

**CHAPTER 4
FRANCHISES**

SECTION 1

401.000. TELEPHONE SYSTEM OPERATION FRANCHISE.

401.001. INTRODUCTION. An Ordinance to R. Borgersrode his successors and assigns the right privilege and authority to occupy the streets and alleys of the Village of Winsted in the County of McLeod and State of Minnesota for the purpose of operating therein a telephone system upon the conditions hereafter named:

(Ord. 16, No Date)

401.002. RIGHTS AND CONDITIONS.

Section 1. R. Borgersrode his successors and assigns are hereby authorized to erect and maintain telephone poles or conduits in the streets and alleys in the Village of Winsted, MN and to stretch wires thereon for the purpose of establishing, operating, and maintaining a telephone system in the Village of Winsted, MN upon the terms and conditions hereafter stated.

Section 2. Said telephone poles and fixtures shall be erected at such places and said wires strung in such manner as the common council of said Village of Winsted, or a committee duly appointed by them shall direct and shall be placed and maintained so as not to interfere with travel of any public improvement on said streets and alleys or other public places of said village, and R. Borgersrode his successors and assigns shall hold said village harmless and free from all damages arising by reason of any abuse or negligence in company or by any act or thing by him done or committed in or about said occupancy or the erection of said poles, wires, and fixtures or anything connected therewith or incident thereto. Said poles shall be so placed as not to interfere with any sewer, gas or water pipes drain or gutter or to interfere with any shade trees or damage thereto and in case of bringing to grade or changing grade of any street or alleys. Said poles shall be reset by the company to conform thereto. This grant is made and is to be enjoyed subject to all reasonable police regulation and ordinance as said council shall at anytime see fit to adopt in the exercise of its legal power not destructive to the rights herein granted.

Section 3. Said Village of Winsted shall have the right at any time to attach wires for police or fire alarms to said poles. Provided that said attachments do not in any way interfere with said granters use of said poles and all such attachments shall be made under the supervision of said grantors manager.

Section 4. Said telephone poles to be painted and kept painted and in good repair and to allow no signs or bills posted thereon.

Section 5. The rights herein granted shall continue for a period of twenty-five years and

the rights and privileges herein granted shall not be exclusive and the council reserves the right to grant like privileges to others for similar purposes the same, however not to interfere with the proper exercise of the privileges herein granted.

Section 6. In case the said R. Borgersrode his successors and assigns shall at any time fail or neglect or refuse to comply with any of the village ordinances of a police nature now or hereafter in force or shall cease for a period of 6 successive months to maintain a telephone exchange in said Village of Winsted and supply and provide telephonic communication for the inhabitants thereof then and in that case the council shall have the right to repeal this ordinance and all the rights hereunder granted and any and all amendments hereto.

Section 7. Before said Winsted Telephone Company shall be entitled to any rights or privileges hereunder he shall make and file in the office of the Recorder of said Village of Winsted his unconditional acceptance in writing of all the terms, conditions, and provisions of this ordinance signed by him.

Section 8. This Ordinance shall take effect and be in force from and after its passage and posting.

(Ord. 16, Sections 1-8, No Date Given)

SECTION 2

402.000. ELECTRIC DISTRIBUTION FRANCHISE.

402.001. DEFINITIONS. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- A. City. The City of Winsted, County of McLeod, State of Minnesota.
- B. City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting or other forms of energy.
- C. Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- D. Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.
- E. Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public or private use.
- F. Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 201 First Street North, P.O. Box 126, Winsted, MN 55395. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- G. Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- H. Public Way. Any street, alley, walkway or other public right-of-way within the City.

402.002. ADOPTION OF FRANCHISE.

- A. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or

customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

- B. Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.
- C. Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.
- D. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
- E. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.
- F. Continuation of Franchise. If City and Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 402.002.A.

402.003. LOCATION, OTHER REGULATIONS.

- A. Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

- B. Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- C. Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.
- D. Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 402.003.D, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
- E. Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.
- F. Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.
- G. Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by

Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

- H. Mapping Information. Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

402.004. RELOCATIONS.

- A. Relocation of Electric Facilities in Public Ways. Company shall comply with the requirements of any applicable ordinance of the City relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.
- B. Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law.
- C. Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.
- D. No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

402.005. TREE TRIMMING. Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

402.006. INDEMNIFICATION.

- A. Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
- B. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

402.007. VACATION OF PUBLIC WAYS. The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

402.008. CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

402.009. FRANCHISE FEE.

- A. Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 402.009. shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$2.00
Sm C & I – Non-Dem	\$2.00
Sm C & I – Demand	\$2.00
Large C & I	\$2.00
Public Street Ltg	\$0.00
Muni Pumping –N/D	\$0.00
MuniPumping – Dem	\$0.00

- B. Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 402.002.E. shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 402.009.A. above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

- C. Terms Defined. For the purpose of this Section 402.009., the following definitions apply:

1. “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.
2. “Fee Schedule” refers to the schedule in Section 402.009.A. setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.

- D. Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in

each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 9. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. In addition, the Company agrees to provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.

- E. Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 40.009.E., the foregoing conditions will be waived to the extent of such written consent.

402.010. PROVISIONS OF ORDINANCE.

- A. Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
- B. Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

402.011. AMENDMENT PROCEDURE. Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

402.012. PREVIOUS FRANCHISES SUPERSEDED. This franchise supersedes any previous electric franchise granted to Company or its predecessor.

402.013. Purpose. The Winsted City Council has determined that it is in the best interest of the City to impose a franchise fee on those public utility companies that provide electric services within the City of Winsted.

A. Pursuant to City Ordinance 0-11-10 (Codified as Section 2 of Chapter 4 of the Municipal Code), a Franchise Agreement between the City of Winsted and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, the City has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, in an amount and fee design as set forth in Section 402.009. of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

402.014. Franchise Fee Statement. A franchise fee is hereby imposed on Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, its successors and assigns, under its electric franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the Xcel Energy May, 2012 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise fee assessment for electric service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by this ordinance have more than one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the city will control.

402.015. Payment. The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 402.009. of the Franchise.

402.016. Surcharge. The City recognizes that the Minnesota Public Utilities Commission allows the utility company to add a surcharge to customer rates to reimburse such utility company for the cost of the fee and that Xcel Energy will surcharge its customers in the

City the amount of the fee.

- 402.017. Record Support for Payment.** Xcel Energy shall make each payment when due and, if required by the City, shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.
- 402.018. Enforcement.** Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Sections 402.002.E. and 402.009. of the Franchise Agreement.
- 402.019. Effective Date of Franchise Fee.** The effective date of this Ordinance (i.e. amendment to City Code) shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance and amendment to City Code to Xcel Energy by certified mail. Collection of the fee shall commence as provided above.

(Ord. 95-03, Sections 1-12, 10/17/95; Ord. 11-10, Sections 1-12, 12/20/11; Ord. 12-04, Sections 13-19, 1/17/12)

SCHEDULE A

Franchise Fee Rates:

Electric Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Amount per month</u>
Residential	\$2.00
Sm C & I – Non-Dem	\$2.00
Sm C & I – Demand	\$2.00
Large C & I	\$2.00

Franchise fees are to be collected by the Utility at the rate listed below, and submitted to the City on a quarterly basis as follows:

- January – March collections due by April 30.
- April – June collections due by July 31.
- July – September collections due by October 31.
- October – December collections due by January 31.

SECTION 3

403.000. GAS ENERGY FRANCHISE.

403.002. DEFINITIONS. The following capitalized terms listed in alphabetical order shall have the following meanings:

- A. **City.** The City of Winsted, County of McLeod, State of Minnesota.
- B. **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- C. **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.
- D. **Company.** CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”) its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.
- E. **Gas Energy.** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.
- F. **Gas Facilities.** Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.
- G. **Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to City of Winsted, City Administrator, PO Box 126, Winsted, Minnesota 55395-0126. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.
- H. **Ordinance.** This gas franchise ordinance, also referred to as the Franchise.
- I. **Public Way.** Any highway, street, alley or other public right-of-way within the City.
- J. **Public Ground.** Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

- 403.003. GRANT OF FRANCHISE.** City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law.
- 403.004. EFFECTIVE DATE; WRITTEN ACCEPTANCE.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution shall revoke this Franchise.
- 403.005. SERVICE AND GAS RATES.** The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.
- 403.006. PUBLICATION EXPENSE.** Company shall pay the expense of publication of this Ordinance.
- 403.007. DISPUTE RESOLUTION.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity.
- 403.008. CONTINUATION OF FRANCHISE.** If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 20-year term set forth in Section 403.003.
- 403.009. LOCATION OF FACILITIES.** Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System.

