21 PM	WC21005187	70XXX-715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/3/2021 12:32:22 AM	WC21005200	18XXX-198 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/3/2021 9:02:28 PM	WC21005319	54XXX-559 IRIS ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/4/2021 10:10:22 AM	WC21005378	WILDWOOD AVE / LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/4/2021 2:23:22 PM	WC21005406	XXX Cedar St, BIRCHWOOD VILLAGE	HARASSMENT
2/4/2021 2:46:00 PM	WC21005417	XX WHITE PINE LN, BIRCHWOOD VILLAGE	FRAUD/SCAM
2/5/2021 3:59:14 PM	WC21005566	50XXX-699 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/6/2021 4:17:09 AM	WC21005645	30XXX-341 WILDWOOD AVE, BIRCHWOOD VILLAGE	TRAFFIC STOP
2/6/2021 10:21:37 AM	WC21005665	XXX - 341 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/6/2021 2:50:07 PM	WC21005695	10XXX-181 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/7/2021 1:03:53 AM	WC21005774	10XXX-180 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/7/2021 2:15:21 AM	WC21005786	XXX HALL AVE, BIRCHWOOD VILLAGE	TRAFFIC STOP
2/7/2021 3:21:52 AM	WC21005797	30XXX-427 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/7/2021 7:49:25 AM	WC21005808	50XXX-698 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/7/2021 9:48:28 AM	WC21005818	10XXX-190 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/7/2021 4:34:50 PM	WC21005853	XX Oakridge Dr, BIRCHWOOD VILLAGE	FIRE
2/7/2021 10:08:47 PM	WC21005880	XXX WILDWOOD AVE, BIRCHWOOD VILLAGE	PUBLIC WORKS CONCERN
2/7/2021 11:51:59 PM	WC21005894	50XXX-535 LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/8/2021 8:09:33 AM	WC21005931	1-99 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/8/2021 10:46:59 AM	WC21005951	50XXX-699 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/8/2021 12:46:08 PM	WC21005970	XXX Hall Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
2/9/2021 12:22:51 AM	WC21006070	50XXX-535 LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/9/2021 6:48:10 PM	WC21006202	XXX Hall Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY

**Incident Summary Report PUBLIC**

From:2/1/2021 12:00:00 AM To:2/28/2021 11:59:59 PM

2/10/2021 2:37:23 AM	WC21006239	40XXX -498 LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/10/2021 8:12:21 AM	WC21006259	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/10/2021 6:26:23 PM	WC21006352	10XXX -191 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/11/2021 7:58:49 AM	WC21006410	IRIS ST / WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/12/2021 7:12:32 AM	WC21006592	OAKRIDGE DR / FIVE OAKS LN, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/13/2021 3:44:35 PM	WC21006814	18XXX -199 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/13/2021 4:44:36 PM	WC21006819	XXX Hall Ave, BIRCHWOOD VILLAGE	FOLLOW UP
2/14/2021 2:46:50 PM	WC21006944	70XXX -714 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/15/2021 2:01:08 AM	WC21007030	10XXX -181 CEDAR ST, BIRCHWOOD VILLAGE	TRAFFIC STOP
2/15/2021 7:48:25 AM	WC21007049	28XXX -299 JAY ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/15/2021 1:19:12 PM	WC21007079	Cedar St / East County Line Rd, BIRCHWOOD VILLAGE	ANIMAL COMPLAINT
2/16/2021 3:28:54 AM	WC21007177	70XXX -715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/16/2021 7:49:36 AM	WC21007186	10XXX -180 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/16/2021 10:47:52 AM	WC21007214	50XXX -699 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/16/2021 3:28:56 PM	WC21007252	XXX WILDWOOD AVE, BIRCHWOOD VILLAGE	FOLLOW UP
2/16/2021 7:08:33 PM	WC21007295	XXX Wildwood Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
2/17/2021 1:43:12 AM	WC21007325	70XXX -715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/17/2021 10:55:57 AM	WC21007351	70XXX -715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/17/2021 3:59:13 PM	WC21007380	3XXX East County Line Rd, BIRCHWOOD VILLAGE	CITIZEN/PUBLIC ASSIST
2/17/2021 4:50:35 PM	WC21007384	2-8 OAKRIDGE DR, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/18/2021 2:24:42 AM	WC21007462	1-199 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/18/2021 9:36:05 AM	WC21007486	XXX Birchwood Ave, BIRCHWOOD VILLAGE	MEDICAL
2/18/2021 4:14:52 PM	WC21007545	40XXX -498 LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/19/2021 3:32:19 AM	WC21007612	50XXX -535 LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/19/2021 12:39:27 PM	WC21007650	XXX Jay St, BIRCHWOOD VILLAGE	VEHICLE UNLOCK
2/20/2021 1:08:31 PM	WC21007780	XXX Wildwood Ave, BIRCHWOOD VILLAGE	MEDICAL
2/20/2021 3:24:45 PM	WC21007793	20XXX -221 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/21/2021 5:36:53 PM	WC21007974	25XXX -269 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/23/2021 1:19:36 AM	WC21008179	70XXX -715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/23/2021 7:50:33 AM	WC21008201	50XXX -699 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/23/2021 10:30:19 AM	WC21008223	18XXX -199 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL

**Incident Summary Report** PUBLIC

From:2/1/2021 12:00:00 AM To:2/28/2021 11:59:59 PM

2/24/2021 7:31:37 AM	WC21008360	60XXX -698 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/25/2021 12:10:06 AM	WC21008501	Wildwood Ave / East County Line Rd, BIRCHWOOD VILLAGE	TRAFFIC STOP
2/25/2021 2:13:59 AM	WC21008515	XXX HALL AVE, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
2/25/2021 2:38:18 AM	WC21008517	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/25/2021 5:31:40 PM	WC21008620	20XXX -255 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/26/2021 2:05:30 AM	WC21008677	20XXX -221 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/26/2021 7:57:49 AM	WC21008697	XXX - 191 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
2/26/2021 4:11:21 PM	WC21008772	20XXX -221 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL

**TOTAL INCIDENTS: 66**

**Citations for: Birchwood**

2/1/2021 To 2/28/2021

Agcy	Date	Citation Number	Badge	Officer Name	Citation Type	Block	Street Name	Str Sfx	Cross Street Name	Cross St Sfx	City	Literal Description	Statute
WCSO	2/6/2021	820040103703	WC144	M. Lombardi	Citation	0	WILDWOOD AVE				Birchwood	BW - No overnight parking	502.040
WCSO	2/7/2021	820040103801	WC144	M. Lombardi	Citation	0	HALL AVE				Birchwood	BW - No overnight parking	502.040
WCSO	2/15/2021	820040104601	WC144	M. Lombardi	Citation	0	CEDAR ST				Birchwood	BW - No overnight parking	502.040
WCSO	2/28/2021	820012105901	WC132 47	C. Blair	Citation	0	WILDWOOD AVE				Birchwood	BW - Winter parking ban	502.060





The following is a brief report on Northeast Youth & Family Services’ programs that directly affect the residents of your community. If you have any questions about this report, please call Tara Jebens-Singh, President & CEO, at (651) 379-3404.

<b>Annual City Contract for Service 2020</b>	<b>\$1,591</b>
<b>Total cost of all services through December 31</b>	<b>\$6,461</b>

(Please note that these numbers represent the actual cost of services provided, not what NYFS charges clients for these services. Because of your collaboration with NYFS, many of these services are offered free of charge or on a sliding-fee scale based on income.)

Services Provided	City Totals		
	# of Clients	Hours	Service Cost
<b>Contracted Services</b>			
Mental Health	1	24	\$ 2,986.25
Senior Chore			
Seniors	3	139	\$ 3,475.00
<b>Total for Contracted Services</b>	<b>4</b>	<b>163</b>	<b>\$ 6,461.25</b>

<b>Totals for all Individual Services</b>	<b>4</b>	<b>163</b>	<b>\$ 6,461.25</b>
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\*There are no NYFS clients that have completed community service work through our Diversion program at this point in the year.



**Subdivision Task Force Minutes February - 5:30 pm February 10, 2021**

**Present: Ron Malles, Trilby White, Mary Wingfield, John Anderson, H. Alan Kantrud, Ryan Hankins**

Noel Hegedus is discontinuing her participation in the Subdivision Task Force.

Trilby would like a shared, rolling minutes document.

1. We are resuming discussion of Birchwood code 308, and discussing sections 308.080, 308.095
2. We discussed to what property divisions the subdivision ordinance should apply, and whether they should apply to parcels of a particular size not number of properties after division. We talked about subdivisions in Mahtomedi where builders had subdivided in ways that circumvent subdivision codes.

**Subdivision Task Force Minutes February - 5:30 pm February 17, 2021**

**Present: Ron Malles, Trilby White, Mary Wingfield, John Anderson, H. Alan Kantrud, Ryan Hankins**

1. Approve Minutes from February 10, 2021
2. Discuss Mahtomedi subdivision code.
3. We continued discussing from 308.095, regarding how runoff is handled.
4. We added a requirement not to clear cut trees.
5. We completed our initial pass through the document. Mayor Wingfield proposed passing it to the city engineer.

**Subdivision Task Force Minutes February - 5:30 pm February 24, 2021**

**Present: Ron Malles, Trilby White, Mary Wingfield, H. Alan Kantrud, Ryan Hankins**

1. Approve Minutes from February 17, 2021
2. Discussion that we should ask the city clerk to add Birchwood development requirements that describe time limits to construction will be added to the permit form. This is code 301.060(B) "Deliveries of equipment and material to the site, work crews on site and construction and demolition activity are prohibited except between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. on Saturday. Work is prohibited on Sundays and holidays. "
3. We discussed whether the city council should consider amending the hours during which construction deliveries may take place from 8:00 am-6:00 pm, and 9:00 am - 5:00 pm on Saturday, and to maintain Sunday and holiday prohibition.
4. Discussed conditions the city may place upon development agreements for approval.
5. We discussed developer agreements and whether the city should have such a requirement.
6. We will seek approval from the council to send the proposed ordinance to the city engineer for his review, and so that the Subdivision Task Force can consider his comments.



MEETING MINUTES

Birchwood Planning Commission Meeting

Virtual Meeting per Governor's Request – 7:00 PM Meeting 2/25/2021

Submitted by Michael Kraemer – acting secretary

COMMISSIONERS PRESENT: Jozsef Hegedus, Ryan Hankins, John Lund, Michael Kraemer

COMMISSIONERS ABSENT: Andy Sorenson

OTHERS PRESENT: None.

1. Meeting called to order by Chairman John Lund at 7:02.
2. APPROVE AGENDA
  - a. Motion by Jozsef Hegedus, second by Ryan Hankins: Approved unanimously.
3. Variance Case No 21-02-VB - 143 Wildwood Ave
  - a. No action taken.
  - b. Resident Cameron Sigecan emailed City Administrator prior to meeting today asking that the variance request be removed from agenda and put on March agenda because variance request documents were not ready for submittal.
4. AGENDA ITEM C. Review Undersized Lot Regulations (Sec. 301.050, 302.015, 300.020.34)\* (pp. 29-30) and AGENDA ITEM D. City Council Request: Guidance on Sec. 302.050 Impervious Surface Ord. (pp. 31-39)
  - a. These two agenda items were carry overs from the January Planning Commission agenda.
  - b. Chairman Lund gave an overview of the development history of the current Birchwood Village Code. He iterated that the Code had undergone a comprehensive review approximately 5 year ago, including the assistance of an outside planner and involvement of local citizens. Chairman Lund re-iterated the level of detail present in the Code.
  - c. After considerable discussion it was determined that since four of the five current Planning Commission member's tenure is less than five years newer members would benefit from a work session to review the Code elements related to Undersized Lot Regulations, and Impervious Surface requirement before making a recommendation to the Council.
  - d. MOTION by Ryan Hankins and second by Jozsef Hegedus for the Planning Commission to hold a work session on Tuesday March 16, 2021 at 7:00 PM. The purpose of the work session will be to review the existing Code as it relates to AGENDA ITEM C. Review of Undersized Lot Regulations (Sec. 301.050, 302.015, 300.020.34) and AGENDA ITEM D. Sec. 302.050 Impervious Surface Ord. Motion passed: Unanimously.
5. AGENDA ITEM E. Review/Approve January 28, 2021 Meeting Minutes\*
  - a. Chairman Lund requested his comments related to Item C - Variance for 15 Wildwood Lane be added to reflect the following:
    - i. Garage height was too high by 1 ¼ inches.

- ii. Block base foundation of garage walls was shown as 4" when Code required 8". Commission requested the plans should be corrected to reflect this discrepancy.
    - iii. The culvert proposed to run under the garage driveway will require a County permit for connection to the County Road storm sewer and specifications are needed for the culvert materials.
  - b. Mike Kraemer requested that his motion for consideration of the 26' street setback for the garage be modified to reflect that the motion was made pending written documentation from either the Washington County engineer or the City Engineer that placing the garage at the 26' setback (and not 40' setback) was the optimal location to accommodate plans for future storm water treatment system to be designed, installed and funded by Rice Creek Watershed and Washington County.
  - c. MOTION inclusive of the edits in Item a & b above was made by Lund and second by Hegedus. Approval was unanimous.
- 6. AGENDA ITEM 1. - Election of Planning Commission Officers.
  - a. John Lund announced he would be resigning from the Planning Commission immediately. He indicated this was his last meeting and would be submitting his resignation to the Council. All members of the Commission expressed regrets for the loss of John's knowledge and leadership while thanking him for his leadership, guidance, and long successful effort.
  - b. CHAIRMAN: Motion by Lund and second by Hegedus to elect Andy Jorgenson as Chairman. Motion carried unanimously.
  - c. VICE CHAIRMAN: Motion by Hankins and second by Kraemer to elect Jozsef Hegedus as Vice Chairman. Motion carried unanimously.
  - d. SECRETARY: Motion by Lund and second by Hegedus to appoint Michael Kraemer as Secretary. Motion carried unanimously.

