

AGENDA
MAPLEWOOD CITY COUNCIL
7:00 P.M. Monday, February 8, 2016
City Hall, Council Chambers
Meeting No. 03-16

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Mayor's Address on Protocol:

“Welcome to the meeting of the Maplewood City Council. It is our desire to keep all discussions civil as we work through difficult issues tonight. If you are here for a Public Hearing or to address the City Council, please familiarize yourself with the Policies and Procedures and Rules of Civility, which are located near the entrance. Sign in with the City Clerk before addressing the council. At the podium please state your name and address clearly for the record. All comments/questions shall be posed to the Mayor and Council. The Mayor will then direct staff, as appropriate, to answer questions or respond to comments.”

D. APPROVAL OF AGENDA

E. APPROVAL OF MINUTES

1. Approval of January 25, 2016 City Council Workshop Minutes
2. Approval of January 25, 2016 City Council Meeting Minutes

F. APPOINTMENTS AND PRESENTATIONS

1. Administrative Presentations
 - a. Council Calendar Update
2. Council Presentations
3. Presentation of Energy Use Report at Maplewood Fire Station No. 1, 600 McKnight Road North

G. CONSENT AGENDA – Items on the Consent Agenda are considered routine and non-controversial and are approved by one motion of the council. If a councilmember requests additional information or wants to make a comment regarding an item, the vote should be held until the questions or comments are made then the single vote should be taken. If a councilmember objects to an item it should be removed and acted upon as a separate item.

1. Approval of Claims
2. Approval of Resolution Accepting Assessment Roll and Ordering Assessment Hearing for March 14, 2016, Bellaire Avenue Street Improvements, Project 15-16
3. Approval of Resolution Directing Modification of Existing Construction Contract, Change Order No. 1, East Metro Public Safety Training Center Phase I Bid Package 5C Classroom Building
4. Approval of Resolution Accepting State Aid Advancement
5. Approval of Transfers from Tax Increment Funds for 2015
6. Approval of 2015 Carryovers and Transfers
7. Approval of 2015 Transfer to Close Public Improvement Project Fund
8. Approval to Transfer Funds Regarding Tax Abatement Note
9. Approval of Resolution for 2016 Pay Rates for Non-Union, Non-Contract Employees
10. Approval of Resolution for 2016 Pay Rates for Temporary/Seasonal and Casual Part-Time Employees

11. Approval of JPA for Dispatching the Fire Department's Closest Unit
12. Approval of Resolution Accepting a Donation of Chocolate from Costco
13. Approval of a Temporary Lawful Gambling - Local Permit for the Ramsey County Pheasants Forever at Gulden's Restaurant, 2999 Maplewood Drive
14. Approval of a Temporary Lawful Gambling - Local Permit for the Knights of Columbus Council #4374, 1725 Kennard Street
15. Approval of Revised Consulting Contract with Carey Communication
16. Approval of Purchase Agreement for Londin Lane Property

H. PUBLIC HEARINGS

1. Public Hearing on the Proposed Franchise Ordinance Granting CenturyLink a Franchise for Providing Cable Services in Maplewood – Second Reading
 - a. Consider Approval of Second Reading of Franchise Ordinance
 - b. Consider Approval of Summary of Franchise Ordinance for Publication

I. UNFINISHED BUSINESS

None

J. NEW BUSINESS

1. Consider Approval of the Senior Task Force Report
2. Consider Approval of Penalties for Alcohol Compliance Failures
3. Beebe Road Street Improvements, Project 13-10
 - a. Consider Approval of Resolution Approving Plans and Specifications and Advertising for Bids
 - b. Consider Approval of Resolution Ordering Preparation of Assessment Roll
4. Lakewood-Sterling Area Street Improvements, Project 15-11
 - a. Consider Approval of Resolution Approving Plans and Specifications and Advertising for Bids
 - b. Consider Approval of Resolution Ordering Preparation of Assessment Roll

K. AWARD OF BIDS

None

L. VISITOR PRESENTATIONS – *All presentations have a limit of 3 minutes.*

M. ADJOURNMENT

Sign language interpreters for hearing impaired persons are available for public hearings upon request. The request for this must be made at least 96 hours in advance. Please call the City Clerk's Office at 651.249.2000 to make arrangements. Assisted Listening Devices are also available. Please check with the City Clerk for availability.

RULES OF CIVILITY FOR THE CITY COUNCIL, BOARDS, COMMISSIONS AND OUR COMMUNITY

Following are rules of civility the City of Maplewood expects of everyone appearing at Council Meetings - elected officials, staff and citizens. It is hoped that by following these simple rules, everyone's opinions can be heard and understood in a reasonable manner. We appreciate the fact that when appearing at Council meetings, it is understood that everyone will follow these principles:

Speak only for yourself, not for other council members or citizens - unless specifically tasked by your colleagues to speak for the group or for citizens in the form of a petition.

Show respect during comments and/or discussions, listen actively and do not interrupt or talk amongst each other.

Be respectful of the process, keeping order and decorum. Do not be critical of council members, staff or others in public.

Be respectful of each other's time keeping remarks brief, to the point and non-repetitive.

MINUTES
MAPLEWOOD CITY COUNCIL
MANAGER WORKSHOP
 5:00 P.M. Monday, January 25, 2016
 Council Chambers, City Hall

A. CALL TO ORDER

A meeting of the City Council was held in the City Hall Council Chambers and was called to order at 5:15 p.m. by Mayor Slawik.

B. ROLL CALL

Nora Slawik, Mayor	Present
Marylee Abrams, Councilmember	Present
Kathleen Juenemann, Councilmember	Present
Bryan Smith, Councilmember	Present
Tou Xiong, Councilmember	Present

C. APPROVAL OF AGENDA

Councilmember Abrams moved to approve the agenda as submitted.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

D. UNFINISHED BUSINESS

None

E. NEW BUSINESS

1. Commissioner Interviews

The following individuals were interviewed for the commission listed.

1. Tou Ger Yang, Human Rights Commission
2. Mary Henderson, Environmental & Natural Resources Commission
3. Brian Finley, Housing & Economic Development Commission
4. Keith Buttleman, Environmental & Natural Resources Commission
5. Bob Cardinal, Heritage Preservation Commission

F. ADJOURNMENT

Mayor Slawik adjourned the meeting at 6:25 p.m.

MINUTES
MAPLEWOOD CITY COUNCIL
7:00 P.M. Monday, January 25, 2016
City Hall, Council Chambers
Meeting No. 02-16

A. CALL TO ORDER

A meeting of the City Council was held in the City Hall Council Chambers and was called to order at 7:03 p.m. by Mayor Slawik.

Mayor Slawik thanked the council and staff for attending the State of the City Address that was held at the Maplewood Community Center on Thursday, January 21, 2016. She also encouraged residents to watch the replays that will be posted on the City's website.

B. PLEDGE OF ALLEGIANCE

Hannah Bruentrup, student at Mahtomedi Middle School led the council in the pledge of allegiance.

C. ROLL CALL

Nora Slawik, Mayor	Present
Marylee Abrams, Councilmember	Present
Kathleen Juenemann, Councilmember	Present
Bryan Smith, Councilmember	Present
Tou Xiong, Councilmember	Present

D. APPROVAL OF AGENDA

The following items were added to the agenda under Appointments and Presentations, Council Presentations:

- a. Recycle the Holidays
- b. Energize Maplewood
- c. Update on Gateway Commission
- d. Update on Tartan Ice Arena Commission
- e. Comments and Follow-Up to League of Minnesota Cities Training
- f. Business Networking and Recycling Event
- g. Planning Commission Meeting Cancellation
- h. Heritage Preservation Commission
- i. League of Minnesota Cities Training
- j. Rush Line Corridor

Councilmember Xiong moved to approve the agenda as amended.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

E. APPROVAL OF MINUTES**1. Approval of January 11, 2016 City Council Meeting Minutes**

Councilmember Abrams moved to approve the January 11, 2016 City Council Meeting Minutes as submitted.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

F. APPOINTMENTS AND PRESENTATIONS**1. Administrative Presentations****a. Council Calendar Update**

City Manager Coleman gave an update to the council calendar.

2. Council Presentations**a. Recycle the Holidays**

Councilmember Juenemann reminded residents that it's their last chance to recycle their Holiday lights at City Hall, the Community Center or the Nature Center.

b. Energize Maplewood

Councilmember Juenemann reported on the Energize Maplewood Challenge that is taking place and encouraged residents to sign up by February 29, 2016; a launch event will take place at the Maplewood Community Center on Saturday, January 30, 2016.

c. Update on Gateway Commission

Councilmember Smith gave an update on the Gateway Commission Meeting he attended on Thursday, January 14, 2016. Public Works Director Thompson provided additional information on the Technical Committee Meeting he attended on Thursday, January 21, 2016.

d. Update on Tartan Ice Arena Commission

Councilmember Smith gave an update on the Tartan Arena Commission Meeting he and Councilmember Xiong attended.

e. Comments and Follow-Up to League of Minnesota Cities Training

Councilmember Smith reported on the training he attended at the League of Minnesota Cities.

f. Business Networking and Recycling Event

Councilmember Abrams reported on the Business Networking and Recycling Event that will take place at the Maplewood Community Center on Tuesday, January 26, 2016.

g. Planning Commission Meeting Cancellation

Councilmember Xiong reported that the Planning Commission Meeting scheduled for January 19, 2016 was cancelled. The next meeting of the Commission will take place on February 2, 2016.

h. Heritage Preservation Commission

Councilmember Xiong provided an update on the Heritage Preservation Commission meeting he attended on Thursday, January 14, 2016.

i. League of Minnesota Cities Training

Councilmember Xiong reported on the training session for Newly Elected Officials at the League of Minnesota Cities.

j. Rush Line

Mayor Slawik reported on the Rush Line Meeting she attended. Interim Economic & Environmental Development Director Carver provided additional information.

3. Presentation by Maplewood Pediatric Dentistry

Interim Environmental & Economic Development Director Carver introduced Claire Mielke, DDS and her husband Bryant Rogness, owners of Maplewood Pediatric Dentistry.

Claire Mielke, DDS and Bryant Rogness addressed the council to give information about their business, Maplewood Pediatric Dentistry.

4. Approval of Resolution Awarding 2015 Maplewood Heritage Award

Mayor Slawik read the Resolution Awarding the 2016 Maplewood Heritage Award to the Bruentrup Family.

Bill Bruentrup introduced his family and thanked everyone for their support of the Bruentrup Farm.

Mayor Slawik read and presented the 2016 Maplewood Heritage Award plaque to the Bruentrup Family.

Councilmember Juenemann moved to approve the Resolution for the 2015 Maplewood Heritage Award to the Bruentrup Family.

Resolution 16-01-1295

**RESOLUTION AWARDING THE
2015 MAPLEWOOD HERITAGE AWARD TO THE BRUENTRUP FAMILY**

January 25, 2016
City Council Meeting Minutes

WHEREAS, Bill and Raydelle Bruentrup have been at the center of historical activity in Maplewood for over sixteen years; and

WHEREAS, Bill and Raydelle Bruentrup have been active members of the Maplewood Area Historical Society, and currently serve as Vice President and Secretary respectively, and volunteer more hours annually than any other member; and

WHEREAS, Bill and Raydelle Bruentrup were instrumental in moving the Bruentrup farm buildings to their new location in July 1999, with tireless efforts obtaining pledges from individuals and seeking funding from the state for moving expenses, donating the farm buildings to the city, and contributing funds to the project; and

WHEREAS, The Bruentrup Heritage Farm site with their assistance has won historical preservation awards and has become a destination for weddings, community gatherings and a mecca for historical research; and

WHEREAS, Bill and Raydelle Bruentrup's children and grandchildren have been an important part of the preservation of the farm volunteering countless hours to improve the grounds, as well as volunteering at the Maplewood Area Historical Society's annual Halloween Hoedown; and

WHEREAS, The Bruentrup Family members have freely given their knowledge, time and energy, without compensation, for the betterment of the City of Maplewood; and

WHEREAS, The Bruentrup Family has contributed their leadership and effort for the benefit of the City.

NOW, THEREFORE, IT IS HEREBY RESOLVED for and on behalf of the City of Maplewood, Minnesota and its citizens that The Bruentrup Family is hereby extended the Maplewood Heritage Award. The Maplewood Heritage Award is an annual award recognizing an individual or group who has positively influenced our City's past or strengthened the preservation of Maplewood history.

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

5. Approval of the 2015 Planning Commission Annual Report

Planning Commissioner Kempe addressed the council and gave the 2015 Planning Commission Annual Report.

Councilmember Abrams moved to approve the 2015 Planning Commission Annual Report.

Seconded by Councilmember Juenemann

Ayes – All

The motion passed.

6. Approval of Resolution for Commission and Board Appointments and Reappointments
a. Approval of Resolution for Appointments
b. Approval of Resolution for Reappointments

City Manager Coleman gave the staff report.

Councilmember Juenemann moved to approve the Resolution Appointing Candidates to Commissions.

Resolution 16-01-1296

BE IT RESOLVED THAT THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

Hereby appoints the following individuals, who have interviewed with the Maplewood City Council, to serve on the following commissions:

Environmental & Natural Resources Commission

Keith Buttleman	Term expires 9/30/2018
Mary Henderson	Term expires 9/30/2016

Heritage Preservation Commission

Bob Cardinal	Term expires 4/30/2018
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Housing and Economic Development Commission

Brian Finley	Term expires 9/30/2017
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Human Rights Commission

Tou Ger Yang	Term expires 4/30/2017
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Seconded by Councilmember Abrams Ayes – All

The motion passed.

Councilmember Abrams moved to approve the Resolution Reappointing Lisa Liddell to the Police Civil Service Commission.

Resolution 16-01-1297

BE IT RESOLVED THAT THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

Hereby appoints the following individuals, who the Maplewood City Council has reviewed, to serve on the following commissions:

Police Civil Service Commission

Lisa Liddell	Term expires 12/31/2018
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Seconded by Councilmember Smith

Ayes – All

The motion passed.

G. CONSENT AGENDA

Councilmember Juenemann moved to approve consent agenda items G1-G12.

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

1. Approval of Claims

Councilmember Juenemann moved to approve the approval of claims.

ACCOUNTS PAYABLE:

\$ 74,953.14	Checks # 96599 thru # 96635 dated 01/12/16
\$ 282,869.32	Disbursements via debits to checking account dated 01/04/16 thru 01/08/16
\$ 382,073.42	Checks #96637 thru #96673 dated 01/12/16 thru 01/19/16
\$ 219,029.64	Disbursements via debits to checking account dated 01/11/16 thru 01/15/16
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\$ 958,925.52	Total Accounts Payable

PAYROLL

\$ 540,160.62	Payroll Checks and Direct Deposits dated 01/15/16
\$ 1,310.03	Payroll Deduction check # 99101999 thru # 99102001 dated 01/15/16
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\$ 541,470.65	Total Payroll
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<u>\$ 1,500,396.17</u>	GRAND TOTAL

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

2. Approval of Waterfest Sponsorship

Councilmember Juenemann moved to approve the Waterfest Sponsorship in the amount of \$1,000 to help support the Ramsey-Washington Metro Watershed District's Waterfest

WHEREAS, the City Council of Maplewood, Minnesota has heretofore approved the cost share agreement between the City of Maplewood and the Metropolitan Council for inflow/infiltration improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, that:

1. The City Engineer is hereby authorized to enter into the cost share agreement.

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

10. Approval of Resolution Approving Final Payment and Acceptance of Project, Arkwright-Sunrise Area Improvements, City Project 12-09

Councilmember Juenemann moved to approve the Resolution Approving Final Payment and Acceptance of Project for the Arkwright-Sunrise Area Improvements, City Project 12-09.

Resolution 16-01-1301
Approving Final Payment and Acceptance of Project
Project 12-09

WHEREAS, the City Council of Maplewood, Minnesota has heretofore ordered the Arkwright-Sunrise Area Improvements, City Project 12-09, and has let a construction contract, and

WHEREAS, the City Engineer for the City of Maplewood has determined that the Arkwright-Sunrise Area Improvements, City Project 12-09 is complete and recommends acceptance of the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, that:

City Project 12-09 is complete and maintenance of this improvement is accepted by the City; the final construction cost is \$4,011,158.65. Final payment to Palda and Sons, Inc. and the release of any retainage or escrow is hereby authorized.

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

11. Approval for Police Department to Accept Donation from Schmelz Countryside Volkswagen

Councilmember Juenemann moved to approve the resolution accepting a \$2,500 donation from Schmelz Countryside Volkswagen and authorize the establishment of a donation fund to be used for senior citizen and child-focused public safety prevention and intervention initiatives.

The motion passed.

J. NEW BUSINESS

1. Consider Approval of Pollinator Resolution

Lead Naturalist Hutchinson gave the staff report and answered questions of the council. Amanda Rudolph, works with Representative Leon Lillie, addressed the council to give additional information and answered questions of the council.

Councilmember Smith moved to approve the Resolution Endorsing the Protection of Pollinators and Enhancement of Pollinator Habitat.

Resolution 16-01-1303
Resolution Endorsing the Protection of Pollinators
and Enhancement of Pollinator Habitat

WHEREAS, the City of Maplewood is dedicated to the protection of pollinators; and

WHEREAS, the City of Maplewood has many established programs and practices that help protect pollinators including preservation of natural areas, enhancing habitat including prairie restoration and use of native plants in gardens and plantings, very limited use of insecticides in the landscape, pollinator education and outreach to the community;

WHEREAS, bees and other pollinators are integral to a wide diversity of essential foods including fruits, nuts, and vegetables; and

WHEREAS, native bees and honey bees are threatened due to habitat loss, pesticide use, pathogens and parasites; and

WHEREAS, research suggests that there is a link between pesticides that contain neonicotinoids and the die-off of plant pollinators, including honey bees, native bees, butterflies, moths, and other insects; and

WHEREAS, neonicotinoids are synthetic chemical insecticides that are similar in structure and action to nicotine, a naturally occurring plant compound; and

WHEREAS, the City Council finds it is in the public interest to demonstrate its commitment to a safe and healthy community environment through the implementation of practices that protect pollinators on city parks, open spaces, and city property.

NOW, THEREFORE, IT IS HEREBY RESOLVED for and on behalf of the City of Maplewood, Minnesota and its citizens that:

1. The City shall undertake its best efforts to become a pollinator-friendly City by undertaking best management practices to protect pollinators on public lands within the City.
2. The City shall develop a policy for the use of insecticides and utilize best

practices to limit the use of systemic insecticides on city property including insecticides from the neonicotinoid family and will request commercial applications are free of systemic insecticides including neonicotinoids.

3. The City shall undertake its best efforts to plant native plants and plants favorable to bees and other pollinators in the City's public spaces.
4. The City shall undertake its best efforts to communicate to Maplewood residents the importance of creating and maintaining pollinator-friendly habitat and will encourage residents and business to use pollinator-friendly practices.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

2. Consider Approval of Updates to Fish Creek Master Plan

Natural Resources Coordinator Gaynor gave the staff report and answered questions of the council.

Councilmember Xiong moved to approve the updates to the Fish Creek Master Plan.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

3. Consider Approval of a New Liquor License Manager for Keller Golf Course, Blaine Raway

Police Chief Schnell gave the staff report. Blaine Raway, applicant addressed the council to give additional information and answer questions of the council.

Councilmember Juenemann moved to approve Blaine Raway as the liquor license manager for Keller Golf Course, 2166 Maplewood Dr. N.

Seconded by Councilmember Abrams Ayes – All

The motion passed.

4. **Bellaire Avenue Street Improvements, Project 15-16**
 - a. **Consider Approval of Resolution Approving Plans and Specifications and Advertising for Bids**
 - b. **Consider Approval of Resolution Ordering Preparation of Assessment Roll**
 - c. **Consider Approval of Joint-Powers Agreement with the City of North St. Paul**

Michael Thompson, Public Works Director gave the staff report and answered questions of the council.

Councilmember Juenemann moved to approve the Resolution Approving Plans and Specifications and Advertising for Bids for the Bellaire Avenue Street Improvements, Project 15-16.

Resolution 16-01-1304
Approving Plans
Advertising for BIDS

WHEREAS, pursuant to resolution passed by the City Council on September 14, 2015 plans and specifications for the Bellaire Avenue Street Improvements, City Project 15-16, have been prepared by (or under the direction of) the City Engineer of the City of North St. Paul, who has presented such plans and specifications to the council for approval,

WHEREAS, the City of Maplewood and the City of North St. Paul have entered into a Joint Powers Agreement for this project which a small portion includes a common border street of Bellaire Avenue from Beam Avenue to Lydia Avenue,

WHEREAS, the City of North St. Paul is the project lead and the JPA outlines terms of repayment and duties of the municipalities in regards to the improvements on said border street,

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

1. Such plans and specifications, a copy of which are attached hereto and made a part hereof, are hereby approved and ordered placed on file in the office of the City Engineer.
2. The City of North St. Paul shall prepare and cause to be inserted into the Ramsey County Review and Finance and Commerce an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published twice, at least twenty-one days before the date set for bid opening, shall specify the work to be done, shall state that bids will be publicly opened and considered by the council at 10:00 a.m. on the 23rd day of February, 2016, at the City of North St. Paul City Hall and that no bids shall be considered unless sealed and filed with the clerk and accompanied by a certified check or bid bond, payable to the City of North St. Paul, Minnesota for five percent of the amount of such bid.
3. The City Clerk and City Engineer are hereby authorized and instructed to receive, open, and read aloud bids received at the time and place herein noted, and to tabulate the bids received. The council will consider the bids, and the award of a contract, at the regular city council meeting of March 14, 2016.

Seconded by Councilmember Abrams

Ayes – All

The motion passed.

Councilmember Juenemann moved to approve the Resolution Ordering Preparation of Assessment Roll for the Bellaire Avenue Street Improvements, City Project 15-16.

Resolution 16-01-1304

4. The applicant shall comply with the requirements in the engineer's report dated December 10, 2015.
5. There shall not be any outdoor storage of tires unless they are kept within a decorative screening enclosure approved by the community design review board.
6. The fueling area shall have proper safeguards provided to prevent or contain any fuel spills as required by the Minnesota Pollution Control Agency.
7. A parking waiver of 41 spaces is approved for this site, with the applicant showing 55 proof-of-parking spaces on the December 11, 2015 site plan. If the proof-of-parking spaces are needed to be constructed, the city council must approve a revised site plan and the materials and construction methods must be environmentally-sensitive and reduce the impact of stormwater runoff the added spaces would contribute.

Resolution 16-01-1306
Conditional Use Permit Revision Resolution
For a Planned Unit Development

WHEREAS, Costco Wholesale Corporation applied to revise its conditional use permit for the Mogren Retail Addition planned unit development by building an expansion to its existing building. This conditional use permit for a planned unit development permits a fuel station and tire-service center.