Gas Facilities may be located on Public Grounds in a location selected by the City. The location and relocation of Gas Facilities shall be subject to reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise.

- 403.010. STREET OPENINGS.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.
- 403.011. RESTORATION.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. The Company shall not be required to post a construction performance bond.
- 403.012. AVOID DAMAGE TO GAS FACILITIES.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.
- 403.013. NOTICE OF IMPROVEMENTS TO STREETS.** The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company

deems necessary.

403.014. MAPPING INFORMATION. If requested by City, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

403.015. EMERGENCY RESPONSE. As emergency first-responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company.

403.016. RELOCATIONS.

A. **Relocation in Public Ways and Public Grounds.** The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in either Public Ways or Public Grounds.

B. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46.

403.017. INDEMNIFICATION.

A. **Indemnity of City.** Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

B. **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written Notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such Notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

403.018. VACATION OF PUBLIC WAYS AND PUBLIC GROUNDS. The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota

Rules 7819.3200 with respect to any request for vacation.

403.019. CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

403.020. FRANCHISE FEE.

A. **Franchise Fee Statement and Schedule.** A franchise fee is hereby imposed on Company commencing with the April 1, 2012 billing month, and in accordance with the following fee schedule:

<u>Customer Classification</u>	<u>Amount per Account per Month (\$)</u>
Residential	\$2.00 per month
Firm A	\$2.00 per month
Firm B	\$2.00 per month
Firm C	\$2.00 per month
Small Volume, Dual Fuel A (“SVDF A”)	\$2.00 per month
Small Volume, Dual Fuel B (“SVDF B”)	\$2.00 per month
Large Volume, Dual Fuel (“LVDF”)	\$2.00 per month

B. **Account Fee.** This fee is an account based fee and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter, but only one account, only one fee shall be assessed to that account. In the event any entities covered by this ordinance have more than one account, each account shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any account, the highest possible fee amount shall apply.

C. **Payment.** Franchise fees are to be collected by the Company and submitted to the City as follows:

January – March collections due by April 30.
April – June collections due by July 31.
July – September collections due by October 31.
October – December collections due by January 31.

D. **Record Support for Payment.** The Company shall make each payment when due and, if requested by the City, shall provide a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total made to account for any non-collectible accounts, refunds or error corrections. The Company shall permit the City, and its representatives, access to the Company’s records for the purpose of verifying such statements.

E. **Payment Adjustments.** Payment to the City will be adjusted where the Company is unable to collect the franchise fee. This includes non-collectible accounts.

- F. **Surcharge**. The City recognizes that the Minnesota Public Utilities Commission may allow the Company to add a surcharge to customer rates to reimburse the Company for the cost of the fee.
- G. **Dispute Resolution**. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this ordinance or for such other relief permitted by law.
- H. **Amendment Procedure**. The City of Winsted may at any time amend this Section 403.02 of its municipal code. Said amendments shall take effect 90 days after its passage and publication according to law. Prior to the City adopting such amendment, it shall give company 10 days prior written notice of the date the City Council will consider adoption of same.

(Ord. 95-03, Sections 1-12, 10/17/95; Ord. 11-12, Section 403.020, 12/20/11)

403.021. ABANDONED FACILITIES. The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities not located in Public Ways and Public Grounds.

403.022. PROVISIONS OF ORDINANCE.

- A. **Severability**. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
- B. **Limitation on Applicability**. This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

403.023. AMENDMENT-PROCEDURE. Either party may propose at any time that this Franchise Ordinance be amended. Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

403.024. HISTORY OF REPEALS. Ordinance No. 43, O83-10 is repealed by Ordinance 0-08-07.

SECTION 4

404.000. **MEDIACOM MINNESOTA LLC CABLE TELEVISION FRANCHISE.**

404.001. INTRODUCTION. An Ordinance granting a franchise to Mediacom Minnesota LLC, a Delaware limited liability company, to construct operate and maintain a cable system in the City of Winsted, 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.

404.002. DEFINITIONS. For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning ascribed to them by the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

A. “Applicable Laws” means any and all generally applicable non-discriminatory local, state or federal law, or other order lawfully issued, executed, or entered by any Governmental Authority with competent jurisdiction which is not otherwise preempted.

B. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

C. “Cable Act” means the Cable Communications Act of 1984 as amended, 47 U.S.C. §521 et. seq.

D. “Cable Service” or “Service” means:

The one-way transmission to Subscribers of (i) Video Programming, or (ii) Other Programming Service; and

Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(6).

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

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 2. A facility that serves Subscribers without using any public Streets;
 3. 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;
 4. An open video system that complies with 47 U.S.C. § 573; or
 5. Any facilities of any electric utility used solely for operating its electric utility system.
 6. Cable System as defined herein shall be the definition set forth in 47 U.S.C. § 522(7).
- F. “Channel” or “Cable 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.
- G. “City” means the City of Winsted, Minnesota.
- H. “City Code” means the Municipal Code of the City of Winsted, Minnesota, as may be amended from time to time.
- I. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- J. “Council” means the City Council of the City of Winsted, Minnesota.
- K. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest distribution point of the System.
- L. “Effective Date” shall mean November 17, 2015.
- M. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- N. “Franchise” means this franchise and the regulatory and contractual relationship established hereby.
- O. “Franchise Fee” shall be the definition set forth in 47 U.S.C. § 542(g).

- P. “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.
- Q. “Grantee” is Mediacom Minnesota LLC, its lawful successors, transferees or assignees.
- R. “Gross Revenues” means any and all revenues actually received by the Grantee, as determined in accordance with generally accepted accounting principles (“GAAP”), from the operation of the Cable System to provide Cable Services in the City. Gross Revenues shall not include any taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority, launch fees, tower rent, network capacity and facilities rent for the provision of non-cable services (including but not limited to voice or data services), investment income, bad debt, credits, refunds, any amounts collected from Subscribers for deposits, FCC Fees or PEG Fees. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.
- S. “Installation” means the connection of the System from distribution cable to the point of connection, including Standard Installations and custom Installations.
- T. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per week and/or some weekend hours. Cable System Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- U. “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the 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 the 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. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- V. “PEG” means public, educational and governmental.
- W. “PEG Access Facilities” means:
1. Channel capacity designated for public, educational or governmental use; and

2. Facilities and equipment for the use of such Channel capacity.
- X. "Person" means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.
 - Y. "Service Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.
 - Z. "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
 - AA. "Standard Installation" means any residential Installation which can be completed using an aerial Drop of one hundred twenty five (125) feet.
 - BB. "State" means the State of Minnesota.
 - CC. "Street" means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Street" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.
 - DD. "Subscriber" means any Person who lawfully elects to subscribe to Cable Service via the System. Subscriber as defined herein shall be the definition set forth in 47 C.F.R. § 76.5(ee).

404.003. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

A. Grant of Franchise.

1. This Franchise is granted pursuant to the terms and conditions contained herein. The Grantee shall have the right and privilege pursuant to this Franchise to construct, erect, maintain, and operate a Cable System in, upon, along, across, above, over and under the Streets and provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Streets. Grantee shall make use of existing poles and other above and below-ground facilities available to Grantee to the extent it is commercially reasonable to do so.
2. Notwithstanding the above grant to use Streets, use of such Streets shall not be inconsistent with the terms and conditions by which such Streets were created or

dedicated and is subject to all legal requirements related to the use of such Streets, including the terms and conditions of any applicable Streets Ordinance.

3. This Franchise shall be nonexclusive. Additional Cable Franchises granted by the City be granted on terms and conditions which, taken as a whole, are no more favorable or less burdensome than those imposed by existing franchises consistent with Applicable Law.
- B. Lease or Assignment Prohibited. Other than for the provision of commercial leased access, no person may lease Grantee's System for the purpose of providing Cable Service until and unless such person shall have first obtained and shall currently hold a valid franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 404.010.E.
- C. Term. This Franchise shall be in effect until November 17, 2030. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 404.008.E.1.herein.
- D. Previous Franchises. Upon acceptance by Grantee as required by Section 404.013. Herein, this Franchise shall supersede and replace the previous ordinance granting a franchise to Grantee.
- E. Compliance with Applicable Laws, Resolutions and Ordinances. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to Applicable Law.
- F. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted; provided, however, Grantee shall have no obligation to extend service if another provider is offering Video Programming or it is otherwise financially or technically unfeasible.
- G. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Grantor: City of Winsted
City Administrator
PO Box 126
Winsted, MN 55395

If to Grantee: Mediacom Minnesota LLC
Government Relations Manager
P.O. Box 110

1504 Second Street SE
Waseca, MN 56093

Non-binding Courtesy

Copy to: Bruce Gluckman, Esq.
Group Vice President and Deputy General Counsel
Mediacom Communications Corporation
One Mediacom Way
Mediacom Park, NY 10918

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

404.004. CONSTRUCTION STANDARDS.

A. Registration, Permits and Construction Codes.

1. Grantee shall strictly adhere to Applicable Law regarding location, construction, installation, operation or maintenance of the System in the City.
2. The City shall have the right to inspect all construction or Installation work performed in Streets pursuant to the applicable provisions of MAR §7819.0050 et seq.