For the Period : 2/9/2021 To 3/4/2021

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>
General Fund	\$428,766.97	\$691.38	\$19,005.03	\$410,453.32
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00
Other Federal Programs	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	(\$4,040.00)	\$0.00	\$0.00	(\$4,040.00)
Tree Canopy Care	\$0.00	\$0.00	\$0.00	\$0.00
Special Rev Projects	\$24,225.69	\$0.00	\$0.00	\$24,225.69
Spec Rev - Warm House	\$40.00	\$0.00	\$0.00	\$40.00
REIMBURSED CONTRACTED SERVICES	\$0.00	\$0.00	\$0.00	\$0.00
General Debt Service (Identify) (Inactive)	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Re-hab Debt	\$2,119.89	\$0.00	\$0.00	\$2,119.89
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00
General Capital Projects	\$0.00	\$0.00	\$0.00	\$0.00
Municipal State Aid Streets - Construction (Inactive)	\$0.00	\$0.00	\$0.00	\$0.00
Capital Project PW	\$82,745.31	\$0.00	\$0.00	\$82,745.31
Water	\$74,080.31	\$0.00	\$52,119.73	\$21,960.58
Sewer	\$131,526.75	\$0.00	\$11,087.97	\$120,438.78
Transit System	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00
Water Meter Upgrade Fees	\$0.00	\$35,000.00	\$0.00	\$35,000.00
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$739,464.92</b>	<b>\$35,691.38</b>	<b>\$82,212.73</b>	<b>\$692,943.57</b>

Fund Name: All Funds

Date Range: 02/09/2021 To 03/04/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
02/09/2021	Office Depot, Inc.	31321*	Tax Forms	N	Office Operations Supplies	100-41911-200-	\$ 57.57
	<b>Total For Check</b>	<b>31321</b>					<b>\$ 57.57</b>
02/09/2021	Washington County - Property & Tax	31322*	Truth in Taxation - 2021	N	Assessing	100-41550-314-	\$ 99.40
	<b>Total For Check</b>	<b>31322</b>					<b>\$ 99.40</b>
02/09/2021	IRS - US Treasury	EFT020921A	Federal Taxes - Q1 2021 - Jan Payment	N	Clerk - Treasurer	100-41401-100-	\$ 1,459.20
	<b>Total For Check</b>	<b>EFT020921A</b>					<b>\$ 1,459.20</b>
02/17/2021	Payroll Period Ending 02/13/2021	31323	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 917.25
	<b>Total For Check</b>	<b>31323</b>					<b>\$ 917.25</b>
02/17/2021	Payroll Period Ending 02/13/2021	31325	Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 156.64
	<b>Total For Check</b>	<b>31325</b>					<b>\$ 156.64</b>
02/17/2021	PERA	EFT021721A	Personnel Retirement - Gonyou	N	Clerk - Treasurer	100-41401-121-	\$ 231.00
	<b>Total For Check</b>	<b>EFT021721A</b>					<b>\$ 231.00</b>
02/20/2021	Velocity Drain Services, Inc.	31326*	L/S #1 Project. Sewer Line Televising	N	Unallocated Expenditures	605-49201-430-	\$ 300.00
	<b>Total For Check</b>	<b>31326</b>					<b>\$ 300.00</b>
03/03/2021	City of Birchwood Village	TRF030321A*	Fund Transfer per Feb 9, 2021 CC Directive	N	Transfer To Enterprise Fund	601-49365-720-	\$ 35,000.00
	<b>Total For Check</b>	<b>TRF030321A</b>					<b>\$ 35,000.00</b>
03/04/2021	Payroll Period Ending 02/27/2021	31327	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 917.25
	<b>Total For Check</b>	<b>31327</b>					<b>\$ 917.25</b>
03/04/2021	Payroll Period Ending 02/27/2021	31328	Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 663.29
	<b>Total For Check</b>	<b>31328</b>					<b>\$ 663.29</b>
03/04/2021	Payroll Period Ending 02/28/2021	31329	Treasurer	N	Clerk - Treasurer	100-41401-100-	\$ 547.29
	<b>Total For Check</b>	<b>31329</b>					<b>\$ 547.29</b>
03/04/2021	Lay, Tobin	31330*	Reimbursement - Zoom	N	Unallocated Expenditures	100-49201-430-	\$ 16.06
	<b>Total For Check</b>	<b>31330</b>					<b>\$ 16.06</b>



**Fund Name:** All Funds  
**March 9, 2021 Regular City Council Meeting**  
**Date Range:** 02/09/2021 To 03/04/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
03/04/2021	Steve Dean	31331*	Water Main Break Storage	N	Wtr/Swr Emergency	601-43185-220-	\$ 800.00
	<b>Total For Check</b>	<b>31331</b>					<b>\$ 800.00</b>
03/04/2021	Manship Plumbing & Heating Inc	31332	Standby, Locates, Meter Repairs & Water Main Breaks - Feb 2021	N	Water Utility	601-43180-314-	\$ 600.00
		31332				601-43180-314-	\$ 120.00
		31332				601-43180-314-	\$ 360.00
		31332			Wtr/Swr Emergency	601-43185-314-	\$ 1,760.00
		31332				601-43185-314-	\$ 1,440.00
	<b>Total For Check</b>	<b>31332</b>					<b>\$ 4,280.00</b>
03/04/2021	Press Publications	31333*	Legal Notice Publications - Feb 2021	N	Ordinances and Proceedings	100-41130-351-	\$ 72.68
	<b>Total For Check</b>	<b>31333</b>					<b>\$ 72.68</b>
03/04/2021	BIRCH, INC.	31334*	Snow Removal Services - 02/03/2021 - 03/01/2021	N	Ice and Snow Removal	100-43125-210-	\$ 1,657.00
		31334*				100-43125-314-	\$ 1,625.50
		31334*				100-43125-314-	\$ 1,489.00
	<b>Total For Check</b>	<b>31334</b>					<b>\$ 4,771.50</b>
03/04/2021	Companion Animal Control LLC	31335	Animal Control Services - Jan & Feb 2021	N	Animal Control	100-41916-314-	\$ 80.00
		31335				100-41916-314-	\$ 80.00
	<b>Total For Check</b>	<b>31335</b>					<b>\$ 160.00</b>
03/04/2021	Gopher State One Call	31336*	Billable Tickets (7) - Feb 2021	N	Utility Locates	605-42805-314-	\$ 9.45
	<b>Total For Check</b>	<b>31336</b>					<b>\$ 9.45</b>
03/04/2021	City of Roseville	31337*	IT Services - Mar 2021	N	General Government Buildings and Plant	100-41940-320-	\$ 692.70
	<b>Total For Check</b>	<b>31337</b>					<b>\$ 692.70</b>
03/04/2021	AirFresh Industries, Inc.	31338*	Portable Restroom Rental - Mar 2021	N	Parks	100-45207-314-	\$ 81.25
	<b>Total For Check</b>	<b>31338</b>					<b>\$ 81.25</b>
03/04/2021	Hugo Equipment Company	31339*	Snow Blower Repair Part	N	Parks	100-45207-400-	\$ 23.00
	<b>Total For Check</b>	<b>31339</b>					<b>\$ 23.00</b>
03/04/2021	Tennis Sanitation, LLC	31340*	Recycling for Service Period: Jan - Feb 2021	N	Recycle	100-43300-314-	\$ 2,392.00

**Fund Name:** All Funds  
 March 9, 2021 Regular City Council Meeting  
**Date Range:** 02/09/2021 To 03/04/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
	<b>Total For Check</b>	<b>31340</b>					<b>\$ 2,392.00</b>
03/04/2021	USS Minnesota One MT LLC	31341*	Energy Charges - Jan 2021	N	General Government Buildings and Plant	100-41940-380-	\$ 40.77
		31341*			Sewer Utility	605-43190-380-	\$ 197.02
		31341*				605-43190-380-	\$ 108.70
	<b>Total For Check</b>	<b>31341</b>					<b>\$ 346.49</b>
03/04/2021	TSE, Inc. Work Account	31342*	Janitorial Services - Feb 2021	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00
	<b>Total For Check</b>	<b>31342</b>					<b>\$ 25.00</b>
03/04/2021	Core & Main	31343*	Plumbing Repair Clamps	N	Water Utility	601-43180-220-	\$ 438.84
	<b>Total For Check</b>	<b>31343</b>					<b>\$ 438.84</b>
03/04/2021	Toshiba Business Solutions	31344*	Printer Maintenance - 02/09/2021 - 03/08/2021	N	Office Operations Supplies	100-41911-314-	\$ 10.62
	<b>Total For Check</b>	<b>31344</b>					<b>\$ 10.62</b>
03/04/2021	Water Conservation Service Inc.	31345*	Water Main Leak Locates - 02/06/2021 & 02/07/2021	N	Wtr/Swr Emergency	601-43185-300-	\$ 1,041.50
	<b>Total For Check</b>	<b>31345</b>					<b>\$ 1,041.50</b>
03/04/2021	CAPRA'S UTILITIES, INC	31346*	Water Main Breaks - Jay St. & Wildwood Ave	N	Wtr/Swr Emergency	601-43185-314-	\$ 5,218.76
		31346*				601-43185-314-	\$ 4,468.50
	<b>Total For Check</b>	<b>31346</b>					<b>\$ 9,687.26</b>
03/04/2021	R Leeves Productions LLC	31347*	Videography - Feb 2021	N	Cable Eqpmt and Service	100-41950-314-	\$ 111.38
	<b>Total For Check</b>	<b>31347</b>					<b>\$ 111.38</b>
03/04/2021	White Bear Township	31348*	Contracted Services - L/S 2 & 3 & Water Main Break	N	Sewer Utility	605-43190-314-	\$ 5,344.96
	<b>Total For Check</b>	<b>31348</b>					<b>\$ 5,344.96</b>
03/04/2021	Metropolitan Council - Env. Service	31349*	Wastewater Service - Mar 2021	N	Sewer Utility	605-43190-217-	\$ 4,988.17
	<b>Total For Check</b>	<b>31349</b>					<b>\$ 4,988.17</b>
03/04/2021	MN Department of Health	31350	Community Water Supply Connection Fee - Q1 2021	N	Water Utility	601-43180-437-	\$ 860.00
	<b>Total For Check</b>	<b>31350</b>					<b>\$ 860.00</b>
03/04/2021	H.A. Kantrud, P.A.	31351	Attorney Services - Feb 2021	N	Legal Services	100-41601-300-	\$ 1,500.00

**Fund Name:** All Funds  
 March 9, 2021 Regular City Council Meeting  
**Date Range:** 02/09/2021 To 03/04/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		<b>Total For Check</b>	<b>31351</b>				<b>\$ 1,500.00</b>
03/04/2021	City of White Bear Lake	31352*	Fire Services - Feb 2021	N	Fire	100-42201-314-	\$ 2,445.58
		<b>Total For Check</b>	<b>31352</b>				<b>\$ 2,445.58</b>
03/04/2021	PERA	EFT030421A	Personnel Retirement - Gonyou, Lay	N	Clerk - Treasurer	100-41401-121-	\$ 231.00
		EFT030421A				100-41401-121-	\$ 89.26
		<b>Total For Check</b>	<b>EFT030421A</b>				<b>\$ 320.26</b>
03/04/2021	Xcel Energy	EFT030421B*	Gas for L/S 2 Generator: 01/19/2021 - 02/18/2021	N	Sewer Utility	605-43190-383-	\$ 30.12
		<b>Total For Check</b>	<b>EFT030421B</b>				<b>\$ 30.12</b>
03/04/2021	Xcel Energy	EFT030421C*	Gas for L/S 3 Generator: 01/20/2021 - 02/18/2021	N	Sewer Utility	605-43190-383-	\$ 27.89
		<b>Total For Check</b>	<b>EFT030421C</b>				<b>\$ 27.89</b>
03/04/2021	Xcel Energy	EFT030421D*	Electric for Tower: 01/19/2021 - 02/18/2021	N	Water Utility	601-43180-381-	\$ 12.13
		<b>Total For Check</b>	<b>EFT030421D</b>				<b>\$ 12.13</b>
03/04/2021	Xcel Energy	EFT030421E*	Electric for Street Lights: 01/03/2021 - 02/02/2021	N	Street Lighting	100-43160-380-	\$ 1,211.69
		<b>Total For Check</b>	<b>EFT030421E</b>				<b>\$ 1,211.69</b>
03/04/2021	Xcel Energy	EFT030421F*	Xcel Utility Billing - 01/19/2021 - 02/20/2021	N	General Government Buildings and Plant	100-41940-380-	\$ 40.83
		EFT030421F*			Parks	100-45207-380-	\$ 40.82
		EFT030421F*			Sewer Utility	605-43190-380-	\$ 40.83
		EFT030421F*				605-43190-380-	\$ 40.83
		<b>Total For Check</b>	<b>EFT030421F</b>				<b>\$ 163.31</b>
<b>Total For Selected Checks</b>							<b>\$ 82,212.73</b>