WHEREAS, this permit applies to the 16-acre site located at 1431 Beam Avenue within the Mogren Retail Addition planned unit development. The legal description is:

Lot 1 Block 2, MOGREN RETAIL ADDITION

WHEREAS, the history of this conditional use permit is as follows:

1. On January 5, 2016, the planning commission held a public hearing. The city staff published a hearing notice in the Maplewood Review and sent notices to the surrounding property owners. The planning commission gave everyone at the hearing a chance to speak and present written statements. The planning commission recommended that the city council approve the planned unit development amendment.
2. On January 25, 2016 the city council discussed the planned unit development amendment. They considered reports and recommendations from the planning commission and city staff.

NOW, THEREFORE, BE IT RESOLVED that the city council approved the above-described planned unit development amendment because:

1. The use would be located, designed, maintained, constructed and operated to be in conformity with the City's Comprehensive Plan and Code of Ordinances.
2. The use would not change the existing or planned character of the surrounding area.

3. The use would not depreciate property values.
4. The use would not involve any activity, process, materials, equipment or methods of operation that would be dangerous, hazardous, detrimental, disturbing or cause a nuisance to any person or property, because of excessive noise, glare, smoke, dust, odor, fumes, water or air pollution, drainage, water run-off, vibration, general unsightliness, electrical interference or other nuisances.
5. The use would not exceed the design standards of any affected street.
6. The use would be served by adequate public facilities and services, including streets, police and fire protection, drainage structures, water and sewer systems, schools and parks.
7. The use would not create excessive additional costs for public facilities or services.
8. The use would maximize the preservation of and incorporate the site's natural and scenic features into the development design.
9. The use would cause minimal adverse environmental effects.

Approval is subject to the following conditions:

1. The building expansion shall follow the plans date-stamped December 11, 2015, except where the city requires changes. Staff may approve minor changes.
2. The proposed construction must be substantially started within one year of council approval or the permit shall end. The council may extend this deadline for one year.
3. The city council shall review this permit in one year.
4. The applicant shall comply with the requirements in the engineer's report dated December 10, 2015.
5. There shall not be any outdoor storage of tires unless they are kept within a decorative screening enclosure approved by the community design review board.
6. The fueling area shall have proper safeguards provided to prevent or contain any fuel spills as required by the Minnesota Pollution Control Agency.
7. A parking waiver of 41 spaces is approved for this site, with the applicant showing 55 proof-of-parking spaces on the December 11, 2015 site plan. If the proof-of-parking spaces are needed to be constructed, the city council must approve a revised site plan and the materials and construction methods must be environmentally-sensitive and reduce the impact of stormwater runoff the added spaces would contribute.

Seconded by Councilmember Smith

Ayes – All

The motion passed.

Councilmember Juenemann moved to approve the plans date-stamped December 11, 2015, for the proposed 5,220 square foot Costco addition. Approval is subject to the applicant complying with the following conditions:

1. This approval is good for two years. After two years, the design-review process shall be repeated if the developer has not begun construction.
2. Obtaining city council approval of the planned unit development amendment and parking waiver.
3. All requirements of the fire marshal and building official must be met.
4. The applicants shall obtain all required permits from the Ramsey-Washington Metro Watershed District and Ramsey County.
5. The applicants shall comply with all requirements of the Maplewood Engineering Report from Jon Jarosch dated December 10, 2015.
6. The applicants shall provide the city with cash escrow or an irrevocable letter of credit for any exterior landscaping and site improvements prior to getting a building permit for the development. Staff shall determine the dollar amount of the escrow.
7. All work shall follow the approved plans. The director of environmental and economic development may approve minor changes.
8. All roof-top mechanical equipment shall be painted to match the building.

Seconded by Councilmember Smith

Ayes – All

The motion passed.

Councilmember Smith moved to approve the parking waiver as proposed subject to the retention of the proposed proof-of-parking spaces in case they are needed for future parking needs. If a parking shortage develops after the paving and curbing of the proof-of-parking spaces, the city council may require parking lot restriping to add more spaces.

Seconded by Councilmember Juenemann

Ayes – All

The motion passed.

6. Consider Approval of Proposed Franchise Ordinance Granting CenturyLink a Franchise for Providing Cable Services in Maplewood – First Reading

City Manager Coleman introduced the staff report. City Attorney Kantrud gave the staff report and answered questions of the council. Patrick Haggerty with Century Link addressed the council to give additional information and answer questions of the council.

Councilmember Abrams moved to approve the Franchise Ordinance providing the authority for CenturyLink to provide competitive Cable Communication Services in the City of Maplewood.

Seconded by Councilmember Juenemann

Ayes – All

The motion passed.

K. AWARD OF BIDS

None

L. VISITOR PRESENTATIONS – *All presentations have a limit of 3 minutes.*

1. Mark Bradley, Maplewood Resident
2. Bob Zick, North St. Paul Resident

M. ADJOURNMENT

Mayor Slawik adjourned the meeting at 9:18 p.m.

DRAFT

MEMORANDUM

TO: City Council
FROM: Melinda Coleman, City Manager
DATE: February 2, 2016
SUBJECT: Council Calendar Update

Introduction/Background

This item is informational and intended to provide the Council an indication on the current planning for upcoming agenda items and the Work Session schedule. These are not official announcements of the meetings, but a snapshot look at the upcoming meetings for the City Council to plan their calendars. No action is required.

Upcoming Agenda Items & Work Session Schedule

1. February 22nd
 - a. Workshop: Update on Fire/EMS Work Group, Kid City Update
2. March 7th
 - a. Workshop: Business Retention Discussion, Communication Plan/Committee Report
3. March 22nd
 - a. Workshop: Emergency Management Plan Review

Budget Impact

None

Recommendation

No action required.

Attachments

None

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Chris Swanson, Environmental and City Code Specialist

DATE: January 25, 2016

SUBJECT: Presentation of Energy Use Report at Maplewood Fire Station No. 1, 600 McKnight Road North

Introduction

Maplewood Fire Station No. 1 opened in November of 2014. The building is staffed around the clock. In addition, the building also serves as a substation for police operations in south Maplewood. This new station helped the City expand their medical service ability in the area and still maintain the City's commitment to sustainable operations.

Background

The City adopted an energy efficiency and conservation strategy in December 2009. One of the goals of the adopted strategy was to establish policies and priorities to help improve Maplewood's long-term operational efficiency. This includes upgrading existing city buildings when feasible and a commitment from the City that any new city-funded building be constructed to a green code.

In September of 2013, the Maplewood City council adopted the Maplewood Green Building Program. The Green Building Program is based on the 2012 International Green Construction Code (IgCC). Maplewood was the first city in the country to adopt a Green Building Code based on the new international standards and Fire Station No. 1 was the first building in the nation designed and built to the specifications of the new code.

Discussion

The City tracks the energy use for all city buildings through the B3 benchmarking program. After looking at the data from the first year of operation, Fire Station No. 1 is using "significantly" less energy than its counterparts in the city and around the state. The largest impact has been the decrease in the amount of natural gas used to heat the building. A comparison of energy use between Fire Station No. 1 (600 McKnight Rd N), Fire Station No. 2 (1955 Clarence Street), and Fire Station No. 7 (1530 County Road C) has been attached for reference.

The yearly operating energy use, on a per foot average, for Fire Station No. 1 is 76.61 *kBtu/SF/Yr*. This is a 38% decrease in energy use compared to the average annual per foot energy use of the other fire stations currently operated by the city. The total operating energy cost for Fire Station No. 1 was \$15,188 for 2015. The 38% decrease in total energy use amounts to a cost avoidance of over \$5,000 per year.

Budget Impact

Reducing energy use through sustainable operation and building practices helps the City save money in addition to meeting our environmental goals.

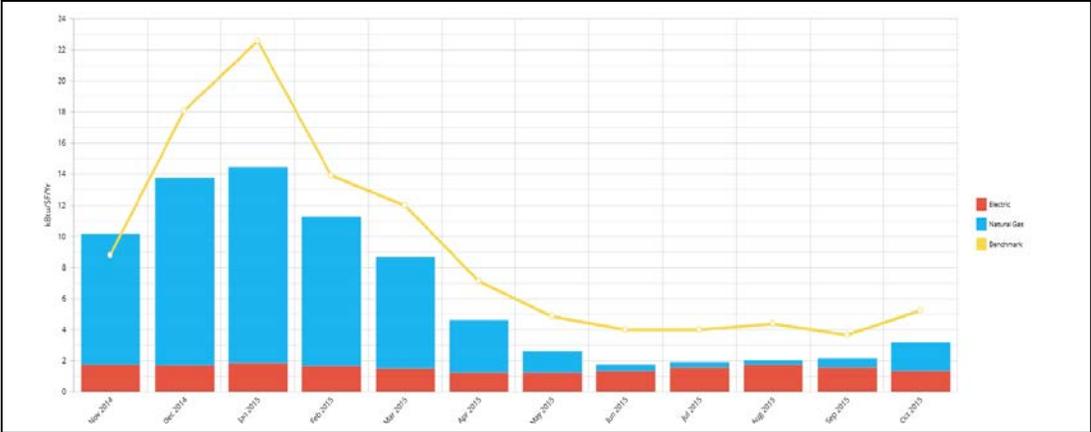
Recommendation

Review the information provided in the report.

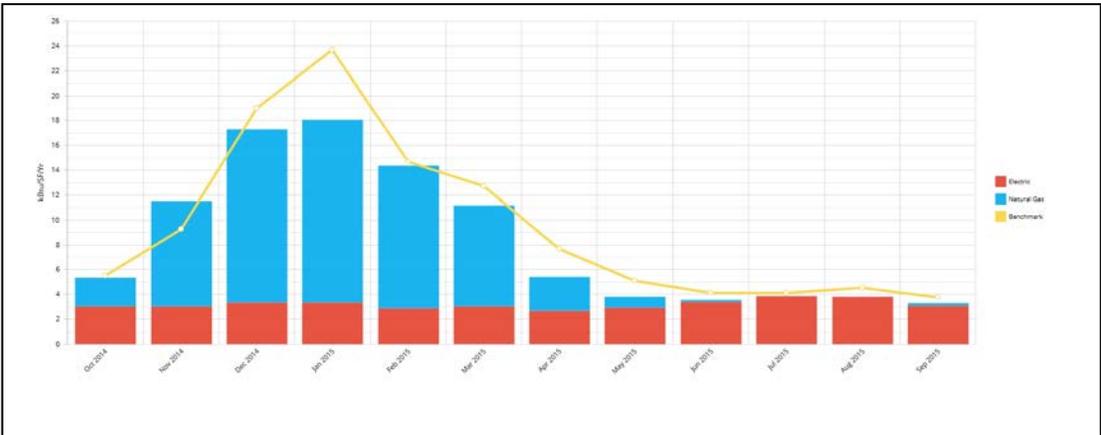
Attachments

1. Fire Station Energy Comparison Report

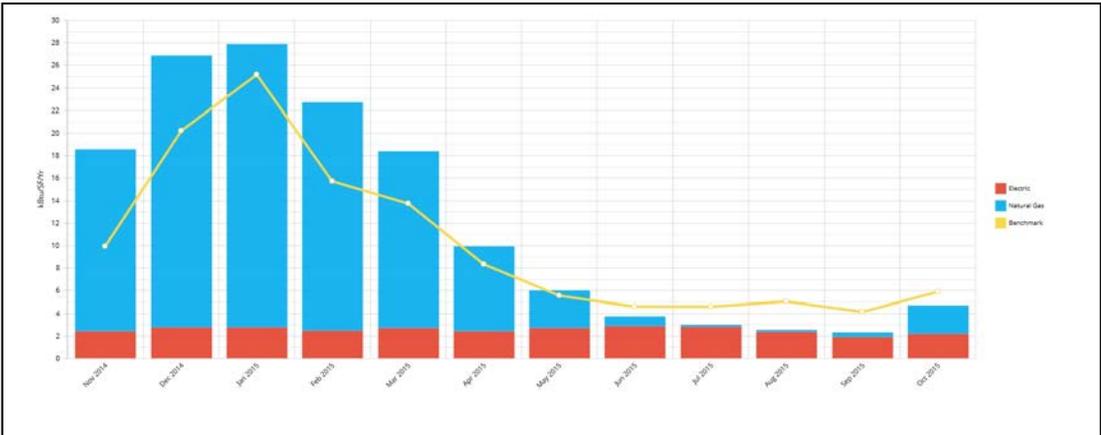
Fire Station No. 1 Energy Report



Fire Station No. 2 Energy Report



Fire Station No. 7 Energy Report



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MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: February 2, 2016
SUBJECT: Approval of Claims

Attached is a listing of paid bills for informational purposes. The City Manager has reviewed the bills and authorized payment in accordance with City Council approved policies.

ACCOUNTS PAYABLE:

\$ 351,416.93	Checks # 96674 thru # 96718 dated 01/26/16
\$ 495,028.28	Disbursements via debits to checking account dated 1/19/16 thru 1/22/16
\$ 846,445.21	Total Accounts Payable
\$ 846,445.21	GRAND TOTAL

Attached is a detailed listing of these claims. Please call me at 651-249-2902 if you have any questions on the attached listing. This will allow me to check the supporting documentation on file if necessary.

Attachments

Check Register
City of Maplewood

01/21/2016

Check	Date	Vendor	Description	Amount	
96674	01/26/2016	03067	CRAIG RAPP LLC	LEADERSHIP DEVELOPMENT PROGRAM	1,350.00
96675	01/26/2016	04206	H A KANTRUD	ATTORNEY SERVICES - FEBRUARY	8,000.00
96676	01/26/2016	00687	HUGO'S TREE CARE INC	TREE TRIM GOOD SAMARITAN HOME	200.00
96677	01/26/2016	02612	DUWAYNE KONEWKO	OVER CONTRIBUTION D COMP 2015	785.00
96678	01/26/2016	00393	MN DEPT OF LABOR & INDUSTRY	MONTHLY SURTAX - DEC 24125123035	2,629.76
96679	01/26/2016	05311	WILLIE MCCRAY	BASKETBALL OFFICIALS 1/16 & 1/17	1,590.00
96680	01/26/2016	00985	METROPOLITAN COUNCIL	WASTEWATER - FEBRUARY	253,253.08
96681	01/26/2016	04316	CITY OF MINNEAPOLIS RECEIVABLES	AUTO PAWN SYSTEM - DECEMBER	708.30
96682	01/26/2016	01546	SUBURBAN SPORTSWEAR	SHIRTS FOR FLAG FOOTBALL	230.00
96683	01/26/2016	01574	T A SCHIFSKY & SONS, INC	WEIGHTS FOR SANDER CALIBRATION	20.00
96684	01/26/2016	01750	THE WATSON CO INC	MDSE FOR RESALE	240.32
	01/26/2016	01750	THE WATSON CO INC	MDSE FOR RESALE	87.41
	01/26/2016	01750	THE WATSON CO INC	MDSE FOR RESALE	-14.88
96685	01/26/2016	01190	XCEL ENERGY	ELECTRIC & GAS UTILITY	2,795.27
	01/26/2016	01190	XCEL ENERGY	ELECTRIC & GAS UTILITY	1,799.07
	01/26/2016	01190	XCEL ENERGY	ELECTRIC & GAS UTILITY	323.75
	01/26/2016	01190	XCEL ENERGY	FIRE SIRENS	51.30
96686	01/26/2016	04848	AVESIS	MONTHLY PREMIUM - JANUARY	236.01
96687	01/26/2016	01811	BERNATELLO'S PIZZA	MDSE FOR RESALE	51.00
96688	01/26/2016	03311	DELL MARKETING LP	SEMI-RUGGED LAPTOPS--	11,778.85
	01/26/2016	03311	DELL MARKETING LP	RUGGED TABLET MEETING SPECS	2,202.11
	01/26/2016	03311	DELL MARKETING LP	DOCKING STATION FOR TABLET	260.08
96689	01/26/2016	00412	DONALD SALVERDA & ASSOCIATES	LEADERSHIP GROWTH GROUP S LOVE	600.00
	01/26/2016	00412	DONALD SALVERDA & ASSOCIATES	BOOKS LEADERSHIP GROUP S LOVE	176.35
96690	01/26/2016	00464	EMERGENCY AUTOMOTIVE TECH, INC	SQUAD BUILD UPS NEW LEASED #901	4,340.79
	01/26/2016	00464	EMERGENCY AUTOMOTIVE TECH, INC	SQUAD BUILD UPS NEW LEASED #904	2,369.60
96691	01/26/2016	05618	ENTERPRISE FM TRUST	LEASE CHARGES PD VEH #998 - JAN	773.30
	01/26/2016	05618	ENTERPRISE FM TRUST	LEASE CHARGES PD VEH #902 - JAN	411.75
96692	01/26/2016	04967	MARCUS FORSYTHE	OVER CONTRIBUTION D COMP 2015	200.00
96693	01/26/2016	05619	LISA GRANT	ACUPUNCTURE SESSIONS - DEC	812.00
96694	01/26/2016	05368	HEALTHHEAST VEHICLE SERVICES	SQUAD SET UP FOR SQUAD #981	8,307.55
	01/26/2016	05368	HEALTHHEAST VEHICLE SERVICES	COMPUTER DOCKING INSTALL #941	1,276.93
	01/26/2016	05368	HEALTHHEAST VEHICLE SERVICES	COMPUTER DOCKING INSTALL #961	1,153.07
96695	01/26/2016	02263	HILLCREST ANIMAL HOSPITAL PA	BOARDING & DESTRUCTION FEES-DEC	188.50
96696	01/26/2016	05616	HOLLMAN	RAQUETBALL PARTS	332.73
96697	01/26/2016	01816	IAFC MEMBERSHIP	MEMBERSHIP DUES	1,070.00
96698	01/26/2016	03963	IMPRESSIVE PRINT	STATE OF MAPLEWOOD LUNCH PROG	166.00
	01/26/2016	03963	IMPRESSIVE PRINT	STATE OF MAPLEWOOD LUNCH PROG	149.00
96699	01/26/2016	03978	KANE'S CATERING SERVICE, INC	STATE OF MAPLEWOOD CATERING	1,983.00
96700	01/26/2016	05598	KELLY & LEMMONS, P.A.	PROSECUTION SERVICES	11,250.00
96701	01/26/2016	00986	METROPOLITAN COUNCIL	MONTHLY SAC - DECEMBER	12,300.75
96702	01/26/2016	05620	MINNESOTA EQUIPMENT	HARD CAB FOR JOHN DEERE MACHINE	5,800.00
96703	01/26/2016	05364	CRYSTALIN MONTGOMERY	ACUPUNCTURE SESSIONS NOV/DEC	1,134.00
96704	01/26/2016	01126	NCPERS MINNESOTA	MONTHLY PREMIUM - JANUARY	496.00
96705	01/26/2016	01175	CITY OF NORTH ST PAUL	MONTHLY UTILITIES - DECEMBER	2,995.33
96706	01/26/2016	05612	OMNI SITE	WIRELESS SRVS FOR LIFT STATION 14	276.00
96707	01/26/2016	00001	ONE TIME VENDOR	REFUND J THEMME FOR TRANS MEDIC	91.04
96708	01/26/2016	00396	MN DEPT OF PUBLIC SAFETY	HAZARDOUS MATERIAL STORAGE FEE	25.00
96709	01/26/2016	01359	REGAL AUTO WASH BILLING	VEHICLE WASHES - DECEMBER	145.73
96710	01/26/2016	05617	RICE STREET CAR WASH	VEHICLE WASHES - 2015	671.58
96711	01/26/2016	04074	ELAINE SCHRAGE	TAI CHI INSTRUCTION 01/06 - 03/09	220.80
96712	01/26/2016	00006	SILVER FIT	REFUND C GALLIVAN CHG TO SILVERFIT	338.10
96713	01/26/2016	01836	ST PAUL, CITY OF	PRINTING FEES FOR MARKETING	785.73
96713	01/26/2016	01836	ST PAUL, CITY OF	PULL BOX COVER REPLACED KENNARD &	177.87
	01/26/2016	01836	ST PAUL, CITY OF	PRINTING FEES FOR MARKETING	117.20

G1, Attachments

	01/26/2016	01836	ST PAUL, CITY OF	PRINTING FEES FOR MARKETING	111.50
	01/26/2016	01836	ST PAUL, CITY OF	PULL BOX COVER REPLACED KENNARD &	65.57
96714	01/26/2016	02686	TASER INTL	BASIC EVIDENCE.COM LICENSE 1 YEAR	90.00
96715	01/26/2016	04081	MICHAEL THOMPSON	OVER CONTRIBUTION D COMP 2015	671.00
96716	01/26/2016	01698	GREATER TWIN CITIES UNITED WAY	4TH QUARTER PMT 2015	184.98
96717	01/26/2016	04179	VISUAL IMAGE PROMOTIONS	PROGRAM DISPLAY SIGN MCC - DEC	325.00
96718	01/26/2016	05013	YALE MECHANICAL LLC	DECTRON INSPECTION	256.75

351,416.93

45 Checks in this report.

CITY OF MAPLEWOOD
Disbursements via Debits to Checking account

Settlement			
<u>Date</u>	<u>Payee</u>	<u>Description</u>	<u>Amount</u>
1/19/2016	MN State Treasurer	Drivers License/Deputy Registrar	62,849.26
1/19/2016	MN Dept of Revenue	MN Care Tax	7,482.00
1/19/2016	MN Dept of Revenue	Sales Tax	8,610.00
1/19/2016	MN Dept of Revenue	Fuel Tax	603.63
1/19/2016	U.S. Treasurer	Federal Payroll Tax	105,423.76
1/19/2016	P.E.R.A.	P.E.R.A.	102,494.82
1/19/2016	Empower - State Plan	Deferred Compensation	29,249.00
1/19/2016	MidAmerica	HRA Flex plan	19,433.43
1/19/2016	Labor Unions	Union Dues	2,251.46
1/20/2016	MN State Treasurer	Drivers License/Deputy Registrar	20,864.41
1/20/2016	MN State Treasurer	State Payroll Tax	21,499.50
1/21/2016	MN State Treasurer	Drivers License/Deputy Registrar	19,806.86
1/21/2016	Delta Dental	Dental Premium	1,865.17
1/22/2016	MN State Treasurer	Drivers License/Deputy Registrar	90,514.64
1/22/2016	Optum Health	DCRP & Flex plan payments	2,080.34
			495,028.28

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Michael Thompson, Director of Public Works

DATE: January 11, 2016

SUBJECT: Approval of Resolution Accepting Assessment Roll and Ordering Assessment Hearing for March 14, 2016, Bellaire Avenue Street Improvements, Project 15-16

Introduction

The City Council will consider accepting the assessment roll and calling for an assessment hearing for March 14, 2016.

Background / Discussion

Assessment rates are consistent with the City's assessment policies and the amount assessed must provide a benefit to the property that is equal to or greater than the assessed amount.

