

HOPKINS CITY COUNCIL

AGENDA

Tuesday, June 20, 2023

6:30 pm

**THIS AGENDA IS SUBJECT TO CHANGE
UNTIL THE START OF THE CITY COUNCIL MEETING**

I. CALL TO ORDER

II. ADOPT AGENDA

III. PRESENTATIONS

1. Update from Hopkins Raspberry Festival; LouJean Gleason
2. Proclamation Recognizing July as Disability Pride Month; Imihy Bean

IV. CONSENT AGENDA

1. Minutes of the June 6, 2023 City Council Regular Meeting Proceedings
2. Second Reading: Ordinance Granting Comcast a Cable Television Franchise; Lenz
3. Resolution Approving an Owner Requested Special Assessment Agreement; Bishop

V. PUBLIC HEARINGS

VI. OLD BUSINESS

1. Second Reading: Ordinance Amending Chapter 102 of the Hopkins City Code Regarding Attached Garages in N3-B Zones; Howard

VII. NEW BUSINESS

1. Proposed Franchise Fee Increase; Bishop
2. Discussion on Regulating Adult Use Cannabis; Lenz/Sathe
3. First Reading: Ordinance Amending Chapter 2 of Hopkins City Code Regarding Salaries of the Mayor and City Council and Compensation for Park Board and Planning and Zoning Commission Members after January 1, 2024; Lenz

VIII. PUBLIC COMMENT

IX. ANNOUNCEMENTS

- Next City Council Regular Meetings: July 11, 18 and 31 at 6:30 p.m.

X. ADJOURN



CITY OF HOPKINS

Administration

Memorandum

To: Honorable Mayor and Council Members
From: Mike Mornson, City Manager
Date: June 20, 2023
Subject: Update from Hopkins Raspberry Festival

PURPOSE

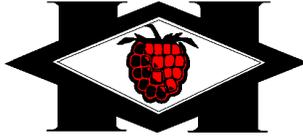
The Raspberry Festival will take place July 12-16, 2023. LouJean Gleason with the festival committee will be attending the meeting to provide an update on the events

INFORMATION

To find out more information the 2023 Hopkins Raspberry Festival, please visit <http://www.raspberrycapital.com/> .

FUTURE ACTION

Presentation only.



Administration

CITY OF HOPKINS

City Council Report 2023-062

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: PeggySue Imihy Bean, Special Projects and Initiatives Manager

Date: June 20, 2023

Subject: Adopt a Proclamation Recognizing July as Disability Pride Month

RECOMMENDED ACTION

MOTION TO Adopt a Proclamation Recognizing July as Disability Pride Month.

OVERVIEW

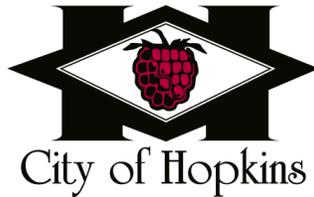
2023 marks the 33rd anniversary of the passage of the Americans with Disabilities Act (ADA), ensuring the civil rights of citizens with disabilities. Nearly one in four people have a disability, and people with disabilities in our community and our staff make tremendous contributions to the City of Hopkins.

The first Disability Pride Day celebration occurred in Boston in July of 1990, to celebrate the passage of the ADA. In 2015, New York held the first official celebration of Disability Pride Month, recognizing the 25th anniversary of the passage of the ADA. Disability Pride month celebrates disabled persons embracing their disabilities as integral parts of who they are, reclaiming visibility in public and interacting fully with their disabilities out in the open, and rejecting shame and normalized ableism.

Tonight, the City recognizes July as Disability Pride Month, and acknowledges the City's current and continued work to make City spaces and communications more accessible to our community. These efforts include hearing accessibility added in the remodel of the Council Chambers, increased website accessibility and an ongoing ADA assessment of the City's parks and public buildings.

SUPPORTING INFORMATION

- Proclamation Recognizing July as Disability Pride Month



A Proclamation Recognizing July as Disability Pride Month

WHEREAS, the Americans with Disabilities Act (ADA) was passed on July 26, 1990, to ensure the civil rights of citizens with disabilities, launching the inaugural Disability Pride Day celebrated in Boston; and

WHEREAS, New York City officially recognized the first Disability Pride Month in July 2015, celebrating the 25th anniversary of the ADA; and

WHEREAS, Disability Pride month celebrates disabled persons embracing their disabilities as integral parts of who they are, reclaiming visibility in public, and interacting fully with their disabilities out in the open, and rejecting shame and internalized ableism; and

WHEREAS, Disability Pride month allows the disability community to come together, uplift, and amplify one another's voices and be heard; and

WHEREAS, the City of Hopkins celebrates and recognizes our disabled community members, City staff and volunteers, who benefit from the hope and freedom envisioned by the passage of the ADA, as well as the businesses and organizations that bring forth the vision of accessibility embodied within the Act; and

WHEREAS; the City of Hopkins acknowledges that celebrating culture, community, and the ADA is only a starting point, and there remains significant room for progress toward full and equitable access and inclusion for all of those in Hopkins;

NOW THEREFORE, I, Patrick Hanlon, Mayor of the City of Hopkins in the State of Minnesota, along with my fellow Council Members, recognize, adopt, and proclaim the month of July as Disability Pride Month in the City of Hopkins, and urge all residents to accept and honor each person's uniqueness, seeing it as a natural and beautiful part of human diversity.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Hopkins, Minnesota to be affixed this 20th day of June 2023.

Patrick Hanlon, Mayor

**HOPKINS CITY COUNCIL
REGULAR MEETING PROCEEDINGS
JUNE 6, 2023**

CALL TO ORDER

Pursuant to due call and notice thereof a regular meeting of the Hopkins City Council was held on Tuesday, June 6, 2023 at 6:35 p.m. in the Council Chambers at City Hall, 1010 1st Street South.

Mayor Pro Tempore Hunke called the meeting to order with Council Members Beck and Garrido attending. Council Member Balan participated via interactive technology pursuant to Minn. Stat. Section 133.02 but with minor technology issues was only able to observe the meeting. Mayor Hanlon was absent. Others attending included City Manager Mornson, Assistant City Manager Lenz, City Clerk Domeier, City Planner Krzos, Planner Howard, City Engineer Klingbeil, City Attorney Riggs and Special Projects and Initiatives Manager Imihy Bean.

ADOPT AGENDA

Motion by Garrido. **Second** by Hunke.

Motion to Adopt the Agenda.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

PRESENTATIONS

III.1. Appointments to Park Board and Planning Commission and Oath of Office; Domeier

Mayor Pro Tempore Hunke summarized the process for selecting the new board and commission members.

Motion by Garrido. **Second** by Hunke.

Motion to appoint Callie Flynn and Wendy Woodfill to the Park Board; reappoint Matthew Miller and Kimberly Stiele to the Park Board; appoint Travis Fauchald and Diane Ilstrup to the Planning Commission; and reappoint Andrew Wright to the Planning Commission all with terms ending June 30, 2025.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

City Clerk Domeier issued the Oath of Office to Callie Flynn, Diane Ilstrup and Wendy Woodfill.

III.2. Update of Hopkins Pride 2023; West Kokesh

Hopkins Pride applicant West Kokesh and Jeremy Hale with LTD Brewing provided an update on the Hopkins Pride 2023 event.

III.3. Proclamation Recognizing June 19, 2023, as Juneteenth in Hopkins; Imihy Bean

Special Projects and Initiatives Manager Imihy Bean summarized City Council Report 2023-047. Juneteenth is the oldest nationally celebrated commemoration of the ending

**HOPKINS CITY COUNCIL
REGULAR MEETING PROCEEDINGS
JUNE 6, 2023**

of slavery in the United States. MN ROOTS! coordinators provided more information about the Juneteenth event.

Motion by Garrido. **Second** by Hunke.

Motion to Adopt a Proclamation recognizing June 19, 2023, as Juneteenth in Hopkins.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

III.4. Equity Update; Imihy Bean

Special Projects and Initiatives Manager Imihy Bean summarized the ongoing work within the organization listed in the memorandum including the recent work with consultant firm, CultureBrokers LLC to develop an Equity Strategic Action Plan (ESAP). Council Member Garrido questioned the performance measurements for the ESAP. Ms. Imihy Bean anticipated that the progress will be continuously measured and reviewed approximately every 10 years. Mayor Pro Tempore Hunke questioned how often the City Council would be updated on equity work. Ms. Imihy Bean provided the timelines for updating stakeholders and residents.

CONSENT AGENDA

Motion by Garrido. **Second** by Hunke.

Motion to Approve the Consent Agenda.

1. Minutes of the May 16, 2023 City Council Regular Meeting Proceedings
2. Approval of Temporary Liquor License for American Legion 320 DBA John Wilbur Moore Post; Domeier
3. Approval of Temporary Liquor License for BPOE Lodge 2221 DBA Hopkins Elks Lodge; Domeier
4. Approval of Temporary Liquor License for JCI Hopkins; Domeier
5. Extension of On-Sale Liquor License for LTD Brewing LLC DBA LTD Brewing Co.; Domeier
6. Resolution Approving Repair and Maintenance Addendum to Cooperative Agreement Between City of Hopkins and Nine Mile Creek Watershed District (NMCWD); Klingbeil
7. Approval of Miller's Application for Deferral of Special Assessment; Bishop
8. Ratify Checks Issued in May 2023; Bishop

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

NEW BUSINESS

VII.1. First Reading: Ordinance Granting Comcast a Cable Television Franchise; Lenz/Grogan

Brian T. Grogan, Esq. with Moss & Barnett summarized City Council Report 2023-063. Mr. Grogan's summary included information about the Southwest Suburban Cable Commissions goals and franchise negotiations.