Fund Name: All Funds

Date Range: 02/09/2021 To 03/04/2021

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
02/10/2021	Apollo Heating & Air	171735041*	Permit	(02/10/2021) -	N	Building Permits	100-32211-	\$ 30.00
								<b>\$ 30.00</b>
02/11/2021	Chad Mayes	171735031*	Permit	(02/11/2021) -	N	Building Permits	100-32211-	\$ 50.00
								<b>\$ 50.00</b>
02/11/2021	Metro Heating & Cooling, LLC	171735039	Permit	(02/11/2021) -	N	Building Permits	100-32211-	\$ 60.00
								<b>\$ 60.00</b>
02/11/2021	Ramsey/Washington Cable Commission	171735040*	Redistribution Payment - Q4 2020	(02/11/2021) -	N	Refund-Reimbursemnt-Dividend	100-36240-	\$ 364.38
								<b>\$ 364.38</b>
02/12/2021	MN Management & Budget	171735030*	Court Fines Jan 2021	(02/12/2021) -	N	Court Fines	100-35101-	\$ 187.00
								<b>\$ 187.00</b>
03/03/2021	City of Birchwood Village	171735048*	Fund Transfer per Feb 9, 2021 CC Directive	(03/03/2021) -	N	Transfers from other Funds	620-39205-	\$ 35,000.00
								<b>\$ 35,000.00</b>
<b>Total for Selected Receipts</b>								<b>\$ 35,691.38</b>

As on 3/4/2021

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Total Revenues	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Sources:</b>			
Total Other Financing Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Disbursements:</b>			
Total Disbursements	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Uses:</b>			
Total Other Financing Uses	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Beginning Cash Balance		24,225.69	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		<u>0.00</u>	
Cash Balance as of 03/04/2021		24,225.69	

As on 3/4/2021

Capital Project PW

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Total Revenues	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Sources:</b>			
Total Other Financing Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Disbursements:</b>			
Total Disbursements	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Uses:</b>			
Total Other Financing Uses	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Beginning Cash Balance		82,745.31	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		<u>0.00</u>	
Cash Balance as of 03/04/2021		82,745.31	

As on 3/4/2021

Water

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Water Fee	0.00	20,959.74	20,959.74
Penalty - Late Water/Sewer	0.00	148.04	148.04
State and Misc fees	0.00	561.30	561.30
<b>Total Acct 341</b>	<b>0.00</b>	<b>21,669.08</b>	<b>21,669.08</b>
Delinquent Water/Sewer Fees	0.00	468.51	468.51
Miscellaneous	0.00	5,790.79	5,790.79
<b>Total Acct 361</b>	<b>0.00</b>	<b>6,259.30</b>	<b>6,259.30</b>
<b>Total Revenues</b>	<b>0.00</b>	<b>27,928.38</b>	<b>27,928.38</b>
<b>Other Financing Sources:</b>			
<b>Total Other Financing Sources</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Disbursements:</b>			
Financial Administration			
Contracted Services	0.00	2,039.57	(2,039.57)
<b>Total Acct 415</b>	<b>0.00</b>	<b>2,039.57</b>	<b>(2,039.57)</b>
Newsletter			
Printing and Binding (351 through 359)	0.00	150.80	(150.80)
<b>Total Acct 419</b>	<b>0.00</b>	<b>150.80</b>	<b>(150.80)</b>
Water Utility			
Repair and Maintenance Supplies (221 through 229)	0.00	438.84	(438.84)
Contracted Services	0.00	15,486.92	(15,486.92)
Utility Services: Electric Utilities	0.00	41.02	(41.02)
Fees	0.00	860.00	(860.00)
Wtr/Swr Emergency			
Repair and Maintenance Supplies (221 through 229)	0.00	800.00	(800.00)
PROFESSIONAL SERVICES (301 through 319)	0.00	1,041.50	(1,041.50)
Contracted Services	0.00	19,983.56	(19,983.56)
<b>Total Acct 431</b>	<b>0.00</b>	<b>38,651.84</b>	<b>(38,651.84)</b>
<b>Total Disbursements</b>	<b>0.00</b>	<b>40,842.21</b>	<b>(40,842.21)</b>
<b>Other Financing Uses:</b>			
Transfer To Enterprise Fund			
Interfund Transfers	0.00	35,000.00	(35,000.00)
<b>Total Acct 493</b>	<b>0.00</b>	<b>35,000.00</b>	<b>(35,000.00)</b>
<b>Total Other Financing Uses</b>	<b>0.00</b>	<b>35,000.00</b>	<b>(35,000.00)</b>
<b>Beginning Cash Balance</b>		<b>69,874.41</b>	
<b>Total Receipts and Other Financing Sources</b>		<b>27,928.38</b>	
<b>Total Disbursements and Other Financing Uses</b>		<b>75,842.21</b>	
<b>Cash Balance as of 03/04/2021</b>		<b>21,960.58</b>	

As on 3/4/2021

Sewer

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Penalty - Late Water/Sewer	0.00	86.87	86.87
Sewer Fee	0.00	18,549.88	18,549.88
<b>Total Acct 341</b>	<b>0.00</b>	<b>18,636.75</b>	<b>18,636.75</b>
Delinquent Water/Sewer Fees	0.00	468.51	468.51
<b>Total Acct 361</b>	<b>0.00</b>	<b>468.51</b>	<b>468.51</b>
<b>Total Revenues</b>	<b>0.00</b>	<b>19,105.26</b>	<b>19,105.26</b>
<b>Other Financing Sources:</b>			
<b>Total Other Financing Sources</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Disbursements:</b>			
Utility Locates			
Contracted Services	0.00	106.70	(106.70)
<b>Total Acct 428</b>	<b>0.00</b>	<b>106.70</b>	<b>(106.70)</b>
Sewer Utility			
Sewer - Wastewater Charge	0.00	14,964.51	(14,964.51)
Contracted Services	0.00	12,393.21	(12,393.21)
Utility Services (381 through 389)	0.00	936.77	(936.77)
Utility Services: Gas Utilities	0.00	169.65	(169.65)
<b>Total Acct 431</b>	<b>0.00</b>	<b>28,464.14</b>	<b>(28,464.14)</b>
Unallocated Expenditures			
Miscellaneous (431 through 499)	0.00	300.00	(300.00)
<b>Total Acct 492</b>	<b>0.00</b>	<b>300.00</b>	<b>(300.00)</b>
<b>Total Disbursements</b>	<b>0.00</b>	<b>28,870.84</b>	<b>(28,870.84)</b>
<b>Other Financing Uses:</b>			
<b>Total Other Financing Uses</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Beginning Cash Balance</b>		<b>130,204.36</b>	
<b>Total Receipts and Other Financing Sources</b>		<b>19,105.26</b>	
<b>Total Disbursements and Other Financing Uses</b>		<b>28,870.84</b>	
<b>Cash Balance as of 03/04/2021</b>		<b>120,438.78</b>	



As on 3/4/2021

Water Meter Upgrade Fees

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
<b>Total Revenues</b>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Sources:</b>			
Transfers from other Funds	0.00	35,000.00	35,000.00
<b>Total Acct 392</b>	<u>0.00</u>	<u>35,000.00</u>	<u>35,000.00</u>
<b>Total Other Financing Sources</b>	<u>0.00</u>	<u>35,000.00</u>	<u>35,000.00</u>
<b>Disbursements:</b>			
<b>Total Disbursements</b>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Other Financing Uses:</b>			
<b>Total Other Financing Uses</b>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Beginning Cash Balance</b>		0.00	
<b>Total Receipts and Other Financing Sources</b>		35,000.00	
<b>Total Disbursements and Other Financing Uses</b>		<u>0.00</u>	
<b>Cash Balance as of 03/04/2021</b>		35,000.00	



MINUTES  
OF THE REGULAR MEETING OF THE  
CITY OF BIRCHWOOD VILLAVE  
VIRTUAL MEEING  
FEBRUARY 9, 2021  
7:00PM

**CALL TO ORDER**

Mayor Wingfield called the meeting to order at 7:01pm and stated that the meeting was being held remotely in compliance with Governor Walz' Stay at Home Order, then shared the procedure for public hearing and community comment.

**MEMBERS PRESENT:** Mayor Mary Wingfield, Council Members: Kevin Woolstencroft, John Fleck, Justin McCarthy, Mark Foster

**STAFF PRESENT:** City Administrator, Andy Gonyou; City Attorney, H. Alan Kantrud; City Planning Commission Chairperson, John Lund

**PLEDGE OR ALLEGIANCE**

**AGENDA APPROVAL**

Mayor Wingfield: Stated that she would like to add items under Council Member Reports under her name;

- a. Water main breaks
- b. Park comp plan
- c. Shed at 312 Wildwood
- d. Building inspection for 310 Wildwood
- e. Uniform Maintenance Code

**MOTION WAS MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER FOSTER TO ADOPT THE AMENDED AGENDA. ROLL CALL; AYES: FOSTER, FLECK, MCCARTHY, WOOLSTENCROFT, WINGFIELD. MOTION PASSED**

**OPEN PUBLIC FORUM**

2. Nadja Gale: at 419 Wildwood questioned on if she would speak now on Agenda Item C or wait for when it came up. She will wait.

**ANNOUNCEMENTS**

- A. We are social, follow us on Facebook @BirchwoodCityHall or Twitter @CityofBirchwood

**CITY BUSINESS-CONSENT AGENDA**

Approve Treasure's Report

Mayor Wingfield asks that we consider that separately and would like to do this under the Council Member Reports.

**CITY BUSINESS-REGULAR AGENDA**

**A. State of the City – Mayor Wingfield**

1. Working on getting a second generator for the lift station at the hockey rink and it would give 100% backup power in case of emergency.
2. Working on being self-sufficient with our water meter reading situation that is not sustainable and our contractor does not want to provide the service and that is a service that is obsolete in our system and we are working well on moving into the 21<sup>st</sup> century.
3. Upkeep on hockey rink going well.
4. Tennis/pickleball courts are being cleaned and used this winter at 25 degrees on up.
5. This year is our 100year anniversary. We have the White Bear Historical Society providing or trying to obtain grants for us on getting historical signage to recognize who our founders and leaders have been.
6. Our historical guidebook coming out this year.
7. The city hall renovation group is looking into rehabbing the city hall inside and out.
8. We had two water main breaks.
9. Also new this year; Andy Gonyou is our new City Administrator. Jackie Smith is our new Deputy Clerk. New Council Members; Mark Foster and Justin McCarthy

**B. Prevailing setback Review for 15 Birchwood Lane**

- a. Planning Commission Chairperson Summary
  - i. **John Lund, Planning Commission Chairperson:** Summarized the Planning Commission's findings.
- b. Council Deliberation
  - i. **Greg and Kathy Sherwood (15 Birchwood Lane):** Explained as to why they were requesting the prevailing setback.
  - ii. **Mayor and Council:** Deliberated concerns of approving prevailing setback request.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER FLECK THAT WILL SAY TO ADD ON THE CONDITION, THAT IT'S NOT 26 FEET, BUT TO BE DETERMINED BY OUR ENGINEER. ROLL CALL VOTES: AYES: FLECK, WOOLSTENCROFT, MCCARTHY, FOSTER, WINGFIELD. MOTION PASSED.**

**C. Variance Case No 21-01-VB for 419b Wildwood Ave**

**a. Planning Commission Chairperson Summary**

**i. John Lund, Planning Commission Chairperson:** Summarized the Planning Commission's findings.

**b. Council Deliberation**

**i. Nadja Gale (419B Wildwood Avenue):** Explained as to why she would like to be considered for this variance.

**ii. Mayor and Council:** Deliberated concerns of approving this variance.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY JUSTIN MCARTHY TO TABLE/WITHDRAW THE VARIANCE REQUEST FOR 60 DAYS PENDING FURTHER INFORMATION, AND ASKED NADJA GALE (HOMEOWNER) TO CONFIRM IT IN WRITING THAT SHE AGREES. ROLL CALL: AYES: MCCARTHY, FOSTER, FLECK WOOLSTENCROFT, WINDFIELD. MOTION PASSED**

**D. Planning Commission Updates**

**a. Undersized Lot Regulations (Sec. 301.050, 302.015, 300.020.34)**

**i. tabled**

**b. Fence Ordinance (Sec. 302.070)**

**i. tabled**

**c. Impervious Surface (Sec. 302.050)**

**i. tabled**

**E. Second Reading Ord. 2021-01-01, Sec. 302.020 Structure Loc. Requirements**

**MAYOR WINGFIELD OPENED THE PUBLIC HEARING AT 8:23PM**

**a. Public Hearing**

**1. Brian M –** Expressed concerns about dropping this section.

**2. Mike Kraemer:** From the Planning Commission mentioned that he has not had a chance to review this or been asked to

**MOTION WAS MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER FLECK TO CLOSE THE PUBLIC HEARING. ROLL CALL VOTE: AYES, FLECK, WOOLSTENCROFT, FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED**

**b. Council Deliberation and Approval**

**MOTION WAS MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER FLECK TO ACCEPT IT AS WRITTEN BY DELETED IT. ROLL CALL VOTES: AYES; FLECK, FOSTER, WOOLSTENCROFT, WINGFIELD. NAYES: MCCARTHY. MOTION PASSED.**

**c. Approve Resolution 2023-06, Summary Publication**

**MOTION WAS MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER FLECK TO APPROVE THE RESOLUTION 2023-06, SUMMARY PUBLICATION. ROLL CALL VOTE: AYES, FOSTER, WOOLSTENCROFT, MCCARTHY, FLECK, WINGFIELD. MOTION PASSED**

**F. City Hall Building Updates**

**a. Mayor Wingfield Update**

**i. Mayor Wingfield:** Shared her findings to the council on getting two bids to help maintain City Hall siding issues.

**b. Council Deliberation**

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER FLECK THAT AUTHORIZATION GO TO PELCO TO GO FORWARD AFTER A CONTRACT HAS BEEN APPROVED BY OUR CITY ATTORNEY ALAN KANTRUD. ROLL CALL VOTES: AYES, FLECK, WOOLSTENCROFT, MCCARTHY, FOSTER, WINGFIELD. MOTION PASSED**

**G. Council Member Report.**

**a. Mayor Wingfield:**

**i. Treasurer' s Report (Carried from "Consent Agenda" )**

Discussion and concerns were made on the Treasures Report, made a comment that she cannot at this time approve the Treasures Report.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY KEVIN WOOLSTENCROFT TO PAY THE BILLS IN ADDITION TO HAVING ADMINISTRATOR ANDY GONYOU CHECK WITH WASHINGTON COUNTY AND PAY THAT IF NECESSARY. ROLL CALL: AYES, FOSTER, WOOLSTENCROFT, MCCARTY, FLECK, WINGFIELD. MOTION PASSED**

**MOTION WAS MADE BY MAYOR WINGFIELD TO SET ASIDE \$35,000 IN A SPECIAL FUND FOR WATER METER REPLACEMENTS. ROLL CALL VOTES: AYES; WOOLSTENCROFT, FLECK, MCCARTY, FOSTER, WINGFIELD. MOTION PASSED**

**i. 3 Way intersection and Wildwood and Iris Stop Sign Request/Public Hearing**

**Mayor Wingfield** would like to move this to our April Agenda for further discussion.

**ii. Subdivision Task Force Update**

**Mayor Wingfield:** working through it and making progress, getting good feedback and productive. Mayor Wingfield also said that she would take minutes of the meetings, a request from Councilmember McCarthy.