An appraisal firm was hired to ascertain an opinion of the special benefit received by properties within the neighborhood project area. This information was used to set the proposed special benefit assessment amounts for the project area.

There are 13 assessable residential parcels within the Bellaire Avenue project area. Each parcel is identified for an assessment of \$3,450.00.

Budget Impact

The funding sources, as outlined in the feasibility study are still in order. Prior to the awarding of bid, staff will review the results make a recommendation if a project budget adjustment is required. The currently approved financing plan is as follows:

Special Assessments =	\$44,850.00
Utility Funds/G.O. Bonds =	\$48,400.00

Recommendation

It is recommended that the City Council approve the attached resolution for the Bellaire Avenue Street Improvements, City Project 15-16, Accepting Assessment Roll and Ordering Assessment Hearing.

Attachments

1. Resolution Accepting Assessment Roll and Ordering Assessment Hearing
2. Project Location Map
3. Pending Assessment Roll

RESOLUTION
ACCEPTING ASSESSMENT ROLL AND ORDERING ASSESSMENT HEARING

WHEREAS, the Clerk and the City Engineer have, at the direction of the council, prepared an assessment roll for the Bellaire Avenue Street Improvements, City Project 15-16, and the said assessment roll is on file in the office of the City Engineer.

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

1. A hearing shall be held on the 14th day of March 2016, at the city hall at 7:00 p.m. to pass upon such proposed assessment and at such time and place all persons owning property affected by such improvement will be given an opportunity to be heard with reference to such assessment.
2. The City Clerk is hereby directed to cause a notice of hearing on the proposed assessment to be published in the official newspaper, at least two weeks prior to the hearing, and to mail notices to the owner of all property affected by said assessment.

The notice of hearing shall state the date, time and place of hearing, the general nature of the improvement, the area to be assessed, that the proposed assessment roll is on file with the clerk and city engineer and that written or oral objections will be considered.

Approved this 8th day of February 2016.

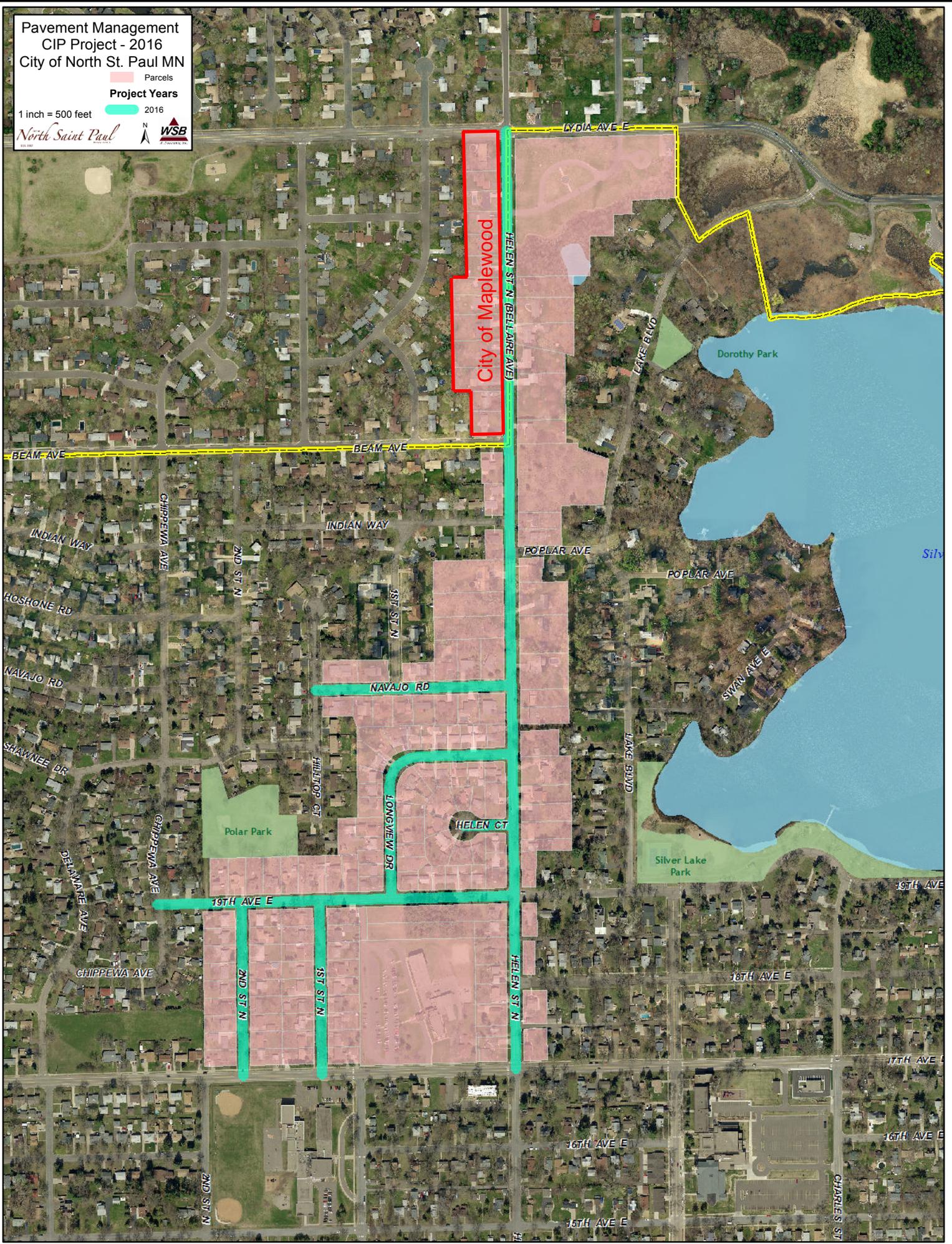
Pavement Management
CIP Project - 2016
City of North St. Paul MN

Parcels
Project Years
2016

1 inch = 500 feet



City of Maplewood
(HELEN ST N (BELL AVE AVE))



Prepared August 10, 2015
Re-Examined January 26, 2016

ASSESSMENT ROLL

BELLAIRE AVE IMPROVEMENTS
MAPLEWOOD PROJECT 15-16

Parcel ID	Taxpayer/Owner	Street Number	Street	Units	Street Assessment	Total Assessment
12922240101	Aaron C Martin	2899	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240100	Kristine L Tavernier Moran	2901	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240010	Thomas E Dahedl	2905	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240009	Bradley D Lavine	2911	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240008	Darlene A Kinney	2921	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240103	Harold Sonnek	2937	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240102	John R Wolfsberger	2939	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240006	Gerald A Teich	2941	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240005	Dorothy A Little	2947	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240004	Donley D Rowenhorst	2967	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240003	Ashley Latola	2977	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240002	Joseph A Tuccitto	2993	Bellaire Ave N	1	\$3,450.00	\$3,450.00
12922240001	John P Majerus	2997	Bellaire Ave N	1	\$3,450.00	\$3,450.00
				Total	13	
					Total	\$44,850.00

ASSESSMENT RATES:

RESIDENTIAL SPECIAL ASSESSMENT RATE = \$3,450.00 PER UNIT
REHABILITATION/PAVEMENT REPLACEMENT

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Michael Thompson, Director of Public Works
Steve Lukin, Fire Chief

DATE: January 20, 2016

SUBJECT: Approval of Resolution Directing Modification of Existing Construction Contract, Change Order No. 1, East Metro Public Safety Training Center Phase I Bid Package 5C Classroom Building

Introduction

The City Council will consider approving the attached resolution directing the modification of the existing construction contract for the East Metro Public Safety Training Center, Phase 1 Bid Package 5C Improvements, City Project 09-09.

Background

On September 14, 2015, the Council awarded Terra General Contractors a construction contract for construction of the Classroom Building at the East Metro site in the amount of \$318,700.00. There have been no previous change orders to the contract.

The East Metro Bid Package 5C Improvements project has been under construction since fall 2015 and is scheduled to be completed by the end of January 2016. Winter construction conditions and a request by the owner to relocate the sanitary sewer connection resulted in the need for changes to the contract.

Discussion

The Change Order includes three items:

COR# 01 – Contractor installed a propane conversion kit in the furnace/heating system to allow the heating system to function while waiting for Xcel Energy natural gas service to be brought to the site in the spring of 2016.

COR# 02 – Owner requested that the contractor reroute the sanitary sewer system, which required dewatering, rock backfill and insulation of the sanitary line to complete the work.

COR# 03 - Temporary heat to allow construction during the winter construction activities. Includes temporary installation of a propane tank and fuel for construction activity.

The change order costs are summarized below:

Change Order #1		Unit	Amount
Item COR# 01	Propane Conversion Kit for Furnace	LS	\$227.00
Item COR# 02	Dewatering & Sanitary Changes	LS	\$7,062.00
Item COR# 03 Rev 2	Temporary Heat	LS	\$1,992.00

Net Project Cost Increase \$9,281.00

Budget Impact

Approval of Change Order No. 1 will increase the project construction contract amount by \$9,281.00 from \$318,700.00 to \$327,981.00. No adjustments to the approved project budget are needed at this time.

The overall project budget is currently \$6,193,901.64 as approved by council on August 11, 2014, which includes a planned assessment against the property (paid by members of the Joint Powers Agreement) in the amount of \$175,000.00. The assessment amount is proposed to increase by between \$135,000.00 and \$240,000 to a new amount of between \$310,000.00 and \$415,000. The final amount will be based on the total indirect costs associated with constructing the classroom, including the proposed change order. The Fire Chief is confident that there will be sufficient revenues from participating entities to cover the additional construction costs and operating costs.

Recommendation

Staff recommends that the City Council approve the attached Resolution Directing Modification of Existing Construction Contract, Change Order No. 1, for the East Metro Public Safety Training Center Phase 1 Bid Package 5C Improvements, City Project 09-09.

Attachments

1. Resolution Directing Modification of Existing Construction Contract, Change Order No.1
2. Change Order No.1

**RESOLUTION
DIRECTING MODIFICATION OF EXISTING CONSTRUCTION CONTRACT
PROJECT 09-09, BID PACKAGE 5C, CHANGE ORDER NO. 1**

WHEREAS, the City Council of Maplewood, Minnesota has heretofore ordered made Improvements Project 09-09, East Metro Public Safety Training Center Phase I Bid Package 5C Improvements, and has let a construction contract pursuant to Minnesota Statutes, Chapter 429, and

WHEREAS, it is now necessary and expedient that said contract be modified and designated as Improvement Project 09-09, Change Order No. 1.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, that:

1. The Mayor and City Engineer are hereby authorized and directed to modify the existing contract by executing said Change Order No. 1 which is an increase of \$9,281.00.

The revised contract amount is \$327,981.00.

Adopted by the Maplewood City Council on this 8th day of February 2016.

AIA[®] Document G701[™] – 2001

Change Order

PROJECT (Name and address): East Metro PSTC - Classroom Bldg 1830 County Road B Maplewood MN 55109	CHANGE ORDER NUMBER: 15-470-001 DATE: 12/31-2015	OWNER: <input checked="" type="checkbox"/> ARCHITECT: <input checked="" type="checkbox"/> CONTRACTOR: <input checked="" type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Terra General Contractors 21025 Commerce Blvd. Ste 100 Rogers MN 55374	ARCHITECT'S PROJECT NUMBER: 117956 CONTRACT DATE: September 29, 2015 CONTRACT FOR: General Construction	

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

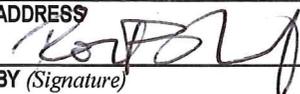
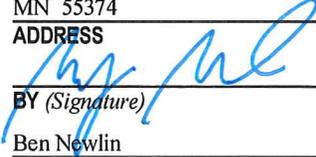
COR# 01 - Propane Conversion Kit for Furnance: \$227.00
 COR# 02 - Dewatering & Sanitary Changes: \$7,062.00
 COR# 03 Rev 2 - Temporary Heat: \$1,992.00

The original Contract Sum was	\$ 318,700.00
The net change by previously authorized Change Orders	\$ 0.00
The Contract Sum prior to this Change Order was	\$ 318,700.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 9,281.00
The new Contract Sum including this Change Order will be	\$ 327,981.00

The Contract Time will be increased by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>S.E.H.</u> ARCHITECT (Firm name)	<u>Terra General Contractors</u> CONTRACTOR (Firm name)	<u>City of Maplewood</u> OWNER (Firm name)
<u>3535 Vadnais Center Drive, St Paul MN 55110-5196</u> ADDRESS	<u>21025 Commerce Blvd. Ste 100, Rogers MN 55374</u> ADDRESS	<u>1830 County Road B East, Maplewood MN 55109</u> ADDRESS
 BY (Signature)	 BY (Signature)	 BY (Signature)
<u>Ron Leaf</u> (Typed name)	<u>Ben Newlin</u> (Typed name)	<u>Nora Slawik</u> (Typed name)
<u>1.15.16</u> DATE	<u>1/1/16</u> DATE	DATE

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User Notes: (1248490817)

Change Order Request

COR# 01



21025 Commerce Blvd, Suite 1000
Rogers, MN 55374

Phone: (763) 463-0220
Fax: (763) 463-0290

Project: East Metro Public Safety Training Center

TGC Project #: 15-470

Owner: City of Maplewood Date: 10/26/2015

To: City of Maplewood
Attn: Steve Lukin
Email: steve.lukin@maplewoodmn.gov

From: Ben Newlin
Email: bnewlin@terragc.com

Description of Change: Propane Conversion Kit for Furnace	
Amount:	\$ 227

If you have any questions concerning this issue, please call as soon as possible so any discrepancies can be addressed. This price is void within 30 days if not accepted.

If this change is accepted by the owner, this will entitle Terra General Contractors to additional time to be determined at a later date. Please note, all changes will affect the completion date for this project.

Please advise if Terra General Contractors is to proceed with this change.

COR# 01

SUPPLEMENTAL PROPOSAL

Terra General Contractors

Description of Change: Propane Conversion Kit for Furnace

CONSTRUCTION MANAGER'S WORK				COMMENTS
1	Direct Materials		\$ -	See Back-Up
2	Sales Tax on Materials	7.30%	\$ -	
3	Direct Labor Supervision		\$ -	
4	Direct Labor Management		\$ -	
5	Rental Equipment / Items		\$ -	See Back-Up
6	Sales tax on Rental Equipment / Items	7.30%	\$ -	
7	Equipment Ownership & Operating Exp.		\$ -	
8	Field Related Activities		\$ -	See Back-Up
9	TOTAL CM'S WORK (1-8)		\$ -	

SUBCONTRACTORS WORK				
SUBCONTRACTORS	QTY.	UNIT	COST	
			Unit Cost	Total Cost
10	1	L.S.	\$ 187.00	\$ 187.00
11	1	L.S.	\$ -	\$ -
12	1	L.S.	\$ -	\$ -
13	1	L.S.	\$ -	\$ -
14	1	L.S.	\$ -	\$ -
15	1	L.S.	\$ -	\$ -
16	1	L.S.	\$ -	\$ -
17	1	L.S.	\$ -	\$ -
18	1	L.S.	\$ -	\$ -
19	1	L.S.	\$ -	\$ -
20	1	L.S.	\$ -	\$ -
21	1	L.S.	\$ -	\$ -
22	SUBCONTRACTORS TOTAL (10-21)			\$ 187.00

SUMMARY				COMMENTS
23	CM's Work (from line 9)		\$ -	
24	Subcontractor's Work (from line 22)		\$ 187.00	
25	SUBTOTAL (add lines 23-24)		\$ 187.00	
26	General Conditions	5.50%	\$ 10.29	
27	Fees	10.00%	\$ 19.73	
28	Permits	1.35%	\$ 2.93	
29	SUBTOTAL (add lines 25-28)		\$ 219.94	
30	Bonds & CGL Insurance	3.00%	\$ 6.60	
31	TOTAL COST (add lines 29-30)		\$ 226.54	

Terra General Contractors

Description of Change: Propane Conversion Kit for Furnace

GENERAL CONTRACTOR'S DIRECT MATERIALS				
ITEM OF MATERIAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL DIRECT MATERIALS			\$ -	\$ -

GENERAL CONTRACTOR'S RENTAL EQUIPMENT				
ITEM OF RENTAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	EA	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL RENTAL EQUIPMENT			\$ -	\$ -

GENERAL CONTRACTOR'S FIELD RELATED ACTIVITIES				
ITEMS OF WORK	QTY.	UNIT	COST	
			Rate	Total
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
TOTAL FIELD RELATED ACTIVITIES			\$ -	\$ -

Change Order Request

COR# 02



21025 Commerce Blvd, Suite 1000
Rogers, MN 55374

Phone: (763) 463-0220
Fax: (763) 463-0290

Project: East Metro Public Safety Training Center

TGC Project #: 15-470

Owner: City of Maplewood Date: 12/14/2015

To: City of Maplewood
Attn: Steve Lukin
Email: steve.lukin@maplewoodmn.gov

From: Ben Newlin
Email: bnewlin@terragc.com

Description of Change: Dewatering & Sanitary Changes

[Empty box for description of change]

Amount: \$ 7,062

If you have any questions concerning this issue, please call as soon as possible so any discrepancies can be addressed. This price is void within 30 days if not accepted.

If this change is accepted by the owner, this will entitle Terra General Contractors to additional time to be determined at a later date. Please note, all changes will affect the completion date for this project.

Please advise if Terra General Contractors is to proceed with this change.

COR# 02

SUPPLEMENTAL PROPOSAL

Terra General Contractors

Description of Change: Dewatering & Sanitary Changes

CONSTRUCTION MANAGER'S WORK				COMMENTS
1	Direct Materials		\$ -	See Back-Up
2	Sales Tax on Materials	7.30%	\$ -	
3	Direct Labor Supervision		\$ -	
4	Direct Labor Management		\$ -	
5	Rental Equipment / Items		\$ -	See Back-Up
6	Sales tax on Rental Equipment / Items	7.30%	\$ -	
7	Equipment Ownership & Operating Exp.		\$ -	
8	Field Related Activities		\$ -	See Back-Up
9	TOTAL CM'S WORK (1-8)		\$ -	

SUBCONTRACTORS WORK				
SUBCONTRACTORS	QTY.	UNIT	COST	
			Unit Cost	Total Cost
10 Larson Excavating	1	L.S.	\$ 5,829.00	\$ 5,829.00
11	1	L.S.	\$ -	\$ -
12	1	L.S.	\$ -	\$ -
13	1	L.S.	\$ -	\$ -
14	1	L.S.	\$ -	\$ -
15	1	L.S.	\$ -	\$ -
16	1	L.S.	\$ -	\$ -
17	1	L.S.	\$ -	\$ -
18	1	L.S.	\$ -	\$ -
19	1	L.S.	\$ -	\$ -
20	1	L.S.	\$ -	\$ -
21	1	L.S.	\$ -	\$ -
22 SUBCONTRACTORS TOTAL (10-21)				\$ 5,829.00

SUMMARY				COMMENTS
23	CM's Work (from line 9)		\$ -	
24	Subcontractor's Work (from line 22)		\$ 5,829.00	
25	SUBTOTAL (add lines 23-24)		\$ 5,829.00	
26	General Conditions	5.50%	\$ 320.60	
27	Fees	10.00%	\$ 614.96	
28	Permits	1.35%	\$ 91.32	
29	SUBTOTAL (add lines 25-28)		\$ 6,855.88	
30	Bonds & CGL Insurance	3.00%	\$ 205.68	
31	TOTAL COST (add lines 29-30)		\$ 7,061.55	

Terra General Contractors

Description of Change: Dewatering & Sanitary Changes

GENERAL CONTRACTOR'S DIRECT MATERIALS				
ITEM OF MATERIAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL DIRECT MATERIALS			\$ -	\$ -

GENERAL CONTRACTOR'S RENTAL EQUIPMENT				
ITEM OF RENTAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	EA	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL RENTAL EQUIPMENT			\$ -	\$ -

GENERAL CONTRACTOR'S FIELD RELATED ACTIVITIES				
ITEMS OF WORK	QTY.	UNIT	COST	
			Rate	Total
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
TOTAL FIELD RELATED ACTIVITIES			\$ -	\$ -

LARSON CONTRACTING, INC.

P.O. BOX 9113
NORTH ST. PAUL, MN 55109

Invoice

Date	Invoice #
11/24/2015	7265

Bill To
TERRA GENERAL CONTRACTORS 21025 COMMERCE BLVD #1000 ROGERS, MN 55374

P.O. No.	Terms	Project
EAST METRO TR...		

Quantity	Description	Rate	Amount
	EXTRA: SEWER AND WATER CHANGES		
	SEWER		
18	SHBETS INSULATION	38.00	684.00
1	CORE DRILL	1,000.00	1,000.00
3	LOADS 1.5" ROCK	600.00	1,800.00
5 -10	HRS EXTRA LABOR	65.00	650.00 325.00
	CREDIT FOR PIPE	-1,000.00	-1,000.00
	UNFORESEEN DEWATERING COSTS		
1	LOAD ROCK FOR DEWATERING	600.00	600.00
20	HRS LABOR	65.00	1,300.00
8	HRS BACKHOE	140.00	1,120.00
	PUMP - NO CHARGE		

Vendor# _____
 Job ID _____
 Cost Code _____
 G/L# _____
 Approval _____

		Total	-\$6,154.00 5829
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NOV 30 2015

Change Order Request

COR# 03REV2



21025 Commerce Blvd, Suite 1000
Rogers, MN 55374

Phone: (763) 463-0220
Fax: (763) 463-0290

Project: East Metro Public Safety Training Center

TGC Project #: 15-470

Owner: City of Maplewood Date: 1/11/2016

To: City of Maplewood
Attn: Steve Lukin
Email: steve.lukin@maplewoodmn.gov

From: Ben Newlin
Email: bnewlin@terragc.com

Description of Change: Temporary Heat

Temp heaters & heated concrete costs due to the late receipt of the permit.

Amount: \$ 1,992

If you have any questions concerning this issue, please call as soon as possible so any discrepancies can be addressed. This price is void within 30 days if not accepted.

If this change is accepted by the owner, this will entitle Terra General Contractors to additional time to be determined at a later date. Please note, all changes will affect the completion date for this project.

Please advise if Terra General Contractors is to proceed with this change.