**HOPKINS CITY COUNCIL
REGULAR MEETING PROCEEDINGS
JUNE 6, 2023**

Motion by Garrido. **Second** by Hunke.

Motion to hold First Reading of Ordinance 2023-1192 an Ordinance Renewing the Grant of a Franchise to Comcast of Minnesota, Inc. to Operate and Maintain a Cable System in the City of Hopkins, Minnesota; Setting Forth Conditions Accompanying the Grant of the Franchise; Providing for City Regulation and Administration of the Cable System; and Terminating Ordinance No. 2012-1051.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

VII.2. Resolution Denying the Variance Request for the property located at 13 Harrison Avenue South; Howard/ VII.3. First Reading: Ordinance Amending Chapter 102 of the Hopkins City Code Regarding Attached Garages in N3-B Zones; Howard

Planner Howard summarized City Council Report 2023-053. The property owner requested variances from standards to locate a garage 10.5 feet in front of the main building's front façade and to locate the garage door on the front façade. Based on the findings detailed in the report, staff determined the applicant did not demonstrate a practical difficulty with meeting the City zoning requirements as required by Minnesota State Statute 462.357, Subdivision 6. Mr. Howard recommended the City deny the applicant's request.

Discussion was held about the variance request including the neighboring property with a similar garage as proposed. Mr. Howard explained how a proposed garage would work under the current code and proposed code.

Mr. Howard summarized City Council Report 2023-062. The proposed ordinance would grant an exception to the attached garage setback and garage door location standards to properties in the N3-B zone that are not served by an improved alley, allowing garages under such circumstances to be designed according to the standards that apply to N3-A, Mid Lot Traditional Neighborhood zones.

Council Member Beck questioned if the lot was considered non-conforming. City Attorney Riggs stated given the use of the lot it was not considered non-conforming.

Brianna Frederick share concerns about the proposed setbacks and the lack of precedence in the neighborhood. Council Member Beck suggested further amendments to the zoning code to allow this single family home and garage to be built. He suggested further modifying the code with something similar with different setbacks. Council Member Garrido concurred; however, Mayor Pro Tempore Hunke supported the proposed ordinance. Council Member Beck wanted feedback from the absent Council Members. He requested it be considered under Old Business on future agenda and revised to allow for different setback options. City Attorney Riggs stated a proposed ordinance would not be ready for June 20 and may require Planning Commission review. Mayor Pro Tempore

**HOPKINS CITY COUNCIL
REGULAR MEETING PROCEEDINGS
JUNE 6, 2023**

suggested the second reading come back with same ordinance for full City Council review.

Motion by Beck. **Second** by Garrido.

Motion to Adopt Resolution 2023-020 denying the variance request for the property located at 13 Harrison Avenue South.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

Motion by Beck. **Second** by Garrido.

Motion to Adopt for First Reading, Ordinance 2023-1191 Amending Chapter 102 of the Hopkins City Code Regarding Attached Garages in N3-B Zones.

Ayes: Beck, Garrido, Hunke

Nays: None. Absent: Balan, Hanlon. Motion carried.

ANNOUNCEMENTS

Mayor Pro Tempore Hunke reviewed the upcoming meeting schedule including the Fire Department Staffing Study virtual town hall meeting.

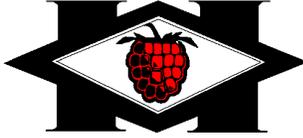
ADJOURNMENT

There being no further business to come before the City Council, and upon a motion by Garrido, second by Beck, the meeting was unanimously adjourned at 7:57 p.m.

Respectfully Submitted,



Amy Domeier, City Clerk



CITY OF HOPKINS

Administration

City Council Report 2023-063

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Ari Lenz, Assistant City Manager

Date: June 20, 2023

Subject: Second Reading: Ordinance Granting Comcast a Cable Television Franchise

RECOMMENDED ACTION

MOTION TO adopt Ordinance 2023-1192 an Ordinance Renewing the Grant of a Franchise to Comcast of Minnesota, Inc. to Operate and Maintain a Cable System in the City of Hopkins, Minnesota; Setting Forth Conditions Accompanying the Grant of the Franchise; Providing for City Regulation and Administration of the Cable System; and Terminating Ordinance No. 2012-1051.

OVERVIEW

No changes have been made to the ordinance since the June 6 first reading.

SUPPORTING INFORMATION

- Draft Ordinance 2023-1192

City of Hopkins, Minnesota

Ordinance Granting a Cable Television Franchise

to

Comcast of Minnesota, Inc.

June 1, 2023

TABLE OF CONTENTS

SECTION 1 DEFINITIONS..... 1

SECTION 2 FRANCHISE 7

SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY 10

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM..... 14

SECTION 5 SYSTEM DESIGN AND CAPACITY 15

SECTION 6 PROGRAMMING AND SERVICES..... 17

SECTION 7 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS 20

SECTION 8 REGULATORY PROVISIONS..... 26

SECTION 9 BOND 27

SECTION 10 SECURITY FUND 27

SECTION 11 DEFAULT 30

SECTION 12 FORECLOSURE AND RECEIVERSHIP 32

SECTION 13 REPORTING REQUIREMENTS 33

SECTION 14 CUSTOMER SERVICE POLICIES..... 34

SECTION 15 SUBSCRIBER PRACTICES..... 40

SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS 41

SECTION 17 MISCELLANEOUS PROVISIONS..... 44

EXHIBIT A COMPLIMENTARY SERVICE LOCATIONS A-1

EXHIBIT B EXISTING PEG TRANSFPOROT LOCATIONSB-1

EXHBIT C FRANCHISE FEE PAYMENT WORKSHEETC-1

EXHIBIT D SUMMARY OF ORDINANCE FOR PUBLICATION..... D-1

**CITY OF HOPKINS
COUNTY OF HENNEPIN**

ORDINANCE NO. 2023-1192

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF HOPKINS, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 2012-1051

RECITALS

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

Comcast of Minnesota, Inc. (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to Ordinance No. 2012-1051.

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

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

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 certain authority to the Southwest Suburban Cable Communications Commission to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

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.

NOW, THEREFORE, THE CITY OF HOPKINS, MINNESOTA 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. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, state, or federal law shall apply.

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

1.2 “Affiliate” or “Affiliated Entity” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successors.

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

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

1.5 “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.

1.6 “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.

1.7 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment which is designed to provide Cable Service that 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 Grantee's Cable System constructed and operated in the City under this Franchise.

1.8 "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.

1.9 "City" means the City of Hopkins, a municipal corporation in the State of Minnesota.

1.10 "City Code" means the Municipal Code of the City of Hopkins, Minnesota, as may be amended from time to time.

1.11 "Commission" means the Southwest Suburban Cable Communications Commission consisting of the cities of Eden Prairie, Edina, Hopkins, Minnetonka and Richfield, Minnesota.

1.12 "Connection" means the attachment of the Drop to the television set of the Subscriber.

1.13 "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 Cable Service signals.

1.14 "Council" means the governing body of the City.

1.15 "Day" means a calendar day, unless otherwise specified.

1.16 "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 Subscriber terminal.

1.17 "Effective Date" means February 1, 2023.

1.18 "FCC" means the Federal Communications Commission, or a designated representative.

1.19 "Franchise" means the right granted by this Ordinance and conditioned as set forth herein.

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

1.21 “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).

1.22 “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”).

1.23 “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.

(m) 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 Applicable Law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.

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

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

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

1.25 “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.

1.26 “Other Programming Service” is information that a cable operator makes available to all Subscribers generally.

1.27 “PEG” means public, educational and governmental.

1.28 “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.

1.29 “Section 621 Order” means the Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019, as modified by any court of competent jurisdiction or any subsequent order of the FCC.

1.30 “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.

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

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

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

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

SECTION 2 FRANCHISE

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

2.2 **Reservation of Authority.** The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between (A) the lawful provisions of the City Code or applicable regulations of the City and (B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances, or any regulation of 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 17.7 or terminated sooner in accordance with this Franchise.

2.4 **Franchise Area.** This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.6 herein. This Franchise governs any Cable Services provided by Grantee to residential and commercial Subscribers to Grantee's Cable System.

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

2.6 **Periodic Public Review of Franchise.** Within sixty (60) Days of the third and sixth annual anniversary of the Effective Date of this Franchise, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise.

2.7 **Transfer of Ownership.**

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

(b) City shall reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on Grantee's Subscribers resulting from the sale or transfer.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be handled in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

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

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

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

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

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

(i) City shall be deemed to have waived its rights under this paragraph (h) in the following circumstances:

(i) If it does not indicate to Grantee in writing, within ninety (90) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(ii) It approves the assignment or sale of the Franchise as provided within this section.

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

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

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner in accordance with 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 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 (service provided at cost).

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

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

3.6 **Maintenance and Restoration.**

(a) **Restoration.** In case of disturbance of any Street, public way, paved area or public improvement, Grantee shall, at its own cost and expense and in accordance with the requirements of Applicable Law, 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, 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 Street, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision, and by its failure, property is damaged, Grantee shall be responsible for all damages caused thereby.

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

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

3.8 **Relocation.**

(a) **City Property.** If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair

install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

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

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days' advance written notice advising Grantee of the date or dates that 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 to a condition as nearly as possible to its prior condition the Street or other public places in the City from which the System has been removed. However, Grantee shall have no obligation under this Franchise 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 Streets, 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 conform to the state right-of-way rules, Minn. Rules, Ch. 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the Cable System 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 its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

4.5 System Construction and Equipment Standards. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, 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 and records of all of its wires, conduits, cables and other property and facilities located, constructed, and maintained in the City, 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 and records 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 Cable Service Channels.