**iii. White Bear Township Water Fee**

**Mayor Wingfield:** Mentioned that it is actually White Bear Lake Water Fee and just finished up our billing for last quarter and the last time we are paying Lake Litigation fee. In White Bear Press they are now going to add on a facilities fee, don't have any more information on that. Went on to explain the Lake Litigation Fee.

**iv. Generator/Water Tower Pole**

**Mayor Wingfield:** Is requesting that the council endorse the idea that the monies for those two expenses, generator/water tower pole, come out of the General Fund and any miscellaneous unanticipated allocated expense. Asked if all agree, councilmembers answered yes. Administrator Andy Gonyou will convey this to Tobin.

**“FROM APPROVE AGENDA”**

**1. Water Main Break at Wildwood/Birchwood**

**Mayor Wingfield:** Discussed events that went on during the water main breaks on Wildwood and Birchwood.

**2. Park Comp Plan**

**Mayor Wingfield** sent out a packet of the Park Comprehensive Plan. Would like to have a workshop for it and combine it with the Planning Commission workshop. Looking to have each workshop run about 45 minutes Administrator Andy Gonyou will address the Planning Commission Workshop.

**3. 312 Wildwood Shed**

**Mayor Wingfield** mentioned that it has not been taken down. Mayor and Councilmembers discussed options.

**4. Building inspection for 310 Wildwood**

**Mayor Wingfield** and Council discussed the issues on this property and how to handle it. Both 312 and 310 Wildwood will be discussed more at the next Council meeting.

**5. Uniform Maintenance Code**

**Mayor Wingfield** will email a copy out to Councilmembers for their review to discuss at next meeting to see if it should be accepted as is or modified.

**b. Planning Commission Workshop**

**Administrator Gonyou** discussed requests from Planning Commission to hold a workshop.

**Mayor Wingfield** suggested that Administrator Gonyou work with the planning commission in terms of how to handle meetings. Council can come in and discuss how the planning and council can work together.

**H. City Administrator’s Report**

**a. Deputy Clerk Update**

i. New deputy clerk started February 8, 2021.

**b. Planning Commission Workshop**

i. Discussion made under “From Approve Agenda” subtitle b- Planning Commission Workshop

**c. Warming House Parking Lot Paving**

i. Treasurer Lay asked for some guidance on what and where to code. Council mentioned it was \$3500 and should come out of parks special revenue funds.

**d. Public Notices for Variances**

Administrator Gonyou is looking for guidance on to where variances should be posted. Council would like to publish it on the website then in paper.

**e. L/S 3 Reimbursement**

Looking for guidance on the issue of the electrical wiring that was to being repaired which was instead of going on a tower it was upgraded and put underground. Issues have arisen from the Insurance company, giving us two options, one is the loss of reimbursement to the city which would be \$5,000 less or try to track down invoices from company who made the repair. Mayor Wingfield and Council discussed this and Administrator Gonyou will work with Xcel and Treasurer Lay to try and rectify the \$5,000 discrepancy.

**f. Water Main Break at 300 Wildwood**

i. Discussion made under "Approved Agenda" under Mayor Wingfield, subtitle a.

**ADJOURN**

**MOTION WAS MADE BY COUNCILMEMBER MCCARTHY AND SECONDED BY COUNCILMEMBER FOSTER TO ADJOURN THE MEETING: FOSTER, WOOL, MCCARTHY. FLECK, WINGFIELD. MOTION PASSED. MEETING ADJOURNED AT 10:15PM**

**ATTEST:**

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Mary Wingfield

Mayor

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Andy Gonyou

City Administrator



**RESOLUTION 2021-07**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION AUTHORIZING A TRANSFER OF \$35,000 FROM  
THE WATER FUND TO THE WATER METER UPGRADE FEES FUND**

At a regular meeting of the City Council of the City of Birchwood Village held virtually through video and telephone conferencing on Tuesday, February 9, 2021, via Zoom Video Communications, Inc., with the following members present: Mayor Mary Wingfield, Council Members Jon Fleck, Justin McCarthy, Mark Foster, and Kevin Woolstencroft, and the following absent: none, the Birchwood City Council resolved:

**WHEREAS**, the Birchwood City Council has previously approved collection of a fee to upgrade water meters; and

**WHEREAS**, the fees collected have previously been kept in the Water Fund; and

**WHEREAS**, the Water Fund had unexpected expenditures arising from allocation of funds received from the CARES Act; and

**WHEREAS**, the Water Fund has been replenished; and

**WHEREAS**, the City Council requested City Staff establish a separate fund to contain collected water meter upgrade fees to ensure availability at the time at which they are needed.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Birchwood Village hereby authorizes the transfer of \$35,000 from the Water Fund to the Water Meter Upgrade Fees Fund to establish a separate fund in which fees collected for water meter upgrades will be kept until needed.

Resolution duly seconded and passed this 9<sup>th</sup> day of March, 2021.

\_\_\_\_\_  
Mary Wingfield, Mayor

Attest:

\_\_\_\_\_  
Andy Gonyou, City Administrator-Clerk



# MEMORANDUM



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**TO:** Birchwood Village City Council  
**FROM:** Andy Gonyou, City Administrator  
**SUBJECT:** Suburban Cable Commission  
**DATE:** March 3, 2021

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Dear Mayor & City Council Members:

The Suburban Cable Commission will be making a presentation at the March 9<sup>th</sup>, 2021 regular City Council Meeting to propose starting the process of adopting an ordinance which would ultimately renew the agreement between Birchwood Village and the Cable Commission for a cable television franchise agreement.

A representative from the Suburban Cable Commission will also be available for questions following their presentation, and the Commission has drafted an agreement which, per the advice of City Attorney Kantrud, should be adopted via the ordinance process if the Council does choose to proceed with the agreement. The ordinance will be included in the agenda packet so it may have a first reading during the March 9<sup>th</sup>, 2021 meeting.

**Request/Recommendation**

Staff requests Council:

- 1) Consider Ordinance 2021-03-01 (attached) and prepare questions for the Suburban Cable Commission representative after their presentation.

Thank you,  
Andy Gonyou  
City Administrator - Clerk

**CITY OF Birchwood Village, MINNESOTA**  
**ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE**  
**TO**  
**COMCAST OF MINNESOTA, INC.**

**April 1, 2021**

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

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

**FINDINGS**

1. The City of [\_\_\_\_\_], Minnesota (“City”), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.
2. Comcast of Minnesota, Inc., a Pennsylvania corporation (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved in 1999.
3. Negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. §546).
4. The City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.
5. The Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.
6. The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement with other cities authorized to grant cable communications franchises, and has delegated authority to the Ramsey Washington Counties Suburban Cable Communications Commission II to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

**NOW, THEREFORE, THE CITY OF [\_\_\_\_\_] DOES ORDAIN** that a franchise is hereby granted to Comcast of Minnesota, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

**SECTION 1 DEFINITIONS**

For the purpose of this Franchise, the following terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always

mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

1.1 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

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

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

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

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

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

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any Streets;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 573; or
- (e) any facilities of any electric utility used solely for operating its electric utility system.

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

1.7 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

1.8 “City” means the City of [\_\_\_\_\_], a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

1.9 “City Code” means the Municipal Code of the City of [\_\_\_\_\_], Minnesota, as may be amended from time to time.

1.10 “Commission” means the Ramsey Washington Counties Suburban Cable Communications Commission II or its successors, delegations, or its lawfully appointed designee, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement among Member Cities.

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

1.12 “City Council” means the governing body of the City of \_\_\_\_\_, Minnesota.

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

1.14 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable in the Street and any electronics on subscriber property between the Street and the Subscriber terminal.

1.15 “Effective Date” means April 1, 2021.

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

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

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

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

1.20 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).



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

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

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

(ii) “Gross Revenues” shall not include:

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the City; and
2. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

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

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

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

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

Notwithstanding the above provisions, Grantee will calculate Franchise Fees using the same methodology it uses for all Twin Cities Region franchising authorities with respect to the allocation of revenues among Cable and non-cable Services. Upon written notice by City to Grantee showing that Grantee has afforded more favorable treatment with respect

to the allocation of revenues among Cable and non-cable Services to a local franchising authority elsewhere in the Twin Cities Region, City will get the same favorable treatment Grantee provides to such local franchising authority. Specifically, this methodology is intended to provide City with equivalent treatment of revenues earned from multi-service (for example late fees, nonsufficient-funds fees) and convenience fees assessed on customers to service bundles that include non-cable services. This “most favored nations” provision will not apply where Grantee settles a franchise fee dispute which does not address the treatment of multi-service fees, bundled revenues or GAAP. However, this “most favored nations” provision will apply in the event of any order or judgment resolving a dispute regarding treatment of multi-service fees, bundled revenues, or GAAP between Grantee and a local franchising authority in the Twin Cities Region which results in more favorable treatment with respect to the allocation of revenues among Cable and non-cable Services to the local franchising authority than that afforded by Grantee to City.

1.22 “Member Cities” means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, Oakdale, White Bear Lake, White Bear Township, and Willernie.

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

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

1.25 “PEG” means public, education and government.

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

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

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

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

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

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

## SECTION 2 FRANCHISE

2.1 **Grant of Franchise.** The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2 herein, this Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate. Except as expressly provided herein, in granting this Franchise, City and Commission release Grantee from any claims they have or could have asserted with respect to underpayment of franchise or other fees through March 31, 2021, under the previous franchise, assuming that the fees owed through March 31, 2021, but not yet paid, are calculated in the same manner that they have been calculated and paid in 2020 (without offsets), and assuming that the fees are timely paid (e.g., the last franchise fee payment under the old franchise must be paid by May 15, 2021). The parties do not waive any rights the parties may have under the previous franchise regarding Grantee’s compliance with all applicable obligations governing Grantee’s facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property. Conversely, claims that (1) arise before April 1, 2021, and (2) that do not relate to Grantee’s compliance with all applicable obligations governing Grantee’s facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property, are not expressly preserved. A condition that violates this Franchise does not “arise before” April 1, 2021, if that violation exists after April 1, 2021, even if it was also present before the renewal.

2.2 **Reservation of Authority.** The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City’s police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City’s police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it

may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

2.3 **Franchise Term.** The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended or extended by mutual written consent in accordance with Section 17.8 or terminated sooner in accordance with this Franchise.

2.4 **Franchise Area.** This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.6 herein.

2.5 **Franchise Nonexclusive.** The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.20. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

2.6 **Periodic Public Review of Franchise.** The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.8 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

2.7 **Transfer of Ownership.**

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

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

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

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

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

(f) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

2.8 **Expiration.** Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

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

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

(c) invite additional franchise applications or proposals;

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

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

2.9 **Right to Require Removal of Property.** At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect

the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

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

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

#### **3.1 Use of Streets.**

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

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

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

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

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

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

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

**3.5 Undergrounding.**

(a) Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

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

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless



reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

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

### 3.6 **Maintenance and Restoration.**

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

(d) Grantee will verify that prior to the end of 2021 it provided its technicians (whether employees or independent contractors) with a training update on system maintenance standards and practices, including those for identifying and reporting system issues.

### 3.7 **Work on Private Property.** Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks,

and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

### 3.8 **Relocation.**

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

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

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

(d) **Failure by Grantee to Remove or Relocate.** If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects

or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

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

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

#### **SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM**

**4.1 Removal of Cable System.** In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise or the City Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Street to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Street, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

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

**4.3 Removal after Abandonment or Termination.** If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within thirty (30) Days after written notice of the City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Bond toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

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

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

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

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

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

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

## **SECTION 5 SYSTEM DESIGN AND CAPACITY**

**5.1 Availability of Signals and Equipment.**

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

downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.

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

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

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

**5.3 System Specifications.**

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

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

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

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

(e) System Upgrades. The Cable System will be upgraded consistent with future System upgrades performed in Grantee's other Twin Cities Cable Systems, when any other of Grantee's Cable Systems in Ramsey County or Washington County also receives a System upgrade.