COR# 03REV2

SUPPLEMENTAL PROPOSAL

Terra General Contractors

Description of Change: Temporary Heat

CONSTRUCTION MANAGER'S WORK				COMMENTS
1 Direct Materials		\$ -		See Back-Up
2 Sales Tax on Materials	7.30%	\$ -		
3 Direct Labor Supervision		\$ -		
4 Direct Labor Management		\$ -		
5 Rental Equipment / Items		\$ -		See Back-Up
6 Sales tax on Rental Equipment / Items	7.30%	\$ -		
7 Equipment Ownership & Operating Exp.		\$ -		
8 Field Related Activities		\$ -		See Back-Up
9 TOTAL CM'S WORK (1-8)			\$ -	

SUBCONTRACTORS WORK				
SUBCONTRACTORS	QTY.	UNIT	COST	
			Unit Cost	Total Cost
10 Patzoldt Concrete & Masonry	1	L.S.	\$ 911.94	\$ 911.94
11 CHI	1	L.S.	\$ 921.27	\$ 921.27
12	1	L.S.	\$ -	\$ -
13	1	L.S.	\$ -	\$ -
14	1	L.S.	\$ -	\$ -
15	1	L.S.	\$ -	\$ -
16	1	L.S.	\$ -	\$ -
17	1	L.S.	\$ -	\$ -
18	1	L.S.	\$ -	\$ -
19	1	L.S.	\$ -	\$ -
20	1	L.S.	\$ -	\$ -
21	1	L.S.	\$ -	\$ -
22 SUBCONTRACTORS TOTAL (10-21)				\$ 1,833.21

SUMMARY				COMMENTS
23 CM's Work (from line 9)		\$ -		
24 Subcontractor's Work (from line 22)		\$ 1,833.21		
25 SUBTOTAL (add lines 23-24)			\$ 1,833.21	
26 General Conditions	5.50%	\$ 100.83		
27 Fees	0.00%	\$ -		
28 Permits	0.00%	\$ -		
29 SUBTOTAL (add lines 25-28)			\$ 1,934.04	
30 Bonds & CGL Insurance	3.00%	\$ 58.02		
31 TOTAL COST (add lines 29-30)			\$ 1,992.06	

Terra General Contractors

Description of Change: Temporary Heat

GENERAL CONTRACTOR'S DIRECT MATERIALS				
ITEM OF MATERIAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL DIRECT MATERIALS			\$ -	\$ -

GENERAL CONTRACTOR'S RENTAL EQUIPMENT				
ITEM OF RENTAL	QTY.	UNIT	COST	
			Unit Cost	Total Cost
	1	EA	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
	1	L.S.	\$ -	\$ -
TOTAL RENTAL EQUIPMENT			\$ -	\$ -

GENERAL CONTRACTOR'S FIELD RELATED ACTIVITIES				
ITEMS OF WORK	QTY.	UNIT	COST	
			Rate	Total
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
	0	Hr.	\$ -	\$ -
TOTAL FIELD RELATED ACTIVITIES			\$ -	\$ -



Patzoldt Concrete & Masonry LLC
 24485 Northern Rd
 Pine City, MN 55063

Estimate

Date 11/19/2015
 Estimate # 356

Name / Address
 Terra General Contractor
 21025 Commerce BLVD Suite 100
 Rogers, MN 55374

P.O. #
Terms

Due Date 11/19/2015
Other

Description	Qty	Rate	Total
Add for heat and cover/winter weather conditions Labor for shelter, tear down & load up (4 hrs @ \$80/hr) = \$320 1 roll reinforced poly \$211.04 Blankets for exterior concrete (4 @ \$25 per week) = \$100 Heat service charge for concrete (66 yds @ \$3/yd) = \$198.00 10% Mark Up (Total \$829.04 x 10% = \$911.94)	1	911.94	911.94
			\$0.00

quentpatzoldt@hotmail.com

Quent Cell: 320-282-...
 Phone/Fax: 320-629-...

Remit To:

G3, Attachment 2

C.H.I. Companies
 8360 Commerce Drive
 Chanhassen, MN 55317
 www.chicompanies.com



Invoice

Continued	Invoice#
Mon 1/ 4/2016	10635-1

Bill to: **Customer #: 2017**

Terra General Contractors
 21025 Commerce Blvd
 Suite 1000
 Rogers, MN 55374

PO #: 15-470
 Job No: Month

Date Out Thu 11/12/2015

Terms	Posted Date
On Account	Mon 1/ 4/2016

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Requested By: Tim Hansen 763-458-0761
Salesman: Stuart Pysick 612-801-3207 spysick@chicompanies.com

Delivery

Delivery: Wed 11/11/2015

Contact: Mitch
Phone: 612-366-1318

Location: East Metro Training Facility

Used at Address: 1881 Century Avenue North ; Maplewood, MN

Qty	Key	Items Rented	Rental Period	Each	Price
1	T04314HO	Rexotherm 250,000 BTUH Heater 1:	Thu 11/12/2015 to Fri 12/11/2015	\$360.00	\$360.00
		Natural Gas/Propane			
1	HOSE50X12-1	50' x 1/2" Hose	Thu 11/12/2015 to Fri 12/11/2015	\$30.00	\$30.00
		Natural Gas/Propane			
Qty	Key	Items		Each	Price
1	IDEL-050-1	DELIVERY/PICKUP/SETUP		\$85.00	\$85.00

Please pay from this invoice.

* Sales Tax Detail: MN \$32.66 Transit \$1.18

Rental and Sales:	Misc Charges:	Damage Waiver	MN-MAPLEWOOD:
\$475.00	\$0.00	\$0.00	\$33.84 *

Current On Account

Total Amount:	\$508.84	Total Paid	\$0.00	Total Due	\$508.84
952-448-6225 Phone			952-448-6829 Fax		

Remit To:

G3, Attachment 2

C.H.I. Companies
8360 Commerce Drive
Chanhassen, MN 55317
www.chicompanies.com



Invoice

Closed	Invoice#
Tue 1/ 5/2016	10635A-1

Bill to: **Customer #: 2017**

Terra General Contractors
21025 Commerce Blvd
Suite 1000
Rogers, MN 55374

PO #: 15-470
Job No: Month
Date Out Sat 12/12/2015

Terms	Posted Date
On Account	Tue 1/ 5/2016

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Requested By: Tim Hansen 763-458-0761
Salesman: Stuart Pysick 612-801-3207 spysick@chicompanies.com
Location: East Metro Training Facility
Used at Address: 1881 Century Avenue North ; Maplewood, MN

Qty	Key	Items Rented	Rental Period	Each	Price
1	T04314HO	Rexotherm 250,000 BTUH Heater 1:	Sat 12/12/2015 to Tue 1/ 5/2016	\$300.00	\$300.00
		Natural Gas/Propane			
1	HOSE50X12-1	50' x 1/2" Hose	Sat 12/12/2015 to Tue 1/ 5/2016	\$25.00	\$25.00
		Natural Gas/Propane			

Please pay from this invoice.

* Sales Tax Detail: MN \$22.34 Transit \$0.82

Rental and Sales:	Misc Charges:		Damage Waiver	MN-MAPLEWOOD:
\$325.00	\$0.00		\$0.00	\$23.16 *

Current On Account

Total Amount:	\$348.16	Total Paid	\$0.00	Total Due	\$348.16
952-448-6225 Phone			952-448-6829 Fax		

Remit To:

G3, Attachment 2

C.H.I. Companies
 8360 Commerce Drive
 Chanhassen, MN 55317
 www.chicompanies.com



Invoice

Closed	Invoice#
Tue 1/ 5/2016	11351-1

Bill to: **Customer #: 2017**

Terra General Contractors
 21025 Commerce Blvd
 Suite 1000
 Rogers, MN 55374

PO #: 15-470

Date Out Mon 12/28/2015

Terms	Posted Date
On Account	Tue 1/ 5/2016

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↓ Fold Here ↓

Requested By: Mitch Hueman 612-366-1318
Salesman: Stuart Pysick 612-801-3207 spysick@chicompanies.com

Delivery

Delivery: Mon 12/28/2015

Contact:
Phone:

Location: East Metro Training Facility

Used at Address: 1881 Century Avenue North ; Maplewood, MN

Qty	Key	Items Sold	Each	Price
1	DUCTFL1625-1	Foil Flex Duct 16" x 25'	\$60.00	\$60.00
1	DEL-050-1	CUSTOMER PICKUP	\$0.00	\$0.00

Please pay from this invoice.

* Sales Tax Detail: MN \$4.13 Transit \$0.14

Rental and Sales:	Misc Charges:		Damage Waiver	MN-MAPLEWOOD:
\$60.00	\$0.00		\$0.00	\$4.27 *

Current On Account

Total Amount:	\$64.27	Total Paid	\$0.00	Total Due	\$64.27
952-448-6225 Phone			952-448-6829 Fax		

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: February 1, 2016
SUBJECT: Approval of Resolution Accepting State Aid Advancement

Introduction

The council will consider a resolution accepting a state aid advancement to cover the 2016 principal payments on our two state aid bond issues.

Background

There are currently no funds available in our Municipal State Aid Street construction account as a result of a number of past Municipal State Aid projects. The City has had a shortage since 2004 due to the fact that we have requested multiple advancements over the years to help fund our projects. Each year a certain amount of money at the state level is available to cities in our situation for advance encumbrances. An advance encumbrance is essentially an interest-free loan to the City to be repaid with future allotments. This is a good program for cities like ours, as it allows for the utilization of funds that other cities are not using.

The City currently has two State Aid bond issues outstanding which require funding from our State Aid maintenance and construction accounts. Prior to 2015, the State had always funded these principal and interest payments without requiring an Advancement Resolution. The State's policies have changed and now they are requiring us to approve a resolution each year we continue to have a shortage in our account before they will remit funds to the City for payment of the bonds.

Budget Impact

None. This is a change in policy by the State requiring the City to approve a resolution before being able to receive funds to cover debt service payments.

Recommendation

It is recommended that the City Council approve the attached Municipal State Aid Street Funds Advance Resolution.

Attachments

1. Resolution Accepting State Aid Advancement

MUNICIPAL STATE AID STREET FUNDS ADVANCE RESOLUTION

CITY OF MAPLEWOOD, MINNESOTA

WHEREAS, the City of Maplewood is planning to implement Municipal State Aid Street Project(s) in 2016 which will require State Aid funds in excess of those available in its State Aid Construction Account, and

WHEREAS, said municipality is prepared to proceed with the construction of said project(s) through the use of an advance from the Municipal State Aid Street Fund to supplement the available funds in their State Aid Construction Account, and

WHEREAS, the advance is based on the following determination of estimated expenditures:

Account Balance as of February 1, 2016	-\$1,063,306.00
Less estimated disbursements:	
Bond Principle:	\$570,000.00
Total Estimated Disbursements	\$570,000.00
Advance Amount (amount in excess of acct balance)	-\$1,633,306.00

WHEREAS, repayment of the funds so advanced will be made in accordance with the provisions of Minnesota Statutes 162.14, Subd. 6 and Minnesota Rules, Chapter 8820.1500, Subp. 10b, and

WHEREAS, the Municipality acknowledges advance funds are released on a first-come-first-serve basis and this resolution does not guarantee the availability of funds.

NOW, THEREFORE, Be It Resolved: That the Commissioner of Transportation be and is hereby requested to approve this advance for financing approved Municipal State Aid Street Project(s) of the City of Maplewood in an amount up to **\$570,000.00**. I hereby authorize repayments from subsequent accruals to the Municipal State Aid Street Construction Account of said Municipality from future year allocations until fully repaid.

I HEREBY CERTIFY that the above is a true and correct copy of a resolution presented to and adopted by the City of Maplewood, County of Ramsey, State of Minnesota, at a duly authorized City Council Meeting held in the City of Maplewood, Minnesota on the 8th day of February, 2016, as disclosed by the records of said City on file and of record in the office.

Approved by the City of Maplewood, MN

This 8th day of February, 2016

City Clerk

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: January 26, 2016
SUBJECT: Approval of Transfers from Tax Increment Funds for 2015

Introduction

It is proposed that the Council authorize the appropriate 2015 budget adjustments and 2015 transfers totaling \$469,640 from the Tax Increment Funds to the Debt Service Funds.

Background

Annually transfers are made from Tax Increment Funds to finance debt service costs on tax increment bonds. A breakdown by fund and comparison with the original budget is listed on the attachment. The result of the recommended transfers will be to decrease the fund balance of six Tax Increment Funds to an amount close to the amount that was anticipated in the 2016 Budget. The second half TIF payments for Districts 1-2 and 1-3 were not received until January 2016. In order to maintain a positive cash balance in the TIF funds, the transfer of these funds will not occur until 2016. This results in a lower amount being transferred for 2015.

Budget Impact

There is no financial impact to the city as the proposal is to transfer money between funds.

Recommendation

It is recommended that the Council authorize the appropriate 2015 budget adjustments and 2015 transfers totaling \$469,640 from the Tax Increment Funds to the Debt Service Funds.

Attachment

1. Transfers from Tax Increment Funds to Debt Service Funds

TRANSFERS FROM TAX INCREMENT FUNDS TO DEBT SERVICE FUNDS

	2015 BUDGET	2015 ACTUAL	BUDGET CHANGES
OPERATING TRANSFERS IN TO DEBT SERVICE FUNDS:			
Fund #336 1999B Tax Increment Bonds	216,420	201,380	(15,040)
Fund #363 2010B Refunding Bonds	378,670	268,260	(110,410)
	<hr/>		
Total transfers	595,090	469,640	(125,450)

	2015 BUDGET	2015 ACTUAL	BUDGET CHANGES
OPERATING TRANSFERS OUT FROM TIF FUNDS:			
Fund #413 Housing District 1-1	144,120	147,810	3,690
Fund #414 Housing District 1-2	182,980	92,520	(90,460)
Fund #415 Housing District 1-3	51,570	27,930	(23,640)
Fund #416 Housing District 1-4	49,180	51,030	1,850
Fund #417 Housing District 1-5	39,170	41,590	2,420
Fund #418 Housing District 1-6	128,070	108,760	(19,310)
	<hr/>		
Total transfers	595,090	469,640	(125,450)

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: February 1, 2016
SUBJECT: Approval of 2015 Carryovers and Transfers

Carryovers

It has been past practice to permit the carry over from one year to the next of unspent monies for specific purposes. This involves reductions in the 2015 Budget and corresponding increases in the 2016 Budget. The Finance Director has determined that the following is eligible for carry over.

Fund	Amount	Account No.	For
CIP Fund	\$29,220	405-000-4720	Park projects
CIP Fund	\$45,000	405-000-4640	Election equipment

Transfers included in the 2015 budget document

A number of transfers were planned for in the 2015 budget document and Council approval is needed to process them. The transfers needed are as follows:

Amount	From		To	
	Fund		Fund	Series
\$1,905,000	368	2013B Bonds	348	2004B Bonds
120,000	366	2012B Bonds	365	2012A Bonds

These two transfers are between debt service funds and are needed to account for refunding proceeds received.

\$250,000	405	Capital Projects Fund	595	09-08 English/TH 36
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This transfer will move the tax levy added in 2015 to assist with street project deficits to the English/TH36 interchange project fund.

\$64,000	604	Environmental Utility	444	Storm Clean Up
----------	-----	-----------------------	-----	----------------

This transfer was requested to continue work needed that was identified after the storm of July 2011.

Increase budget for General Fund department

For the General Fund, monthly reports are prepared to monitor actual revenues and expenditures compared to the budget. Unforeseen costs or changes made during the year do happen and usually a department is able to absorb the expenditure within its budget by making other changes, but this is not always the case. The bill for the city's 1/3 share of Tartan Ice Arena operations has ranged from \$20,000 - \$39,000 over the past five years. Staff utilizes the information it has when preparing budget numbers for the next year. For 2015, the city's share of the cost for operations exceeded the budget by \$8,793.50. An increase to the 2015 budget for the Parks Department is necessary to cover this additional expenditure.

Budget adjustment needed \$8,795 101-606-000-4480

Budget Impact

None. The budget adjustments have been factored into our year end projections and transferring money between funds has no financial impact on the city.

Recommendation

It is recommended that the City Council approve the carry over requests listed above and authorize the Finance Director to reduce the 2016 budget as needed for any carry over amount that is not used for its specified purpose during the year. It is also recommended that the Council authorize the Finance Director to make the entries necessary to account for the transfers and direct the Finance Director to make the budget adjustments necessary to complete the transactions noted above.

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: February 1, 2016
SUBJECT: Approval of 2015 Transfer to Close Public Improvement Project Fund

Introduction

Financial transfers and budget adjustments are needed to close public improvement project funds.

Background

Project 10-14, Western Hills/Larpenteur Area Streets, has been completed. There is a surplus balance in the project fund due to project expenditures being under budget and revenues coming in higher than anticipated. The surplus balance currently sits at \$331,407.65.

The City also has three projects which had some feasibility work done on them back between 2007 and 2011. They are:

07-20 Pond Avenue/Dorland Road Improvements
08-11 County Road C Area Streets
10-20 County Road D, Hwy 61 to Hazelwood

None of these projects have moved forward yet, but are expected to at some point in the future. Because the initial work was done so long ago, much of it will need to be redone when the project does move forward. In order not to burden the future project with additional costs, staff is recommending to utilize some of the surplus from the Western Hills project to pay off the deficits in these three projects and give them a clean slate.

Surplus funds from project 10-14, Western Hills/Larpenteur Area Streets should be transferred as follows:

- \$50,134.70 to project 07-20 (fund 583).
- \$106,424.77 to project 08-11 (fund 502).
- \$38,659.24 to project 10-20 (fund 513).
- Balance of funds should be transferred back to the Environmental Utility Fund (fund 604) which financed a portion of the project.

Budget Impact

There is no financial impact to the city as the proposal is to transfer money between funds.

Recommendation

It is recommended that the Council authorize the following:

- (1) A transfer of \$50,134.70 (or current deficit) from fund 512 (10-14) to fund 583 (07-20),
- (2) A transfer of \$106,424.77 (or current deficit) from fund 512 (10-14) to fund 502 (08-11),
- (3) A transfer of \$38,659.24 (or current deficit) from fund 512 (10-14) to fund 513 (10-20),
- (4) Remaining surplus balance from fund 512 (10-14) to fund 604 (EUF),
- (5) The appropriate budget changes,
- (6) Move any remaining balance sheet accounts to the new funds if necessary.

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Gayle Bauman, Finance Director
DATE: January 26, 2016
SUBJECT: Approval to Transfer Funds Regarding Tax Abatement Note

Introduction

It is recommended that the Council approve the transfer of funds and related budget adjustments from the Legacy Village Tax Abatement District Fund to the G.O. Tax Abatement Bond Fund in the amount of \$98,700.00.

Background

In working with our bond counsel during a prior year, it was discovered that the terms of the tax abatement note for Legacy Village from 2004 had changed.

In 2004, the City became indebted in the amount of \$2,888,000 to Legacy Holdings LLC for the purchase of real estate to be used in a tax abatement development district. This note has been canceled and the Development Agreement has been amended to read that the City will make principal payments to the developer from tax abatement bond proceeds equal to the amount currently due to pay off the special assessments on such phase as of October 15 of the year in which a building permit for the improvements on such phase was issued. The City will not pay any portion of unpaid real estate taxes, installment of special assessments penalties or interest and any interest or penalties that accrue as a result of a late payment. The payments will be made as each phase of the development occurs in the form of credits on special assessments.

As of the end of 2015, there are two remaining parcels in the development. The current balance of outstanding special assessments on those two parcels is \$368,606. The balance in the Legacy Village Tax Abatement District Fund as of the end of 2015 is \$469,469. The difference between the amount of funds on hand and the balance due on the two parcels can be transferred to the debt service fund and applied to future debt service payments.

Budget Impact

This is a transfer of money between funds and has no financial impact on the City.

Recommendation

It is recommended that the Council authorize the Finance Director to make the entries necessary to account for the transfer of \$98,700 from the Legacy Village Tax Abatement District Fund (431) to the G.O. Refunding Tax Abatement Bond, Series 2014B Fund (370).

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Mike Funk, Assistant City Manager/Human Resource Director
Alec Knutson, Management Intern

DATE: January 27, 2016

SUBJECT: Approval of Resolution for 2016 Pay Rates for Non-union, Non-contract Employees

Introduction/Consideration

To authorize cost of living adjustments (COLA) for all non-union, non-contract employees in 2016.

Background

All full and part-time benefit earning employees are represented by unions, except for the following five (5) positions: City Manager, Police Chief, Finance Director, Assistant City Manager/HR Director, and Fire and Emergency Management Coordinator. The City Manager and Assistant City Manager/HR Director's compensation is defined and authorized through their employment contract.

The remaining three (3) positions of Police Chief, Finance Director, and Emergency Management Coordinator are considered non-union, non-contract employees. Staff presents a recommendation to the city council annually that allows for an increase to the cost of living adjustments for these positions.

The City's past practice is to offer consistent and equitable COLA adjustments across the organization by providing non-union, non-contract positions the same escalations as it does with the City's collective bargaining groups. In 2015, the City of Maplewood approved two-year contracts for the seven collective bargaining groups that established COLA adjustments for calendar years' 2015 and 2016.

For 2016, all union employees will receive the following three (3) separate COLA adjustments: 1% on January 9, 1% on June 11, and 1% on September 3. While the aggregate increase for the year is 3%, the phased-in approach over 12 months reduces the net fiscal impact to approximately 1.92%. This is also consistent with the changes occurring in the market.

Budget Impact

The approved 2016 budget assumed this adjustment, therefore there is no additional budget impact.

Recommendation

It is recommended the City Council adopt the attached resolution.

Attachment

1. Resolution for 2016 Non-Union, Non-Contract Employees

RESOLUTION APPROVING COST OF LIVING ADJUSTMENTS (COLA) FOR NON-UNION,
NON-CONTRACT CITY EMPLOYEES FOR 2016

WHEREAS, The City's past practice is to offer consistent and equitable COLA adjustments across the organization by providing non-union, non-contract positions the same escalations as it does with the City's collective bargaining groups; and,

WHEREAS, For 2016, all union employees will receive the following three (3) separate COLA adjustments: 1% on January 9, 1% on June 11, and 1% on September 3; and,

THEREFORE, BE IT RESOLVED that the Police Chief, Finance Director, and Fire and Emergency Management Coordinator receive three (3), one (1) percent Cost of Living Increases to their salary in 2016, which shall be effective on January 9 (retroactive), June 11, and September 3; and,

BE IT FURTHER RESOLVED, this resolution shall supersede any previous resolution setting pay rates for these pay classifications.

The motion for the adoption of the foregoing resolution was duly seconded by member _____, and after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

Mayor

Attest:

City Clerk

MEMORANDUM

DATE: January 27, 2016

TO: Melinda Coleman, City Manager

FROM: Mike Funk, Assistant City Manager/Human Resource Director
Terrie Rameaux, Human Resource Coordinator

SUBJECT: Approval of Resolution for 2016 Pay Rates for Temporary/Seasonal, and Casual Part-Time Employees

Introduction/Background

Please forward the attached resolution to the City Council for approval. It is recommended that this resolution be adopted to replace the existing resolution establishing pay rates for temporary, seasonal, and casual part-time employees. This resolution, updated annually, provides a current competitive wage scale when hiring for these positions. Changes indicated in bold.