B. Repair of Streets and Property. Any and all Streets, other public property, or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee consistent with Applicable Law. If Grantee fails to promptly perform the restoration required herein, the City may perform the restoration of the Streets, other public or private property as required consistent with Applicable Law.

C. Drop Burial. Grantee shall bury all Drops in a reasonable time period, which shall not exceed thirty (30) business days, subject to weather conditions. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial which in no event shall be later than June 30th.

D. Conditions on Street Use.

1. Nothing in this Franchise shall be construed to prevent the City from adopting an ordinance governing the use of City rights-of-way which is consistent with Applicable Law.
2. 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. All System transmission and distribution structures, lines and equipment erected by the Grantee shall be located consistent with Applicable Law.
 4. If at any time during the period of this Franchise, City shall elect to alter or change the grade or location of any Streets, the Grantee shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System consistent with Applicable Law.
 5. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
 6. The Grantee shall have the authority to trim any trees upon and overhanging the Streets consistent with Applicable Law.
 7. Except in emergency circumstances and only to the extent required by Applicable Law, Grantee shall use reasonable efforts to provide prior notice to those private property owners impacted by Grantee's work in the Rights-of-Way located on their property.
- E. Undergrounding of Cable. Grantee must place newly constructed facilities underground in areas where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above-ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
- F. Safety Requirements.
1. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
 2. The Grantee shall install and maintain its System and other equipment in accordance with Applicable Law and the requirements of the National Electric Safety Code.

404.005. SYSTEM DESIGN AND EXTENSION PROVISIONS.

A. Channel Capacity.

1. Grantee currently provides a 750 MHz fiber/coaxial hybrid System which delivers a minimum of 75 video channels.
2. All programming decisions remain the discretion of Grantee; subject to the City's rights pursuant to 47 U.S.C. § 544(b). Grantee shall provide notice prior to any

channel additions, deletions, or realignments, in a manner consistent with federal law.

B. System Extension/Density Requirement.

1. Grantee shall be required to extend Service beyond present System boundaries to dwelling units in the City that are not currently served in the event there are thirty (30) dwelling units or more per cable mile and such dwelling units are contiguous to the existing System.
2. Grantee shall also extend Service to Persons requesting Service where the density is insufficient to require extension without any special or individualized charge. In such case, Grantee shall extend Service at a mutually acceptable cost.

C. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications. In such case, Grantee may charge for the incremental increase in costs incurred beyond the Standard Installation.

D. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as maybe amended or modified from time to time, which regulations are expressly incorporated herein by reference.

E. FCC Reports. Upon request, the results of any tests required by the FCC shall be made available to City which demonstrate the level of System performance and signal quality.

F. Lockout Device. Upon the request of a Subscriber, Grantee shall provide a Lockout Device.

404.006. SERVICES PROVISIONS.

A. Regulation of Service Rates.

1. The City may regulate rates for the provision of Cable Service, equipment, or any other service provided over the System to the extent allowed pursuant to Applicable Law.
2. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection.

B. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.

C. Customer Service. Grantee shall comply with the provisions of the FCC Customer Services Rules attached hereto as Exhibit A.

- D. Complaint and Other Service Records. Subject to Grantee's obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
- E. Subscriber Contracts. Grantee shall file with the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file With the City Administrator a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours.
- F. Billing and Subscriber Communications. Grantee must give Subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- G. Refunds and Credits. If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits tor will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated.

404.007. INSTITUTIONAL SERVICE PROVISIONS.

- A. Public, Educational and Government Access.
 - 1. Channel. Grantee shall dedicate one (1) channel for PEG Access use. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.
 - 2. Use of Channel(s). Grantee shall provide to each of its Subscribers who receive all, or part of the total services offered on the System, reception on the PEG Access Channel(s) free of charge. The specially designated access channel may be used by the public, local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the public, educational authorities

or local government, the Grantee may lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. Grantee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the public, local educational authorities, local government, or commercial or noncommercial users who have leased time.

3. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to the City and the public.
4. PEG Fee.
 - a. Upon sixty (60) days prior written notice to all providers of Cable Service or Video Programming in the City, Grantee shall collect on behalf of City a per month Subscriber fee of up to One Dollar and no/100 (\$1.00) solely to fund PEG access expenditures as permitted by Applicable Law (hereinafter "PEG Fee").
 - b. The City may, at any time, reduce the PEG Fee upon sixty (60) Days written notice to Grantee.
 - c. Grantee shall pay the PEG Fee to the City quarterly, at the same time as the payment of Franchise Fees.
5. Access Rules. The City, or its designee, may implement rules for use of any access channel(s).
 - a. Service to Public Buildings.
 1. Upon request by the City and consistent with applicable federal law, Grantee shall provide, free of charge, Installation of one (1) Drop, one (1) cable outlet, and monthly Basic Cable Service to the institutions listed in Exhibit B, which are within two hundred (200) feet of the System. Drops to subsequently designated institutions in excess of two hundred (200) feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the two hundred (200) feet closest to the building. Grantee shall have one (1) year from the date of the City's request to complete construction of the Drop and outlet. Additional Drops and/or outlets shall be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. No redistribution of the free Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent.
 2. Upon request by the City and consistent with applicable federal law, Grantee shall provide two-way activated capacity allowing

live or recorded cable-cast of programming to the following site(s) listed in Exhibit C which are within two hundred (200) feet of the System. Drops to subsequently designated institutions in excess of two hundred (200) feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the two hundred (200) feet closest to the building. Grantee shall have one (1) year from the date of the City's request to complete construction.

404.008. OPERATION AND ADMINISTRATION PROVISIONS.

- A. Administration of Franchise. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise.
- B. Franchise Fee.
1. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee in an annual amount equal to five percent (5%) of its Gross Revenues subject to the same franchise fee requirement being imposed on all video service providers over whom the City has jurisdiction.
 2. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
 3. All amounts paid shall be subject to audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
- C. Access to Records. Grantee shall make available those records maintained by Grantee which relate to this Franchise or System operations including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. and, in the case of confidential or proprietary records, a mutually acceptable nondisclosure agreement.
- D. Reports and Maps to be filed with the City.
1. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues.
 2. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or System as shall be mutually agreed upon by City and Grantee.
- E. Periodic Evaluation.
1. The City may require evaluation sessions during the term of this Franchise not more than annually, upon thirty (30) days written notice to Grantee. Grantee and City shall hold evaluation sessions after the fifth and tenth years of this franchise.

2. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of all evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1) Basic Service channel of the System between the hours of 7:00 p.m. and 9 00 p.m. for five (5) consecutive days preceding each session.
3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.
4. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

404.009. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

A. Performance Bond.

1. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City, in the amount of Twenty-two Thousand and No/100 (\$22,000) in a form and with such sureties as are reasonably acceptable.
2. If at any time Grantee undertakes material upgrade or material additional construction of the System, Grantee shall increase the bond to Seventy-Five Thousand and No/100 (\$75,000). Upon completion of said upgrade or additional construction, Grantee shall provide written notice to the City. At such time as the upgrade or additional construction is complete, Grantee may decrease said bond to the original amount.
3. The bond must be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System.

4. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
 5. The City may demand payment from the principal and surety of the bond for liquidated damages charged pursuant to this section, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise:
 - a. For violation of any other provision of this Franchise or applicable federal, state, or local law or regulation, One Hundred Forty and No/100 Dollars (\$140.00) per day for each day, or part thereof such violation continues.
 - b. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise or the City makes a claim pursuant to the bond, a written notice shall be given thirty (30) days' notice of any franchise violation, or other claim, liability or obligation. Grantee shall have thirty (30) days from receipt of such notice in which to cure, correct, or satisfy the violation, claim, liability, or obligation. At any time after the cure period, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.
 - c. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect from the performance bond any resultant damages, costs or liabilities incurred by the City.
 - d. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.
- B. Indemnification of the City. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this Franchise.
1. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to

pay as a result of the exercise, administration, or enforcement of the Franchise including, but not limited to, the reimbursement to City of any insurance deductible paid by City. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.

2. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Streets or public place or with the construction or reconstruction of a sewer or water system.
3. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph b. above.

C. Insurance.

1. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy; including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise.
2. The policies of insurance shall be in the sum of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for personal injury or death or any one Person, and Three Million Dollars (\$3,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Seven Hundred Fifty Thousand Dollars (\$750,000.00) for property damage to any one person and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one act or occurrence.
3. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether

at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

404.010. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.

- A. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:

Grantee has violated any material provision of this Franchise and failed to timely cure; or

Grantee has attempted to evade any of the material provisions of the Franchise; or

Grantee has practiced fraud or deceit upon the City or Subscriber.

The City may revoke this Franchise without the hearing required herein if Grantee is adjudged bankrupt.

- B. Procedures for Revocation.

1. The City shall provide Grantee with written notice of intent to revoke the Franchise which shall identify the basis of the revocation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to cure the violation or to provide assurance of performance in compliance with the Franchise. Upon receipt of the violation notice from the City, the Grantee may within thirty (30) Days of such receipt notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the timeframes herein and the accrual of all alleged damages until the City issues a decision following the required hearing in this section.
2. City shall schedule a public hearing affording Grantee due process prior to revocation. The public hearing shall be scheduled after the end of the cure period and within ninety (90) days of the date of the notice of revocation. Notice of the hearing shall be provided to Grantee.
3. The City shall provide Grantee with written notice of its final decision together with written findings of fact supplementing said decision.
4. The Franchise shall remain in full force and effect during any appeal unless the term thereof sooner expires.

- C. Abandonment of Service. Grantee may not abandon the System or any portion thereof or discontinue providing video programming services without having first given six (6)

months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

D. Removal After Abandonment, Termination or Forfeiture.

1. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within the City; provided; however, that the Grantee shall not be required to remove the System if it is authorized to provide non-Cable Service pursuant to state or federal law.
2. If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the Performance Bond toward removal.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or corporate change of or in Grantee or the System, including, but not limited to, the sale of a majority of the entity's assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
2. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section 404.010.E. The term "controlling interest" as used herein means actual working control in whatever manner exercised.
3. The City shall have such time as is permitted by applicable law in which to review a transfer request.
4. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (1) or (2) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
5. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subparagraph (1) or (2) of this Section, the City shall have the right to purchase the System. In the event Grantee has received a bona fide offer for purchase of the System, the City shall have the right to purchase in accordance with the terms thereof The Grantee must promptly convey such offer to the City along with any written acceptance. As used in this Section, "bona fide offer"

means an offer to purchase the System received by the Grantee which it intends to accept. In any other event, the City shall have the right to purchase the System for an equitable price and upon commercially reasonable terms.

6. The City shall be deemed to have waived its right to purchase under in the following circumstances:
 - a. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise or reserve its right of purchase; or
 - b. It approves the assignment or sale of the Franchise as provided within this Section.

404.011. PROTECTION OF INDIVIDUAL RIGHTS.

A. Discriminatory Practices Prohibited. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.

B. Subscriber Privacy.

1. Grantee shall comply with the Subscriber privacy-related requirements of 47 U.S.C. § 551. 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. 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 authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
2. No 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 and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. 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 authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
3. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing.

Confidentiality of such information shall be subject to the provision set forth in Subparagraph (b) of this Section.

404.012. MISCELLANEOUS PROVISIONS.

- A. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- B. Work Performed by Others. All obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other Person performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Streets, public property or new System construction or System upgrade.
- C. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 404.008.E. or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
- D. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
- E. Compliance with Federal State and Local Laws.
 - 1. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
 - 2. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective 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.
- F. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to

enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

- G. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.

404.013. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.

- A. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of this Section 404.013.
- B. Acceptance. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights previously granted to Grantee shall be null and void.
1. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
 2. Grantee shall accept this Franchise in the following manner:
 - a. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
 - b. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

EXHIBIT A

Customer Service Standards

- A. Cable System office hours and telephone availability:
1. 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.
 2. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 3. 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.
 4. 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.
 5. The 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.
 6. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 7. Customer service center will be open at least during Normal Business Hours.
- B. 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:
1. 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.
 2. Excluding conditions beyond the control of the Grantee, the Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

3. 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.)
 4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 5. 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.
- C. Communications between Grantee and Subscribers. Grantee shall comply with the provisions of 47 CFR § 76.1601-1604 in communicating with Subscribers in the City.
1. 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:
 - a. Products and Services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and Service maintenance policies;
 - d. Instructions on how to use the Cable Service;
 - e. Channel positions of programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City's cable office.
 2. Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Grantee, including the address of the responsible officer of the City.
 3. 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 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the information required by Section (c) 1(A) – (F) of this Exhibit A.
 4. In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give 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, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

5. To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.
6. Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

D. Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
2. The return of the equipment supplied by the Grantee if Service is terminated.

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

F. Billing.

1. 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 Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
2. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within 30 days.

G. Grantee shall, upon request, provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Exhibit A.

EXHIBIT B

DESIGNATED BUILDINGS FOR SUBSCRIBER NETWORK DROPS

BUILDINGS	ADDRESS
LIBRARY, WINSTED	180 MAIN AVE. W.
FIRE DEPT, WINSTED	431 6TH ST. S.
PUBLIC WORKS, WINSTED	433 6TH ST. N.
ELEM. SCHOOL, WINSTED	431 N 4TH ST.
LOCAL ACCESS, WINSTED	201 1ST ST N.
ELEMENTARY, TRINITY	211 N. 2ND ST
CITY OF WINSTED CITY HALL	201 1ST ST N.

EXHIBIT C

PUBLIC BUILDINGS WITH TWO-WAY CAPABILITY

CITY HALL	201 1ST N.
FIRE DEPT.	431 6TH ST. S.
PUBLIC WORKS	433 6TH ST. N.
LIBRARY	180 MAIN AVE. W.

SECTION 5

405.000. WINSTED TELEPHONE COMPANY DBA TDS TELECOM CABLE TELEVISION FRANCHISE.

405.001. INTRODUCTION. An Ordinance granting a franchise to Winsted Telephone Company dba TDS Telecom, a Minnesota Corporation, to construct operate and maintain a cable system in the City of Winsted, 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.

405.002. DEFINITIONS. For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning ascribed to them by the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

A. “Applicable Laws” means any and all generally applicable non-discriminatory local, state or federal law, or other order lawfully issued, executed, or entered by any Governmental Authority with competent jurisdiction which is not otherwise preempted.

B. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

C. “Cable Act” means the Cable Communications Act of 1984 as amended, 47 U.S.C. §521 et. seq.

D. “Cable Service” or “Service” means:

The one-way transmission to Subscribers of (i) Video Programming, or (ii) Other Programming Service; and

Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(6).

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

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 2. A facility that serves Subscribers without using any public Streets;
 3. 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;
 4. An open video system that complies with 47 U.S.C. § 573; or
 5. Any facilities of any electric utility used solely for operating its electric utility system.
 6. Cable System as defined herein shall be the definition set forth in 47 U.S.C. § 522(7).
- F. “Channel” or “Cable 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.
- G. “City” means the City of Winsted, Minnesota.
- H. “City Code” means the Municipal Code of the City of Winsted, Minnesota, as may be amended from time to time.
- I. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- J. “Council” means the City Council of the City of Winsted, Minnesota.
- K. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest distribution point of the System.
- L. “Effective Date” shall mean November 17, 2015.
- M. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- N. “Franchise” means this franchise and the regulatory and contractual relationship established hereby.
- O. “Franchise Fee” shall be the definition set forth in 47 U.S.C. § 542(g).

- P. “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.
- Q. “Grantee” is Winsted Telephone Company dba TDS Telecom, its lawful successors, transferees or assignees.
- R. “Gross Revenues” means any and all revenues actually received by the Grantee, as determined in accordance with generally accepted accounting principles (“GAAP”), from the operation of the Cable System to provide Cable Services in the City. Gross Revenues shall not include any taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority, launch fees, tower rent, network capacity and facilities rent for the provision of non-cable services (including but not limited to voice or data services), investment income, bad debt, credits, refunds, any amounts collected from Subscribers for deposits, FCC Fees or PEG Fees. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.
- S. “Installation” means the connection of the System from distribution cable to the point of connection, including Standard Installations and custom Installations.
- T. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per week and/or some weekend hours. Cable System Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- U. “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the 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 the 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. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- V. “PEG” means public, educational and governmental.
- W. “PEG Access Facilities” means:
1. Channel capacity designated for public, educational or governmental use; and

2. Facilities and equipment for the use of such Channel capacity.
- X. "Person" means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.
- Y. "Service Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.
- Z. "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- AA. "Standard Installation" means any residential Installation which can be completed using an aerial Drop of one hundred twenty-five (125) feet.
- BB. "State" means the State of Minnesota.
- CC. "Street" means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Street" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.
- DD. "Subscriber" means any Person who lawfully elects to subscribe to Cable Service via the System. Subscriber as defined herein shall be the definition set forth in 47 C.F.R. § 76.5(ee).