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

- (a) Initial proof of performance for any construction;
- (b) Tests in response to Subscriber complaints; and
- (c) Tests reasonably requested by the City to demonstrate Franchise compliance.
- (d) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

5.5 **Special Testing.**

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

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

## SECTION 6 PROGRAMMING AND SERVICES

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

Local Broadcast (subject to federal carriage requirements)

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

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

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

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

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

**6.6 Line Extension.**

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 twenty-five (25) dwelling units per mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using existing aerial plant, and thirty (30) dwelling units per mile of feeder cable as measured from the closest existing distribution plant capable of supporting the extended distance if the extension is to be constructed using underground plant. The 25 dwelling units per mile aerial and 30 dwelling units per mile underground standards will be applied proportionately. 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.

(a) Except for the areas set forth in Exhibit A, the Cable System shall be further extended to Franchise Areas within the City that do not meet the 25-dwelling-units and 30-dwelling-units density requirements set forth above upon the request from the City based upon the following:

(i) “Total Construction Costs.” Grantee shall first determine the total construction costs of the extension. “Total construction costs” (“TCC”) is defined as the actual turnkey cost to construct the entire extension from the existing trunk and distribution system that is required to serve the Person(s) requesting Cable Service including electronics, pole make-ready charges, labor and reasonable associated overhead, but not the cost of the Drop. TCC shall include existing plant modifications needed to support the extension (such as node splits and fiber extensions).

(ii) “Grantee Contribution.” Grantee shall then determine its contribution (“GC”) toward the construction costs per participating dwelling unit by dividing the TCC by 25 in the case of aerial construction, or by 30 in the case of underground construction, which are the density thresholds specified in section 6.6(a).

$$GC = \frac{TCC}{Density\ Threshold}$$

For illustration, if the TCC in the area to be extended is \$50,000, GC is \$2,000 per dwelling unit for aerial construction, and \$1,667 per participating dwelling unit for underground construction.

(iii) “Participating Dwelling Unit” is a residential dwelling unit owner who requests and has signed a contract to receive Cable Service.

(iv) “Third Party Contribution” (“TPC”) means the TCC less the product of the Grantee Contribution and the number of PDUs.

$$TPC = TCC - (GC \times PDUs)$$

For illustration, using the TCC and GC values from subparagraph (b)(ii) above, if there are 16 PDUs, the TPC would be \$18,000 for an aerial construction project, and \$23,328 for underground construction.

(b) Grantee shall provide a construction credit of Two Hundred Fifty Thousand (\$250,000) (the “Construction Credit”) restricted solely for the purpose of making a TPC as defined in Section 6.6(a)(iv). The Commission and not Grantee will have the responsibility of determining how the Construction Credit should be allocated. The Construction Credit must be used within five (5) years after the Effective Date of the Franchise or it will be forfeited by the Commission and City.



(c) Subject to the limitations, conditions, and restrictions set forth in Exhibit A, Grantee will also extend its Cable System in the Franchise Area to the developments listed on Exhibit A.

(d) Grantee and the Commission will collaborate directly with the Member Cities on applications for federal or state grants to extend buildouts. Comcast will reasonably amend this agreement to eliminate a condition that affects eligibility for grant funding for broadband deployment within the boundaries of the Commission unless that amendment would require Grantee to materially alter its rights and obligations under this Franchise.

(e) Any residential unit located within one hundred and twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred and twenty-five (125) foot limit, provide a quote identifying the costs and construction schedule associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event later than the date committed in the quote, excluding events covered by Section 17.10 herein. The Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

(f) Upon request from the City (made before all Third Party Contributions are made), Grantee will explain how it arrived at its calculation of Total Construction Costs.

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

6.8 **Services to Public Buildings.** The provision of Cable Service and phase out of dark fiber services to public buildings is set forth in Exhibit B.

## SECTION 7 LOCAL PEG PROGRAMMING

7.1 **Number of PEG Channels.**

(a) Upon the Effective Date of this Franchise, Grantee will make available a minimum of four (4) PEG Channels in addition to channels required by the State of Minnesota, such as regional channel 6. Throughout the term of this Franchise, Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, a high definition (“HD”) format or signal refers to a PEG signal delivered by Grantee to subscribers in a resolution that is either: (i) the same as received by Grantee from City or the entity from which Grantee received the PEG signal, or (ii) the highest resolution used for the delivery of the primary signals of local broadcast stations, if lower than the level described in subparagraph (b)(i).

## 7.2 **HD PEG Channels.**

(a) No later than one year after the Effective Date of this Franchise, and upon 90 days written notice to Grantee, Grantee shall provide four (4) HD PEG Channels that are simulcasted in Standard Definition (“SD”) until SD is no longer offered. At the Commission’s discretion, two of the four PEG Channels may be narrowcast channels. At any time 24 months after Effective Date of this Franchise, the Commission may require additional Channels if it satisfies the standards set out in Minn. Stat. § 238.084. The parties agree that PEG funding may be used to support streaming of PEG programming, provided the Commission or City does not permit PEG funding to be used for operational expenses except as permitted by law. Grantee may propose dedicated streaming options as an alternative to the additional linear channels.

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

(c) The Commission shall pay for and be responsible for all HD playback servers to be located at 2460 East County Road F, Suite A, White Bear Lake, MN 55110 (“Playback Facility”). Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties.

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

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

## 7.5 **PEG Channel Locations.**

(a) Grantee shall continue cablecasting PEG programming on the Cable System on the same Channel locations as such programming is cablecast within the City as of the Effective Date. Current SD PEG Channel locations as of the Effective Date as well as the location of the four (4) HD PEG Channels to be provided under Section 7.2 are listed on Exhibit C. Grantee agrees not to change these PEG Channel locations more than two (2) times during the term of this Franchise unless required by law for other programmers with specific Channel number rights or pursuant to an overall Channel reorganization of the entire Channel lineup. In no event shall any PEG Channel relocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond

Grantee's control. If relocated, Grantee will work in good faith with the City to identify new Channel locations such that the PEG Channels will be located within reasonable proximity to other broadcast or news Channels where available Channel numbers allow.

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

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

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

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

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

**7.9 PEG Transport.** During the term of this Franchise, Grantee will provide PEG transport as follows:

(a) The Commission may transmit signals for the PEG Channels in “real time” upstream from the nine (9) locations listed in Exhibit D to the Commission’s playback facility currently located at 2460 East County Road F Suite A, White Bear Lake, MN 55110 (“Playback Facility”) to Grantee’s hub and headend using existing fiber connections without additional charge or offsets from Grantee. Grantee shall continue to provide without charge or offsets, fiber backhaul and transmitter/receiver equipment for PEG programming as is the practice on the Effective Date of this Franchise. The Commission must be able to simultaneously program all PEG channels with signals originating from a central playback facility, designated by the Commission, and from the nine (9) remote locations specified in Exhibit D. Each connection shall be bidirectional and satisfy the requirements of this Section.

(b) Grantee may invoice the Commission for any actual, incremental cost of maintenance, and agrees to cap any return line maintenance charges at \$10,000 per year for the nine (9) permanent return line sites. This will allow the Commission to continue cablecasting PEG programming from the locations listed in Exhibit D and maintain connections from the Commission’s master control to Grantee’s hub and headend without additional charge or offsets. Grantee will replace PEG transport fiber for the nine (9) sites if any such fiber is destroyed or if the Cable System has moved. If one of the nine (9) sites moves, Grantee is required by this Franchise to serve that new location at its cost if no new fiber construction in the Street is required to serve that new location. If one of the nine (9) sites moves and new fiber construction in the Street is required to serve that new location, Grantee may require the City to reimburse Grantee for reasonable construction costs as a condition to serving that new location. Grantee shall also make any capital improvements required to maintain upstream transmission without significant deterioration at no cost. Should a member of the Commission choose to depart from the Commission, the Commission may terminate the obligation to maintain any return line from the departing community, in which case, the fees for maintenance will be reduced proportionately.

(c) For all of the PEG origination points identified in Exhibit E, Grantee must either provide permanent fiber connections for PEG transport to replace the coaxial connections, or it may provide for an alternative solution acceptable to the Commission. As an alternative solution acceptable to the Commission, the parties agree to the following: All PEG origination points identified on Exhibit E will be served by a portable cable-modem solution for transport of PEG programming. The cable modem service shall include all the equipment needed to use Comcast’s business class internet service. The Commission shall be responsible for renting necessary modems from Comcast, and providing encoders, decoders, or similar devices. In the event that Commission equipment causes interference with the Grantee’s delivery of Cable Service, the source of the interference shall be removed and the parties will cooperate to determine and rectify the cause of the interference. If the Commission requests that a new site be added to Exhibit E, Grantee will provide the portable cable modem connection to the subscriber network if technologically and economically feasible. In connection with the use of cable modems or substitute equipment under this paragraph:

(i) Grantee will provide to Commission, and the Commission shall be responsible for purchasing, a subscription to a Comcast Business Class Internet account including cable modem (or an equivalent commercial broadband service however named by Grantee in the future) at a price per account per year equivalent to the lowest price at which Grantee offers the closest equivalent service on a commercial basis. The Commission may determine the number of accounts with cable modems to purchase and may add or terminate use of all or any of the accounts at any time without penalty or additional charge.

(ii) The Commission shall, at its expense, provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Playback Facility. Grantee does not sell and is not required to provide such devices.

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

PEG transport, however provided, shall be reliable and permit continuous programming of a quality such that the Commission may deliver to Comcast signals equivalent or better in quality to the PEG signals that Comcast may be required to deliver to subscribers.

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

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

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City

facilities, other government facilities or other designated facilities (other than those indicated in paragraph 7.9); or

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

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

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

**7.12 PEG Channel Carriage.**

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

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

**7.13 PEG Programming Financial Support.**

(a) In accordance with the schedule below, during the term of the Franchise, Grantee shall pay quarterly to the Commission a public, educational, and governmental programming capital support fee (herein the “PEG Fee”) in an amount equal to the following percentages of its quarterly Gross Revenues:

Beginning April 1, 2021 (expected effective date of renewed franchise)	3.25% of gross revenue
Beginning April 1, 2022	3% of gross revenue
Beginning April 1, 2023 through remaining term of franchise, which will end on April 1, 2031.	2.75% of gross revenue

Payments pursuant to this subsection shall be paid to the Commission on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 16.1(a-c) of this Franchise.

(b) The PEG Fee may be used by City and Commission to fund PEG expenditures in accordance with Applicable Law. Grantee agrees not to contest the internal accounting treatment (whether operating or capital support) of the Commission's use of PEG funding for the purchase of cable modem services (as described in Section 7.9(c) or dark fiber institutional network services (as described in Exhibit B) from Grantee on the basis that this reflects a compromise of the Commission's claim that it could request permanent facilities that would qualify as capital if not for these alternative solutions.

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

(d) After December 31, 2021, Grantee is no longer responsible for lease payments for the Commission's PEG facilities (including studio, administrative, and business office space), and the Commission shall assume sole responsibility for the lease of its PEG facilities (including studio, administrative, and business office space).

#### 7.14 **PEG Technical Quality and Support.**

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

(b) Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues. For urgent issues (such as signal problems during live programs) the Grantee will respond as soon as possible. For non-urgent tech support requests the Grantee will respond within three (3) hours or forty-eight (48) hours, depending upon the response time needed. Commission technical staff will determine what requests are urgent or non-urgent. The Commission agrees to use best efforts to verify that the issue is not on the Commission's side of the demarcation point before a call is made to Grantee.

(c) Grantee agrees to continue its practice of providing to the Commission two (2) satellite feeds identified on Exhibit G from Grantee's headend facility and/or hub site locations directly to the Commission's Playback Facility without charge to Commission. The Commission shall be responsible for obtaining any necessary carriage and license agreements for the programming aired on its PEG Channels to the extent the content providers require such agreements. The Commission shall pay any license fees, copyright fees and other costs of the programming provider. If Grantee receives a demand to cease and desist from providing any programming content to the Commission under this Section or the source of the programming ceases to operate, Grantee may terminate such programming immediately without prior notice, but will provide notice that such programming has been terminated as soon as possible. If Grantee ceases to maintain the satellite reception facility through which the programming is received, Grantee will give the Commission sixty (60) Days prior notice of the discontinuation to allow the Commission to obtain the programming from another source.

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

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

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

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

## SECTION 8 REGULATORY PROVISIONS

8.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise to the full extent permitted by Applicable Law. The City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.

8.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to another governmental entity, including, but not limited to, an entity which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the Commission shall have



continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise.

### 8.3 Regulation of Rates and Charges.

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

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

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

## SECTION 9 BOND

### 9.1 Performance Bond.

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

9.2 **Rights.** The rights reserved by City with respect to the Bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the Bond.

9.4 **Procedure to Draw on Bond.**

(a) The parties shall follow the procedure set forth in Section 11 of this Franchise regarding any draw on the Bond.

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

(c) Grantee shall be entitled to the return of the Bond, or portion thereof, as remains one hundred and twenty (120) Days after the expiration of the term of the Franchise or termination for violation thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said violation.

(d) The rights reserved to the City with respect to the Bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the Bond shall affect any other right the City may have.

## SECTION 10 SECURITY FUND

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

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

10.3 **Liquidated Damages.** Subject to Section 10.5 and 10.11, in addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following liquidated damages:

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

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

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

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

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

**10.5 Maximum Draw Per Violation.** Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand Dollars (\$25,000). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

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

**10.7 Procedure for Draw on Security Fund.** The parties shall follow the procedure set forth in Section 11 of this Franchise regarding any withdrawal from the Security Fund.

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

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

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

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

## **SECTION 11 VIOLATION PROCEDURE**

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

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

**11.2 Violation Procedure.** The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation.

- (a) Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation (or if such violation is of such a character as to require more than

thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's sole opinion, to cure such violation as soon as possible).