There are two (2) changes recommended for your consideration. The first change is a cost of living adjustment (COLA) to the casual part-time Fire Department positions retroactive to January 9, 2016. The City's past practice is to be consistent in providing the same COLA adjustments to the casual part-time Fire Department positions as it does to the City's various collective bargaining groups. For 2016 the seven collective bargaining groups received three (3) separate COLA adjustments: 1% on January 9, 1% on June 11, and 1% on September 3.

The second change reflects an adjustment in the salary range for the "gardener" position. The range was increased to better reflect market and to attract more qualified candidates for the position.

Budget Impact

Each department has an approved 2016 budget for temporary/seasonal, casual part-time employees; therefore there is no supplementary budget impact.

Recommendation

It is recommended that the Council adopt the attached resolution to be effective January 9, 2016.

Attachment

- 1) Resolution for 2016 Temporary/Seasonal and Casual P/T Employees

RESOLUTION

WHEREAS, according to the Minnesota Public Employees Labor Relations act, part-time employees who do not work more than 14 hour per week and temporary/seasonal employees who work in positions that do not exceed 67 days in a calendar year, or 100 days for full-time students, are not public employees and are therefore not eligible for membership in a public employee union.

NOW, THEREFORE, BE IT RESOLVED, that the following pay ranges and job classifications are hereby established for temporary/seasonal, casual part-time employees effective January 9, 2016 upon Council approval.

Accountant	\$10.00-30.00	per hour
Accounting Technician	\$9.00-22.00	per hour
Administrative Assistant	\$9.00-23.00	per hour
Background Investigator	\$25.00-40.00	per hour
Building Inspector	\$14.00-35.00	per hour
Building Attendant**	\$9.00-15.00	per hour
Customer Service Assistant**	\$9.00-15.00	per hour
CSO	\$14.50-19.50	per hour
Election Judge	\$9.00-12.00	per hour
Election Judge - Assistant Chair	\$9.00-15.00	per hour
Election Precinct Chair	\$9.00-16.00	per hour
Engineering Aide	\$9.00-16.00	per hour
Engineering Technician	\$10.00-16.00	per hour
Fire Maintenance/Engineer ***	\$15.15	per hour
Firefighter-in-Training (new hire) ***	\$10.83	per hour
Firefighter/EMT ***	\$12.99	per hour
Firefighter/Paramedic ***	\$14.07	per hour
Firefighter/EMT Captain ***	\$15.15	per hour
Firefighter/Paramedic Captain ***	\$16.24	per hour
Battalion Chief ***	\$17.32	per hour
Gardener	\$12.00-22.00	per hour
Intern	\$9.00-20.00	per hour
IT Technician	\$15.00-20.00	per hour
Laborer	\$9.00-14.00	per hour
Manager-on-Duty Differential**	\$1.00	per hour
Office Specialist	\$9.00-18.00	per hour
Receptionist	\$9.00-16.00	per hour
Recreation Instructor/Leader	\$9.00-32.00	per hour
Recreation Official	\$9.00-30.00	per hour
Recreation Worker	\$9.00-18.00	per hour
Vehicle Technician	\$9.00-15.00	per hour
Video Coordinator*	\$11.00-19.00	per hour
Video Technician*	\$10.00-18.00	per hour

* Video positions shall be paid a guaranteed minimum flat fee of \$50 for 4 hours or less.

** Community Center positions shall receive a \$2 per hour differential for working the following holidays: New Years Eve, New Year's Day, Memorial Day, July 4th, and the day after Thanksgiving.

*** Fire Department positions shall receive a \$2 per hour differential for working the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. Positions will also receive an additional 1% COLA adjustment on June 11 and an additional 1% COLA adjustment on September 3.

BE IT FURTHER RESOLVED, this resolution will supersede previous resolutions setting pay rates for these pay classifications; and,

BE IT FURTHER RESOLVED, that the City Manager shall have the authority to set the pay rate within the above ranges.

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Steve Lukin, Fire Chief
SUBJECT: Approval of JPA for Dispatching the Fire Department's Closest Unit
DATE: February 1, 2016

INTRODUCTION

Starting in 2014 with the new computer aided dispatch system going online in the first part of 2015 and along with GPS capabilities, the Maplewood Fire Department brought forward to the Ramsey County Chiefs Association the idea of closest unit dispatching. With this new technology, the Ramsey County Dispatch Center would now have the capabilities to know the location of each fire truck or ambulance within Ramsey County. With this capability, they would now be able to send the closest resource to a specific emergency call anywhere within the County.

A committee was formed where Assistant Chief Mike Mondor played an important role in helping in developing the guidelines for the JPA. Currently, all but two departments in Ramsey County are in the process of getting the JPA approved. As the first step in this process, the JPA is setup to allow for closest unit dispatching on two specific types of calls; working structure fires and cardiac arrests. What this means is that a St. Paul ambulance may be leaving St. John's Hospital when a cardiac arrest comes in and it would alert the dispatch by way of GPS that their unit would be the closest to the call and would respond along with a Maplewood unit. This also hold true if Maplewood Fire has a fire truck that is closer than a Roseville truck when a structure fire comes in on the Roseville side of Rice Street, Maplewood would be sent as well as Roseville Fire.

Currently, these are the only two types of calls when the closest unit dispatching would be utilized. There is not a large amount of these types of calls, however, there is a high impact probability on life and property. At time goes on, more types of calls could be added to this type of response.

RECOMMENDATION

I recommend that the city council approve to accept the JPA for dispatching the fire department's closest unit.

Attachment 1

**MUTUAL AID AGREEMENT TO PROVIDE FOR THE
AUTOMATIC DISPATCH OF THE CLOSEST EMERGENCY
RESPONSE UNIT REGARDLESS OF JURISDICTIONAL BOUNDARIES**

This Mutual Aid Agreement (“Agreement”) is made and entered into this ____ day of _____, 2016 by and among Cities of Saint Paul, Roseville, Little Canada, Maplewood, Falcon Heights, North Saint Paul, Lauderdale, White Bear Lake, New Brighton, and the Lake Johanna Fire Department Inc. (collectively the “Cities” or “Parties” and individually the “City” or the “Party”).

RECITALS

- A. The Cities/Parties desire to enter into this Agreement to authorize their respective fire departments to provide, and for the participating Cities/Parties to receive, automatic mutual aid to dispatch the closest equipment and personnel to emergency events to provide assistance in the form of fire, rescue, and related services;
- B. The Cities/Parties are authorized under Minnesota Statutes, section 471.59 to cooperatively exercise their commonly held powers and mutual aid agreements are critical to providing and supporting emergency services;
- C. The Cities/Parties determine that providing for the automatic dispatch of the closest emergency unit as is authorized in this Agreement is in their best interests and they desire to create an opportunity for other cities and towns to participate in this Agreement.

AGREEMENT

In exchange for the mutual promises made herein, the Parties hereby agree as follows:

I. DEFINITION OF TERMS

For the purposes of this Agreement, the terms defined in this section shall have the meanings given them below.

- 1. “Agency” means the fire department, fire station, or fire unit called upon to provide Assistance to an Emergency Event.
- 2. “Assistance” means the provision of fire personnel and equipment in response to an Emergency Event.
- 3. “Dispatcher” means the person at the applicable public safety access point that receives reports of Emergency Events and selects the appropriate Agency to respond to and provide Assistance for the Emergency.
- 4. “Emergency” any request for fire department assistance.

5. "Emergency Events" means any Emergency incident in which an Agency may be called upon by a Dispatcher to provide Assistance within the scope of the Agency's service capabilities as determined by the respective member Cities and communicated in writing to the Emergency Communications Center.
6. "President" means the president of the Ramsey County Fire Chiefs Association.
7. "Protection Area" means the area within the Cities of Saint Paul, Roseville, Little Canada, Maplewood, Falcon Heights, North Saint Paul, North Oaks, Shoreview, Arden Hills, Lauderdale, New Brighton, White Bear Lake, and any additional city or town that joins this Agreement as provided herein.
8. "Requesting Party" means a Party which requests assistance from another Party to this Agreement and each such responding Party is considered a Sending Party.
9. "Sending Party" means a Party called upon to provide Assistance to another Party and which actually provides Assistance to the Requesting Party.
10. "Specialized Activities" means the provision of non-emergency assistance including, but not limited to, training of personnel and associated equipment and facilities.

II. AUTHORIZATION

Each of the Cities participating in this Agreement hereby authorize their respective fire Agencies to respond to and receive automatic mutual aid services pursuant to the terms of this Agreement and to otherwise take such actions as are needed to provide and receive Assistance as provided herein.

III. TERM AND TERMINATION

This Agreement shall be effective as of the date first written above and shall be ongoing until terminated as provided herein. Each City shall act by resolution to adopt this Agreement and shall forward a fully executed copy of its resolution and a signed original of this Agreement to the President of the Ramsey County Fire Chiefs Association.

Any Party may act by resolution to opt out of its participation in this Agreement. No such resolution shall be effective until the Party provides at least 60 days' written notice of termination to the President, the applicable County Emergency Communications Center, and each of the other Parties. The resolution must indicate the date of withdrawal from this Agreement, which must be sufficiently in the future to allow for the 60 day notice. The notice shall include a fully executed copy of the termination resolution.

IV. AUTOMATIC MUTUAL AID PROCEDURE

1. Whenever a Party to this Agreement receives a call for Assistance for an Emergency Event occurring within its jurisdictional boundaries, that call will automatically be

dispatched to the Agency having primary jurisdiction, as well as to any Agency for which the Dispatcher or Computer Aided Dispatch System (CAD) determines may provide a more timely response. The Sending Party shall respond to the call and make necessary Assistance available without undue delay. The typical response from the Sending Party shall be one apparatus and crew.

The extent of Assistance provided by the Sending Party shall be determined solely by the Sending Party based on its established response criteria and procedures. In the event a Sending Party determines it will not be able to provide Assistance, the fire official for the Agency making that determination shall immediately notify the Requesting Party.

2. The first arriving unit shall be in command of the emergency scene, until relieved by the Requesting Party. The Sending Party's fire official shall retain direction and control of the Sending Party's fire personnel and equipment on the scene.
3. Each Party, whether it be the Requesting Party or a Sending Party, shall be responsible for injuries or death of its own personnel. Each Party shall maintain workers' compensation insurance or self-insurance coverage covering its own personnel while they are providing Assistance pursuant to this Agreement. Each Party waives the right to sue the other Party for any workers compensation benefits paid to its own employee or their dependents, even if the injuries were caused wholly or partially by the negligence of the other Party or its officers, employees.
4. Each Party shall be responsible for damages to or loss of its own equipment. Each Party waives the right to sue the other Party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of the other Party or its officers, employees, or volunteers.
5. Specialized Activities of non-emergency nature may be requested and/or provided by both parties to the Agreement. There is no obligation on the part of a Sending Party to provide Specialized Activities.
6. No charge shall be made to either party for Assistance rendered under this Agreement for incidents with duration under eight (8) hours. Provided, however, that in the event the Requesting Party is reimbursed for said personnel, equipment, or any other costs from a party or parties responsible for the Emergency, or is otherwise reimbursed by a third party source, then reimbursement, on a pro-rata basis, shall be made to the Sending Party for any equipment or personnel charges.

V. COOPERATIVE IMPLEMENTATION

The Parties agree to work in good faith through their respective Agencies to cooperatively establish any specific response criteria or procedures as they may determine are needed to implement this Agreement. Such criteria and procedures do not necessarily need to be the same for each Party, but they shall not be contrary to the

primary purpose of this Agreement. Each Party shall be responsible for communicating in writing its response criteria and procedures to each of the other Cities, the President, and the applicable County Emergency Communications Center.

VI. LIABILITY AND INDEMNIFICATION

1. For the purposes of the Minnesota Municipal Tort Liability Act (Minnesota Statutes, chapter 466), the employees and officers of the Sending Party are deemed to be employees (as defined in Minnesota Statutes, section 466.01, subdivision 6) of the Requesting Party. For all other purposes, all personnel remain the employees of their respective Party during the performance of duties under this Agreement.
2. The Requesting Party agrees to defend and indemnify the Sending Party against any claims brought or actions filed against the Sending Party or any officers, employees, or volunteers of the Sending Party for injury to or death of any third person or persons, or damage to the property of any third person or persons, arising out of the provision of Assistance by the Sending Party under this Agreement.

Under no circumstances, however, shall a Party be required to pay on behalf of itself and other Parties, any amounts in excess of the limits on liability established in Minnesota Statutes, chapter 466 applicable to any one Party. As provided in Minnesota Statutes, section 471.59, subdivision 1a, for the purposes of determining total liability the Parties shall be considered a single governmental unit and the total liability for the Parties shall not exceed the limits on governmental liability for a single governmental unit as specified in Minnesota Statutes, section 466.04, subdivision 1. Nothing in this Agreement shall be interpreted as any of the Parties waiving any exemptions or limitations on liability available to them under law.

The intent of the indemnification requirement of this section is to impose on each Requesting Party a limited duty to defend and indemnify any Sending Party for claims arising within the Requesting Party's jurisdiction subject to the liability limits under Minnesota Statutes, chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of liability claims by eliminating conflicts among defendants, and to permit liability claims against multiple defendants from a single occurrence to the defended by a single attorney.

3. No Party to this Agreement, nor any officer of any Party, shall be liable to any other Party or to any other person for failure of any Party to furnish Assistance to any other Party, or for recalling Assistance.

VII. ADDING MEMBERS

Any other city or town adjacent to the Protection Area may join this Agreement upon the written consent of all of the existing Parties to this Agreement that abut upon the boundaries of the joining city or town, the adoption by the joining city or town of a resolution authorizing execution of this Agreement, and the filing of a copy of the

executed resolution and this Agreement with the President. The Ramsey County Fire Chiefs may impose reasonable conditions on the admission of additional cities and establish procedures for removal of a Party for cause. The addition of a city or town to this Agreement as provided herein does not require an amendment to this Agreement. The joining city or town shall become subject to the terms and conditions of this Agreement as of the effective date of its participation in the sharing of services under this Agreement as determined by the President.

VIII. MISCELLANEOUS

1. This Agreement may be amended by written agreement of the all of the Parties.
2. The Parties will execute this Agreement in any number of duplicate originals, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. Each Party will deliver enough executed counterpart signature pages so that all of the Parties will have a fully executed original of this Agreement. The President will coordinate the delivery of the signature pages and compiling and delivering originals of the Agreement to each of the Parties.
3. This Agreement is made under the law of the State of Minnesota.
4. This Agreement is entered into for the benefit of the Parties and is not intended to provide any rights to any third parties.
5. This Agreement is not exclusive and is not intended to replace any other mutual aid agreements any of the Parties may have in place.

IX. EXECUTION

Each Party has read, agreed to, and executed this Agreement on the date indicated below.

[signature pages follow]

CITY OF MAPLEWOOD

Adopted on the ____ day of _____, 2016.

By _____

By _____

Its _____

Its _____

AGENDA REPORT

TO: Melinda Coleman, City Manager
FROM: Steve Lukin, Fire Chief
SUBJECT: Approval of Resolution Accepting a Donation to the Fire Department from Costco
DATE: January 27, 2016

INTRODUCTION

The fire department has received a donation from Costco of chocolate treats valued at approximately \$200.00. These treats will be given out to senior living facilities and nursing homes in the city and used for public relations/training events.

RECOMMENDATION

I recommend that the city council approve to accept the donation of chocolate valued at approximately \$200.00 donated from Costco.

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RESOLUTION AUTHORIZING GIFT TO CITY

WHEREAS, Maplewood is AUTHOIRIZED to receive and accept grants, gifts and devices of real and personal property and maintain the same for the benefit of the citizens and pursuant to the donor’s terms if so-prescribed, and;

WHEREAS, Costco wishes to grant the city of Maplewood the following: Cases of chocolate valued at approximately \$200.00, and;

WHEREAS, Costco has instructed that the City will be required to use the aforementioned for: use by the fire department, and;

WHEREAS, the city of Maplewood has agreed to use the subject of this resolution for the purposes and under the terms prescribed, and;

WHEREAS, the City agrees that it will accept the gift by a four-fifths majority of its governing body’s membership pursuant to Minnesota Statute §465.03;

The Maplewood City Council passed this resolution by four-fifths or more majority vote of its membership on _____, 20_____.

Signed:

Signed:

Witnessed:

(Signature)

(Signature)

(Signature)

Mayor

(Title)

Chief of Fire

(Title)

City Clerk

(Title)

(Date)

(Date)

(Date)

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Karen Haag, Citizen Services Director
DATE: January 28, 2016
SUBJECT: Approval of a Temporary Lawful Gambling Local permit for the Ramsey County Pheasants Forever at Gulden's Restaurant, 2999 Maplewood Drive

Introduction

An application for a Lawful Gambling Local permit has been submitted by Daniel Jambor on behalf of the Ramsey County Pheasants Forever, 1555 Iglehart Ave in Saint Paul.

Background

This permit will be used for the organization's banquet, which will be held at Gulden's Restaurant in Maplewood on Saturday, March 12, 2016 from 4:00pm to 10:00pm. Proceeds from the event will go towards promoting conservation and restoration of wildlife habitat, specifically, but not exclusively, to pheasants. In addition, funds will be used for the education on conservation, as well as engage youth in the outdoors.

The applicant has also submitted an Application for Exempt Permit, which is required by MN Statute §349.166, and processed and approved by the Minnesota Gambling Control Board. MN Statute §349.166 also requires that the applying organization notify the local government unit 30 days before the lawful gambling occasion, or 60 days for an occasion held in a city of the first class.

Budget Impact

None

Recommendation

Staff recommends that Council approve the Lawful Gambling Local permit for the Ramsey County Pheasants Forever's fundraising banquet on March 12, 2016 at Gulden's Restaurant, 2999 Maplewood Dr, in Maplewood.

In addition, staff recommends that Council acknowledge the Application for Exempt Permit and waive any objection to the timeliness of said permit, as governed by MN Statute §349.166.

MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Karen Haag, Citizen Services Director
DATE: January 28, 2016
SUBJECT: Approval of a Temporary Lawful Gambling - Local Permit for the Knights of Columbus Council #4374, 1725 Kennard Street

Introduction

An application for a Lawful Gambling Local permit has been submitted by Robert Altman on behalf of the Knights of Columbus Council #4374, 1481 Barclay Street in Saint Paul.

Background

This permit will be used for the organization's banquet, which will be held at the Presentation of the Blessed Virgin Mary church, in Maplewood on Saturday, March 12, 2016 from 6:00pm to 10:00pm. Proceeds from the event will go towards raising money to assist the youth of the Presentation of the Blessed Virgin Mary to travel to Poland for World Youth Day in July and August 2016.

The applicant has also submitted an Application for Exempt Permit, which is required by MN Statute §349.166, and processed and approved by the Minnesota Gambling Control Board. MN Statute §349.166 also requires that the applying organization notify the local government unit 30 days before the lawful gambling occasion, or 60 days for an occasion held in a city of the first class.

Budget Impact

None

Recommendation

Staff recommends that Council approve the Lawful Gambling Local permit for the Knights of Columbus Council #4374 fundraising event on March 12, 2016 at the Presentation of the Blessed Virgin Mary church, located at 1725 Kennard Street.

In addition, staff recommends that Council acknowledge the Application for Exempt Permit and waive any objection to the timeliness of said permit, as governed by MN Statute §349.166.

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Karen Haag, Citizen Services

DATE: February 1, 2016

SUBJECT: Approval of Consulting Contract for Marketing and Advertising

Introduction

The City uses numerous venues to communicate with our constituents and is in a contractual agreement with Carey Communications (Heidi Carey) to assist us with our Marketing and Advertising projects.

Background

One of our main communication tools is the Maplewood Monthly which is mailed to every household and business within our community. The Monthly includes current events, council updates, neighborhood projects, seasonal reminders, etc. and is one of our most visual tools to keep residents informed.

Due to budget constraints the Maplewood Living was only produced nine times in 2015. One of the councils Strategic Priorities for 2016 is Coordinated Communications, with this in mind during the 2016 budget preparation; staff included the production of twelve issues of the Monthly. Additionally, Ms. Carey assists with the following annual projects:

- Four issues of the Seasons newsletter; and
- Conducting interviews and writing articles for the Maplewood Living as directed
- City Event Assistance, (including, but not limited to, securing sponsors, working with vendors and designing ads) ; and
- Design City PSA Clear Channel Billboard ads; and
- Securing ads for publications with a required minimum of \$3600.00 each quarter in ads for the Maplewood Monthly,
- Additional projects as required or requested. E.g. Miscellaneous brochures, banners, posters, etc. These projects will be submitted to the City Manager or the Citizen Services Director for approval and then forwarded to the Consultant.

Ms. Carey is compensated an annual flat fee of \$48,000 for the above on a pro-rata basis of \$4,000 per month contingent upon securing a minimum of \$3,600 in advertising sales each quarter. In the event that Ms. Carey does not meet the sales criteria in any given quarter then the payment for the next month would be reduced on a dollar for dollar basis for each dollar under the minimum for the quarter. Additionally, if Ms. Carey secures over \$4,500 of advertising revenue in a quarter, the City shall pay her an additional commission on those sales as follows:

<u>Additional Ad Revenue per Quarter:</u>	<u>Commission Percentage</u>
First \$100 - \$498 over \$4,500	20%
Next \$499 - \$1,500 over \$4,500	25%
Next \$1,501 over \$4,500	30%

The complete contract is attached for your review.

Budget Impact

The Contract is budgeted for in the 2016.

Recommendation

It is recommended that the council approve the Consulting Contract for Marketing and Advertising with Carey Communications through December 2017 and authorizes the City Manager and Director of Citizen Services to sign the same.

Attachments

1. Independent Contractor Consulting Contract

CITY OF MAPLEWOOD INDEPENDENT CONTRACTOR CONSULTING CONTRACT

This agreement is entered into on January 1, 2016, by and between the City of the Maplewood (hereinafter "City" or "Employer" and/or "we" or "us" or "our") and **Heidi Carey** (hereinafter "Consultant" and/or "you" or "your"). This agreement sets forth all terms and conditions concerning the contract appointment of Heidi Carey to the position of Marketing and Advertising Consultant.

A. TERM OF APPOINTMENT

This contract shall begin on January 1, 2016, and continue on a weekly basis at the discretion of the City and Consultant, terminating on December 31, 2017, unless terminated earlier by the City of Maplewood or by the Consultant pursuant to this Agreement. The contract will terminate automatically on the termination date unless the appointment is extended in writing prior to the termination date. If the contract is extended, it will terminate automatically upon the new expiration date, unless terminated earlier pursuant to this Agreement.

B. DUTIES AND RESPONSIBILITIES

Consultant shall consult with the City Manager and Citizens Services Director in the performance of all their duties with regard to marketing and advertising for the City of Maplewood. The Consultant's duties and responsibilities shall be conducted in accordance with this Agreement and in accordance with all applicable laws and the City's policies, procedures, and rules as established by management. The Consultant agrees that she will be performing all the duties set forth in this job description as an independent contractor and assumes all responsibility for payment of any and all employment taxes arising out of the City's payments to Consultant hereunder. Consultant shall furnish her own equipment and home office and determine her own schedule with regards to completing the deliverables. City will provide access to City servers to allow Consultant to email out newsletters. Consultant hereby indemnifies the City of Maplewood for any employment taxes arising out of the City's payments to Consultant hereunder.