(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. To the extent required by Applicable Law, Grantee shall provide access to equal and uniform Cable Service throughout the City.

5.3 System Specifications.

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

(b) **Emergency Alert Capability.** At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable Laws 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 consistent with the Minnesota State Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan, containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee’s obligations beyond that which is required by the EAS Plan and Applicable Law.

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

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

(e) **System Upgrades.** The Cable System will be upgraded consistent with future System upgrades performed in Grantee’s other Twin Cities Region Cable Systems, when any other of Grantee’s Cable Systems in Hennepin County also receives a System upgrade, understanding that work on the Cable System is done based on Grantee’s construction schedules.

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 shall include, at a minimum:

- (a) Initial proof of performance for any construction; and
- (b) Tests in response to Subscriber complaints; and
- (c) Tests requested by the City to demonstrate franchise compliance; and
- (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 caused by such testing.

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

SECTION 6 PROGRAMMING AND SERVICES

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

- 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. As required by Applicable Law, 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. Upon request by any Subscriber, Grantee shall make available for sale or lease a parental control or lockout device 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 at the time of original subscription and annually thereafter.

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

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

6.6 Line Extension.

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

(b) Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. Grantee may offer the Persons requesting Service the opportunity to "prepay" some or all of the necessary line extensions according to its regular business policies. Grantee shall at all times implement such line extension policy in a nondiscriminatory manner throughout the City.

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

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

6.8 Free Cable Service to Public Buildings.

(a) The parties acknowledge that as of the Effective Date of this Franchise, Grantee continues to provide, free of charge, basic Cable Service (including the PEG Channels) to certain schools, libraries and public institutions within the Franchise Area as set forth in Exhibit A (“Complimentary Services”). In the event Grantee elects, to the extent permitted by Applicable Law, to invoice the City for the marginal cost of the Complimentary Services, the Grantee agrees that it will do so only after providing City with one hundred twenty (120) Days’ prior written notice.

(b) The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to impose a charge to the City for the Complimentary Service as set forth in the preceding paragraph. Within ninety (90) days of receiving the aforementioned notice, the City will notify the Grantee whether, with respect to each identified Complimentary Service location, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(c) 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 City may substitute locations listed on Exhibit A attached hereto as long as the number of locations to receive Complimentary Service remains the same as Exhibit A.

(d) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional

outlets, Grantee will provide up to three (3) devices at no charge and will provide additional devices at Grantee's lowest residential rate charged within the Twin Cities Region.

(e) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.

SECTION 7 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 Number of PEG Access Channels.

(a) Grantee will make available three (3) PEG Access Channels in addition to Channels required by the State of Minnesota, such as Regional Channel 6, throughout the entire term of this Franchise and any extensions of the Franchise term.

(b) Grantee shall provide the PEG Access 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.

(c) 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 (c)(i) above.

7.2 HD PEG Carriage Requirements.

(a) No later than September 1, 2023, Grantee shall provide all three (3) PEG Access Channels in HD format and shall also simulcast all three (3) PEG Access Channels in standard definition ("SD") until SD is no longer offered by Grantee. The parties agree that PEG funding may be used to support streaming of PEG programming, provided the City does not permit PEG funding to be used for operational expenses except as permitted by Applicable Law.

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

(c) 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

Grantees' headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties related to the government PEG Access Channel.

7.3 Control of PEG Access Channels. The control and administration of the PEG Access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

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

7.5 PEG Access Channel Locations.

(a) PEG Access Channels shall be carried on the Basic Cable Service tier to the extent required by Applicable Law and as set forth in Section 7.2 herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service. Grantee shall make every reasonable effort to coordinate the cablecasting of PEG access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The Access Channels will be located within reasonable proximity to other commercial video or broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.

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

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

7.6 Navigation to PEG Access Channels and Electronic Programming Guide. Grantee agrees that if it utilizes any navigation interfaces, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. Grantee will maintain the existing ability of the City to place PEG Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. PEG programming provided by the City shall appear on the EPG for each Channel carried in the City. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access 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 Access Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational, or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 PEG Monitoring. Grantee shall provide the capability, without charge, to the City and to the City of Edina (location of the Commission’s master control facility), to monitor and verify the audio and visual quality of PEG Access Channels received by Subscribers as well as the existing connections and equipment at the City and the City of Edina. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the City and the City of Edina to verify the accuracy of EPG listings for the PEG Access Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the City and one (1) additional feed to the City of Edina 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 Noncommercial Use of PEG. Permitted noncommercial uses of the Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a Access Channel.

7.10 PEG Transport. Grantee will maintain all existing fiber paths in place as of the Effective Date to facilitate PEG origination/return capacity in the City. Such fiber returns paths are listed in Exhibit B attached hereto and will be provided by Grantee without additional charge, with no recurring, monthly costs or offsets, except that Grantee may invoice the Commission for any maintenance costs consistent with Applicable Law and the Section 621 Order. Grantee shall not be responsible for fiber “replacement” but will handle any damage and all maintenance on the existing fiber. Grantee anticipates, but cannot guarantee, that that this will result in minimal fiber expenditures by the City over the Franchise term.

7.11 Interconnection. To the extent technically feasible, Grantee will allow necessary interconnection with any newly constructed City and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the demarcation point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review, Grantee may condition the interconnection on the reasonable reimbursement of Grantee’s incremental costs,

with no markup for profit, to recoup Grantee's construction costs only. In no event will Grantee impose any type of recurring fee for said interconnection.

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

7.13 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 Exhibit B); 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. Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time but not later than September 1st in the year proceeding the request for any costs exceeding Twenty-five Thousand and No/100 Dollars (\$25,000). The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for Grantee's out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber.

7.14 PEG Access Channel Carriage.

(a) Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG Access Channels/signals leave the City's designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any PEG Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional PEG Access Channel when the cumulative time on all the existing PEG Access Channels combined meets the following standard: whenever one of the PEG Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, PEG Access Channel for the same purpose;

provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

(c) Only to the extent mandated by Applicable Law, the VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated PEG Access Channels.

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

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

7.15 Access Channel Support.

(a) No later than September 1, 2023, Grantee shall collect and remit to the City a minimum of two percent (2%) of Grantee's Gross Revenues in support of PEG ("PEG Fee") to be used by the City as permitted under Applicable Law.

(b) The PEG Fee is not part of the Franchise Fee and instead falls within one (1) or more of the exceptions in 47 U.S.C. § 542, unless 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.

(c) Grantee shall pay the PEG Fee to the City quarterly, on the same schedule as the payment of Franchise Fees as set forth in Section 16.1 of this Franchise. Grantee agrees that it will not offset or reduce its payment of past, present, or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

7.16 PEG Technical Quality and Support.

(a) Grantee shall not be required to carry a PEG Access 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 Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Access 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 Access 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 Access 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) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

7.17 Access Channel Promotion. If a PEG Access Channel is relocated, Grantee shall notify the Commission, City and Subscribers of the relocation in a manner consistent with Grantee's other normal Channel relocation notices.

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

7.19 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 the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

7.20 Regional Channel Six. Grantee shall make available Regional Channel Six as long as it is required to do so by the State of Minnesota.

7.21 Government Access Channel Functionality. Grantee and City agree that City will continue to have the following capability on the government Access Channel:

- (a) City can insert live Council meetings from City Hall;
- (b) City can replay government access programming from City Hall;
- (c) City can transmit character generated programming; and
- (d) City can schedule to replay City-provided programming in pre-arranged time slots on the government PEG Access Channel.

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

SECTION 8 REGULATORY PROVISIONS.

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

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

8.3 Areas of Administrative Authority.

(a) In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

(i) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility; and

(ii) Coordinating the operation of PEG Access Channels; and

(iii) Formulating and recommending long-range cable communications policy for the Franchise Area; and

(iv) Disbursing and utilizing Franchise revenues paid to the City; and

(v) Administering the regulation of rates, to the extent permitted by Applicable Law; and

(vi) All other regulatory authority permitted under Applicable Law.

(b) The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operations under the Franchise to the extent allowed by Applicable Law.

8.4 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.** Upon the Effective Date of this Franchise and at all times thereafter Grantee shall maintain with City 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 City, conditioned upon the faithful performance by Grantee of this Franchise and the acceptance hereof given by City 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 two percent (2%) in excess of the then prime rate), 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.

SECTION 10 SECURITY FUND

10.1 **Security Fund.** If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful

performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty-five Thousand and No/100 Dollars (\$25,000.00). In no event shall Grantee fail to post a Twenty-five Thousand and No/100 Dollar (\$25,000.00) letter of credit within thirty (30) days receipt of a notice of franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses, and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Five Thousand and No/100 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 purpose.

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

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

(a) For failure to provide data, documents, reports, or information or to cooperate with City during an application process or System review, the liquidated damage shall be Two Hundred Fifty and No/100 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 Paragraph 10.4, the liquidated damage shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) Forty-five (45) Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage

shall be Five Hundred and No/100 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 Access Channels the liquidated damage shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

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

10.6 Maximum Draw Per Violation. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-five Thousand and No/100 Dollars (\$25,000). 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.

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

10.8 Procedure for Draw on Security Fund. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

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

(b) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may require payment of all liquidated damages due it.

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

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

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

10.12 Collection of Funds Not Exclusive Remedy. The collection by City of any damages or monies from the security fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the security fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages, that remedy shall remain the City's exclusive remedy up to Twenty-five Thousand and No/100 Dollars set forth in Section 10.6.