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

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

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

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

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

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

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

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

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

**11.4 Compliance with the Laws.**

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

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

## **SECTION 12 FORECLOSURE AND RECEIVERSHIP**

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

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

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

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

## **SECTION 13 REPORTING REQUIREMENTS**

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

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

**13.3 Monthly Subscriber Data Report.** Every other month starting in January, Grantee shall provide the City with a Subscriber data report consistent with the format set forth in Exhibit I attached hereto, separately delineating, for each month within that two-month period, the responsive information. In the event technical or programming changes require changes to the format of the report, the City and Grantee shall work in good faith to make such changes without the need to amend this Franchise. The Commission reserves the right to request and receive from Grantee greater detail regarding Subscriber data provided in the form attached as Exhibit I in order to better understand differences in or trends regarding that data or in Franchise Fee report data.

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

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

**13.6 Communications with Regulatory Agencies.**

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

and City shall comply with all Applicable Law governing confidential, privileged or proprietary rights to such documents.

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

## SECTION 14 CUSTOMER SERVICE POLICIES

**14.1 Response to Customers and Cooperation with City and Commission.** Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints. Grantee shall provide the Commission and the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

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

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



copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

#### 14.3 **Customer Service Standards.**

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

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

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

14.4 **Local Office.** Grantee shall maintain a convenient, reasonably accessible local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee's customer service offices in Vadnais Heights and Woodbury (or reasonably accessible alternative locations) are deemed to satisfy this requirement for a convenient, reasonably accessible local customer service office.

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

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

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

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

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

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

(d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

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

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

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.6(e).

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

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

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

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

**14.7 Communications between Grantee and Subscribers.**

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

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

(ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

**14.8 Billing:**

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

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

**14.9 Subscriber Information.**

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

(i) Products and Services offered;

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

(iii) Installation and Service maintenance policies;

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

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

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

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

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

**14.10 Notice of Rate or Programming Changes.** Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the

control of Grantee. For the purpose of this Section a “Service change” shall not include channel additions or moves that do not impact rates. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change. When the change involves the deletion of Channels, each Channel deleted must be separately identified.

**14.11 Subscriber Contracts.** Grantee shall, upon written request, provide the Commission with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. Grantee shall provide City a list of Grantee’s current Subscriber rates and charges for Cable Service and a current Channel line-up showing all Channels available in the City. Grantee shall also provide on a monthly basis a copy of a sample Subscriber Bill to the Commission.

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

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

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

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

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

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

**14.18 Subscriber Privacy.**

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

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

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

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

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

## **SECTION 15 SUBSCRIBER PRACTICES**

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

charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's Cable Service.

**15.2 Refunds to Subscribers shall be made or determined in the following manner:**

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

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

**SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS**

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

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

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

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall immediately begin to accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

**16.2 Auditing and Financial Records.** Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise.

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

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

**16.4 Audit of Records.** The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees or PEG Fees paid to the City under this Franchise. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire cost of the audit within thirty (30) Days of the completion and acceptance of the audit by the City. Notwithstanding the foregoing rights, and consistent with the release under Section 2.1, City and the Commission shall not conduct an audit of franchise fees or other fees paid under the previous franchise except for the purpose of determining whether franchise fees paid for the first quarter of 2021 under the previous franchise were calculated in the same manner calculated and paid in 2020.

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

**16.6 Indemnification by Grantee.** Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City and Commission, and in their capacity as such, the officers, agents and employees thereof (collectively the "Indemnified Parties"), from and against any and all claims, suits, actions, demands, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to

arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the Indemnified Parties from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the Indemnified Parties.

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

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City and Commission shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to City.



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

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

## SECTION 17 MISCELLANEOUS PROVISIONS

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

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

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

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

17.5 **Prior Franchise Terminated.** The cable television franchise originally granted by Ordinance No. \_\_\_\_\_ is hereby terminated.

17.6 **Prior Regulatory Agreements Terminated.** The Memorandum of Understanding and Regulatory Agreement dated March 9, 1995 (herein "MOU"), the March 10, 2014 Settlement Regarding PEG Capacity (herein "2014 Settlement Agreement"), and any other prior settlement agreements or memorandums of understanding are terminated and of no further effect. Grantee releases any claims it has against City and the Commission with respect to its asserted rights to offset past payments made to the Commission pursuant to the MOU and the 2014 Settlement Agreement against Franchise Fees, and any claim of overpayment of franchise fees or other fees.

17.7 **Franchise Acceptance.** No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds,

security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 16.7(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

**17.8 Amendment of Franchise.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

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

If to City:                      City Administrator  
    City of \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

If to Commission:      Executive Director  
    Ramsey Washington Counties Suburban  
    Cable Communications Commission  
    2460 East County Road F  
    White Bear Lake, MN 55110

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

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

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications required under Section 14.10. Such communication should be addressed and directed to the Person of record as specified above.

**17.10 Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes,

delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

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

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

**17.13 Commission.** In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Joint and Cooperative Agreement between the parties. In the event that the Commission lawfully merges with another commission, it would not be deemed by the Grantee a withdrawal for purposes of this franchise.

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

**17.15 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 or interpretation of this Franchise.

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

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

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

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

**17.20 Competitive Equity.**

(a) The Grantor has the authority to grant franchises that allow entities to construct and operate facilities in the Public Rights-of-Way that may be used to provide video programming services to residences that compete with Grantee's services. If Grantor grants such a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, then the parties agree that the processes and provisions of this Section will apply.

(b) If Grantor grants a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, the Grantor and Grantee will either negotiate the terms of this Franchise to include any material terms or conditions that the Grantor imposes upon the new entrant, or negotiate amendments to the Franchise to insure that the regulatory and financial burdens on each Grantee are materially equivalent. "Material terms and conditions" include franchise provisions related to: Franchise fees and Gross Revenues; Operation in Streets and Rights-of-Way (Section 3), number of Public, Education and Government Access Channels and their funding; customer service standards; required reports and related record keeping; and liquidated damages. The parties agree that this provision shall not require an identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens in their entirety on each entity are materially equivalent.

(c) Exemptions. The following are exempt from this Section:

(i) video programming services delivered over wireless networks, unless the state or FCC has determined that these are subject to City franchising authority;

- (ii) video programming services delivered via means over systems that are not subject to the Grantor's franchising authority or upon which the Grantor may not impose similar requirements, under state or federal law, including a system described in 47 U.S.C. § 651(a)(2);
  - (iii) telecommunication services;
  - (iv) interstate information services;
  - (v) any new franchise that is issued for less than 10% of the territory of the City. For the avoidance of doubt, this exemption is not intended to preclude the Grantee's pursuit of any remedies it may have under Minn. Stat. § 238.08, Subd. 1.
- (d) Limits on Relief. The parties agree that:
- (i) Grantee may not withhold, delay or enjoin any performance or otherwise refuse to comply with its obligations whether or not it believes it is entitled to relief under this Section;
  - (ii) Any relief shall be prospective only, and limited to the relief agreed upon, or the modifications obtained through any renewal of this Franchise;
  - (iii) Grantor will not be liable for any damages to Grantee for any breach of this provision; and
  - (iv) Grantee may not obtain any relief from non-franchise obligations it may have under settlements or other contracts with the Grantor via this provision.
- (e) Modifications Process, Initiation. The modifications process provided for herein shall only be initiated by written notice provided by Grantee to Grantor regarding specified franchise obligations. Grantee's notice must: (1) identify the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor with a written explanation of why the proposed amendments are necessary and consistent; and (4) confirm whether Grantee is willing to accept any additional obligations that may be contained within the modified franchise that are not contained within its franchise.
- (f) Negotiation. Upon receipt of Grantee's written notice as provided under subsection (e) above, Grantor and Grantee agree that they will use best efforts in good faith to negotiate the proposed Franchise modifications to achieve competitive equity of regulatory and financial burdens, and that such negotiation will proceed and conclude within a one hundred and eighty (180) day period, unless that time period is reduced or extended by mutual agreement of the parties. If Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then Grantor shall amend this Franchise to include the modifications insofar as permitted under City law. If the Grantor and Grantee fail to reach agreement in such negotiations, Grantee may elect to shorten the

remaining term of this Franchise to not more than thirty-six (36) months, and Grantee may pursue non-monetary equitable relief it deems necessary to enforce its rights under this Section. If Grantee elects to shorten the term of this Franchise pursuant to this Section, Grantee shall be deemed to have timely invoked the formal renewal rights and procedures set forth in Section 626 of the Federal Cable Act.

(g) Actual Providers. Notwithstanding anything contained herein to the contrary, Grantor shall not be obligated to amend this Franchise unless the new entrant is actually providing video programming services under a franchise granted by Grantor.

**17.21 Treatment of negotiated provisions.**

For the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2((c)), 7.5(c), 7.8, 7.9, 7.10, 7.12, 7.14, 7.15, 7.16, 13.1, 13.2, 13.3, and 13.4 shall be treated by Grantee as Grantee’s business expense and not a Franchise Fee under Sections 1.19 and 16.1 of this Franchise or as a PEG Fee under Section 7.13 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 7.13 of this Franchise, any PEG capital costs set forth in Section 7.2(a) and (c), 7.8, 7.9, 7.10, 7.11, 7.15 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this \_\_\_\_ day of \_\_\_\_\_ 2021.

ATTEST

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

By: \_\_\_\_\_  
Its: City Clerk

By: \_\_\_\_\_  
Its: Mayor

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

COMCAST OF MINNESOTA, INC.

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

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

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

SWORN TO BEFORE ME this  
\_\_ day of \_\_\_\_\_, 2021.

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

**EXHIBIT A  
BUILDOUT COMMITMENT**

Regarding the subdivisions on the list below, for those which the developer or builder has not given another provider exclusive access or refused to provide access to the property and for those not already built out, Grantee agrees (for underground developments) to extend its Cable System promptly when the utility easement trenches are open for all companies to enter, and (for above ground developments) when other utilities such as telephone or electricity are provided to the site, provided all necessary permits are issued and the developer or the Member City imposes no Unusual Conditions on such permits, or on Grantee's use of such trenches. If the subdivision is already served by utilities, Grantee will build it out promptly. "Unusual Conditions" means a condition imposed by City or developer that requires conditions for cost sharing that are extraordinary to the area.

Grantee will provide an annual update on its progress on each development listed below.

**Constructed within 12 months of Franchise Agreement effective date:**

1. Easton Village
2. Wildflower at Lake Elmo
3. Village Preserve
4. Southwind Diedrich-Reider
5. Hunters Crossing
6. Inwood
7. Hammes Estates
8. Boulder Ponds
9. Savona
10. White Oaks Savannah (Grant)
11. Gateway (Grant)
12. Hidden Meadows Phase I
13. Legacy at North Star
14. Northport
15. Royal Golf Club
16. Union Park (if developer actually starts this project)

**Constructed within 36 months of Franchise Agreement effective date:**

Build-out to these sites is contingent upon the developer's schedule:

1. Hidden Meadows Phase 2
2. Wyndham Village (if developer actually starts this project)

**The following projects on the RWSCC list will not be included in this Exhibit because the developer has an exclusive contract or bulk contract with another service provider:**

1. Fields of Arbor Glen
2. Springs Apartment





## **SPECIAL LANGUAGE FOR THE CITY OF GRANT FRANCHISE**

In accordance with and subject to the procedures below, Grantee agrees to work with the City of Grant to identify a build-out area within the City of Grant. The City of Grant, at its sole cost and discretion, will solicit written expressions of interest in subscribing to Grantee's services from residents within the area depicted on the map above, describing those parts of the buildout that the resident will be required to fund. The City of Grant will provide Grantee a list of addresses of responding residents who have expressed interest. The City of Grant has the discretion to determine which residential properties within the area depicted on the map above it will include in any solicitation of written expressions of interest. Grantee will then provide the City of Grant a written estimate of the portion of the cost to each such resident of building out the Cable System to serve that customer. In its cost estimate, Grantee will itemize the cost of the Drop, the cost of the line extension, and the cost of any line extension that must occur on the resident's property in order to provide Cable Service to that resident. Grantee's estimates will be based on cost.

The City of Grant may direct Grantee to build out to those residential properties identified in Grantee's written estimates. Grantee shall bear the cost of construction up to \$2,600 per home passed. Grantee is not required to build out to any home directed by the City of Grant to be built out unless, for that home, there is a secure commitment to fund all construction costs (including the node splits and fiber extensions) in excess of \$2,600 per home through any combination of funds from the potential subscribers, a grant commitment, or a commitment of any portion of the Construction Credit provided in Section 6.6(b) of the Franchise.

For places within the targeted buildout area on private property with one or more existing poles that are not currently usable by Grantee because of trees, brush, or both, but that could be made usable, the City of Grant or property owner can, at their own choice and not under the direction or request of Grantee, cut back the trees or brush at its own expense, or in combination with the expense of the benefitted property owner(s), to make the existing pole(s) usable by Grantee.