C. DELIVERABLES AND COMPENSATION

Deliverables

Consultant shall deliver the following work (hereafter "Work" or "Deliverables") in a timely efficient and professional manner:

- Twelve issues of the Maplewood Monthly; and
- Four issues of the Seasons newsletter (4 pages each); and
- Conducting interviews and writing articles for the Maplewood Monthly as directed
- City Event Assistance,(including, but not limited to, securing sponsors, working with vendors and designing ads) ; and
- Design City PSA Clear Channel Billboard ads; and
- Securing ads for publications (Maplewood Monthly and Recreation Booklets) with a required minimum of \$3600.00 each quarter in ads for the Maplewood Monthly,

Page 2

Consultant Contract – Heidi Carey

August 1, 2013

- Additional projects as required or requested. E.g. Miscellaneous brochures, banners, posters, etc. These projects will be submitted to the City Manager or the Citizen Services Director for approval and then forwarded to the Consultant.

Each of the above-stated publication deliverables includes two (2) proofs to City staff, delivery to the printer, and any final editing for the printer and printer proof. *Maplewood Monthly* page numbers shall be as determined by Karen Haag. Consultant shall also deliver an annual schedule that lists when articles are due, when each council member is to write their articles, and how many pages are included for each issue. Consultant shall send the Citizen Services Director and/or his or her designee, monthly advertising invoices that will be billed to each advertiser and the invoice for such advertising shall come directly from the City (in the same manner as they are currently sent). Consultant shall also email a copy of each publication to each of the advertisers to prove that their ads ran in the publication. The City reserves the right to decrease these stated deliverables upon 30 day written notice to Consultant, and any such reduction shall result in a pro rata reduction in compensation to Consultant upon implementation of such reduction.

Compensation

The City will pay Consultant an annual flat fee of Forty Eight Thousand Dollars (\$48,000.00) for the above deliverables on a pro-rata basis of Four Thousand Dollars (\$4,000.00) per month. Such payments shall be paid on the first day of each month following completion of the pro rata deliverables for the previous month. Such payment is not only contingent upon maintaining completion of the deliverables on a pro-rata basis each month; it is also contingent upon meeting the \$3600.00 minimum advertising requirement each quarter. If Consultant fails to meet these deliverable requirements (except for the advertising minimum) in any given quarter, then the payment for the next month shall be reduced by pro-rata amount for the deliverables not completed. If the Consultant fails to meet the advertising minimum of \$3600.00 per quarter, then the payment for the next month shall be reduced on a dollar for dollar basis for each dollar under the minimum for the quarter. Additionally, if Consultant brings in over \$4500.00 of advertising revenue in a quarter, the City shall pay Consultant an additional commission on such sales as follows:

<u>Additional Ad Revenue per Quarter:</u>	<u>Commission Percentage</u>
First \$100 - \$498 over \$4,500	20%
Next \$499 - \$1,500 over \$4,500	25%
Next \$1,501 over \$4,500	30%

Additional Work

Additionally, Consultant shall be available to perform "Additional Work" at an hourly rate of \$65.00 per hour. Such "Additional Work" must be authorized in writing, in advance, by either the Assistant City Manager, the citizens Services Director or the Parks and Recreation Director. Optional projects that may qualify for such "Additional Work" include Media Blasts, Media Placement, Marketing Plans, Press Releases, Sponsorship Sales for MCC, Recreation Events, marketing Campaigns and other design projects for programs and/or events.

Page 3
Consultant Contract – Heidi Carey
August 1, 2013

As an independent contractor, the Consultant will not receive overtime compensation or compensatory time off or additional compensation beyond the established pay for the position pursuant to the agreement.

D. WORK FOR HIRE

Consultant agrees that with regard to all Work completed pursuant to this Agreement, i.e. marketing services, editorial services, design services, etc.:

1. To deliver to us no later than the end of each month, the pro rata Work to be performed that month, or to meet whatever other deadline has been determined for other specific Work, (i.e. Additional Work) in a manner and form satisfactory to us.
2. Upon acceptance of the Work, we agree to pay you Four Thousand Dollars per month and/or other payments of Sixty Five Dollars per hour for Additional Work for all rights in the Work. You will not receive any further payment from us.
3. You expressly acknowledge that the material contributed by you hereunder, and your services hereunder, are being specially ordered and commissioned by us for use in connection with marketing, advertising and publishing for the City of Maplewood. The Work contributed by you hereunder shall be considered a "work made for hire" as defined by the copyright laws of the United States. We shall be the sole and exclusive owner and copyright proprietor of all rights and title in and to the results and proceeds of your services hereunder in whatever stage of completion. If for any reason the results and proceeds of your services hereunder are determined at any time not to be a "work made for hire", you hereby irrevocably transfer and assign to us all right, title and interest therein, including all copyrights, as well as all renewals and extensions thereto.
4. You agree that we may make any changes or additions to the Work prepared by you, which we, in our sole discretion, may consider necessary, and may engage others to do any or all of the foregoing, with or without attribution to you. You further agree to waive any so-called moral rights in the Work.
5. You represent that, except with respect to material furnished to you by us, you are the sole author of the Work and all of your services are original and not copied in whole or in part from any other work; that your Work is not libelous or obscene, or knowingly violates the right of privacy or publicity, or any other rights of any person, firm or entity.

E. BREACH

If either party fails at any time to meet any deadlines required herein, or otherwise fails to meet the professional standards required, or otherwise by their actions or inactions provides just cause to terminate this Agreement, then the non-breaching party shall provide the breaching party with written notice of such breach and the breaching party shall have thirty (30) days from receipt of such notice to cure said breach to the satisfaction of the non-breaching party. Any

Page 4
Consultant Contract – Heidi Carey
August 1, 2013

failure to cure said breach upon expiration of the 30 day cure period shall be grounds for immediate termination of the Agreement upon written notice of termination for failure to cure. Notice, if to the City shall be delivered to:

City of Maplewood Attention:

Karen Haag, Director Citizen Services
1830 County Road B East
Maplewood, MN 55109
Fax (651) 249-2059

And if to Consultant shall be delivered to:
Heidi Carey
10599 108th Avenue N.E.
Hanover, Minnesota 55341

All written notices to be delivered by mail, shall be delivered by Certified U.S. Mail, Return receipt requested, and shall be deemed delivered three (3) business days after the date the notice was sent. Email and facsimiles shall be deemed delivered the next business day after they are sent.

F. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performance under this Agreement, to the extent such delay or failure is proximately caused by conditions beyond its control, including, but not limited to, war, strikes, floods, tornados or other natural disasters or Acts of God or any other cause beyond the reasonable control of the affected party.

G. GENERAL PROVISIONS

This contract constitutes the entire agreement between the parties and supersedes any other agreement either oral or written. The terms of this agreement may be modified only by subsequent written agreement signed by both parties. In the event that any part of this agreement is declared or rendered invalid by court decision or statute, the remaining provisions of the agreement shall remain in full force and effect. Minnesota law shall govern the interpretation and construction of this agreement.

CONSULTANT SIGNATURE:

Heidi Carey

Date: _____

SIGNATURES FOR THE CITY OF MAPLEWOOD:

City Manager

Date: _____

City Clerk

Date: _____

MEMORANDUM

REGARDING SALE OF PROPERTY LOCATED AT 2501 LONDIN LANE

TO: City Council

FROM: Melinda Coleman, City Manager
H. Alan Kantrud, City Attorney

DATE: February 2, 2016

SUBJECT: Sale of Excess Land (Londin Lane Fire Station property)

These reports are confidential per Minnesota Statute 13D.05:

Subd. 3. What meetings may be closed.

(c) A public body may close a meeting:

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section [13D.03, subdivision 3](#), applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.

Once considered at workshop the decision is going to be made during the public meeting as Consent Agenda Item G-16 and the full memorandum will be available to the public and shall be made part of the public record and approved at the next meeting of the City Council as part of the official minutes.

MEMORANDUM

TO: City Council

FROM: Melinda Coleman, City Manager
H. Alan Kantrud, City Attorney

DATE: February 2, 2016

SUBJECT: Sale of Excess Land (Londin Lane Fire Station Property)

Introduction and Background

The City of Maplewood authorized the sale of several parcels of vacant/excess land within the City including two fire stations, including the one at Londin Lane. Over the last several months the City's Agent, Mike Brass, identified and has been working with a Developer, Rubicon Group, to purchase the Londin Lane site.

The City was marketing this site for redevelopment at approximately \$2M with the understanding that any buyer would likely discount the cost of removal of the existing infrastructure—essentially the retired fire station and attendant parking area as well as let the market dictate the value.

Mr. Brass and Staff anticipated that this site would be slow to market as any potential developer would need to secure the parcel next to it to make full-use of the site in terms of being economically viable. The adjacent piece is approximately 15 acres and is bank-owned. The Londin Lane site is approximately 6 acres.

Discussion

The City has a Purchase Agreement from the Rubicon Group before it. Rubicon is owned or at least managed by a developer by the name of Tom Wentz. Tom and his group spent a fair amount of time negotiating a deal with the Bank that has control of the adjacent parcel, which they now have a Purchase Agreement on. Since then staff has been working with Mr. Wentz to create a Purchase Agreement that combines the closing on the Londin Lane parcel with the closing on the vacant piece next to it. That is what is before you and Rubicon has offered \$1,165,000.00 with some contingencies.

Rubicon plans to develop the area with a multi(4)story market-rate apartment complex of approximately 240 units. This would require a change in the zoning of the property, from lower (farm) to higher (R4) density residential (a simple majority vote) unless a PUD is brought forward. It would also require a modification of the City's Comprehensive Plan as the site is guided, "government," currently which would require a super-majority vote and also means it needs the advise-and-consent approval of the Metropolitan Council.

To proceed with the actual building the project plans will receive design review and there may be a need for a lot division as well.

These approvals and changes are part of the contingency to close and Rubicon would make those applications promptly following the signing of the Purchase Agreement. This will allow the

City to move forward with the Commission and Met Council recommendations and approvals that will eventually come to Council for your ultimate decision.

While the development is important, it is also worth noting that the adjacent 15 acres that Rubicon is also purchasing will be used for density purposes, but preserved as green space in perpetuity, which is a nice preservation of native ground and reduces visual clutter.

While the contingencies are plain enough, the price is based on a few expenses that have been built into the deal in the mind of the developer, including approximately \$100,000.00 in demo expenses. While your agent will be available to provide more detail, the offer is consistent with his market analysis and does contemplate redevelopment that will bring an attractive market-rate complex to south Maplewood with no tax subsidies.

According to the Closing estimate the City will net approximately \$1,090,000.00.

Recommendation

Rubicon is a well-positioned and experienced player in this development market. Staff has found them easy to work with and professional in their conduct. This is a good project for the area and also makes good use of the adjacent 15 acres. Staff recommends that the Council approve and authorize the signing of the Rubicon PA (presented as signed by them) and allow Rubicon to initiate the process to obtain the approvals to clear the contingencies prior to closing.

Attachments

1. Rubicon, LLC Purchase Agreement and visual site plan
2. Colliers Land Sale Comps
3. Closing Cost Estimate

AGREEMENT FOR SALE AND PURCHASE OF PROPERTY

This AGREEMENT FOR SALE AND PURCHASE OF PROPERTY (this "Agreement") is made and entered into as of the Contract Date between **The City of Maplewood Minnesota** ("Seller") and **RUBICON DEVELOPMENT GROUP LLC** (the "Buyer").

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

- (a) **Buyer's Broker.** None.
- (b) **Closing.** The closing and consummation of the purchase and the sale of the Property pursuant hereto.
- (c) **Closing Agent.** Stewart Title Company - Commercial Division attn. Dawn Anderson 1700 82nd Street West, Suite 100 Bloomington, MN 55431 Office (612) 435-6103, mobile (651) 262-3787 danderson@stewart.com, which shall also act as escrow agent pursuant to the terms and conditions of this Agreement.
- (d) **Closing Date.** The date on which the Closing occurs as provided in Section 10 hereof.
- (e) **Code.** The Internal Revenue Code of 1986, as amended.
- (f) **Contract Date.** The date upon which this Agreement shall be deemed effective, which shall be the date set forth below in the Seller's signature block.
- (g) **Deed.** Collectively, the deeds which will be a special warranty deed or a limited warranty deed to be executed by the Sellers, provided it is acceptable in form and content that must be approved by the Title Company in their sole but reasonable discretion.
- (h) **Environmental Laws.** Any applicable statute, code, enactment, ordinance, rule, regulation, permit, consent, approval, authorization, license, judgment, order, writ, common law rule (including, but not limited to, the common law respecting nuisance and tortious liability), decree, injunction, or other requirement having the force and effect of law, whether local, state, territorial or national, at any time in force or effect relating to: (i) emissions, discharges, spills, releases or threatened releases of Hazardous Substances into ambient air, surface water, ground water, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, septic systems or onto land; (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation or shipment of Hazardous Substances; (iii) the regulation of storage tanks or sewage disposal systems; or (iv) otherwise relating to pollution or the protection of human health or the environment.

- (i) **Hazardous Substances.** All substances, wastes, pollutants, contaminants and materials regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangerous, or toxic, under the following federal statutes and their state counterparts, including any implementing regulations: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Hazardous Materials Transportation Act, 42 U.S.C. §§ 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; or any other federal, state, or municipal statute, law or ordinance regulating or otherwise dealing with or affecting materials deemed dangerous or hazardous to human health or the environment; with petroleum and petroleum products including crude oil and any fractions thereof; with asbestos; and with natural gas, synthetic gas, and any mixtures thereof.
- (j) **Land.** The fee or other estate in each tract or parcel of land described in **Exhibit A** and all privileges, rights, easements, and appurtenances thereto belonging, and all right, title and interest of Seller in and to any streets, alleys, passages and other rights of way included therein or adjacent thereto (before or after the vacation thereof).
- (k) **Property.** All of Seller's right, title and interest in and to the Land.
- (l) **Seller's Broker** Colliers International attn.: Mike Brass mike.brass@colliers.com 5985 Rice Creek Parkway Suite 105 Shoreview, MN 55126 Direct 952 837 3054 Mobile 612 750 4312 Main 952 897 7700 Fax 952 541 8054
- (m) **Taxes.** All general real estate, ad valorem, sales, and personal property taxes assessed against the Property.
- (n) **Title Commitment.** A commitment for an ALTA Form B Owner's Title Insurance Policy for the Property, issued by the Title Company in the full amount of the Consideration, agreeing to insure title to the Property on or after the Contract Date, showing Seller as owner of the Property, and indicating the conditions upon which the Title Company will issue full extended coverage over all general title exceptions contained in such policies, and including such endorsements as Buyer may require.
- (o) **Title Company.** Stewart Title Company - Commercial Division attn. Dawn Anderson 1700 82nd Street West, Suite 100 Bloomington, MN 55431 Office (612) 435-6103, mobile (651) 262-3787 danderson@stewart.com, which shall also act as escrow agent pursuant to the terms and conditions of this Agreement.

Section 2. Agreement to Sell and to Purchase. Subject to and in accordance with the terms, conditions and provisions hereof, Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller.

Section 3. Earnest Money. Within 5 business days after the Contract Date, Buyer will deposit with the Closing Agent the cash sum of Fifty Thousand Dollars (\$50,000.00). Said

sum, together with all income earned on the investment thereof (if any), shall be collectively referred to herein as the "**Earnest Money.**" The Earnest Money shall be held by Closing Agent. The Earnest Money shall be held by the Closing Agent until disbursed as set forth in this Agreement. If Buyer acquires the Property, then the Earnest Money shall be paid to Seller and applied as a credit against the Consideration. If all of the conditions precedent set forth in this Agreement are not met or resolved to the satisfaction of Buyer, or if Buyer terminates this Agreement as expressly permitted pursuant to the provisions hereof, then the Earnest Money shall be returned by the Closing Agent to Buyer. If all of the conditions precedent set forth in this Agreement have been satisfied or waived by Buyer, and if thereafter Buyer fails to acquire the Property pursuant to the terms of this Agreement and Seller is not in default, then the Earnest Money shall be delivered to Seller and shall be retained by Seller as liquidated damages. If there is a dispute between Buyer and Seller as to the distribution of the Earnest Money, or if for any other reason the Closing Agent in good faith elects not to make any such disbursement, then the Closing Agent shall continue to hold the Earnest Money until otherwise directed by written instructions executed both by Seller and Buyer, or by a final judgment of a court of competent jurisdiction. Upon request, Buyer and Seller shall execute Closing Agent's standard earnest money escrow agreement; provided, however, that if there is any conflict or inconsistency between such escrow agreement and this Agreement, then this Agreement shall control.

Section 4. Consideration and Prorations.

4.1 Consideration. The "**Consideration**" shall be \$1,165,000.00. The Consideration shall be subject to the prorations and allocations provided for herein, which shall be added or subtracted as the case may be. The Consideration shall be paid by Buyer to Seller at Closing.

4.2 Prorations.

- (a) **General.** Seller and Buyer shall make the prorations set forth in this section, as a credit or debit to the Consideration. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to any income therefrom and responsible for any expenses thereof, for the entire day upon which the Closing occurs. All prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed prior to the Closing Date.
- (b) **No Income Proration.** The parties acknowledge that the Property is not currently generating income, and that there will be no proration of income at Closing.
- (c) **Taxes and Special Assessments.** The parties shall Prorate all Taxes payable for the year of Closing, on a calendar year basis, on the basis of the most recent final tax bills for the Land. Seller shall pay all Taxes for years prior to the year of Closing. If after Closing either party receives a refund of any Taxes that were prorated pursuant to this Agreement, then the parties shall equitably share the refund. Seller shall not appeal, protest, or otherwise seek reduction of Taxes for years prior to the year of Closing without Buyer's prior written consent. Seller shall pay all pending or levied municipal or special district assessments (including unpaid installments) related or pertaining to the Property (including any fines, interest or penalties thereon due to the non-payment thereof), and shall

indemnify, defend and save Buyer from any claims therefor or any liability, loss, cost or expenses arising therefrom. If, after Closing, any additional Taxes or assessments applicable to the period prior to the Closing Date are levied for any reason, including back assessments or escape assessments, then Seller shall pay all such additional amounts.

- (d) **Operating Expenses.** Except for Taxes and special assessments, which are covered by Section 4.2(c) above, Seller shall be responsible for any operating expenses applicable to the Property prior to the Closing Date. Buyer shall be responsible for any operating expenses incurred by Buyer on and after the Closing Date.

Section 5.

5.1 Title Commitment. Buyer shall order the Title Commitment from the Title Company within 5 business days after the Contract Date. Seller shall, at Seller's sole cost and expense, provide the Title Company with any title abstracts, documents, or information reasonably required by the Title Company to complete the Title Commitment. The Title Commitment shall show the condition of title to the Land, shall name Buyer as the proposed insured, and shall include legible copies of all recorded exceptions and covenants, conditions, easements, and restrictions affecting the Property. The Title Commitment shall contain the conditions upon which the title insurance policy that will be issued by the Title Company at Closing pursuant to the Title Commitment (the "**Title Policy**") will provide extended coverage insurance that shall result in the deletion of the following exceptions: (a) liens for labor or materials, whether or not of record; (b) parties in possession; (c) unrecorded easements; and (d) exceptions that an accurate survey would disclose. The Title Policy shall include an ALTA Form 9.1 comprehensive endorsement, and any other endorsements required by Buyer.

5.2 Survey. Promptly following receipt of the Title Commitment, Buyer shall order and pay for as its sole expense, an ALTA survey of the Property (the "**Survey**"), which Survey shall expressly state the total square footage of the Property. Each party shall provide any cooperation reasonably necessary to assist in the preparation and delivery of the Survey to both parties.

5.3 Title Notice. If the Title Commitment or Survey disclose matters that are not acceptable to Buyer ("**Unpermitted Exceptions**"), then Buyer shall notify Seller in writing (the "**Title Notice**") of Buyer's objections within 45 days after Buyer has received both the Title Commitment and the Survey. In the event that Buyer notifies Seller of any objections within such 45-day period, then Seller shall notify Buyer in writing, within 10 days following the date of receipt of Buyer's notice of such objections, that either: (a) the Unpermitted Exceptions will be, prior to Closing, removed from the Commitment and/or Survey, insured over by the Title Company pursuant to an endorsement to the Commitment, or otherwise cured to Buyer's reasonable satisfaction; or (b) Seller declines to arrange to have the Unpermitted Exceptions removed, insured over, or otherwise cured. If Seller fails to deliver such written notice to Buyer within such 10-day period, then Seller shall be deemed to have elected to remove, insure over, or otherwise cure the Unpermitted Exceptions. If Seller declines to arrange to remove, insure over, or otherwise cure any of the Unpermitted Exceptions, then Buyer shall elect, through written notice to Seller within 30 days after Buyer's receipt of Seller's written declination, to: (a) terminate this Agreement and receive refund of the Earnest Money; or (b) waive such objections and take title subject to the Unpermitted Exceptions that Seller has declined to remove, insure over, or otherwise cure. If Buyer fails to deliver such written notice to Seller within such 30-day

period, then Buyer shall be deemed to have elected to waive such objections. The Closing Date shall be adjusted, if necessary, to allow for any elections allowed or required by this Section. Notwithstanding anything to the contrary contained herein, Seller shall be obligated to remove as a title exception (x) all mortgages, security deeds, mechanic's liens, or other security instruments encumbering the Property, and (y) all past due ad valorem taxes and assessments, and (z) any judgments or tax liens against the Seller (which do not result from acts or omissions on the part of Buyer) which have attached to and become a lien against the Property.

5.4 Pre-Closing "Gap" Title Defects. Buyer may, at or prior to Closing, notify Seller in writing (the "Gap Notice") of any title issues raised by the Title Company or by Buyer's surveyor after Buyer's receipt of the initial Title Commitment and Survey; provided that Buyer must notify the Seller of such objection to title within 10 days of being made aware of any such issue. If Buyer sends a Gap Notice to the Seller, Buyer and the Seller shall have the same rights and obligations with respect to such notice as apply to a Title Notice under Section 5.3 hereof.

Section 6. Buyer's Inspection.

6.1 Document Inspection. Buyer and Seller acknowledge that Buyer (by itself or through such agents, consultants and others as Buyer shall designate) may inspect, test and analyze the Property.