405.003. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

A. Grant of Franchise.

1. This Franchise is granted pursuant to the terms and conditions contained herein. The Grantee shall have the right and privilege pursuant to this Franchise to construct, erect, maintain, and operate a Cable System in, upon, along, across, above, over and under the Streets and provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Streets. Grantee shall make use of existing poles and other above and below-ground facilities available to Grantee to the extent it is commercially reasonable to do so.
2. Notwithstanding the above grant to use Streets, use of such Streets shall not be inconsistent with the terms and conditions by which such Streets were created or

dedicated and is subject to all legal requirements related to the use of such Streets, including the terms and conditions of any applicable Streets Ordinance.

3. This Franchise shall be nonexclusive. Additional Cable Franchises granted by the City shall be granted on terms and conditions which are consistent with Applicable Law and Minnesota Statutes 238.08 subd. 1(b).
- B. Lease or Assignment Prohibited. Other than for the provision of commercial leased access, no person may lease Grantee's System for the purpose of providing Cable Service until and unless such person shall have first obtained and shall currently hold a valid franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 405.010.E.
- C. Term. This Franchise shall be in effect until November 17, 2030. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 405.008.E.1. herein.
- D. Previous Franchises. Upon acceptance by Grantee as required by Section 405.013. Herein, this Franchise shall supersede and replace the previous ordinance granting a franchise to Grantee.
- E. Compliance with Applicable Laws, Resolutions and Ordinances. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to Applicable Law.
- F. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted; provided, however, Grantee shall have no obligation to extend service if another provider is offering Video Programming or it is otherwise financially or technically unfeasible.
- G. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Grantor: City of Winsted
City Administrator
PO Box 126
Winsted, MN 55395

If to Grantee: TDS Telecom
Attention: Manager – Video Services
525 Junction Road
Madison, WI 53717

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

405.004. CONSTRUCTION STANDARDS.

A. Registration, Permits and Construction Codes.

1. Grantee shall strictly adhere to Applicable Law regarding location, construction, installation, operation or maintenance of the System in the City.
2. The City shall have the right to inspect all construction or Installation work performed in Streets pursuant to the applicable provisions of MAR §7819.0050 et. seq.

B. Repair of Streets and Property. Any and all Streets, other public property, or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee consistent with Applicable Law. If Grantee fails to promptly perform the restoration required herein, the City may perform the restoration of the Streets, other public or private property as required consistent with Applicable Law.

C. Drop Burial. Grantee shall bury all Drops in a reasonable time period, which shall not exceed thirty (30) business days, subject to weather conditions. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial which in no event shall be later than June 30th.

D. Conditions on Street Use.

1. Nothing in this Franchise shall be construed to prevent the City from adopting an ordinance governing the use of City rights-of-way which is consistent with Applicable Law.
2. 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. All System transmission and distribution structures, lines and equipment erected by the Grantee shall be located consistent with Applicable Law.
4. If at any time during the period of this Franchise, City shall elect to alter or change the grade or location of any Streets, the Grantee shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System consistent with Applicable Law.
5. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings

with the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

6. The Grantee shall have the authority to trim any trees upon and overhanging the Streets consistent with Applicable Law.
 7. Except in emergency circumstances and only to the extent required by Applicable Law, Grantee shall use reasonable efforts to provide prior notice to those private property owners impacted by Grantee's work in the Rights-of-Way located on their property.
- E. Undergrounding of Cable. Grantee must place newly constructed facilities underground in areas where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above-ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
- F. Safety Requirements.
1. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
 2. The Grantee shall install and maintain its System and other equipment in accordance with Applicable Law and the requirements of the National Electric Safety Code.

405.005. SYSTEM DESIGN AND EXTENSION PROVISIONS.

A. Channel Capacity.

1. Grantee currently operates and maintains a communications system which provides telecommunications and information services to residents and businesses ("Telecommunications Network") within the City pursuant to authority prescribed in the Certificate of Need issued by the Minnesota Public Utilities Commission. Utilizing its Telecommunications Network, Grantee shall maintain and operate within the City an Internet Protocol television (IPTV) application through which Internet Television services are delivered using the architecture and networking methods of Internet Protocol over a packet-switched network infrastructure system, generally referred to in this Franchise herein as a "Cable System" providing a minimum of at least 75 video programmed Channels throughout the term of this Franchise.
2. Construction Timetable. Grantee shall complete any construction related to System enhancements required herein within sixty (60) months of the effective date of this Franchise as required by Minn. Stat Chapter 238. Failure to timely complete such construction shall be a violation of this Franchise

3. All programming decisions remain the discretion of Grantee; subject to the City's rights pursuant to 47 U.S.C. § 544(b). Grantee shall provide notice prior to any channel additions, deletions, or realignments, in a manner consistent with federal law.

B. System Extension/Density Requirement.

1. Grantee shall be required to extend Service beyond present System boundaries to dwelling units in the City that are not currently served in the event there are thirty (30) dwelling units or more per cable mile and such dwelling units are contiguous to the existing System.
2. Grantee shall also extend Service to Persons requesting Service where the density is insufficient to require extension without any special or individualized charge. In such case, Grantee shall extend Service at a mutually acceptable cost.

C. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications. In such case, Grantee may charge for the incremental increase in costs incurred beyond the Standard Installation.

D. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as maybe amended or modified from time to time, which regulations are expressly incorporated herein by reference.

E. FCC Reports. Upon request, the results of any tests required by the FCC shall be made available to City which demonstrate the level of System performance and signal quality.

F. Lockout Device. Upon the request of a Subscriber, Grantee shall provide a Lockout Device.

405.006. SERVICES PROVISIONS.

A. Regulation of Service Rates.

1. The City may regulate rates for the provision of Cable Service, equipment, or any other service provided over the System to the extent allowed pursuant to Applicable Law.
2. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection.

B. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.

- C. Customer Service. Grantee shall comply with the provisions of the FCC Customer Services Rules attached hereto as Exhibit A.
- D. Complaint and Other Service Records. Subject to Grantee's obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
- E. Subscriber Contracts. Grantee shall file with the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file With the City Administrator a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours.
- F. Billing and Subscriber Communications. Grantee must give Subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- G. Refunds and Credits. If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits tor will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated.

405.007. INSTITUTIONAL SERVICE PROVISIONS.

- A. Public, Educational and Government Access.
 - 1. Channel. Grantee shall dedicate one (1) channel for PEG Access use. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.
 - 2. Use of Channel(s). Grantee shall provide to each of its Subscribers who receive all, or part of the total services offered on the System, reception on the PEG Access Channel(s) free of charge. The specially designated access channel may be

used by the public, local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the public, educational authorities or local government, the Grantee may lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. Grantee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the public, local educational authorities, local government, or commercial or noncommercial users who have leased time.

3. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to the City and the public.
4. PEG Fee.
 - a. Upon sixty (60) days prior written notice to all providers of Cable Service or Video Programming in the City, Grantee shall collect on behalf of City a per month Subscriber fee of up to One Dollar and no/100 (\$1.00) solely to fund PEG access expenditures as permitted by Applicable Law (hereinafter "PEG Fee").
 - b. The City may, at any time, reduce the PEG Fee upon sixty (60) Days written notice to Grantee.
 - c. Grantee shall pay the PEG Fee to the City quarterly, at the same time as the payment of Franchise Fees.
5. Access Rules. The City may implement rules for use of any access channel(s).
 - a. Service to Public Buildings.
 1. Upon request by the City and consistent with applicable federal law, Grantee shall provide, free of charge, Installation of one (1) Drop, one (1) cable outlet, and monthly Basic Cable Service to the institutions listed in Exhibit B, which are within two hundred (200) feet of the System. Drops to subsequently designated institutions in excess of two hundred (200) feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the two hundred (200) feet closest to the building. Grantee shall have one (1) year from the date of the City's request to complete construction of the Drop and outlet. Additional Drops and/or outlets shall be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. No redistribution of the free Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent.