**EXHIBIT B**  
**CABLE SERVICE AND PHASE OUT OF DARK FIBER SERVICES TO PUBLIC BUILDINGS**

a. One or more Member Cities may request basic cable service at those locations attached to this Exhibit B that were receiving complimentary services and equipment under the previous franchise. Each location includes one drop, one activated outlet, and one cable box and remote control (if required). Grantee, City, and the Commission agree that under the FCC Section 621 Order, Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019 (currently pending appeal), complimentary accounts are not a condition of the Franchise. Grantee will charge fair market value prices for former complimentary service locations (current pricing is attached to this Exhibit B) and accounts shall be subject to Grantee's regular, nondiscriminatory rate adjustments. On the Effective Date of the Franchise, for those locations attached to this Exhibit B already receiving complimentary services and equipment, Grantee will continue to provide the outlets, equipment and the remote controls, if any, subject to the provisions of this Exhibit B.

b. Additional subscriber network Drops and/or outlets will be installed at designated institutions by Grantee at the cost of Grantee's time and material, or such other price as may be required to comply with Applicable Law. Alternatively, said institution may add outlets at its own expense as long as such installation meets Grantee's standards. Grantee will complete construction of the additional Drop and outlet within three (3) months from the date of City's designation of additional institution(s) unless weather or other conditions beyond the control of Grantee requires more time. The communities may substitute locations listed on the attachment to this Exhibit B subject to the new location being within 250 feet of existing distribution lines (if further than 250 feet from existing distribution lines, communities must pay the additional actual cost of installing a longer drop).

c. The City or the locations will pay the service rate for each location set forth on the attachment to this Exhibit B commencing sixty (60) days after notification from Grantee. Grantee will notify the City of any locations for which it elects at its sole discretion not to impose a charge within thirty (30) days of the effective date of the franchise. Commission/City or former Complimentary Service recipients (schools, libraries, et al.) have the right to choose to retain Cable Service at the rates listed on the municipal pricing sheet or terminate Cable Service to their Location. Each location identified on the attachment to this Exhibit B that chooses to retain Cable Service shall receive one Drop, one activated outlet, and one cable box and remote control (if required) as part of the rate listed on the attachment to this Exhibit B. Additional tiers of cable service and equipment may be purchased at rate card rates.

d. In the event there is a change in Applicable Law, and franchise-mandated complimentary services to public buildings are no longer considered to be "franchise fees" under 47 USC §542, then for the remaining Franchise term Commission/City may require Comcast to provide basic Cable Service to the former Complimentary Service Locations attached to this Exhibit B at an adjusted rate or on a complimentary basis consistent with such change in Applicable Law.

e. Comcast will agree to continue to make dark fiber connections now available to the Commission and City, and to repair and maintain those connections so that the fiber connections satisfy manufacturer's specifications. For 24 months after the Effective Date of the Franchise, there will be no charge to Commission or City for the connections; thereafter, Grantee will charge \$330 per site per month for the initial term of this Franchise. Commission and City may terminate use of the dark fiber at any time. Grantee agrees not to contest the internal accounting treatment (whether operating or capital support) of the Commission's use of PEG funding for the payment of the charges under this paragraph. Nothing herein prevents Commission or City from entering into a different arrangement for dark fiber or for managed services, including, for example, long-term contracts at discounted rates. By December 1, 2022, Grantee will provide the City and Commission a proposed Comcast Business Services agreement for dark fiber services at the monthly pricing set forth above. The parties may negotiate other terms and conditions to be included in the Comcast Business Services agreement, other than the monthly recurring charge. If the parties are unable to reach agreement on other terms and conditions included in the Comcast Business Services agreement prior to the end of the 24-month period above, Comcast's obligation to continue providing dark fiber services shall terminate at the end of the 24-month period, and the City or Commission may purchase dark fiber or managed services from a different provider. This shall not affect the City's right to terminate use of the dark fiber at any time, or its right to terminate use of the dark fiber for some but not all of the buildings within its jurisdiction that use it.

**EXHIBIT B, Continued.**

Location	Address	City	Business Basic Cable Pricing (Includes BTF)	Business Select Cable Pricing (includes BTF and RSN)	Business Services Equipment and Fees
			\$24.60	\$42.65	\$9.95 per piece of equipment. \$5.00 per account for HD services.
CITY HALL,BIRCHWOOD	207 BIRCHWOOD AVE	BIRCHWOOD			
HIGH SCHOOL,MAHTOMEDI	8000 75TH ST N	MAHTOMEDI			
FIRE DEPT,LAKE ELMO	3510 LAVERNE AVE N	LAKE ELMO			
MAINT BUILDING,LAKE ELMO	4259 JAMACA AVE N	LAKE ELMO			
FIRE DEPT,LAKE ELMO	4059 JAMACA AVE N	LAKE ELMO			
CITY OF,LAKE ELMO	3800 LAVERNE AVE N APT B	LAKE ELMO			
ELEMENTARY,OH ANDERSON	666 WARNER AVE S	MAHTOMEDI			
MIDDLE SCHOOL,MAHTOMEDI	1520 MAHTOMEDI AVE	MAHTOMEDI			
SCHOOL,ST JUDE	600 MAHTOMEDI AVE	MAHTOMEDI			
PUBLIC WORKS,MAHTOMEDI	30 LONG LAKE RD	MAHTOMEDI			
FIRE DEPT,MAHTOMEDI	800 STILLWATER RD	MAHTOMEDI			
CITY HALL,OAKDALE	1584 HADLEY AVE N	OAKDALE			
ELEMENTARY,EAGLE PT	7850 15TH ST N	OAKDALE			
CHURCH,HOLY CROSS LUTHERN	6355 10TH ST N	OAKDALE			
HIGH SCHOOL,TARTAN	828 GREENWAY AVE N	OAKDALE			
ELEM SCHOOL,CASTLE	6675 50TH ST N	OAKDALE			
FIRE DEPT,OAKDALE	6633 15TH ST N	OAKDALE			
ICE ARENA,TARTAN	740 GREENWAY AVE N	OAKDALE			
CHURCH,HOUSE OF PRAYER	6039 40TH ST N	OAKDALE			
FIRE DEPT,OAKDALE	5000 HADLEY AVE N	OAKDALE			
SCHOOL,TRANSFIGURATION	6133 15TH ST N	OAKDALE			
ELEMENTARY,SKYVIEW COMM	1100 HERON AVE N	OAKDALE			
PUBLIC WORKS,OAKDALE	1900 HADLEY AVE N STE 1	OAKDALE			
MIDDLE SCHOOL,SKYVIEW	1100 HERON AVE N	OAKDALE			
COLLEGE,EAST CENTURY	3300 CENTURY AVE N	WHITE BEAR LAKE			
SCHOOL,CENTRAL MIDDLE	4857 BLOOM AVE	WHITE BEAR LAKE			
POLICE,WHITE BEAR	4701 HIGHWAY 61 N	WHITE BEAR LAKE			
ELEMENTARY,BIRCH LAKE	1616 BIRCH LAKE AVE	WHITE BEAR LAKE			
SCHOOL,ST MARY OF THE LAKE	4690 BALD EAGLE AVE	WHITE BEAR LAKE			
ELEMENTARY,LAKE AIRES	3963 VAN DYKE ST	WHITE BEAR LAKE			
ELEMENTARY,WILLOW LN	3375 WILLOW AVE	WHITE BEAR LAKE			
HIGH SCHOOL,WBL	3551 MCKNIGHT RD N	WHITE BEAR LAKE			
ELEMENTARY,LINCOLN	1961 6TH ST	WHITE BEAR LAKE			
AREA LEARNING,WHIT BEAR LA	2449 ORCHARD LN	WHITE BEAR LAKE			
FIRE DEPT,WHITE BEAR LAKE	3595 MCKNIGHT RD N	WHITE BEAR LAKE			
ELEM SCHOOL,PARKVIEW	2530 SPRUCE PL	WHITE BEAR LAKE			
WATER PLNT,WHITE BEAR LAKE	2401 ORCHARD LN	WHITE BEAR LAKE			
PUBLIC WORKS,WHITE BEAR	4200 HOFFMAN RD	WHITE BEAR LAKE			
SPORTS CTR,WBL	1328 HIGHWAY 96 E	WHITE BEAR LAKE			
CABLE COMM,RAMSEY-WASH	2460 COUNTY ROAD F E STE A	WHITE BEAR LAKE			
MIDDLE SCHOOL,SUNRISE	2399 CEDAR AVE	WHITE BEAR LAKE			
FIRE,WBL	4701 HIGHWAY 61 N	WHITE BEAR LAKE			
CITY HALL,WBL	4701 HIGHWAY 61 N	WHITE BEAR LAKE			
PUBLIC WORKS,WHITE BEAR	3950 HOFFMAN RD	WHITE BEAR LAKE			
CITY OF,WHITE BEAR TOWNSHI	1281 HAMMOND RD	WHITE BEAR TOWNSHIP			
COUNSELING CENTER,WHITE BE	1280 BIRCH LAKE BLVD	WHITE BEAR TOWNSHIP			
HALL,HERITAGE	4200 OTTER LAKE RD	WHITE BEAR TOWNSHIP			
PUBLIC WORKS,WHITE BEAR TO	1281 HAMMOND RD	WHITE BEAR TOWNSHIP			
CITY HALL,WILLERNIE	111 WILDWOOD RD	WILLERNIE			
CITY HALL,MAHTOMEDI	600 STILLWATER RD	MAHTOMEDI			

**EXHIBIT C**  
**SD/HD PEG Channel Numbers**

	<b>Channel Name</b>	<b>SD Channel #</b>	<b>HD Channel #</b>
1.	Government	16	799
2.	Global	18	TBD
3.	Local Community Events	19	801
4.	Educational	20	TBD

**EXHIBIT D  
LIST OF PERMANENT PEG TRANSPORT SITES**

- 1. White Bear Lake City Hall, 4701 Highway 61 N., White Bear Lake**
- 2. White Bear Lake Township City Hall, 1281 Hammond Rd., White Bear Township**
- 3. Lake Elmo City Hall, 3800 Laverne Ave. N., Lake Elmo**
- 4. Oakdale City Hall, 1584 Hadley Ave. N., Oakdale**
- 5. Birchwood Village City Hall, 207 Birchwood Ave., Birchwood**
- 6. Mahtomedi City Hall, 600 Stillwater Rd., Mahtomedi**
- 7. Willernie City Hall (Dellwood and Grant share the Willernie City Hall connection), 111 Wildwood Rd., Willernie**
- 8. SCC Studio, 2460 East County Road F Suite A, White Bear Lake**
- 9. Heritage Hall, 4200 Otter Lake Rd., White Bear Township**

Notwithstanding Section 7.9(b), which requires the City to reimburse Grantee for reasonable construction costs for new fiber construction in the Street necessary to provide PEG transport services in the event one of the above nine (9) sites moves to a new location, Comcast has agreed to pay for the cost of moving the Lake Elmo City Hall from its current location at 3800 Laverne Ave. to its new location at 3880 Laverne Ave. without seeking reimbursement from City or Commission.

**EXHIBIT E**

<b>CABLE MODEM SERVICE SITES</b>		
<b>Location</b>	<b>Address</b>	<b><u>Currently Served by Coax I-NET Connection</u></b>
1. White Bear Township Admin	1281 Hammond Rd, White Bear Township	X
2. Otter Lake Elementary	1401 County Rd H2 E, White Bear Lake	X
3. Birchlake Elementary	1616 Birch Lake Ave, White Bear Lake	X
4. Gospel Fellowship Church	1685 County Hwy 96, White Bear Lake	X
5. White Bear Lake North Campus	5045 Division Ave, White Bear Lake	X
6. Central Middle School	4857 Bloom Ave, White Bear Lake	X
7. White Bear Lake Library	2150 2nd St, White Bear Lake (4698 Clark Av)	X
8. White Bear Lake City Hall	4701 Hwy 61 N, White Bear Lake	X
9. White Bear Lake Police & Fire Station #910	4701 Hwy 61 N, White Bear Lake (4700 Miller Ave)	X
10. White Bear Unitarian Church	328 Maple St, Mahtomedi	X
11. Mahtomedi District Office (Board meetings telecast in DEC Community Room)	1520 Mahtomedi Ave, Mahtomedi	X
12. Wildwood Elementary	8698 75th St N, Mahtomedi (formerly 535 N Warner Rd)	X
13. Mahtomedi Middle School	8100 75th St N, Mahtomedi	X
14. Mahtomedi High School	8000 75th St N, Mahtomedi	X
15. Mahtomedi City Hall	600 Stillwater Rd, Mahtomedi	X
16. Mahtomedi City Fire	800 Stillwater Rd, Mahtomedi	X
17. Wildwood Library	763 Stillwater Rd, Mahtomedi	X
18. Willernie City Hall (Dellwood, Grant, Willernie offices; meeting room for Dellwood and Willernie councils)	111 Wildwood Rd, Willernie	X



19. OH Anderson Elementary	666 Warner Ave S, Mahtomedi	X
20. South Shore Trinity Church	2480 S Shore Blvd, White Bear Lake	X
21. RWSCC Master Control	2460 East County Road F, White Bear Lake	X
22. Bellaire Education Center (formerly Bellaire Elementary)	2540 County Rd F East, White Bear Lake	X
23. Lakeaires Elementary School	3963 Van Dyke St, White Bear Lake	X
24. Matoska International IB World School (formerly Parkview Elementary)	2530 Spruce Place, White Bear Lake	X
25. First Lutheran Church	4000 Linden St, White Bear Lake	X
26. Birchwood City Hall	207 Birchwood Ave, Birchwood	X
27. Sunrise Park Middle School	2399 Cedar Ave, White Bear Lake	X
28. Redeemer Lutheran Church	3770 Bellaire Ave, White Bear Lake	X
29. White Bear Lake District Center (School board meetings telecast in Community Room)	4855 Bloom Avenue, White Bear Lake (formerly 3554 N White Bear Av)	X
30. White Bear Lake Fire Station #920	2240 E County Road E	X
31. White Bear Lake Area High School - South Campus and Northeast Metro 916 Intermediate School District South Campus Education Center	3551 McKnight Rd N, White Bear Lake	X
32. White Bear Lake Area Learning Center (formerly Golfview School)	2449 Orchard Ln, White Bear Lake	X
33. Willow Lane Elementary	3375 Willow Ave, White Bear Lake	X
34. Century College West Campus	3401 E County Line N, White Bear Lake	X
35. Century College East Campus & and Northeast Metro 916 Career and Tech Center	3300 Century Ave N White Bear Lake	X
36. Castle Elementary	6675 50th St N, Oakdale	X
37. Oakdale Fire Station 1 (North Station)	5000 Hadley Avenue, Oakdale (formerly 6279 N 50th St)	X
38. Oakdale Discovery Nature Center	4444 Hadley Ave N, Oakdale	X
39. Oakdale City Hall & Police	1584 Hadley Avenue N, Oakdale	X