SECTION 11 DEFAULT

11.1 Basis for Default. City shall give written notice of default to Grantee if City, in its sole discretion, determines that Grantee has:

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

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

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

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

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

11.3 Mediation. If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Unless the Grantee and City mutually agree otherwise, such mediation shall be in accordance with the rules of the American Arbitration Association currently in effect at the time of the mediation. A party seeking mediation shall file a request for mediation with the other party to the Franchise and with the American Arbitration Association. The request may be made simultaneously with the filing of a complaint, but, in such event, mediation shall proceed in advance of legal proceedings only if the other party agrees to participate in mediation. Mutually agreed upon mediation shall stay other enforcement remedies of the parties for a period of ninety (90) Days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator's fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

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

11.5 Compliance with the Laws.

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

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

SECTION 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 forty-five (45) calendar 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 C 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 1.23 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. In addition, Grantee shall provide City with copies of reports of the semi-annual test and compliance procedures established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 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, free of 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.

13.4 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. Ch. 13. The City shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to City. Grantee acknowledges that the City shall at all times comply with the MGDPA related to the release of information and nothing herein shall be read to modify the City's obligations under the MGDPA.

13.5 Communications with Regulatory Agencies.

(a) Upon written request, Grantee shall submit to City 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 shall not claim confidential, privileged, or proprietary rights to such documents unless under federal,

state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. With respect to all other reports, documents and notifications provided to any federal, state, or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the Franchise Area, Grantee shall make such documents available to City upon City's written request.

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

SECTION 14 CUSTOMER SERVICE POLICIES

14.1 Response to Customers and Cooperation with City. Grantee shall promptly respond to all requests for service, repair, installation, and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints. Grantee will continue to 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 Definition of "Complaint." For the purposes of Section 14.1 and 14.4 only, the word "complaint" shall mean any communication to the Commission or the City by a Subscriber, and thereafter reported to the Grantee, expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

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

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.

- (f) Converter/Subscriber terminal equipment policy.
- (g) Breach of Franchise specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed, and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

14.4 Reporting Complaints.

(a) The requirements of this Section 14.4 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, telephone number of Subscriber complaints as well as the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

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

14.5 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, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Section 14.5.

(c) Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. To the extent that this Franchise imposes requirements greater than those established by the FCC, Grantee reserves whatever rights it may have to recover the costs associated with compliance in any manner consistent with Applicable Law.

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

14.7 Cable System office hours and telephone availability. Grantee shall comply with the standards and requirements for customer service set forth in Section 14.5 – 14.21 during the term of this Franchise.

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

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

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(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 14.7 as is the current practice

14.8 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(c).

(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.

14.9 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.

14.10 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.

14.11 Subscriber Information.

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

- (i) Products and Services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and Service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) Channel positions of programming carried on the System; and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

(b) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.11.

14.12 Notice or Rate Programming Change. In addition to the requirement of this Section 14.12 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

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

14.14 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.

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

14.16 **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.

14.17 **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)).

14.18 **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 this Franchise.

14.19 **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 14.3, 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.

14.20 **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.

14.21 **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 be affected 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 offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability.

(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.

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

SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS.

16.1 Franchise Fees.

(a) During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation, or valid rule alters the five percent (5%) Franchise Fee ceiling enacted 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.

(b) In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

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

(d) 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.

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

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

necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years, pursuant to Minn. Stat. § 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated Entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

16.3 Review of Record Keeping Methodology. Grantee agrees to meet with representative of the City upon request 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.

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 in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents,

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

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 and No/100 Dollars (\$3,000,000.00). The liability policy shall include:

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to City
- (i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City

will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

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

SECTION 17 MISCELLANEOUS PROVISIONS.

17.1 **Posting and Publication.** The Summary of Ordinance for Publication ("Summary") attached hereto as Exhibit D shall be published at least once in the official newspaper of the City. Grantee shall assume the cost of posting and publication of the Summary as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

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

17.3 **Entire Agreement.** This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

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 as originally granted by Ordinance No. 2012-1051 is hereby terminated.

17.6 **Franchise Acceptance.** No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall accept and return to the City an executed Franchise along with performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to accept this Franchise, or fails to provide the required documents, this Franchise 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 February 1, 2023.

requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

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

17.12 **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.

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

17.14 **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.

17.15 **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.

17.16 **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.

17.17 **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.

17.18 Competitive Equity

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Cable Services or Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.18 will apply.

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

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects and following the ninety (90) Day negotiation time period set forth in this paragraph 17.18 (c), the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream Video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.

(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the

Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.18 is intended to alter the rights or obligations of either party under Applicable Law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to mandate a Cable Service franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists or does not exist.

17.19 FCC Preemption.

(a) At any time after this Franchise is approved by the City Council, the Grantee may, if Grantee is legally permitted by Applicable Law, provide the City with a written list of “in-kind cable-related contributions” (as that term is defined by the FCC in the Section 621 Order) that the Franchise requires Grantee to provide (including but not limited to the Complimentary Service requirements in Section 6.8) and the incremental cost(s) associated with the provision of the in-kind cable-related contributions. Within one hundred and twenty (120) days of receiving the aforementioned list, the City will notify the Grantee whether, with respect to each identified in-kind cable-related contribution, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 16.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(b) In the event the Section 621 Order is stayed or overturned in whole or in part by action of the FCC, the City and the Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies. It is the intent of the parties that the City shall be treated by the Grantee in a reasonably comparable manner as other jurisdictions within the Twin Cities Region with respect to any offsets or charges imposed by Grantee for the provision of Complimentary Service. Nothing herein waives the City's right to enforce Grantee's compliance with all lawful obligations contained in this Franchise.

17.20 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, 7.10, 7.11, 7.12, 7.13, 7.16(b), 7.17, 7.18, 7.19, 13.1, 13.2, and 13.3, shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 1.23 and 16.1 of this Franchise or as a PEG Fee under Section 7.15 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 7.15 of this Franchise, any PEG capital costs set forth in Section 7.2(a) and (c), 7.8, 7.10, 7.11, 7.12, 7.14 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this 20th day of June, 2023.

ATTEST

CITY OF HOPKINS, MINNESOTA

By: _____
Its: City Clerk

By: _____
Its: Mayor

ACCEPTED: This Franchise is accepted, and Comcast of Minnesota, Inc. agrees to be bound by its terms and conditions.

COMCAST OF MINNESOTA, INC.

By: _____

Its: _____

EXHIBIT A
COMPLIMENTARY SERVICE LOCATIONS

BUILDING	ADDRESS	CITY
Hopkins Center	33 14th Ave N	Hopkins
Hopkins City Hall	1010 1st St S Apt Hall	Hopkins
Eisenhower Elem School	1001 Highway 7 Apt A	Hopkins
Alice Smith Elementary	801 Minnetonka Mills Rd	Hopkins
Fire Dept, Hopkins	101 17th Ave S	Hopkins
Hopkins Center For the Arts	1111 Mainstreet	Hopkins
Hopkins Garage	11100 Excelsior Blvd	Hopkins
Hopkins Pavilion	11000 Excelsior Blvd Ste A	Hopkins
Police Dept, Hopkins	1010 1st St S Apt Cops	Hopkins
Public Housing, Hopkins	22 5th Ave S Ste Cmcl	Hopkins
Hopkins Public School	1001 Highway 7	Hopkins

* For as long as the building remains publicly owned and operated. If the building is leased or operated by a commercial tenant, Grantee's voluntary courtesy service offer will expire.

EXHIBIT B
EXISTING PEG TRANSPORT LOCATIONS

<u>BUILDING</u>	<u>STREET ADDRESS</u>
Hopkins City Hall	1010 1st Street South

EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET

*****CONFIDENTIAL*****



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

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

This statement represents your payment for the period listed above.

Revenue Category	Amount
Expanded Basic Video Service	\$
Limited Basic Video Service	\$
Digital Video Service	\$
Pay	\$
PPV / VOD	\$
Digital Video Equipment	\$
Video Installation / Activation	\$
Franchise Fees	\$
Guide	\$
Other	\$
Late Fees	\$
Write-offs / Recoveries	\$
Ad Sales	\$
Home Shopping Commissions	\$
Total	\$
Franchise Fee %	%
Franchise Fee	\$
PEG Fee 2%	

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

EXHIBIT D
SUMMARY OF ORDINANCE FOR PUBLICATION

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF HOPKINS, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On June 20, 2023, the City of Hopkins, Minnesota (“City”) adopted an ordinance granting a Cable Television Franchise to Comcast of Minnesota, Inc. (“Comcast”). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible cable service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable television franchise to Comcast, to operate, construct and maintain a cable system within the City and contains specific requirements for Comcast to do so.

The Franchise includes the following: 1) a Franchise Fee of 5% of Comcast’s annual gross revenues; 2) a Franchise term of ten (10) years; 3) incorporation of the City Code regarding right-of-way protections; 4) a list of schools and public buildings entitled to receive complimentary cable service; 5) dedicated channel capacity for public, education and government (“PEG”) access programming; 6) a PEG Fee of 2% of Comcast’s annual gross revenues to support local access programming as permitted under applicable law; 7) strong customer service standards regarding Comcast’s cable services; and 8) a performance bond and letter of credit to enforce Comcast’s compliance with the Franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. 2023-1192. A copy of the entire ordinance shall be posted at the Hopkins City Hall.