2. Upon request by the City and consistent with applicable federal law, Grantee shall provide two-way activated capacity allowing live or recorded cable-cast of programming to the following site(s) listed in Exhibit C which are within two hundred (200) feet of the System. Drops to subsequently designated institutions in excess of two hundred (200) feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the two hundred (200) feet closest to the building. Grantee shall have one (1) year from the date of the City's request to complete construction.

405.008. OPERATION AND ADMINISTRATION PROVISIONS.

- A. Administration of Franchise. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise.
- B. Franchise Fee.
 1. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee in an annual amount equal to five percent (5%) of its Gross Revenues subject to the same franchise fee requirement being imposed on all video service providers over whom the City has jurisdiction.
 2. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
 3. All amounts paid shall be subject to audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
- C. Access to Records. Grantee shall make available those records maintained by Grantee which relate to this Franchise or System operations including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. and, in the case of confidential or proprietary records, a mutually acceptable nondisclosure agreement.
- D. Reports and Maps to be filed with the City.
 1. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues.
 2. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or System as shall be mutually agreed upon by City and Grantee.
- E. Periodic Evaluation.

1. The City may require evaluation sessions during the term of this Franchise not more than annually, upon thirty (30) days written notice to Grantee. Grantee and City shall hold evaluation sessions after the fifth and tenth years of this franchise.
2. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of all evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1) Basic Service channel of the System between the hours of 7:00 p.m. and 9 00 p.m. for five (5) consecutive days preceding each session.
3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.
4. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

405.009. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

A. Performance Bond.

1. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City, in the amount of Twenty-two Thousand and No/100 (\$22,000) in a form and with such sureties as are reasonably acceptable.
2. If at any time Grantee undertakes material upgrade or material additional construction of the System, Grantee shall increase the bond to Seventy-Five Thousand and No/100 (\$75,000). Upon completion of said upgrade or additional construction, Grantee shall provide written notice to the City. At such time as the upgrade or additional construction is complete, Grantee may decrease said bond to the original amount.
3. The bond must be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System.

4. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
 5. The City may demand payment from the principal and surety of the bond for liquidated damages charged pursuant to this section, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise:
 - a. For violation of any other provision of this Franchise or applicable federal, state, or local law or regulation, One Hundred Forty and No/100 Dollars (\$140.00) per day for each day, or part thereof such violation continues.
 - b. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise or the City makes a claim pursuant to the bond, a written notice shall be given thirty (30) days' notice of any franchise violation, or other claim, liability or obligation. Grantee shall have thirty (30) days from receipt of such notice in which to cure, correct, or satisfy the violation, claim, liability, or obligation. At any time after the cure period, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.
 - c. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect from the performance bond any resultant damages, costs or liabilities incurred by the City.
 - d. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have.
- B. Indemnification of the City. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this Franchise.
1. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and

against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise, administration, or enforcement of the Franchise including, but not limited to, the reimbursement to City of any insurance deductible paid by City. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.

2. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Streets or public place or with the construction or reconstruction of a sewer or water system.
3. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph b. above.

C. Insurance.

1. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a commercial general liability insurance policy; including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages and penalties which may arise as a result of this Franchise.
2. The policies of insurance shall be in the sum of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for personal injury or death or any one Person, and Three Million Dollars (\$3,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Seven Hundred Fifty Thousand Dollars (\$750,000.00) for property damage to any one person and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one act or occurrence.
3. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall

contain language outlining cancellation notice requirements. Grantee shall provide sixty (60) days prior to any cancellation.

405.010. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.

- A. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:

Grantee has violated any material provision of this Franchise and failed to timely cure; or

Grantee has attempted to evade any of the material provisions of the Franchise; or

Grantee has practiced fraud or deceit upon the City or Subscriber.

The City may revoke this Franchise without the hearing required herein if Grantee is adjudged bankrupt.

- B. Procedures for Revocation.

1. The City shall provide Grantee with written notice of intent to revoke the Franchise which shall identify the basis of the revocation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to cure the violation or to provide assurance of performance in compliance with the Franchise. Upon receipt of the violation notice from the City, the Grantee may within thirty (30) Days of such receipt notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the timeframes herein and the accrual of all alleged damages until the City issues a decision following the required hearing in this section.
2. City shall schedule a public hearing affording Grantee due process prior to revocation. The public hearing shall be scheduled after the end of the cure period and within ninety (90) days of the date of the notice of revocation. Notice of the hearing shall be provided to Grantee.
3. The City shall provide Grantee with written notice of its final decision together with written findings of fact supplementing said decision.
4. The Franchise shall remain in full force and effect during any appeal unless the term thereof sooner expires.

- C. Abandonment of Service. Grantee may not abandon the System or any portion thereof or discontinue providing video programming services without having first given six (6) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

Notwithstanding the foregoing, Grantee shall have the right to terminate this Franchise upon six (6) months advance written notice to the City ("Termination Date") and any such termination shall not impact Grantee's right to continue the provision of Telecommunications services and broadband services over the Telecommunications Network. In the event the Franchise is terminated, Grantee shall be responsible to payment to the City up to the Termination Date for all PEG Fees required under Section 405.007 and all Franchise Fees required remit under Section 405.008.

D. Removal After Abandonment, Termination or Forfeiture.

1. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within the City; provided; however, that the Grantee shall not be required to remove the System if it is authorized to provide non-Cable Service pursuant to state or federal law.
2. If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the Performance Bond toward removal.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or corporate change of or in Grantee or the System, including, but not limited to, the sale of a majority of the entity's assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
2. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section 405.010.E. The term "controlling interest" as used herein means actual working control in whatever manner exercised.
3. The City shall have such time as is permitted by applicable law in which to review a transfer request.
4. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (1) or (2) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.

5. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subparagraph (1) or (2) of this Section, the City shall have the right to purchase the System. In the event Grantee has received a bona fide offer for purchase of the System, the City shall have the right to purchase in accordance with the terms thereof. The Grantee must promptly convey such offer to the City along with any written acceptance. As used in this Section, "bona fide offer" means an offer to purchase the System received by the Grantee which it intends to accept. In any other event, the City shall have the right to purchase the System for an equitable price and upon commercially reasonable terms.
6. The City shall be deemed to have waived its right to purchase under in the following circumstances:
 - a. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise or reserve its right of purchase; or
 - b. It approves the assignment or sale of the Franchise as provided within this Section.

405.011. PROTECTION OF INDIVIDUAL RIGHTS.

- A. Discriminatory Practices Prohibited. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.
- B. Subscriber Privacy.
 1. Grantee shall comply with the Subscriber privacy-related requirements of 47 U.S.C. § 551. 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. 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 authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
 2. No 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 and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. 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 authorization. The

authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

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

405.012. MISCELLANEOUS PROVISIONS.

- A. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- B. Work Performed by Others. All obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other Person performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Streets, public property or new System construction or System upgrade.
- C. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 405.008.E. or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
- D. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
- E. Compliance with Federal State and Local Laws.
 1. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
 2. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective 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.

F. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

G. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.

405.013. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.

A. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of this Section 405.013.

B. Acceptance. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights previously granted to Grantee shall be null and void.

1. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

2. Grantee shall accept this Franchise in the following manner:

a. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.

b. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

EXHIBIT A

Customer Service Standards

- A. Cable System office hours and telephone availability:
1. 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.
 2. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 3. 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.
 4. 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.
 5. The 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.
 6. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 7. Customer service center will be open at least during Normal Business Hours.
- B. 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:
1. 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.
 2. Excluding conditions beyond the control of the Grantee, the Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

3. 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.)
 4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 5. 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.
- C. Communications between Grantee and Subscribers. Grantee shall comply with the provisions of 47 CFR § 76.1601-1604 in communicating with Subscribers in the City.
1. 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:
 - a. Products and Services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and Service maintenance policies;
 - d. Instructions on how to use the Cable Service;
 - e. Channel positions of programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City's cable office.
 2. Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Grantee, including the address of the responsible officer of the City.
 3. 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 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the information required by Section (c) 1(A) – (F) of this Exhibit A.
 4. In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give 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, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

5. To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.
6. Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

D. Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
2. The return of the equipment supplied by the Grantee if Service is terminated.

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

F. Billing.

1. 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 Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
2. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within 30 days.

G. Grantee shall, upon request, provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Exhibit A.

EXHIBIT B

DESIGNATED BUILDINGS FOR SUBSCRIBER NETWORK DROPS

BUILDINGS	ADDRESS
LIBRARY, WINSTED	180 MAIN AVE. W.
FIRE DEPT, WINSTED	431 6TH ST. S.
PUBLIC WORKS, WINSTED	433 6TH ST. N.
ELEM. SCHOOL, WINSTED	431 N 4TH ST.
LOCAL ACCESS, WINSTED	201 1ST ST N.
ELEMENTARY, TRINITY	211 N. 2ND ST
CITY OF WINSTED CITY HALL	201 1ST ST N.