40. Eagle Point Elementary	7850 15th St N, Oakdale	X
41. Washington County Library Oakdale	1010 Heron Ave N, Oakdale	X
42. Skyview Elementary/Middle School	1100 Heron Avenue North Oakdale	X
43. Oakdale Fire Station 2 (South Station)	6633 15th Street, Oakdale	X
44. Tartan High School	828 Greenway Avenue North, Oakdale	X
45. Tartan Ice Arena	740 Greenway Ave N, Oakdale	X
46. Oakdale Elementary	821 Glenbrook Avenue North, Oakdale	X
47. Oakdale Fiber Hub	7245 Stillwater Blvd N Oakdale	X
48. Lake Elmo Fire Station #2 (Lake Elmo Maintenance)	4259 Jamaica Ave. N, Lake Elmo	X
49. Lake Elmo City Hall	3800 Laverne Avenue North, Lake Elmo	X
50. Lake Elmo Elementary	11030 Stillwater Blvd N Lake Elmo	X
51. Lake Elmo Library	3537 Lake Elmo Avenue North Lake Elmo (formerly 3459 Lake Elmo Av N)	X
52. Lake Elmo Park and Rec	11194 Upper 33rd, Lake Elmo	X
53. Lake Elmo Fire Station #1	3510 Laverne Ave N, Lake Elmo	X
54. Oak-Land Middle School	820 Manning Ave. N. Lake Elmo	X
55. River of God Church (formerly Northwoods Church) *	2490 7th Ave E, North St. Paul	X
56. Oakdale Public Works	1900 Hadley Ave N, Oakdale	X
57. Frassati Catholic Academy (formerly St. Mary's School)	4690 Bald Eagle Ave, White Bear Lake	X
58. White Bear Armory	2228 4th St, White Bear Lake	X
59. Normandy Park Education Center (White Bear Area Senior Program & White Bear Lake Area Schools Early Childhood Program)	2482, 2484 E County Rd F, White Bear Lake	X
60. Lake Elmo City Admin Offices/Brookfield Building	3800 Laverne Ave. N., and upon relocation 3880 Laverne Ave. N., Lake Elmo	
61. Aldrich Arena	1850 White Bear Ave.	



**Exhibit F**

**Delivery of live and recorded programming to and from below listed entities on C-RAN**

1. St. Paul SPNN (1 receive channel and 1 send channel)
2. Town Square Television (1 receive channel and 1 send channel)
3. Coon Rapids (1 receive channel and 1 send channel)
4. Central St. Croix- Valley Access (1 receive channel and 1 send channel)
5. South Washington – SWC-TV (1 receive channel and 1 send channel)
6. Hastings – HCTV (1 receive channel and 1 send channel)

Subject to economic and technical feasibility, the Commission reserves the right to reassign these entities as needed during the term of the Franchise, in response to changing circumstances regarding such programming providers.

## **Exhibit G**

### **Existing Satellite Fed Programming as of Effective Date**

1. NASA
2. Deutsche Welle

In the event these programmers change their satellite delivery such that it is no longer receivable by Comcast at the Region headend, the obligation ends.

**Exhibit H**  
**FRANCHISE FEE PAYMENT WORKSHEET**  
TRADE SECRET – CONFIDENTIAL

**\*\*\*CONFIDENTIAL\*\*\***



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

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

This statement represents your payment for the period listed above.

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

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

**EXHIBIT I**  
**MONTHLY SUBSCRIBER REPORT FORM**

Twin Cities/RWSCC

Data is for fiscal month ending x/x/xxxx

**House Data**

Marketable Homes	xxx
Penetration%	x%

**Subscriber Data**

Basic1 (residential, includes EBUs)	xxx
Basic 2 (residential, includes EBUs)	xxx

**Other Video Services**

Digital Economy (Residential)	xxx
Digital Preferred	xxx
Multilatin o	xxx
Sports Tier	xxx
HBO	xxx
Cinemax	xxx
Showtime	xxx
Starz	xxx
TMC	xxx

**Equipment**

Households with DVR Equipment	xxx
Households with HD Equipment	xxx
Households with DTA Equipment	xxx

**Pay Per View**

Total# PPV Purchases	xxx
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**Connects**

Basic1 Connects (Residential)	xxx
Basic 1 Disconnects (residential)	xxx
Net Gain/Losss	xxx

\* EBUs - Equivalent Business Units

**CONFIDENTIAL**



1/28/2021

To: Birchwood City Council

From: Birchwood Planning Commission

Date: 1/28/2021

Re: Review of 302.070. CITY FENCE ORDINANCE

Honorable Council:

The Birchwood Planning Commission considered the City Fence Ordinance at our 1/28/2021 meeting and offer the following suggestions. The existing ordinance is identified below with recommendation/changes/additions identified in **BOLD**.

**302.070. CITY FENCE ORDINANCE**

1. **Zoning Permit.** A Zoning Permit (see Sections 301.080.1.b and 307) shall be obtained from the City before installing or constructing any fence for any purpose. A site drawing showing the location of the fence shall be submitted with the permit application.
2. **Notice to Neighbors.** Any applicant for a Zoning Permit to construct a fence shall notify all abutting property owners at least five (5) days prior to submitting the application for a Zoning Permit.
3. **Location.** All fences shall be located entirely upon the property of the fence owner.
4. **Height.** No fence shall exceed six feet six inches (78") in height above grade at any point. Post shall not exceed 12 inches above the adjacent fence.
5. **Retaining Walls.** Solid wall in excess of four (4) feet high shall be prohibited unless they are part of a building.
6. **Materials.** Fences in excess of four (4) feet in height shall be at least thirty percent (30%) open through the entire surface area of the fence. All fences shall be constructed and maintained in a substantial manner and of material reasonably suited for the purpose for which the fence is proposed to be used. That side of the fence considered to be the face (or most attractive side of the fence) shall face toward abutting properties. ***The Planning Commission (Vote 5-yes, 0-no) is asking the Council CONSIDER ADDING following language to Section 302.0706.: No electric or barb wire fences shall be erected within the City except for City purposes as needed and approved by Council.***

**"AMENDED BY ORDINANCE 1997-2; AUGUST 12, 1997"**

**"AMENDED BY ORDINANCE: DECEMBER 13,2016"**

**(NEW) 7.** *As the Village of Birchwood works to resolve certain nuisance elements such as deer predation on flowers, shrubs and gardens, the Planning Commission (Vote: 5 – yes, 0-no) is proposing the consideration of a Nuisance Fence element in City Ordinance. The recommendation is that the Council consider adding the following to the Village Fence Ordinance. CONSIDER ADDING following language to Section 302.070.7. - **NUISANCE FENCE Permit.** Nuisance Fence permit may be considered by Council through Interim Use Permit process per Section 305 of Birchwood City Code. A Nuisance Fence - Interim Use Permit would be addressed on a case by case basis. The interim use permit would specify details such as duration, scale and scope of the proposed fence, permit, and conditions. (I.e. 72" Nuisance Deer Fence. 10% opaqueness with installation duration April 30 through November 1, and removed annually.)*

**(NEW) 8.** *In concert with the consideration of a Nuisance Fence element the Planning Commission (Vote: 5-yes, 0-no) is recommending the Council amend the City's Fence Ordinance to add an element for Seasonal or Garden Fencing. CONSIDER ADDING following language to Section 302.070.8. **SEASONAL OR GARDEN FENCE** will be allowed without permit if totally in side or rear yard and meets all set back requirements. Fence shall not exceed 72" and shall be removed at end of growing season.*

**Changes to Section 303.020.2 – Requirements and Performance Standards – Setback Table**

*The Planning Commission (Vote 5-yes, 0-no) is asking the Council to CONSIDER CHANGING the FENCE element in Setback table of **Section 030.020 2. of Zoning Code: Requirements and Performance Standards** to change the setback on Municipal Streets to read as follows: **Municipal Street, Front, Back, and Side = 0'**, County Road Front, Back, and Side = 20'. Most communities allow fences in residential areas to be installed up to street ROW so people can use their yards. The proposed change would allow fences to come up to the roadway ROW on lower volume and lower speed city streets but would continue current code of additional setback (I.e. 20' setback from ROW) on higher volume county and state roads.*

**Additional Language to Section 302.070.6**

*The Planning Commission (Vote 5-yes, 0-no) is asking the Council to CONSIDER ADDING the following language to Section 302.0706.: **...No electric or barb wire fences shall be erected within the City except for City purposes as needed and approved by Council.***

**Additional Language to Section 300.020. DEFINITIONS.**

*Also suggested (no vote) the Council CONSIDER ADDING the underlined language to Section 300.020. DEFINITIONS. – 18. Fence. A permanent partition, structure, hedge or landscape planting, wall or gate erected as a dividing marker or enclosure. Hedges or plantings could be used as de facto fences.*



# MEMORANDUM



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**TO:** Birchwood Village City Council  
**FROM:** Andy Gonyou, City Administrator  
**SUBJECT:** Board of Equalization Meeting  
**DATE:** March 3, 2021

Dear Mayor & City Council Members:

The date for the Birchwood Village 2021 Board of Appeal and Equalization + Open Book Meeting has been set by Washington County as April 13<sup>th</sup>, 2021 from 06:00 – 06:30pm. The City Assessor Chase Peloquin has provided me with a summary of what can be expected from this meeting which I will provide to the Council separately.

This meeting is scheduled within 30 minutes of the regular City Council meeting which is also scheduled for April 13<sup>th</sup>, 2021 – my recommendation would either be to have the Council vote to change the date of the regular April City Council meeting, or potentially plan to put the meeting into recess at some point the Council may agree upon and then resume the meeting at a subsequent date. Please prepare to have this discussion at the March 9<sup>th</sup>, 2021 meeting.

### **Request/Recommendation**

Staff requests Council:

- 1) Prepare to attend the Board of Appeal and Equalization + Open Book meeting on Tuesday, April 13<sup>th</sup> 2021 from 06:00pm – 06:30pm. Please also plan to have a discussion on how the Council would like to handle the scheduling of the regular City Council meeting that is currently planned to take place on Tuesday, April 13<sup>th</sup> 2021 beginning at 07:00pm.

Thank you,  
Andy Gonyou  
City Administrator - Clerk



# MEMORANDUM



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**TO:** Birchwood Village City Council  
**FROM:** Andy Gonyou, City Administrator  
**SUBJECT:** Uniform Maintenance Code  
**DATE:** March 4, 2021

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Dear Mayor & City Council Members:

The Council has previously discussed the idea of adopting a uniform maintenance code in order to take action when buildings are in disrepair in the City, but due to the typical length of such codes, there has also previously been discussion of adopting such a code by reference.

These codes are indeed quite lengthy, and to include them all in the Council Meeting agenda packet would be very costly and not an efficient use of paper. Because of this, I will post the three examples of potential maintenance codes that Mayor Wingfield provided on the City's website under the "Proposed Codes & Codes Under Review" section (located in the "Government" drop down).

### **Request/Recommendation**

Staff requests Council:

- 1) Review the three examples of uniform maintenance code listed on the City's website and prepare for further discussion on the potential adoption of such a code by reference.

Thank you,  
Andy Gonyou  
City Administrator - Clerk





# MEMORANDUM



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**TO:** Birchwood Village City Council  
**FROM:** Justin McCarthy, Councilmember  
**SUBJECT:** City Administrator Check-In  
**DATE:** March 3, 2021

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Dear Council,

During the November 2020 meeting, the City Council decided on March 2021 as the date for providing preliminary guidance on the performance of Andy Gonyou as City Administrator. As the Councilmember assigned to Personnel, I would ask the Council to decide whether to do an assessment or “check in” at this time, or whether to defer to a later date.

If we are interested in a preliminary evaluation at this time, I have included some potential questions you might want to consider when thinking about Andy’s performance. These questions are not intended to be a rigid framework for evaluation, but only intended to spark discussion. The questions are not in any particular order.

- Is Andy an effective communicator and does he keep Council adequately informed on city issues and events?
- Are agenda items and supporting documents appropriate and brought to Council in sufficient time for deliberations?
- Does Andy follow up promptly on Council requests for information or action without having to be reminded?
- Does Andy have adequate knowledge of City affairs?
- Does Andy exercise good judgment?
- Does Andy properly manage, along with our Treasurer, the financial affairs of Birchwood Village?
- Does Andy manage City employees properly?
- Does Andy manage and maintain City property properly?
- Does Andy pay proper attention to details to avoid things “slipping through the cracks”?
- Does Andy put in enough time and effort to perform to your expectations?
- Does Andy prioritize tasks appropriately?
- Does Andy make a positive impression on citizens in Birchwood Village?
- Is Andy effective when representing Birchwood in dealing with other agencies?
- How does Andy respond to criticism?

Furthermore, we may wish to verify that Andy is receiving the guidance and resources he needs to complete his job. For example, we may wish to ask Andy questions about the support he has been given, such as:

- Do you feel you have been given access to the training necessary to do your job?
- Do you feel that you know who to contact if you have questions?
- Do you have the resources (computers, etc...) to effectively do your job?
- How do you feel it is going?
- Is there anything that you feel is preventing you from fulfilling your duties?

Thank you,  
Justin McCarthy  
Councilmember