It is hereby directed that only the above title and summary of Ordinance No. 2023-1192 be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the Hopkins City Hall at 1010 1st Street South, Hopkins, MN 55343 during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

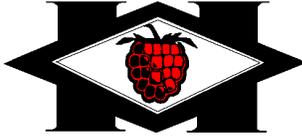
	<u>Yes</u>	<u>No</u>
Mayor Hanlon	<u>x</u>	_____
Councilmember Balan	<u>x</u>	_____
Councilmember Beck	<u>x</u>	_____
Councilmember Garrido	<u>x</u>	_____
Councilmember Hunke	<u>x</u>	_____

Passed by the Hopkins City Council this 20th day of June, 2023.

ATTEST:

Patrick Hanlon, Mayor

Amy Domeier, City Clerk



Finance Department

CITY OF HOPKINS

City Council Report 2023-065

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Ann M. Vidoloff, Deputy City Clerk

Date: June 20, 2023

Subject: Adopt Resolution 2023-021 Approving an Owner Requested Special Assessment Agreement

RECOMMENDED ACTION

MOTION TO Adopt Resolution 2023-021 Approving an Owner Requested Special Assessment.

OVERVIEW

Hopkins residents are required to make repairs to private water or sewer service and remove diseased trees based on City Code. The cost associated with this work can be significant. In order to assist residents in completing the private work, the City offers a special assessment program. The program allows residents to assess the cost of the repairs to their property taxes over a 10-year period with 4% interest.

A homeowner petitioned the City to assist with the payment of certain required sewer repair work needed on the property.

The homeowner signed an agreement in which the City will pay the contractor for the completed work after it has been deemed in accordance with our standards and requirements. Homeowner waived the right to a hearing and also waived the right to object to a special assessment. Upon adoption of this resolution, the City will directly pay the contract for the work and levy the owed amount against the homeowner's property.

SUPPORTING INFORMATION

- Resolution 2023-021

**CITY OF HOPKINS
HENNEPIN COUNTY, MINNESOTA**

RESOLUTION 2023-021

APPROVING AN OWNER REQUESTED SPECIAL ASSESSMENT

WHEREAS, on May 9, 2023, a certain property owner signed an Agreement with the City regarding required sewer repair and/or replacement on the property for the amount listed below:

<u>Address</u>	<u>PID</u>	<u>Amount</u>
334 13 th AVE N	24-117-22-23-0124	\$6,685.00; and

WHEREAS, the owner has insufficient funds to pay for the costs of this required work; and

WHEREAS, the City has a program in which owners may petition the City to pay a contractor for the completed work in exchange for a special assessment against their property to finance the payments; and

WHEREAS, as part of the signed Agreement the Owner waived the right to a public hearing and waived the right to object to the assessment,

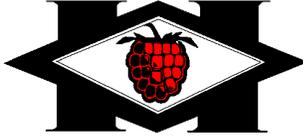
NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Hopkins hereby orders an assessment to be placed on the taxes of the property listed above for a ten (10) year period with a simple interest rate of four percent (4%).

Adopted by the City Council of the City of Hopkins this 20th day of June, 2023.

By: _____
Patrick Hanlon, Mayor

ATTEST:

Amy Domeier, City Clerk



CITY OF HOPKINS

City Council Report 2023-066

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Kurt Howard, Planner

Date: June 20, 2023

Subject: Second Reading: Ordinance 2023-1191 Amending Chapter 102 of the Hopkins City Code Regarding Attached Garages in N3-B Zones

RECOMMENDED ACTION

MOTION TO Adopt for Second Reading, Ordinance 2023-1191 Amending Chapter 102 of the Hopkins City Code Regarding Attached Garages in N3-B Zones

OVERVIEW

The City's updated Zoning Code established new provisions related to setbacks for attached garages relative to the main building's front façade in neighborhood zones and the allowed locations for garage doors in order to encourage development that is human-scaled and pedestrian-oriented. The code requires attached garages in N3-B, Small Lot Traditional Neighborhood zones be set back 30 feet behind the main building's front façade and only allows garage doors to be located on the rear, side, or side street façade. These standards reflect that most, but not all, properties in N3-B zones are served by improved alleys, which presents design challenges for garages on properties in the N3-B zone that are not served by an improved alley.

The proposed ordinance would grant an exception to the attached garage setback and garage door location standards to properties in the N3-B zone that are not served by an improved alley, instead allowing garages under such circumstances to be designed according to the standards that apply to N3-A, Mid Lot Traditional Neighborhood zones. More specifically, the code requires attached garages in the N3-A zone to be set back 10 feet behind the main building's front façade and allows garage doors to be located on any façade as long as the garage door constitutes no more than 30% of the front façade width. This proposed ordinance is intended to offer relief to properties located in N3-B zones that are not served by an improved alley while still encouraging development to be human-scaled and pedestrian oriented.

SUPPORTING INFORMATION

- Proposed Ordinance 2023-1191 Amending Chapter 102 of the City Code Regarding Attached Garage Setbacks in N3-B Zones
- Planning and Zoning Commission Resolution 2023-04
- Map of Properties in N3-B Zones With and Without an Adjacent Improved Alley

PREVIOUS ACTIONS

The Planning and Zoning Commission reviewed the proposed ordinance at their May 23, 2023 meeting and voted unanimously to recommend that the City Council approve the proposed ordinance. The City Council reviewed the proposed ordinance at their June 6, 2023 meeting. The Council expressed some support for the ordinance as proposed, but also expressed interest in exploring potential options to further amend the code to find the appropriate balance between pedestrian-oriented design standards and the ability to capitalize on limited remaining opportunities to construct single family homes in Hopkins. It was agreed that the first reading of the ordinance should be approved as proposed, but that further discussion of options for further amending the code should be had when considering the second reading.

OPTIONS FOR FURTHER AMENDMENT

One option for further amending the code is to further reduce required setback distances for attached garages relative to the main building's front façade in neighborhood zones. This option is an example of a modification to the proposed ordinance that could be approved during the second reading.

One example of a more significant change that could be explored is developing standards that base the required attached garage setback distance on the width of the main building's front façade, allowing buildings with wider habitable front facades to have lesser attached garage setbacks. This potential option would establish an alternative means of promoting the use of the area directly behind the front façade for people and not the parking vehicles. This option is an example of a change that is significant enough to require a new ordinance to be drafted and zoning code text amendment process to be reinitiated.

ALTERNATIVES

1. Approve the second reading to adopt the ordinance as proposed or with minor modifications. By approving the proposed ordinance, properties in the N3-B zones that are not served by an improved alley would be allowed to have attached garages setback behind the main building front façade by 10 feet or more and with the garage door located on the front façade. The effective date of this ordinance would be June 29, 2023.
2. Deny the ordinance as proposed and direct staff to explore alternative changes to the zoning code. By denying the proposed ordinance, staff would draft a new or revised ordinance and reinitiate the zoning code text amendment process with a public hearing at the Planning & Zoning Commission and a first and second reading at the City Council.
3. Continue for further information. The item should be continued if the City Council finds that further information is needed.

**CITY OF HOPKINS
HENNEPIN COUNTY, MINNESOTA**

ORIDNANCE 2023-1191

**AN ORDINANCE AMENDING CHAPTER 102 OF THE HOPKINS CITY CODE
REGARDING ATTACHED GARAGES IN N3-B ZONES**

THE CITY COUNCIL OF THE CITY OF HOPKINS HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Hopkins City Code, Part III, Chapter 102, Article 2, Section 102-260 (d), is hereby amended by adding the double-underlined language as follows:

		N3-A	N3-B	
102-260 (d) Parking & Accessory Structure. See Figure 260-B				
9	Driveway Access	Off alley; if no alley, one off side street; if no side street, front street		
10	Attached Garage: Additional Setback	10 ft. min. from main principal building's front facade	30 ft. min. from main principal building's front façade ^[1]	<u>[1]The standards for the N3-A zone apply to properties in the N3-B zone that are not served by an improved alley.</u>
11	Allowed Garage Door Location	Any facade; 30% max of front facade width	Rear, side, side street façade ^[1]	

SECTION 2. In accordance with Section 3.03 of the City Charter and Minn. Stat. § 412.191, subd. 4, due to the significant length of this Ordinance, City staff shall have the following summary printed in the official City newspaper in lieu of the complete ordinance:

On June 20, 2023, the Hopkins City Council adopted Ordinance 2023-1191 an Ordinance Amending Chapter 102 of the Hopkins City Code to allow attached garages constructed on properties in the N3-B zone that are not served by an improved alley to be constructed according to design standards that apply to attached garages in the N3-A zone.

A printed copy of the ordinance is available for inspection during regular business hours at Hopkins City Hall and is available online at the City’s web site located at www.hopkinsmn.com.

SECTION 3. The effective date of this ordinance shall be June 29, 2023.

First Reading:	June 6, 2023
Second Reading:	June 20, 2023
Date of Publication:	June 29, 2023
Date Ordinance Takes Effect:	June 29, 2023

By: _____
Patrick Hanlon, Mayor

ATTEST:

Amy Domeier, City Clerk

**CITY OF HOPKINS
HENNEPIN COUNTY, MINNESOTA**

PLANNING & ZONING COMMISSION RESOLUTION 2023-04

**RESOLUTION RECOMMENDING THE CITY COUNCIL APPROVE AN ORDINANCE
AMENDING CHAPTER 102 OF THE CITY CODE REGARDING ATTACHED
GARAGES IN N3-B ZONES**

WHEREAS, the City of Hopkins's updated Zoning Code adopted established provisions related to setbacks and garage door location for attached garages; and

WHEREAS, the proposed ordinance is intended to offer relief to properties located in N3-B, Small Lot Traditional Neighborhood zones that are not served by an improved alley while still encouraging development to be human-scaled and pedestrian oriented; and

WHEREAS, the Hopkins Zoning and Planning Commission, pursuant to published notice, held a public hearing on and reviewed the proposed ordinance on May 23, 2023: all persons present were given an opportunity to be heard; and

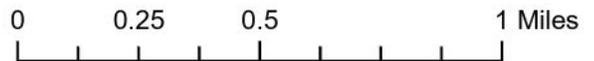
WHEREAS, the written comments and analysis of City Staff were considered.