EXHIBIT C

PUBLIC BUILDINGS WITH TWO-WAY CAPABILITY

CITY HALL	201 1ST N.
FIRE DEPT.	431 6TH ST. S.
PUBLIC WORKS	433 6TH ST. N.
LIBRARY	180 MAIN AVE. W.

SECTION 6

406.000. MCLEOD COOPERATIVE POWER ASSOCIATION ELECTRIC DISTRIBUTION FRANCHISE.

406.001. DEFINITIONS. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- A. City. The City of Winsted, County of McLeod, State of Minnesota.
- B. City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting or other forms of energy.
- C. Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- D. Company. McLeod Cooperative Power Association, a Minnesota corporation, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.
- E. Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public or private use.
- F. Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Manager, 1231 Ford Avenue, Glencoe, Minnesota 55336. Notice to the City shall be mailed to the City Administrator, City Hall, 201 First Street North, P.O. Box 126, Winsted, MN 55395. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- G. Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- H. Public Way. Any street, alley, walkway or other public right-of-way within the City.

406.002. ADOPTION OF FRANCHISE.

- A. Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the

provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

- B. Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.
- C. Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are not subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.
- D. Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
- E. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.
- F. Continuation of Franchise. If City and Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 406.002.A.

406.003. LOCATION, OTHER REGULATIONS.

- A. Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased

conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

- B. Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- C. Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.
- D. Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 406.003.D., but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
- E. Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.
- F. Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

- G. Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City and pay annual pole attachment rental fee.
- H. Mapping Information. Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

406.004. RELOCATIONS.

- A. Relocation of Electric Facilities in Public Ways. Company shall comply with the requirements of any applicable ordinance of the City relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.
- B. Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law.
- C. Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.
- D. No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

406.005. TREE TRIMMING. Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

406.006. INDEMNIFICATION.

- A. Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
- B. Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

406.007. VACATION OF PUBLIC WAYS. The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

406.008. CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

406.009. FRANCHISE FEE.

A. Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 406.009. shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Account Per Month</u>
Residential	\$2.00
Sm C & I – Non-Dem	\$2.00
Sm C & I – Demand	\$2.00
Large C & I	\$2.00
Public Street Ltg	\$0.00
Muni Pumping –N/D	\$0.00
MuniPumping – Dem	\$0.00

This fee is an account based fee and not a meter based fee. In the event that an entity covered by this ordinance has more than one meter, but only one account, only one fee shall be assessed to that account. In the event any entities covered by this ordinance have more than one account, each account shall be subject to the appropriate fee.

B. Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 406.002.E. shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 406.009.A. above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

C. Terms Defined. For the purpose of this Section 406.009., the following definitions apply:

1. “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.
2. “Fee Schedule” refers to the schedule in Section 406.009.A. setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.

- D. Collection of the Fee. The franchise fee shall be payable monthly or quarterly, as selected by the Company, and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 406.009. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a fee in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers. In addition, the Company agrees to provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.
- E. Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 406.009.E., the foregoing conditions will be waived to the extent of such written consent.
- F. Surcharge. The City recognizes that the Company is allowed to add a surcharge to customer rates to reimburse the Company for the cost of implementing and administering the fee.

406.010. PROVISIONS OF ORDINANCE.

- A. Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any

other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

- B. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

406.011. AMENDMENT PROCEDURE. Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance, and Ordinance 97-04 and Ordinance O-11-11 is repealed.

406.012. PREVIOUS FRANCHISES SUPERSEDED. This franchise supersedes any previous electric franchise granted to Company or its predecessor.

406.013. PURPOSE. The Winsted City Council has determined that it is in the best interest of the City to impose a franchise fee on those public utility companies that provide electric services within the City of Winsted.

- A. Pursuant to City Ordinance 0-12-02 (Codified as Section 6 of Chapter 4 of the Municipal Code), a Franchise Agreement between the City of Winsted and McLeod Cooperative Power Association, a Minnesota corporation, its successors and assigns, the City has the right to impose a franchise fee on McLeod Cooperative Power Association, its successors and assigns, in an amount and fee design as set forth in Section 406.009. of the McLeod Cooperative Power Association Franchise and in the fee schedule attached hereto as Schedule A.

406.014. FRANCHISE FEE STATEMENT. A franchise fee is hereby imposed on McLeod Cooperative Power Association, a Minnesota Corporation, its successors and assigns, under its electric franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the McLeod Cooperative Power Association April, 2012 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise fee assessment for electric service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by this ordinance have more than

one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the city will control.

406.015. PAYMENT. The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 406.009. of the Franchise.

406.016. SURCHARGE. The City recognizes that the Company is allowed to add a surcharge to customer rates to reimburse such utility company for the cost of the fee and that McLeod Cooperative Power Association will surcharge its customers in the City the amount of the fee.

406.017. RECORD SUPPORT FOR PAYMENT. McLeod Cooperative Power Association shall make each payment when due and, if required by the City, shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds or error corrections.

406.018. ENFORCEMENT. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Sections 406.002.E. and 406.009. of the Franchise Agreement.

(Ord. 11-11, Sections 1-12, 12/20/11; Ord. 12-02, Sections 1-12, 1/17/12; Ord. 12-03; Sections 13-18, 1/17/12)

SCHEDULE A

Franchise Fee Rates:

Electric Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Amount per month</u>
Residential	\$2.00
Sm C & I – Non-Dem	\$2.00
Sm C & I – Demand	\$2.00
Large C & I	\$2.00

Franchise fees are to be collected by the Utility, and submitted to the City monthly or quarterly as selected by the company.

SECTION 7

407.000. WIRELESS TELECOMMUNICATIONS SERVICES.

407.001. DEFINITIONS. The following words and terms, when used in this ORDINANCE, shall have the following meanings unless the context clearly indicates otherwise.

- A. Accessory Structure - Any structure subordinate to and serving the principal use on the same lot, attached or detached, and clearly and customarily incidental thereto.
- B. Antenna - Any structure or device used for the purpose of collecting, receiving, transmitting or radiating electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, satellite dishes, and omni-directional antennas, such as whip antennas.
- C. Commercial Receiving or Transmitting Antenna - Any antenna erected for the commercial use of information.
- D. Private Receiving or Transmitting Antenna - Any antenna erected for the non-commercial use of information.
- E. Commercial Wireless Telecommunication Services - Licensed commercial wireless telecommunication services including cellular, personal communications services (pcs), specialized mobilized radio (smr), enhanced specialized mobilized radio (esmr), paging, and similar services that are marketed to the general public.
- F. Public Utility - Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land-line telephone services to the general public. For the purpose of this Ordinance, commercial wireless telecommunication services shall not be considered public utility uses, and are defined separately.
- G. Tower - Any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade (except amateur radio antennas). Towers or antenna towers shall be considered antennas by definition.
- H. Tower, Multi User - A tower to which is attached the antennas of more than one commercial wireless telecommunication service provider or governmental entity.

407.002. PURPOSE AND INTENT. The purpose of this Ordinance is to establish balanced regulations for the construction and maintenance of wireless communication equipment in order to accommodate the growth of wireless communication systems within the City of Winsted while protecting the public against adverse impacts on the City's aesthetic resources and the public welfare. In order to accommodate the communication needs of residences and businesses while protecting the public health, safety, and general welfare of the community, the City finds that these regulations are necessary in order to 1) facilitate provision of wireless communications services to the residences and businesses

of the City; 2) minimize adverse visual effects of towers through careful design, siting, and vegetative screening; 3) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures; and 4) maximize use of any new or existing communication tower to reduce the number of towers needed to serve the community.

407.003. EXISTING TOWERS AND ANTENNAS. Antennas, towers and accessory structures in existence as of June 1, 2001, which do not conform to or comply with this section are subject to the following provisions:

- A. Towers may continue in use for the purpose now used and as now existing but may not be replaced or structurally altered without complying in all respects with this Ordinance.
- B. If such towers are damaged due to any reason or cause whatsoever, the tower may be repaired and restored to its former use, location and physical dimension upon obtaining a building permit, except if it is destroyed to the extent of more than fifty percent (50%) of the assessed market value, then it shall not be restored unless the use of such structure shall thereafter conform to this section.