6.2 Physical Inspection and Applications. Buyer and its consultants and agents shall have the right, from time to time prior to the earlier of the completion of the Formal Inspection Period in Section 6.3 below or termination of this Agreement, to enter upon the Property to examine the same and the condition thereof, and to conduct such investigations, inspections, tests, studies and submit such permit and zoning applications as Buyer shall determine to be reasonably necessary, including without limitation invasive geotechnical and soil testing and Land-use and PUD applications. Buyer agrees to pay all costs of such investigations, inspections, tests, studies and applications and to indemnify and hold Seller harmless from and against any claims for injury or death to persons or damage to property arising solely out of any action of any person or firm entering the Property on Buyer's behalf as aforesaid, which indemnity shall survive the Closing and any termination of this Agreement without the Closing having occurred. Notwithstanding the foregoing, Buyer shall not be liable hereunder for the discovery of a preexisting condition at the Property or for the consequences of such discovery.

6.3 Formal Inspection Period. Notwithstanding Buyer's continuing right of inspection contained in Section 6.2 above, Buyer shall have until that date which is 120 days after the Contract Date (the "Inspection Date") in which to make such investigations, inspections, tests, studies and applications as permitted herein with respect to the Property, and any other thing or matter relating to the Property as Buyer deems appropriate, and, at the sole discretion of Buyer, to terminate this Agreement on or before such Inspection Date if Buyer is not, for any reason or for no reason, satisfied with the Property. If Buyer terminates this Agreement on or before the Inspection Date, then the Earnest Money shall be returned to Buyer, and neither party shall have any further obligation to the other except as to provisions herein which are to survive termination. Upon the submission to the City of an application for zoning or PUD approval, this section and its timeline shall be deemed satisfied and any remaining time pursuant herein waived. This Section 6.3 shall not be deemed to limit Buyer's additional termination rights under any other section of this Agreement

6.4 Preliminary Site Plan and Elevations Period. Notwithstanding Buyer's continuing right of inspection contained in Section 6.2 above, Buyer shall have until that date which is 75 days after the Contract Date (the "**Site Plan Date**") in which provide to the Seller a preliminary site plan showing the approximate location of all structures and improvements along with exterior elevations showing approximate building height and appearance along with such other information as reasonably may be required to clearly show the Buyer's planned development of and use of the Property. If Buyer fails to provide such information to the Seller on or before the Site Plan Date and has not terminated this Agreement, then the Buyer shall be deemed to have waived section 6.3 Formal Inspection Period. If Buyer terminates this Agreement on or before the Site Plan Date, then the Earnest Money shall be returned to Buyer, and neither party shall have any further obligation to the other except as to provisions herein which are to survive termination. If Buyer provides the information required by this section 6.4 to the Seller on or before the Site Plan Date, then section 6.3 Formal Inspection Period shall remain in full force and effect allowing Buyer a 120 day period to complete the items allowed by section 6.3 above; and \$10,000 of the earnest money shall become non-refundable subject to section 9 below.

6.5 Appraisal. Buyer may obtain, at its sole cost and expense, an appraisal of the Property (the "**Appraisal**"), to be performed by an appraiser acceptable to Buyer in its sole discretion. In the event Buyer has the Property appraised, Seller shall provide all reasonable cooperation necessary to the appraiser conducting the Appraisal.

Section 7. Seller's Representations, Warranties and Covenants.

7.1. In addition to any other representations, warranties and covenants provided by Seller to Buyer elsewhere in this Agreement, Seller represents, warrants and covenants to Buyer as of the Contract Date:

- (a) **No Leases.** There are no leases (or other similar written or verbal agreements) granting third parties rights of possession or occupancy of the Property or any part thereof.
- (b) **No Purchase Options or Rights of First Refusal.** No person or entity has an option or right of first refusal to purchase all or any portion of the Property.
- (c) **No Service Contracts.** There are no service contracts that relate or pertain to the Property, or the operation or maintenance thereof.
- (d) **Authority.** Seller is formed pursuant to, and in good standing under, the laws of the State of Minnesota and authorized to do business in the State of Minnesota. Each Seller is authorized to own and operate real estate in the state in which its Land is located. No Seller is subject to any proceeding in bankruptcy or any proceeding for dissolution or liquidation. This Agreement and all exhibits and documents to be delivered by each Seller pursuant to this Agreement have been duly executed and delivered by each Seller and constitute the valid and binding obligations of each Seller, enforceable in accordance with their terms. Each Seller has all necessary authority, has taken all action necessary to enter into this Agreement and to consummate the transactions contemplated hereby, and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement will not conflict with or constitute a breach or default under (i) the organizational documents of Seller; (ii) any material instrument, contract,

or other agreement to which any Seller is a party which affects any of the Property; or (iii) any statute or any regulation, order, judgment, or decree of any court or governmental or regulatory body.

- (e) **Environmental Matters.** To Seller's knowledge: (i) Hazardous Substances have not been used, generated, transported, treated, stored, released, discharged or disposed of in, onto, under or from the Property in violation of any Environmental Laws by Seller, by any predecessor-in-title or agent of Seller, or by any other person at any time except as disclosed by that certain Phase I Environmental Report dated October 2013 prepared by SEH and directed to the City of Maplewood with a copy previously provided to the Buyer; (ii) there are no above-ground or underground tanks or any other underground storage facilities located on the Property, and there have never been such tanks or facilities on the Property; and (iii) there are no wells or private sewage disposal or treatment facilities located on the Property and there have never been such wells or private sewage disposal or treatment facilities located on the Property.
- (f) **Non-Foreign Status.** Seller is not a "foreign person" as that term is defined in the Code and the regulations promulgated pursuant thereto.
- (g) **Anti-Terrorism Laws.** Neither Seller, nor any of its affiliated entities, is in violation of any laws relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law No. 107-56. Neither Seller nor, to the knowledge of Seller, any of its affiliated entities, or their respective brokers or agents acting or benefiting in any capacity in connection with the purchase of the Property, is any of the following: (i) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with which Seller is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Laws; (iv) a person or entity that commits, threatens, or conspires to commit or supports "terrorism" as defined in the Executive Order; or (v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list. Neither Seller nor, to the knowledge of Seller, any of its brokers or other agents acting in any capacity in connection with the purchase of the Property: (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person as described above; (y) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (z) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any of the Anti-Terrorism Laws.
- (h) **Governmental Matters.** Seller has not received written notice from any governmental body having jurisdiction over the Property, and has no other actual

knowledge, of: (i) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property; (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property; (iii) any proposed changes in any road patterns or grades which would adversely and materially affect ingress or egress to or from the Property; (iv) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting the Property; (v) any uncured violations of laws, codes or ordinances affecting the Property; or (vi) any violation of the terms of, or any failure to obtain, any permit required for the operation of the Property as presently operated, or any threat to revoke, cancel, suspend or not renew any such permit.

- (i) **Litigation.** To Seller's knowledge, there is no controversy, investigation, complaint, protest, proceeding, suit, litigation or claim relating to the Property or any part thereof, or relating to any Seller, which might adversely affect the Property or the transactions contemplated by this Agreement.
- (j) **Mechanics' Liens.** To Seller's knowledge, all bills and claims for labor performed and materials furnished to or for the benefit of the Property prior to the date of execution hereof have been paid in full.
- (k) **No Bankruptcy.** Seller: (a) is not in receivership or dissolution; (b) has not made any assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature; (c) has not been adjudicated a bankrupt or filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any jurisdiction and no such petition has been filed against Seller or any of its property or affiliates, if any; (d) has not suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, which remains pending as of such time; (e) has not made an offer of settlement, extension or composition to its creditors generally; and (f) none of the foregoing are pending or threatened.
- (l) **Methamphetamine Production.** To Seller's knowledge, no methamphetamine production has occurred on the Land.

7.2. It shall be a condition of Closing that the representations, warranties and covenants contained in this Section 7 are true and correct at Closing. If Seller learns that any of said representations or warranties has become inaccurate between the Contract Date and the Closing Date, Seller shall immediately notify Buyer in writing of such change. The Closing Date shall be automatically extended for 10 days in order to allow Seller to cure such change. If Seller cures such change, then this Agreement shall proceed to Closing. If Seller does not cure such change, Buyer may either (a) terminate this Agreement by written notice to Seller, in which case the Earnest Money shall be returned to Buyer and the parties shall have no further rights or obligations hereunder, except for those which expressly survive such termination, or (b) waive such right to terminate and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Buyer elects option (b) in the preceding sentence, the representations and warranties shall be deemed to be automatically amended to reflect said change. Seller's execution and delivery of the Deed shall be deemed Seller's certification that all of the foregoing representations and warranties remain true and correct as of the Closing

Date, as if made on such date. The representations, warranties and covenants contained in this Section 7 shall survive Closing.

Section 8. Buyer's Representations and Warranties. Buyer represents and warrants that, as of the Contract Date:

8.1. Buyer is a validly formed limited liability company under the laws of North Dakota, is in good standing in the state of North Dakota, will be qualified to do business in the State of Minnesota on or before Closing, and is duly authorized to do all things required of it under or in connection with this Agreement. The parties executing this Agreement on behalf of Buyer are duly authorized to so do, and, upon execution, this Agreement will be duly executed by and binding upon Buyer; and

8.2. Buyer is not subject to any involuntary proceeding for dissolution or liquidation.

Section 9. Conditions to Closing. Buyer's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent unless waived by the Buyer:

- (a) This Agreement shall not have terminated or been deemed terminated pursuant to any provision hereof.
- (b) The Buyer shall have acquired the approximately 15.5 acre parcel of real property adjoining and directly to the west of the Property as described on Exhibit B.
- (c) Prior to the end of the Formal Inspection Period in Section 6.3 the Buyer shall provide the City with a proposed multifamily development plan for the Property and the adjoining 15.5 acres to the west including applications for: Comprehensive Plan Amendment; PUD or rezoning approval; Design Review and Parking waiver and any lot combination (division) which may or may not be needed as may be reasonably requested by the City. The City shall have 60 days to approve the Buyer's multifamily development plan as submitted or if approved with conditions, all conditions must be acceptable to the Buyer in its sole discretion. City shall have such extensions as may be reasonably necessary to adequately review and present for approval the project to the City Council as allowed by law. The City's obligation under this section shall be tolled if there are approvals needed from any other governmental entity and until such decision(s) is/are made.
- (d) Seller shall have made all deliveries to the Closing Agent as required by Section 10.4 below.
- (e) Prior to Closing, Buyer shall have received from the Title Company an acceptable pro-forma of the Title Policy, obligating the issuance of the Title Policy in accordance therewith showing (effective upon Closing) title in Buyer subject only to such exceptions as have been approved by Buyer pursuant to this Agreement.

If any of the foregoing conditions are not satisfied or waived by Buyer on or before the Closing Date, then Buyer may terminate this Agreement on written notice to Seller, and, in such event, this Agreement shall cease and terminate, the Earnest Money shall be applied as set forth

pursuant to Section 3, and neither party shall have any further obligation hereunder except as to covenants which are to survive termination.

Section 10. Closing.

10.1 Time and Place. Provided that all of the conditions and contingencies set forth in this Agreement are fully satisfied or performed, Buyer's acquisition of the Property shall take place on a mutually agreeable business day (the "**Closing Date**") that is at the earlier of the soonest day after the satisfaction of all of the conditions and contingencies. Closing shall occur through mail escrow with the Closing Agent, or in another mutually agreeable manner.

10.2 Buyer's Costs. Buyer shall pay:

- (a) All recording and filing charges in connection with the Deed.
- (b) One-half of all escrow and closing agent charges.
- (c) The premiums and costs for the Title Policy, and for any endorsements requested by Buyer (other than curative endorsements that Seller may be obligated to provide pursuant to Section 5 above).
- (d) The cost of preparation of the Survey.
- (e) All costs of Buyer's due diligence.
- (f) Its own attorneys.

10.3 Seller's Costs. The Seller shall pay:

- (a) One-half of all escrow and closing agent charges.
- (b) The cost of preparation of the Title Commitment, including without limitation the cost to update any necessary title abstracts.
- (c) The cost of preparation and recording of all documents (other than the Deed) necessary to place record title in the condition warranted by Seller in this Agreement.
- (d) Any form of deed tax or personal property tax imposed by any state or federal entity by virtue of the sale of the Property, or recording of the Deed, to Buyer.
- (e) Its own attorneys.

10.4 Seller's Deliveries. Seller shall obtain and deliver to Buyer at the Closing the following documents (all of which shall be duly executed and, if required for recording, acknowledged, which documents Buyer agrees to execute and acknowledge where required):

- (a) The Deed, conveying to Buyer all of each Seller's right, title and interest in and to the Property, subject only to encumbrances and title exceptions approved by Buyer.

- (b) From each Seller, a non-foreign certificate in form reasonably required by the Title Company.
- (c) From each Seller, an affidavit customarily required of sellers by the Title Company to remove the standard exceptions from an owner's title insurance policy that are capable of being removed by such an affidavit.
- (d) Such further documents as Buyer or the Title Company may reasonably request to carry out the provisions of this Agreement.

10.5 Buyer's Deliveries. Buyer shall deliver to Seller at Closing:

- (a) The Consideration, as prorated and allocated pursuant to this Agreement.
- (b) Such further documents as Seller or the Title Company may reasonably request to carry out the provisions of this Agreement.

Section 11. Buyer 1031 Exchange. Buyer may elect to enter into the transaction as part of a simultaneous, deferred or reverse tax-deferred exchange under Section 1031 of the Code, pursuant to an exchange agreement or similar agreement to be entered into by and between Buyer and another qualified party ("**1031 Agent**") as contemplated by the Code. Each Seller agrees to cooperate with Buyer and to execute any documents (which may include an acknowledgement of an assignment of Buyer's rights, but not its obligations, under this Agreement) that are reasonably required by Buyer, the 1031 Agent, or the Code in order to complete the purchase of the Property as part of an exchange that qualifies for non-recognition of gain under Section 1031 of the Code. Sellers shall not incur any additional liability or financial obligation as a consequence of Buyer's possible exchange, and Buyer agrees to indemnify and hold each Seller harmless from any liability that may arise from Seller's participation therein.

Section 12. Operations Pending Closing. Seller shall not: (i) enter into or agree to enter into any lease or other agreement concerning occupancy or use of any of the Property, or (ii) sell, mortgage, pledge, hypothecate or otherwise transfer or dispose of all or any part of the Property, or incur any liabilities, except for such liabilities as will actually be discharged on or before Closing.

Section 13. Default and Remedies.

13.1 Seller's Default. Should Seller breach any of Seller's covenants, representations, or warranties contained in this Agreement, or should Seller otherwise default under this Agreement, then Buyer may, upon 20 days written notice to Seller, and provided such breach or failure is not cured within such 20-day period:

- (a) if such breach or default is discovered by Buyer prior to Closing, then Buyer may terminate this Agreement, without further liability on Buyer's part and, in such event, Buyer shall be entitled to a return of the Earnest Money and shall have no further liability hereunder; and/or
- (b) if such breach or default is discovered by Buyer prior to Closing, then Buyer may enforce specific performance of this Agreement, provided such action is

commenced within 180 days after the date of Buyer's written notice to Seller pursuant to this Section; and/or

- (c) if such breach or default is discovered by Buyer after Closing, then Buyer may seek damages from Seller on account of any such default.

13.2 Buyer's Default. Should Buyer, after the Inspection Date and prior to Closing, default in respect to any of its covenants, representations, or warranties contained in this Agreement, and if Seller is not in material default hereunder, Seller may terminate this Agreement in accordance with applicable statutes without further liability on Seller's part, in which event Seller shall have the right to the Earnest Money, which shall be considered liquidated damages and such right of termination shall be Seller's sole remedy hereunder, it being agreed that the damages which Seller would incur would be difficult, if not impossible, to calculate, but that such liquidated damages are a reasonable estimate of the damages that would be incurred by Seller.

13.3 Attorney's Fees to Prevailing Party. In the event of any litigation between the parties hereto under any of the provisions of this Agreement, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in such litigation. The parties agree that the Judge presiding over the litigation shall determine whether a party is a "prevailing party," and shall determine the reasonable amount of attorney's fees and costs recoverable. The parties agree that the amount of attorney's fees and costs which may be awarded must bear a reasonable relationship to, and must be limited by the Judge to a reasonable amount in view of, the amount recovered by the prevailing party in such matter.

Section 14. Condemnation. If, between the Contract Date and the Closing Date, any condemnation or eminent domain proceedings are initiated or threatened that might result in the taking of any part of the Land or access to the Land from adjacent roadways, Buyer, at its sole discretion, may elect to terminate this Agreement without cost, obligation, or liability on the part of Buyer, in which event this Agreement shall terminate all rights and obligations of the parties hereunder shall cease and the Earnest Money shall be returned to Buyer. If this Agreement is not terminated, Seller shall assign to Buyer all of Seller's right, title, and interest in and to any award pertaining to the Property made in connection with such condemnation or eminent domain proceedings. Buyer shall notify Seller within 15 calendar days after its receipt of written notice from Seller of such condemnation or eminent domain proceeding, whether it elects to exercise its right to terminate. If Buyer fails to notify Seller of its election within said 15-day period, such failure shall constitute an election to terminate this Agreement as aforesaid. The Closing Date shall be adjusted, if necessary, to allow for such election.

Section 15. Damage or Destruction. Seller shall bear all risk of loss to the Property until the Closing Date.

Section 16. Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by hand, by nationally-recognized overnight express delivery service, or by electronic "email" transfer (conditioned on delivery of a copy of such notice by nationally-recognized overnight express delivery service, which notice shall be deposited for delivery within one business day after delivery of such electronic "email" transfer) to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER: Melinda Coleman
City of Maplewood
1830 County Road B East
Maplewood, Minnesota 55109
Direct: 651-249-2055
Facsimile: 651-387-9951
Melinda.Coleman@ci.maplewood.mn.us

With a copy to: Alan Kantrud
City of Maplewood
1830 county Road B East
Maplewood, MN 55109
Direct: 651-249-2052
Mobile: 612-743-4242
Facsimile: 651-249-2059
alan.kantrud@ci.maplewood.mn.us

With a copy to: Mike Brass
Colliers International
5985 Rice Creek Parkway Suite 105
Shoreview, MN 55126
Direct: 952 837 3054
Mobile: 612 750 4312
Facsimile: 952 541 8054
mike.brass@colliers.com

BUYER: Rubicon Development Group LLC
Attn: Thomas A. Wentz Jr.
1334 Hiawatha St.
Minot, ND 58701
Telephone: (701) 340-5294 mobile
Telephone: (701) 833-0526 office
Email: tom.wentz@rubiconND.com

CLOSING AGENT: Dawn Anderson
Stewart Title Company - Minnesota Commercial Division
1700 82nd Street West, Suite 100
Bloomington, MN 55431
Telephone: (612) 435-6103 office
Telephone: (651) 262-3787 mobile
danderson@stewart.com

Such notices shall be deemed received (a) as of the date of delivery, if delivered by hand by 5:00 p.m. Central time on a business day, (b) as of the next business day, if tendered to an overnight express delivery service by the applicable deadline for overnight service, or (c) as of the date of email transmission, if properly transmitted by email prior to 5:00 p.m. Central time. If a notice is hand delivered or transmitted by email after 5:00 p.m. Central time, then any such notice shall be deemed received as of the next business day.

Section 17. Miscellaneous.

17.1. Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State in which the Land is located, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

17.2. Assignment. Buyer may assign this agreement to a to be formed Minnesota or Delaware entity without the consent of seller provided any assignee is affiliated with Buyer and the Buyer remains obligated on this Agreement unless released in writing by the Seller.

17.3. Brokers. Buyer and Seller each warrant and represent to the other that such representing and warranting party has not employed or made any commitment to a broker or agent (including without limitation any real estate or securities broker, agent, dealer, or salesperson) in connection with the transaction contemplated hereby, except for Seller's Broker. Each party agrees to indemnify and hold the other harmless from any loss or cost suffered or incurred by it as a result of the indemnifying parties' representation herein being untrue. If this transaction closes, Seller shall pay Seller's Broker a commission fee as agreed pursuant to a separate written agreement.

17.4. Time of the Essence; Possession. Time shall be of the essence of this Agreement and each and every term and condition hereof. Seller shall give possession of the Property to Buyer at Closing.

17.5. No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof, except the Closing of this Agreement shall constitute waiver of all conditions to Closing except to the extent otherwise agreed in writing at Closing.

17.6. Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the Property, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

17.7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

17.8. Amendments. No amendment to this Agreement shall be binding on any of the parties hereof unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

17.9. Date for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regular business day.

17.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

17.11. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations, and is intended, and shall for all purposes be deemed to be, a single, integrated document setting forth all of the agreements and understandings of the parties hereto, and superseding all prior negotiations, understandings and agreements of such parties. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

17.12. Survival. Except as otherwise expressly provided herein, neither this Agreement nor any provision contained herein shall be cancelled or merged with any deed or other instrument on, as of, at or by reason of the Closing, and the covenants and obligations of the parties shall survive the Closing.

17.13. Further Assurances. After the Closing, Buyer and Seller shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such instruments and take such other actions as may be reasonably necessary or advisable to carry out their respective obligations under this Agreement and under any Exhibit, document, certificate, or other instrument delivered pursuant thereto.

17.14. Joint and Several Liability. If this Agreement is executed by more than one entity or individual as Seller, then references to "Seller" or "Sellers" herein shall be deemed to refer to each such individual or entity and the liability of each individual or entity shall be joint and several, and the release by Buyer of any of them shall not release or affect in any manner the obligations of any other of them, and this Agreement shall not be revoked, discharged or impaired as to any such individuals or entities by reason of the insolvency of any other of them. Buyer may at its option enforce this Agreement against one or all such individuals or entities, and Buyer shall not be required to resort to enforcement against each such individual or entity, and Buyer's failure to proceed against or join any such individual or entity shall not affect the joint and several liability of any other individual or entity that signed this Agreement as Seller.

17.15. Exhibits. Attached hereto and forming an integral part of this Agreement are multiple exhibits, all of which are hereby incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

Section 18. Tax Deferred Exchange

18.1 Buyer shall have the right, at its option, to require the Property to be transferred by means of a transaction with another individual, partnership, trust or entity that is structured to qualify as a like-kind exchange of property within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended. The Seller agrees to cooperate with the Buyer to effectuate a Section 1031 exchange through a qualified intermediary, qualified trust, or other means as determined by the Buyer upon the following terms and conditions:

- A. The Buyer shall bear the additional transactions costs (including reasonable attorneys' fees) attributable to the closing of a qualified exchange, and shall indemnify the other party against any liability to them arising on account of such an exchange transaction.
- B. The parties do not expect that Seller will incur any additional expenses due to an exchange transaction; however, any additional out-of-pocket expenses incurred by the Seller as a result of the structuring of this transaction as part of an exchange, rather than as an outright purchase, shall be paid by Buyer within ten (10) days of Seller submitting proof of such expenses to Seller.
- C. The Buyer shall not be obligated to take title to any other property as part of any such tax-free exchange.
- D. No such exchange shall result in a delay of the closing, place any additional burden on the Seller, or cause the Seller to suffer any loss as a result of following the instructions of the the Buyer or the Buyer's representative in proceeding with a Section 1031 exchange herein, otherwise this paragraph shall be unenforceable at the Seller's option.
- E. No exchange contemplated under this paragraph shall result in waiver or limitation of the warranties made by the Buyer pursuant to this Agreement, nor release either party from their obligations hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and sealed by its duly authorized signatory, effective as of the Contract Date.