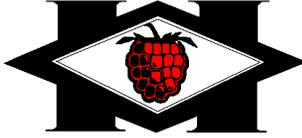
NOW THEREFORE BE IT RESOLVED, that the Planning & Zoning Commission of the City of Hopkins hereby recommends the City Council of the City of Hopkins approve an ordinance amending Chapter 102 of the City Code Regarding Attached Garages in N3-B Zones.

Adopted this 23rd day of May, 2023.



Nathan White, Chair





CITY OF HOPKINS

Finance Department

Memorandum

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Nick Bishop, Finance Director

Date: June 20, 2023

Subject: Proposed Franchise Fee Increase

PURPOSE

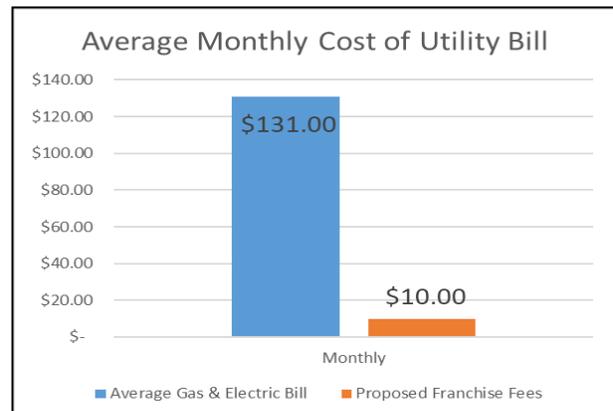
To seek guidance on gas and electric franchise fee increases beginning on January 1, 2024. For administrative purposes, City Staff needs an agreement on the amount of franchise fees by July 14th. Staff is also looking for guidance on the proposed uses of franchise fees, however that decision can be made during the 2024 budget process.

INFORMATION

The City of Hopkins adopted two franchise fee ordinances beginning on 1/1/2019 with five year terms. They both expire at the end of 2023. Residential customers pay \$3.50 monthly for electric service to Xcel Energy and \$3.50 monthly for natural gas to Centerpoint Energy. Commercial and industrial customers pay higher rates based on type and size of meter.

City Council met and discussed gas and electric franchise fees on May 9, 2023. Staff is proposing a rate increase of \$1.50 monthly for gas and electric for residential customers, or \$3.00 combined per month. The total paid by a residential household would be \$10.00 per month or \$120.00 per year. A chart showing the detailed analysis proposed rates paid by type and number of customers is attached.

Franchise fees represent a small portion of the total utility bills paid by residents. The average monthly cost of gas and electric service is \$131, compared to \$10 per month of proposed franchise fees.



Franchise fees can be used for any public purpose. The proposal continues to subsidize the general fund and support the parks and capital improvement funds. The additional revenue is estimated at \$427,101 with proposed uses for sustainability and parks. Sustainability investments have been shown to drive cost savings. The City is in the process of finalizing a Park System Master plan which has identified needs in the park system. The following chart shows the proposed uses of current and increased franchise fees:

Proposed Uses of Franchise Fees	
Current Uses (No Change)	
General Fund	295,489
Parks Fund	292,394
Capital Fund	350,042
	<hr/>
	937,925
2024 Increase	
Climate Solution Fund - Grants	202,101
Sustainability - Staffing, Consulting Etc.	175,000
Parks Fund	50,000
	<hr/>
	427,101
	<hr/>
Total Proposed Uses	<u>1,365,026</u>

Different users pay different amounts when levying taxes or collecting franchise fees. In order to collect \$427,101 of revenue a median value home (\$361,000) would pay taxes of \$56.29 per year compared to franchise fees of \$36.00.

SUPPORTING INFORMATION

- 2024 Franchise Increase Proposal
- Monthly Franchise Fee Comparison

FUTURE ACTION

Gas and electric franchise fees are each established by separate ordinance. Xcel and Centerpoint each need to be provided with a written notice of proposed ordinances before July 14th. The first reading and second reading/adoption could occur on September 19th and October 3rd.

City of Hopkins
2024 Franchise Increase Proposal
June 20, 2023

	Xcel Energy				Centerpoint Energy							Total
	Residential	Small C&I Non	Small C&I Demand	Large C&I	Residential	Commercial A	Commercial B	Commercial/ Industrial C	Small Dual Fuel A	Small Dual Fuel B	Large Volume Dual Fuel	
Brooklyn Center	1.65	4.25	22.75	103.00	1.66	1.74	5.63	22.50	56.23	107.96	107.96	
Edina	2.90	4.90	13.68	58.32	2.90	4.90	13.68	58.32	58.32	58.32	58.32	
Champlin	3.62	9.80	41.21	144.24	3.98	3.98	10.78	45.33	90.67	158.66	158.66	
Richfield	4.10	12.50	30.00	185.00	4.10	4.10	12.50	30.00	30.00	30.00	185.00	
Mnnetonka	4.50	4.50	13.50	45.00	4.50	4.50	13.50	45.00	45.00	45.00	45.00	
Chanhassen	5.00	14.00	40.00	290.00	5.00	5.00	9.00	20.00	90.00	90.00	90.00	
Golden Valley	6.00	6.00	30.00	258.00	6.00	7.50	30.00	30.00	258.00	258.00	258.00	
Saint Louis Park	6.75	12.00	48.50	148.50	6.75	6.75	12.00	48.50	48.50	48.50	148.50	
Hopkins - Current	3.50	6.15	24.70	170.50	3.50	3.50	8.75	24.70	48.55	170.50	170.50	
67th Percentile	5.00	12.00	40.00	185.22	5.00	5.01	13.50	45.34	90.00	108.11	158.74	
Proposed Rates (67th Percentile or current)	5.00	12.00	40.00	185.22	5.00	5.01	13.50	45.34	90.00	170.50	170.50	
\$ Increase	1.5000	5.85	15.30	14.72	1.50	1.51	4.75	20.64	41.45	0.00	0.00	
% Increase	42.86%	95.12%	61.94%	8.63%	42.86%	43.14%	54.29%	83.56%	85.38%	0.00%	0.00%	
# of Customers	8,441	674	303	68	5,073	0	200	202	15	0	1	
Projected Collections	506,460	97,056	145,440	151,140	304,380	0	32,400	109,904	16,200	0	2,046	1,365,026
\$ Increase	151,938	47,315	55,631	12,012	91,314	0	11,400	50,031	7,461	0	0	427,101

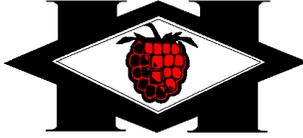
City of Hopkins

Monthly Franchise Fee Comparison

June 20, 2023

City	Electric	Gas	Total	Purpose
Brooklyn Center	1.65	1.66	3.31	Street Improvements
Edina	2.90	2.90	5.80	Pedestrian and cyclist safety, conservation and sustainability
Champlin	3.62	3.98	7.60	City infrastructure
Richfield	4.10	4.10	8.20	Street maintenance - mill & overlay, curb & gutter, sealcoating
Minnetonka	4.50	4.50	9.00	Undergrounding electrical wires, street light improvements and trails
Hopkins (Proposed)	5.00	5.00	10.00	General fund, parks, municipal buildings, sustainability
Chanhassen	5.00	5.00	10.00	Pavement Maintenance Program
Golden Valley	6.00	6.00	12.00	Water, sewer, storms water and street infrastructure
Saint Louis Park	6.75	6.75	13.50	Pavement Management

Comparable Cities without Franchise Fees: Columbia Heights, Crystal, Fridley & Roseville
 Shakopee collects 3% for both gas and electric



CITY OF HOPKINS

Administration

Memorandum

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Ari Lenz, Assistant City Manager

Date: June 20, 2023

Subject: Discussion on Regulating Adult Use Cannabis

PURPOSE

During the legislative session the state passed cannabis legislation that established a framework for adult-use cannabis in the state. Over the next two years, the state will develop and roll-out a more specific regulatory structure, but the timeline for when licenses will be issued and businesses will begin operating is not clear. We have also received questions about City regulations from businesses looking to open facilities in our community. Currently the City does not have any regulations (as this is brand new legislation that is not effective until July 1, 2023).

INFORMATION

The City Attorney is recommending we adopt a moratorium in July to allow the City Council the opportunity to review yet-to-be-drafted state-level administrative rules and provide us the time to have discussions with Council about what regulations, if any, should look like for the City of Hopkins. Adopting the interim ordinance before in July would allow us to have some local control if the State is ready to start authorizing licenses. Assistant City Attorney, Joe Sathe has drafted a high level summary report (attached) of the cannabis legislation and the City's role in regulation, he will also be present to answer any questions.

FUTURE ACTION

The request for tonight is simply to direct staff and the City Attorney to draft a moratorium on the *Cannabis Businesses*. Cannabis Businesses are businesses that deal in products that are made from cannabis plants containing more than .3% THC – this does not include hemp products which are products made from cannabis plants containing .3% or less of THC. Enacting a moratorium will give the City Council and staff time to discuss and develop regulations related to the newly authorized cannabis legislation prior to any licenses being issued at the state level.



Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

(612) 337-9300 telephone
(612) 337-9310 fax
<http://www.kennedy-graven.com>
Affirmative Action, Equal Opportunity Employer

MEMORANDUM

DATE: June 14, 2023
TO: Honorable Mayor and City Council Members
FROM: Joseph L. Sathe, Assistant City Attorney
RE: Overview of Options to Regulate Adult Use Cannabis

The Cannabis Act (the “Act”) was signed into law on May 30, 2023, and establishes a regulatory framework for adult use cannabis in the State of Minnesota.

The purpose of this memo is to provide the City of Hopkins with an overview of the products addressed by the Act, the new Office of Cannabis Management (“OCM”), potential long-term regulations, as well as shorter-term options the City may consider to temporarily pause the establishment and operation of certain businesses within the City.

I. Product Categories

There are four main types of products that contain tetrahydrocannabinol (“THC”), the main psychoactive component in cannabis, that the City can choose to address. The following are very high-level definitions:

- A) ***Cannabis Products*** – Products derived from the cannabis plant (defined in the Act as a plant of the genus Cannabis containing *more than* .3% THC) and are generally considered to be higher impact. These products were legalized under Act.
- B) ***Lower-Potency Hemp Edibles (“LPHEs”)*** – Products derived from the hemp plant (defined in the Act as a plant of the genus Cannabis containing *no more than* .3% THC) and include a food ingredient and are intended to be eaten or consumed as a beverage. These products were established under the Act.
- C) ***Medical Cannabis Products*** – Products that contain certain cannabis or hemp derivatives that are provided to eligible individuals to treat or alleviate the symptoms of a qualifying medical condition. Some medical cannabis products have been available for years, but the Act provides for additional regulation.

D) *Edible cannabinoids and nonintoxicating cannabinoids (“151 Products”)* – These products are derived from hemp plants and are authorized under Minnesota Statutes, Section 151.72 and include:

1. **151 Edibles** – Products combining a cannabinoid (either THC or cannabidiol (“CBD”)) with a food ingredient and are intended to be eaten or consumed as a beverage (“151 Edibles”). Amendments to Minn. Stat. § 151.72 in 2022 resulted in 151 Edibles being sold widely across the state.
2. **Nonintoxicating Cannabinoids** – Any substance extracted from hemp that does not product intoxicating effects when consumed by any route of administration, but must be intended for application externally to a part of the body of a human or animal, and contain less than .3% of any THC. These can include both THC and CBD based products.

II. Office of Cannabis Management

The Act creates the Minnesota Office of Cannabis Management (“OCM”) effective July 1, 2023. The OCM will have several very broad powers and duties that include, in general: establishing rules and regulating the industry, promoting economic growth, issuance and renewal of licenses, inspections, and authorizing research and studies. The regulation of medical cannabis, which is already legal in Minnesota, will also transfer to the OCM effective March 1, 2025.

III. License Types, Rulemaking, and Model Ordinance

The Act establishes 16 different types of licenses for cannabis businesses, hemp businesses, and medical cannabis businesses, including licenses covering growing, manufacturing, retail sales, wholesale, transportation, delivery, and testing.

Each of these licenses will be issued by the OCM. After its establishment, the OCM will draft and put forward administrative rules that may help to clarify portions of the Act. The OCM is authorized to operate under “expedited” rulemaking. The expedited process removes many of the process requirements for rulemaking, including not requiring public hearings, and could technically be accomplished in just over 30 days, after which the OCM could start issuing licenses. However, given the scope of the task at hand, it seems apparent that rulemaking will not be completed for a significant period of time. According to the League of Minnesota Cities’ website, the authors of the Act anticipate that issuing retail licenses will begin sometime in 2024.

The OCM is also directed to work with cities to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of a cannabis business.

IV. Potential Long-Term City Regulations

The following section provides the current understanding of the types of regulations the City may be able to adopt to regulate cannabis businesses and hemp businesses. However, the administrative rules and model ordinance being drafted by the OCM may clarify or otherwise impact what cities will be able to do.

A) Cannabis Businesses

Cities generally *may not* completely prohibit the establishment of cannabis businesses (businesses dealing in cannabis products and medical cannabis products). Cities are specifically authorized to enact time, place, and manner restrictions on cannabis business operations and may limit the number of cannabis retailers. Cities also should be able to adopt zoning regulations that impact cannabis businesses.

1) *Time, Place, and Manner Restrictions & Zoning Compliance*

The Act provides that “[a] local unit of government may adopt reasonable restrictions on the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses. A local unit of government may prohibit the operation of a cannabis business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.”

The Act also requires that the OCM contact the City when a cannabis business applies to operate within the City, and the City is required to certify whether the cannabis business complies with local zoning ordinances, as well as state and fire codes. Meaning that the authors of the bill at least contemplated that cities could establish zoning regulations that would impact cannabis businesses.

2) *Limiting Retail Cannabis Businesses*

The City may limit the number of *retail* cannabis licenses which may be issued to cannabis businesses within a City to one per 12,500 residents.

The City may decline to allow a cannabis retailer to operate if the county already has one cannabis retailer per 12,500 residents.

B) Hemp Businesses

Unlike cannabis businesses, the Act does not specifically address how cities can regulate hemp businesses, such as LPHE retailers and manufactures. The OCM is responsible for licensing LPHE retailers and manufacturers, but cities can enact other regulations, such as zoning requirements, that apply to LPHE retailers and manufacturers.

Given the specific provisions in the Act addressing cannabis businesses, it is conceivable that the OCM will enact administrative rules that address a city’s ability to regulate hemp businesses.

C) 151 Products

The Act does not establish licensing for 151 Products nor does it address how cities can regulate 151 Products. The City has the same ability to enact licensing, zoning, or other regulations on 151 Products that it has had since 2022. However, Minnesota Statutes, Section 151.72 will automatically be repealed in March 2025. LPHE products will replace 151 Products in the market as they are substantially the same.

V. Short-Term City Options (Moratoria)

A) Cannabis Business Moratorium

The City may temporarily prohibit the establishment or operation of a cannabis business within all or a part of the City through a moratorium (“Cannabis Business Moratorium”). Unlike other moratoria which have a maximum duration of one year, Cannabis Business Moratorium may be effective until January 1, 2025.

To enact a Cannabis Business Moratorium, the City must authorize and conduct a study for the purpose of considering adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of a cannabis business.

Before adopting the Cannabis Business Moratorium, a city must hold a public hearing. There are no specific provisions regarding notice or other public hearing guidelines. The City should determine now whether it wants to adopt Cannabis Business Moratorium as authorized by the Act, which will provide the City some time to consider what options are available and what policy direction is most desirable. Adopting a Cannabis Business Moratorium will also allow the City to consider the not-yet-established rules and model ordinance the OCM will develop.

B) Interim Ordinance – LPHEs and 151 Products

The authority to enact a Cannabis Business Moratorium that could last until January 1, 2025 does not also include LPHEs and 151 Products. However, the City has the authority to enact a standard moratorium under Minnesota Statutes, Section 462.355, which can be in effect for up to one year.

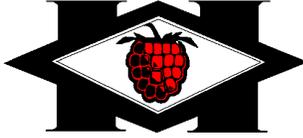
The City can choose to enact a one-year moratorium regarding the sale of 151 Products and/or LPHEs. The City of Hopkins chose not to establish a moratorium on 151 Products in 2022.

Adopting a moratorium on LPHEs would provide the City with additional time to consider whether it wants to enact zoning or other allowed regulations prior to the OCM potentially issuing LPHE licenses to businesses in the City. If a moratorium only addresses LPHEs, it will not impact the ability of businesses to sell 151 Products.

VI. Conclusion

Given all of the questions and uncertainties surrounding the Act and its potential impacts, it is recommended that the City adopt a Cannabis Business Moratorium. Doing so will allow the City to consider the yet-to-be-drafted administrative rules and yet-to-be-drafted model ordinance and to conduct a study on the potential impacts of Cannabis Businesses on the community. A Cannabis Business Moratorium will also ensure the City stays ahead of the OCM’s still uncertain timeline after which it will start issuing licenses.

Adopting a one-year moratorium on LPHE retailers would allow the city to consider zoning and other regulations that it may want to consider after the administrative rules are enacted by the OCM. Having a moratorium in place would allow the city to consider whether it wants to adopt zoning regulations similar to those imposed on Cannabis Businesses.



CITY OF HOPKINS

Administration

City Council Report 2023-064

To: Honorable Mayor and Council Members
Mike Mornson, City Manager

From: Ari Lenz, Assistant City Manager

Date: June 20, 2023

Subject: First Reading: Ordinance Amending Chapter 2 of Hopkins City Code Regarding Salaries of the Mayor and City Council and Compensation for Park Board and Planning and Zoning Commission Members after January 1, 2024

RECOMMENDED ACTION

MOTION TO adopt for First Reading Ordinance 2023-1193 Amending Chapter 2 of Hopkins City Code Regarding Salaries of the Mayor and City Council and Compensation for Park Board and Planning and Zoning Commission Members after January 1, 2024.

OVERVIEW

In 2017, the Council decided on a new method of salary review for the City Council. On or before September 1 of each odd numbered year, staff would review and bring to the Council an ordinance to adjust salaries effective January 1 of the following year. Salary adjustments have to be passed and take place after an election cycle. The salaries must equal the limit for the prior year, increased by the percentage increase contained in the Compensation Limit for Local Government Employees annually published by the Minnesota Office of Management and Budget, pursuant to Minn. Stats. § 43A.17. According to the statute the salary limits are increased by the Consumer Price Index for all-urban consumers.