407.004. COMMERCIAL TELECOMMUNICATIONS ANTENNAS/TOWERS: GENERAL REQUIREMENTS.

- A. Towers and antennas less than 200 feet in height above ground level (AGL), for wireless communications facilities are permitted upon the issuance of a conditional use permit pursuant to this Ordinance.
- B. Antennas or towers shall be located on:
 - 1. Municipally owned land or municipally owned structures (in either such location, to be subject to a Lease Agreement to be entered into between the City and the proposed user including such terms and conditions including rent that the City Council deems appropriate under the circumstances; or
 - 2. On any land located within the city of Winsted that is zoned industrial (I-1).
- C. Antennas attached to existing structures shall not exceed 20 feet above the highest point of the structure.

407.005. CONDITIONAL USE PERMIT REQUIREMENTS. Construction and maintenance of a wireless communication services requires a conditional use permit issued by the Planning Commission.

- A. In reviewing an application for a conditional use permit for the construction and maintenance of wireless communication services and supporting towers and accessory structures, the Planning Commission shall consider the effect of the proposed use upon the health, safety, convenience and general welfare of occupants of surrounding lands, the effect on property values of property in surrounding areas, and the effect of the proposed use on the comprehensive plan.

- B. In applying for a conditional use permit, the applicant shall provide the following information:
1. Documentation illustrating compliance or pending compliance with FAA and FCC authorization procedures.
 2. Sufficient information to indicate that construction, installation, and maintenance of the antenna and tower will not create a safety hazard or damage to the property of other persons.
 3. Documentation of the area to be served including a search area for the antenna location. A narrative describing a search area (with not less than a 1 1/2 mile radius) clearly explaining why the site was selected, and a completed environmental assessment worksheet, including a summary of relevant conclusions, and what existing structures were available and why they are not suitable as locations or co-locations.
 4. Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search area due to one or more of the following reasons:
 - a. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced or modified to accommodate planned equipment at a reasonable cost; or
 - b. The planned equipment would cause interference with other existing or planned equipment at the tower or building as documented by a qualified professional radio frequency (RF) engineer, and the interference cannot be prevented at a reasonable cost; or
 - c. No existing or approved tower industrial sites within a 1 1/2 mile radius meet the radio frequency (RF) design criteria; or
 - d. Existing or approved tower and commercial/industrial sites within a 1 1/2 mile radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified professional radio frequency (RF) engineer.
 - e. A good faith effort to co-locate on existing towers and structures within 1 1/2 mile radius was made, but an agreement could not be reached.
 5. A certified survey showing the location of the proposed tower/antenna.
 6. A detailed screening plan.
 7. A report from a qualified and licensed professional engineer which:

- a. Describes the tower height and design with cross section and elevation;
 - b. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation between antennas;
 - c. Describe the number and type of antennas that can be accommodated;
 - d. Documents the steps the applicant will take to avoid interference with public safety telecommunications;
 - e. Includes the engineer's stamp and registration number.
8. A letter of intent committing all commercial wireless telecommunications service towers to allow the shared use of the tower if an additional user agrees, in writing, to meet reasonable terms and conditions for structures.

407.006. CONDITIONAL USE PERMITS--NOT REQUIRED. A conditional use permit is not required in the following circumstances:

- A. Antennas and towers used by the City for City purposes.
- B. Adjustment or replacement of the elements of an antenna array affixed to a tower or antenna, provided that replacement does not reduce the safety factor.
- C. Antennas and/or towers erected temporarily for test purposes or for emergency communications. Temporary antennas shall be removed within seventy-two (72) hours following installation.
- D. Antennas mounted on water towers, public structures or on the roofs of existing public buildings not exceeding twenty (20) feet above the principal structure.

407.007. FEES. Fees issued for a conditional use permit pursuant to this Ordinance shall be set from time to time by City Council Resolution. The City shall not be responsible for incurring any of the costs associated with providing expert opinions or any charges associated with the approval of this conditional use permit. The applicant shall also be responsible for the fees associated with the need for the city's consulting engineers to review the applicant's plans. In addition to any fees associated with the conditional use permit, the applicant must also submit a performance bond to guarantee all construction and maintenance of the tower.

407.008. STANDARDS FOR THE ISSUANCE AND CONTINUATION OF A CONDITIONAL USE PERMIT. All antennas/towers constructed, and all writing therefore, shall comply with the following requirements:

- A. Towers shall be certified by a registered professional engineer under the laws of the State of Minnesota and shall conform to the latest structural standards and wind loading requirements of the Minnesota State Building Code and the Electronics Industry Association.

- B. An agreement providing for co-location and prompt removal of unused and/or obsolete towers shall be attached and become part of the permit.
- C. With the exception of necessary electric and telephone service and connection lines approved by the issuing authority on part of any antenna or tower, no lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way of a public street or highway, sidewalk, or property line.
- D. Any ground mounted tower/antenna design shall be such that the antenna will withstand high velocity wind and seasonal storms. The tower/antenna shall be maintained by the applicant so as to assure that it remains upright.
- E. Applicant must obtain Federal Aviation Administration approval or provide documentation that Federal Aviation Administration approval is not needed.
- F. Application must obtain Federal Communication Commission licensure and approval as required for various communications applications. Applicant shall follow Federal Communication Commission regulations regarding the correction and/or prevention of any radio frequency interference problems.
- G. Complete screening shall be provided surrounding all towers in excess of 15 feet in height from ground level. This screening shall be provided to a height necessary to cover all supporting equipment or buildings needed to support this tower. This screening shall be 100% opaque. The applicant shall also fence off the tower/antenna with a minimum of a six foot high fence or barrier with a located gate to prevent public access.
- H. Towers and antennas shall be designed to blend into the surrounding environment through the use of a natural color, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
- I. Commercial wireless telecommunication service towers shall be of a monopole design unless the Planning Commission determines that an alternative design would better blend into the surrounding environment.
- J. No advertising or identification of any kind intended to be visible from the ground or other structures is permitted, except applicable warning and equipment information signage required by the manufacturer or by Federal, State or local authorities.
- K. Applicant must submit proof of liability and Worker's Compensation insurance. All communication towers, their antennas, and associated equipment shall be adequately insured for injury or property damage caused by structural failure of the tower or associated equipment. Proof of all of said insurance shall be provided to the City on an annual basis.
- L. The permit will be subject to annual administrative review.

407.009. TOWER SETBACKS. Towers shall conform to each of the following minimum setback requirements:

- A. Towers shall be set back from the lot line as shown on a registered land survey by a minimum distance equal to one half of the height of the tower including all antennas and attachments. In industrial zoning districts, towers may encroach into the rear setback area, provided that the rear property line abuts another industrially zoned property and the tower does not encroach upon any easements.
- B. A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.

407.010. LIGHTS OR OTHER ATTACHMENTS. No antenna or tower shall have affixed or attached to it in any way except during time of repair or installation, any lights, reflectors, flashers, or other illuminating device, except as required by the Federal Aviation Administration or Federal Communications Commission, nor shall any tower have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair.

407.011. TOWERS SUPPORTING AMATEUR RADIO ANTENNAS/TOWERS. In residential, commercial and agriculture districts, private towers supporting amateur radio antennas/towers may be constructed subject to the following:

- A. That such structures are incidental to the principal use of the premises.
- B. Such structures shall not exceed 30 feet in height as measured from ground level. Any proposed structure in excess of 30 feet shall be by Conditional Use Permit.
- C. Metal structures shall be constructed of or treated with corrosive resistant material. Wood poles shall be impregnated with rot-resistant, non-flammable substances.
- D. Every tower affixed to the ground shall be protected to discourage climbing of the tower.
- E. Such structures shall be screened to the greatest extent practicable to minimize visual impact on surrounding properties. Screening shall include landscape materials for ground-mounted tower/antenna structures. The Planning Commission shall approve screening plans.
- F. No tower/antenna shall have affixed or attached reflectors unless required by the Federal Aviation Administration or Federal Communications Commission.
- G. A building permit shall be obtained prior to construction of such tower/antenna. All towers may be inspected at least once a year by the City Building Inspector

to determine compliance with original construction standards.

407.012. VIOLATIONS. Notice of violations will be sent by registered mail to the owner and the owner shall have thirty (30) days from the date the notification is issued to correct the violation. The owner shall notify the building official that the corrections have been made, and as soon as possible thereafter, another inspection will be made and the owner notified of the results. If the owner of the tower does not correct the violations, the City will then take the necessary steps in this Ordinance to revoke the user's conditional use permit. Revocation of the conditional use permit will result in the need to take down the tower. If the tower is abandoned by the owner, and is not removed, the City shall have the right to use the bond submitted to the City with the initial application to pay for the removal of the tower.