The salary was last adjusted in 2019, because the Council decided in 2021 due to the pandemic and unknowns in the budget to not make an adjustment to Council wages. The current wages are \$9,751 for the Mayor and \$7,472 for council members.

If the current method is followed, the adjustment for this year (2023), would be based off last years (2022) compensation limit of 6.2%. The 2023 adjusted wages would be \$10,356 for the Mayor and \$7,935 for council member.

However, this method of only adjusting by the CPI every other year, is not keeping up with the compensation of our neighboring communities and from a pay perspective the City has made significant efforts to stay competitive with wages. The City has a goal to engage underrepresented populations. Staff believes that lower wages could be a barrier or major factor in someone's ability to serve on City Council. Below is a table of our neighbors current or proposed* wages compared to the City of Hopkins (*some of

these communities may also adopt compensation changes this year before their own elections).

City	Council Pay	Mayor Pay	Notes
	\$	\$	
Eden Prairie	13,351.10	17,245.07	Will not update until after 2024 election
	\$	\$	
Edina	12,700.68	15,964.53	Will not update until after 2024 election
Golden	\$	\$	
Valley	10,952.00	14,634.00	Will not update until after 2024 election
	\$	\$	
Minnetonka	18,000.00	23,500.00	Just updated Salaries Effective 1/1/24 Estimated - Will adjust in 2024 in the amount equal to the cumulative adjustments for non-organized city employees since the last adjustment (the increase from 2022 + the recommended adjustment in 2023)
St. Louis	\$	\$	
Park	14,344.98	20,739.96	
	\$	\$	
AVERAGE	13,869.75	18,416.71	
	\$	\$	
Hopkins	7,472.00	9,751.00	

Based on the review, staff is recommending adjusting Council Salaries to \$12,500 and the Mayor's salary to \$15,000.

The City has made significant efforts to stay competitive with wages, and to engage with underrepresented populations. In order to remove financial means as a barrier or major factor in someone's ability to serve on a Board & Commission, the City is implementing a per meeting stipend of \$50 for every meeting attended for the following Boards & Commissions: Planning and Zoning Commission and Park Board.

SUPPORTING INFORMATION

- Draft Ordinance 2023-1193

**CITY OF HOPKINS
HENNEPIN COUNTY, MINNESOTA**

ORDINANCE NO. 2023-1193

**AN ORDINANCE AMENDING CHAPTER 2 OF HOPKINS CITY CODE REGARDING
SALARIES OF THE MAYOR AND CITY COUNCIL AND COMPENSATION FOR PARK
BOARD AND PLANNING AND ZONING COMMISSION MEMBERS
AFTER JANUARY 1, 2024**

THE CITY COUNCIL OF THE CITY OF HOPKINS DOES HEREBY ORDAIN:

SECTION 1. That Article II, Section 2-19 is hereby amended by deleting the ~~stricken~~ material and adding the double-underlined material as follows:

Sec. 2-19. – Salaries of mayor and council members.

(a) *Mayor.* The salary of the mayor is ~~\$9,754~~ \$12,500 per year, payable bi-weekly.

(b) *Council Member.* The salary of a council member is ~~\$7,472~~ \$15,000 per year, payable bi-weekly.

(d) *Salary review.* On September 1 of odd-numbered years beginning in ~~2019~~ 2024, the salaries in subsections (a) and (b) of this section shall be reviewed for possible adjustment with an effective date of the following January 1. The proposed salaries must ~~equal the limit for the prior year, increased by the percentage increase contained in the Compensation Limit for Local Government Employees annually published by the state office of management and budget, pursuant to M.S.A. § 43A.17. Any such proposed salary adjustment for the mayor and council members must be approved by ordinance of the city council.~~ be the cumulative adjustment of non-union employees for the prior two years in increase percentage. Any such proposed salary adjustment for the mayor and council members must be approved by ordinance of the City Council.

SECTION 2. That Article II, Section 2-68 is hereby amended by deleting the ~~stricken~~ material and adding the double-underlined material as follows:

Sec. 2-68. – Planning and zoning commission.

(a) *Establishment of the planning and zoning commission.* The planning and zoning commission is created and continued.

(b) *Members; qualifications.* The commission shall consist of seven persons of which no less than six shall have been a resident of the city for one year or more on the date of appointment and up to two ex-officio non-voting youth members. At the sole discretion of the city council, one member may be a manager, owner or have substantial ownership stake in a business that is located within the corporate limits of the city. The commission shall also have one staff liaison to be appointed by the city manager. Each member except the staff liaison and ex-officio youth members shall have the right to vote on all matters before the commission. Members who discontinue legal residency in the

city or fail to maintain the requirements eligible to serve as a business representative shall automatically be deemed to have resigned from the commission as of the date of such discontinuance.

(c) *Terms.* Member terms of office shall be for two years. Three members of the commission shall be appointed on July 1 of each odd-numbered year and four shall be appointed on July 1 of each even-numbered year. Members appointed to complete a current term of office will not be considered a term of office. Members shall serve no more than two consecutive terms of office. The youth member(s) shall be 14 to 18 years old at the time of selection, serve a one-year term, and shall be eligible for reappointment if in good standing at the end of each term.

(d) *Compensation.* ~~The commission shall serve without compensation other than such compensation as its members may receive for other services performed for the city.~~ Compensation for the members shall be \$50 per meeting attended.

(e) *Appointment.* The appointments shall be made by the city council and any member of the commission may be removed by a majority vote of the council for misconduct or neglect of duties.

(f) *Officers.* The commission shall elect a chairperson from among its members and such other officers as its bylaws may provide. The chairperson shall not be the business representative unless that member is also a resident of the city. The administrative assistant of the community development department shall act as secretary of the commission and the city attorney shall act as legal counsel for the commission.

(g) *Bylaws.* The commission shall adopt bylaws governing its procedures.

(h) *Duties.* The commission is the board of adjustment and appeals as provided in city zoning regulations and has the powers and duties assigned to it by the zoning code and by law.

(i) *Advisory body.* The commission is advisory to the city council.

SECTION 3. That Article II, Section 2-69 is hereby amended by deleting the ~~stricken~~ material and adding the double-underlined material as follows:

Sec. 2-69. – Park board.

(a) *Established; members.* There is created and continued a park board for the city, consisting of seven members to be appointed as follows: Seven members at-large, each to serve for no more than two consecutive terms of two years. Four of the at-large members of the board shall be appointed on July 1 of each odd-numbered year and the other three at-large members, shall be appointed on July 1 of each even-numbered year. The commission shall also have one staff liaison to be appointed by the city manager. The membership also includes up to two ex-officio non-voting youth members. All appointments, except those otherwise hereinabove provided, shall be made by the city council. A member of the board may be removed by the city council for misconduct or

neglect of duties. Each member except the staff liaison member and ex-officio youth members shall have the right to vote on all matters before the board.

(b) *Compensation; term.* ~~Members of the board serve without compensation~~ Compensation for the members shall be \$50 per meeting attended. ~~And their Members~~ respective terms of office shall expire at the end of the time for which they are appointed, not to exceed their term of office for which they have been elected to the respective governing bodies. A member who is appointed to fill a vacancy to a term will not be considered a term of office.

(c) *Officers, rules and meetings.* Immediately following appointment of and acceptance of such appointment by all members of the board, the board shall meet and/organize by electing such officers as may be necessary, and adopt such rules, by-laws and regulations for the conduct of its work as it deems necessary and advisable. The board shall meet at least once each quarter. Three members present at a regular or special meeting of the board shall constitute a quorum.

(d) *Secretary.* The director of public works may, with the approval of the manager, serve as the executive officer of the board and may act as its secretary, in a relationship similar to that of the superintendent of schools to the board of education.

(e) *Program, facilities and operation.* The board shall advise the council in conducting a public recreation program for the city and its immediate vicinity and to that end shall advise in the providing, conducting and supervising of recreation areas, facilities, services and programs for public recreation in its broadest sense, including playgrounds, parks, playfields, swimming pools, beaches, camps, indoor recreation centers and any and all other recreation facilities and activities either within or without the corporate limits of the city upon property under the custody and management of the city or on other public or private property with the consent of the owners of such property. The board shall advise the council in the operation of parks and recreation areas and facilities now owned or hereafter acquired by the city and may advise the city to enter into agreements of a cooperative nature with other public and private agencies, organizations or individuals when, in the judgment of the board, such procedure would prove advantageous.

(f) *Reports and recommendations.* The board shall, annually on or before September 1, render a full report to the council covering its operation for the preceding 12 months, together with its recommendations and an estimate of the funds required for its work for the ensuing year. The board shall also render such other regular or special reports, advisory recommendations, or make such investigations as it deems advisable or as may be requested by the council.

SECTION 4. In accordance with Section 3.03 of the City Charter and Minn. Stat. § 412.191, subd. 4, due to the significant length of this Ordinance, City staff shall have the following summary printed in the official City newspaper in lieu of the complete ordinance:

On July 11, 2023, the Hopkins City Council adopted Ordinance 2023-1193 that amends Chapter 2 of the Hopkins City Code. The purpose of amending the City Code was to amend City Council salaries and compensation for Park Board and Planning and Zoning Commission members.

A printed copy of the ordinance is available for inspection during regular business hours at Hopkins City Hall and is available online at the City's web site located at www.hopkinsmn.com.

SECTION 5. The effective date of this ordinance shall be January 1, 2024.

First Reading: June 20, 2023

Second Reading: July 11, 2023

Date of Publication: July 20, 2023

Date Ordinance Takes Effect: January 1, 2024

By: _____
Patrick Hanlon, Mayor

ATTEST:

Amy Domeier, City Clerk