BUYER:

RUBICON DEVELOPMENT GROUP LLC

By: _____

Print Name: Thomas A. Wentz Jr

Print Title: President

Date: _____

SELLER:

City of Maplewood Minnesota

By: _____

Print Name: _____

Print Title: _____

Date: _____ (**"Contract Date"**)

EXHIBIT A
Description of Land

That part of the Northwest corner of the Northeast quarter of Section 12, Township 28 North, Range 22, Lying Southwesterly of New Lower Afton Road & Northerly & Northwesterly Of Londin Lane in the City of Maplewood, County of Ramsey, State of Minnesota

EXHIBIT B
Description of adjoining land

Tract 1:

That part of the East 330 feet of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 12, Township 28 North, Range 22 West, lying North of the South 333 feet thereof, and Southerly of the southline of Lower Afton Road.

Tract 2:

All that part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 12, Township 28, Range 22, lying Southerly of the South line of Lower Afton Road, and lying Westerly of the following described line: beginning at a point on the South line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of said Section 12 distant 622 feet (assumed bearing) South 88 degrees 40 minutes West from the Southeast corner of the Northeast Quarter of the Northwest Quarter of said Section 12, thence North 369.55 feet, thence North 4 degrees 39 minutes 10 seconds East 293.26 feet, thence North 15 degrees 08 minutes East 218.13 feet to a point on the South line of Lower Afton Road and there terminating except the South 346.5 feet thereof.

Tract 3:

All that part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 12, Township 28, Range 22, lying Southerly of the South line of Lower Afton Road, and lying Easterly of the following described line: beginning at a point on the South line of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 12 distant 622 feet (assumed bearing) South 88 degrees 40 minutes from the Southeast corner of the Northeast Quarter (NE 1/4) of Northwest Quarter (NW 1/4) of said Section 12, thence North 369.55 feet, thence North 4 degrees 39 minutes 10 seconds East 293.36 feet, thence North 15 degrees 08 minutes East 218.13 feet to a point on the South line of Lower Afton Road and there terminating except the South 333 feet thereof and except the North 36.55 feet of the South 369.55 feet of the West 292 feet of the East 622 feet thereof. Except that part of the East 330 feet of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 12, Township 28 North, Range 22 West, lying North of the South 333 feet thereof.

All in Ramsey County, Minnesota

Abstract Property

122822210004

122822210002

122822210003

MapRamsey

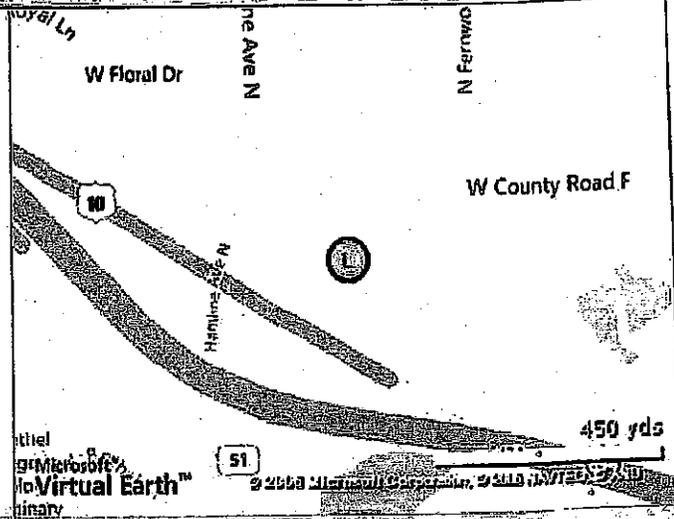


2320
2321
2322
2323
2324
2325
2326
2327
2328
2329
2330

1296 County Road F - 1296 County Rd F

Arden Hills, MN 55112

Sale on 1/1/2011 - Research Complete
Commercial Land of 2.74 AC (119,354 SF)



Buyer & Seller Contact Info

Recorded Buyer: -

Recorded Seller: **Reiling George J**
661 Heinel Dr
Roseville, MN 55113
(651) 483-1941

Listing Broker: **CBRE**
Brian Pankratz
(952) 924-4665

Transaction Details

ID: 2028625

Sale Date: **01/01/2011 (893 days on market)**
Escrow Length: -
Sale Price: -Full Value
Asking Price: **775000 \$10.49**

Sale Type: **Investment**
Land Area: **2.74 AC (119,354 SF)**
Proposed Use: **Industrial**

Zoning: **I-1**

Street Frontage: **225 feet on W County Road F**

Topography: **Level**
On-Site Improv: **Raw land**
Off-Site Improv: **Curb/Gutter/Sidewalk, Electricity, Gas, Sewer, Streets, Water**
Improvements: **House On Lot**

Transaction Notes

Listing Broker Brian Pankratz with CB Richard Ellis confirmed the sale of the 2.74 acres of land on 1296 County Rd F in Arden Hills, Minnesota of Ramsey County. Pankratz represented the seller, who assessor records confirm is George Reiling.

The parties involved were not at liberty to disclose any vital information about the transaction or were unable to be contacted.

The sale has not yet been recorded and the sale date is estimated.



1296 County Road F - 1296 County Rd F

SOLD

Commercial Land of 2.74 AC (119,354 SF) (cont)

Income Expense Data

Expenses	- Taxes	\$27,734
	- Operating Expenses	
	Total Expenses	\$27,734

Current Land Information

ID: 6618150

Zoning:	I-1	Proposed Use:	Industrial
Density Allowed:	-	Land Area:	2.74 AC (119,354 SF)
Number of Lots:	-	On-Site Improv:	Raw land
Max # of Units:	-	Lot Dimensions:	-
Units per Acre:	-	Owner Type:	-
Improvements:	House On Lot		
Topography:	Level		
Off-Site Improv:	Curb/Gutter/Sidewalk, Electricity, Gas, Sewer, Streets, Water		
Street Frontage:	225 feet on W County Road F.		

Location Information

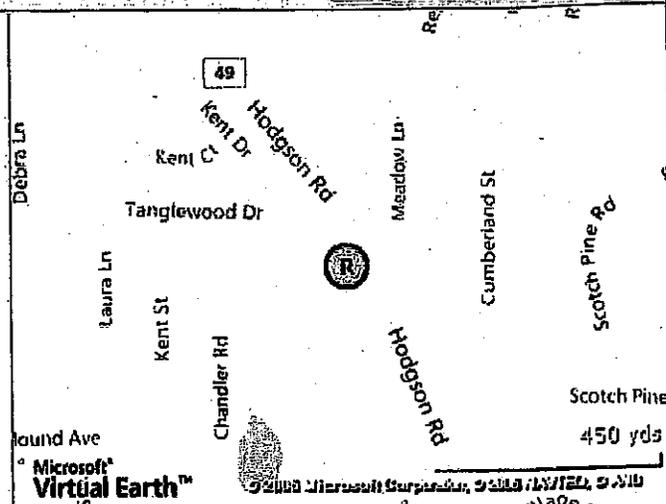
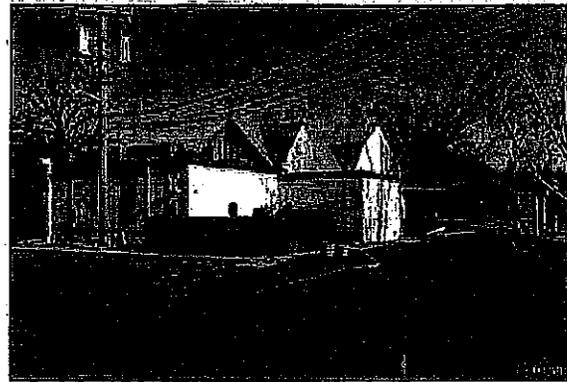
Located:	N of I-694 & E of Hwy 51
Metro Market:	Minneapolis/St Paul
Submarket:	Suburban St Paul/Suburban St Paul
County:	Ramsey
CBSA:	Minneapolis-St. Paul-Bloomington, MN-WI
CSA:	Minneapolis-St. Paul, MN-WI
DMA:	Minneapolis-St Paul, MN-WI



4785 Hodgson Rd

Shoreview, MN 55126

Sale on 4/10/2014 for \$1,100,000 (\$75.06/SF) - Research Complete
 14,655 SF - Sold for Land Value, Retail Restaurant Building Built in 1966.



Buyer & Seller Contact Info

Recorded Buyer: United Properties Residential LLC
True Buyer: United Properties
 3600 American Blvd W
 Bloomington, MN 55431
 (952) 835-5300

Recorded Seller: Ruth & John Kozlak Revocable Trust
True Seller: Ruth & John Kozlak Revocable Trust
 Paul Kozlak
 1920 Imperial Golf Course Blvd
 Naples, FL 34110
 (612) 673-9309

Buyer Type: Developer/Owner-RGNL
Buyer Broker: No Buyer Broker on Deal

Seller Type: Trust
Listing Broker: Tatonka Real Estate Advisors, Inc
 (612) 466-7300

Transaction Details

ID: 3019216

Sale Date: 04/10/2014	Sale Type: Investment
Escrow Length: -	Bldg Type: Retail - Restaurant
Sale Price: \$1,100,000-Confirmed	Year Built/Age: Built in 1966 Age: 48
Asking Price: -	GLA: 14,655 SF
Price/SF: \$75.06	Land Area: 3.68 AC (160,301 SF)
Price/AC Land Gross: \$298,913.04	
Percent Leased: 100.0%	
Tenancy: Multi	Percent Improved: 0.2%
Sale Conditions: Redevelopment Project	Total Value Assessed: \$1,125,000 in 2012
	Improved Value Assessed: \$1,900
	Land Value Assessed: \$1,123,100
	Land Assessed/AC: \$305,190
Financing: Down payment of \$1,100,000.00 (100.0%)	
Parcel No: 13-30-23-31-0039	
Document No: 4504167	



4785 Hodgson Rd

SOLD

14,655 SF - Sold for Land Value, Retail Restaurant Building Built in 1966 (cont)

Transaction Notes

4875 Hodgson Rd in Shoreview, MN sold for \$1,100,000. Consideration reflected the value of the land as this location will be redeveloped into a 77-unit senior housing community. Construction is targeted to be completed some time in 2015. The restaurant at this location closed approximately 1 month before the sale.

Details were confirmed with parties on both sides of the transaction.

Income Expense Data

Expenses	- Taxes	\$46,530
	- Operating Expenses	
	Total Expenses	\$46,530

Current Retail Information

ID: 1043138

Property Type:	Retail - Restaurant	GLA:	14,655 SF
Center:	-	Total Avail:	0 SF
Bldg Status:	Built in 1966	% Leased:	100.0%
Owner Type:	Developer/Owner-RGNL	Bldg Vacant:	0 SF
Zoning:	--	Land Area:	3.68 AC
Owner Occupied:	No	Lot Dimensions:	-
		Building FAR:	0.09
Rent/SF/Yr:	-	No. of Stores:	-
CAM:	-		

Street Frontage: 129 feet on Hodgson Rd
Expenses: 2014 Tax @ \$3.18/sf
Parking: 125 free Surface Spaces are available
Features: Dedicated Turn Lane, Pylon Sign, Signage, Signalized Intersection

Location Information

Metro Market: Minneapolis/St Paul
Submarket: Rosedale Ret/Rosedale Ret
County: Ramsey
CBSA: Minneapolis-St. Paul-Bloomington, MN-WI
CSA: Minneapolis-St. Paul, MN-WI
DMA: Minneapolis-St Paul, MN-WI



Multi-Property

SOLD

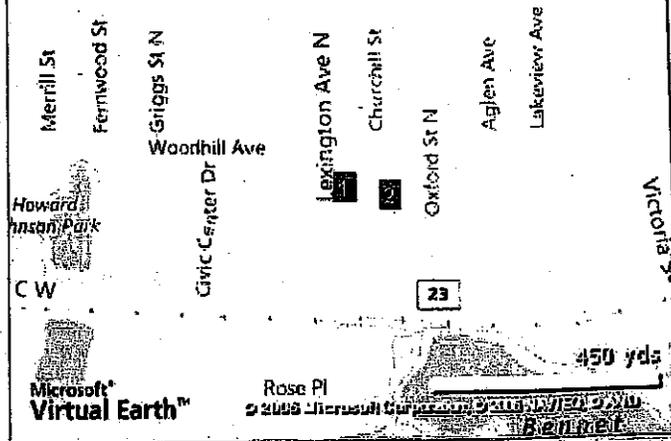
3

Multi-Property sale on 7/14/2015 of 2 Land parcels, for \$1,300,000 (\$4.77/AC) - Research Complete



Image Coming Soon

- 1 2688 Lexington Ave N
- 2 2644 Lexington Ave N



Summary of Property Info - at time of sale

Address	City, State	Type-Class	Property SF	Built	Sale Price
1 2688 Lexington Ave N	Roseville, MN	Land	-	-	\$1,246,005 (Allocated)
2 2644 Lexington Ave N	Roseville, MN	Land	-	-	\$53,995 (Allocated)

Buyer & Seller Contact Info

Recorded Buyer: Cherrywood Pointe of Roseville at Lexington LLC	Recorded Seller: Roger J Relling
True Buyer: United Properties 3600 American Blvd W Bloomington, MN 55431 (952) 835-5300	True Seller: Roger J Relling Roger Relling 1877 Gluek Ln Roseville, MN 55113 (651) 636-1794
Buyer Type: Developer/Owner-RGNL	Seller Type: Individual
Buyer Broker: No Buyer Broker on Deal	Listing Broker: Tatonka Real Estate Advisors, Inc Darryle Henry (612) 466-7300 Steve Chirhart (612) 466-7302

Transaction Details

ID: 3443159

Sale Date: 07/14/2015 (57 days on market)	Sale Type: Investment
Escrow Length: 548 days	RBA: -
Sale Price: \$1,300,000-Confirmed	Land Area: 6.26 AC (272,686 SF)
Asking Price: -	
Price/SF: -	
Pro Forma Cap Rate: -	
Sale Conditions: Redevelopment Project, Soil Contamination Issue	
Transfer Tax: -	
Legal Desc: Parcel 1: That part of the North 253.8 feet of the South 749.8 feet of the West 160 feet of the Southwest Quarter of Section 2, Township 29, Range 23, Ramsey County, Minnesota, which lies south of the following described line:	
Parcel No: 02-29-23-33-0047, 02-29-23-33-0048	



Multi-Property

SOLD

Multi-Property sale on 7/14/2016 of 2 Land parcels, for \$1,300,000 (\$4.77/AC) - Research Complete (cont)

Financing: **Down payment of \$50,000.00 (3.8%)**

Transaction Notes

On July 14, 2015, the individual owner of 2688 Lexington Avenue and 2644 Lexington Avenue in Roseville, Minnesota sold ownership to Cherrywood Pointe of Roseville at Lexington LLC for \$1,300,000. Both properties consist of approximately six acres of commercially zoned land. The escrow period lasted approximately a year and a half.

The seller was represented by Darryle Henry and Steve Chirhart of Tatonka Real Estate Advisors.

The buyer had no formal representation.

There was an issue with the soil possessing asphalt beneath the soil which the buyers thought would make it difficult to develop a property on the land thus the sale price was \$1.3 million instead of its original asking price of \$1.7 million according to the seller.

The buyer was motivated to purchase the property in order to develop it into a 100-unit senior care assisted-living facility. The facility is currently proposed and is expected to break ground in May of 2016 with an estimated delivery date of January, 2017.

The seller was motivated to sell the property because it was an inheritance and chose to sell it to the buyer because they believed it was going to be used for a good cause according to the seller.

All information on this transaction was confirmed by the seller and the listing broker.

The buyer could not be reached for comment.

Current Land Information: 2688 Lexington Ave N

ID: 9673458

Zoning: -	Proposed Use: -
Density Allowed: -	Land Area: 6 AC (261,360 SF)
Number of Lots: -	On-Site Improv: -
Max # of Units: -	Lot Dimensions: -
Units per Acre: -	Owner Type: Developer/Owner-RGNL
Improvements: -	

Location Information

Metro Market: **Minneapolis/St Paul**
 Submarket: **Suburban St Paul/Suburban St Paul**
 County: **Ramsey**
 CBSA: **Minneapolis-St. Paul-Bloomington, MN-WI**
 CSA: **Minneapolis-St. Paul, MN-WI**
 DMA: **Minneapolis-St Paul, MN-WI**

Current Land Information: 2644 Lexington Ave N

ID: 9885305

Zoning: -	Proposed Use: Health Care
Density Allowed: -	Land Area: 0.26 AC (11,326 SF)
Number of Lots: -	On-Site Improv: -
Max # of Units: -	Lot Dimensions: -
Units per Acre: -	Owner Type: Developer/Owner-RGNL
Improvements: -	

Location Information

Metro Market: **Minneapolis/St Paul**
 Submarket: **Suburban St Paul/Suburban St Paul**
 County: **Ramsey**
 CBSA: **Minneapolis-St. Paul-Bloomington, MN-WI**
 CSA: **Minneapolis-St. Paul, MN-WI**
 DMA: **Minneapolis-St Paul, MN-WI**





Property Address: **Londin Lane**
Land Square Feet **257,875**
Price Per Square Foot **\$4.52**
Sale Price **\$1,165,000**

Closing Cost Estimate

	Buyer	Seller	
Seller Commissions	0.00%	6.00%	\$ 69,900.00
Both Title Insurance			\$ 600.00
Buyer Appraisal			\$ -
Buyer Mortgage Registration Tax (\$2.40 per \$1000.00)			\$ -
Seller Deed Tax			\$ 3,961.00
Seller PHASE I			\$ -
Seller PHASE II			\$ -
Seller Asbestos Testing			\$ -
Buyer Survey Update			\$ -
Buyer Soil Engineering			\$ -
Buyer Structural Engineering			\$ -
Both Legal Fees			\$ -
Both Closer's Fee			\$ 250.00
Buyer Name Search			\$ -
Buyer Recording Fees			\$ -
Seller Damage Deposits			\$ -
Seller Assessments	\$0	PSF	\$ -
Seller Association Dues			\$ -
Seller Mortgage Pay Off			\$ -
Seller Estimated Taxes	\$15,791	\$1,316	\$ -
Quick adjustment +/-			\$ -
Total Cost			\$ 74,711.00
Adjusted Net			\$ 1,090,289.00
Net PSF			\$ 4.23

All information is judged reliable, however, no warranty or representation is made to its accuracy or completeness

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MEMORANDUM

TO: City Council
FROM: H. Alan Kantrud, General Counsel
SUBJECT: **PUBLIC HEARING REGARDING CABLE TELEVISION FRANCHISE
ORDINANCE FOR QWEST BROADBAND SERVICES d/b/a CENTURYLINK
TO PROVIDE CABLE COMMUNICATIONS SERVICES**
DATE: February 1, 2016

INTRODUCTION

After considering the Franchise Ordinance at first reading, Council authorized Staff to make any edits and bring the Document back for second reading and public hearing prior to the adoption/granting of the actual Franchise Ordinance.

BACKGROUND

The City is bound to a process that calls for certain procedures to be followed prior to the actual passage of a franchise, "ordinance," to a cable operator by its own policy of providing a Public Hearing in the passage of its Ordinances in all cases.

Staff has reviewed the Ordinance with Council once before, made edits, and has brought it back for your consideration. Thus at this second reading a public hearing is warranted.

DISCUSSION

As the agenda title implies, the Council is being asked to hold the City-required public hearing on the Franchise Ordinance for CenturyLink. This is an opportunity for questions or comments by the public on the proposed Ordinance. It is then CenturyLink's opportunity to explain any terms and respond to any such questions. Similarly, City staff will be available for questions it can handle or is responsible for.

The Hearing is conducted as any other with a simple opening by the Mayor and her call for public comments. Once she has closed the hearing, the record is complete with respect to the Ordinance under consideration. Staff will then incorporate any comments into the Ordinance and, if substantive, bring forward the revised Franchise Ordinance at the Council's next meeting for consideration and approval but the anticipation is that the Document is in its final iteration.

RECOMMENDATION

It is recommended that the City Council hold the noticed Public Hearing regarding the proposed Franchise for CenturyLink to provide Cable Communication Services in the City of Maplewood.

ATTACHMENT

Final Version of Franchise Ordinance

ORDINANCE

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC D/B/A CENTURYLINK TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the development of a competitive Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

In the review of the application by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

Grantee's plans for constructing, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

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

The Franchise granted to Grantee is nonexclusive.

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the CenturyLink Cable Franchise Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

a. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §§543(b)(7).

b. "City" means City of Maplewood, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

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

d. "Cable Service" or "Service" means Cable Service as defined by Minn. Stat. § 238.01 et seq. and 47 U.S.C § 521 et seq., as may be amended from time to time.

e. "Cable System" or "System" means, unless the context clearly indicates otherwise, the Company's network or facility, , consisting of antennas, copper or fiber optic cables, transmitters and receivers, amplifiers, towers, cablecasting facilities, power supplies, pedestals, and any other equipment or facilities intended for the purpose of providing Cable Service to Subscribers in the City. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C § 522(7).

f. "Class IV Cable Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

g. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

h. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

i. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and contractual relationship established hereby.

j. "Grantee" is Qwest Broadband Services, Inc d/b/a CenturyLink, its lawful successors, transferees or assignees.

k. "Gross Revenues" means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%) or more, from operation of its System within City to provide Cable Services including, but not limited to, all Cable Service fees, Franchise Fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, set top box fees, Lockout Device fees. The term Gross Revenues shall not include advertising revenues, FCC regulatory fees, bad debt, or any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit or refundable subscriber deposits.

l. "Installation" means the connection of the System from feeder cable to the point of connection with the Subscriber Set Top Box or other terminal equipment.

m. "Living Unit" means a distinct address as tracked in the QC network inventory used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

n. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.

o. "Mosaic Channel" means a channel which displays miniaturized media screens and related information for a particular cluster of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the group.

p. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program video signals to Subscribers for a fee or charge, in addition to the charge for other Basic Cable Services or other Cable Services.

q. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

r. "QC" means Qwest Corporation d/b/a CenturyLink, an commonly-owned affiliate of Grantee.

s. "Qualified Living Unit" means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service.

t. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest, and any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel waterway, easement or right-of-way, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, or dedicated for use by City, use by the general public or use compatible with Cable System operations, including other dedicated Rights-of-Way for travel purposes and utility easements.

u. "Right-of-Way Ordinance" means any ordinance of City codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

v. "Set Top Box" means an electronic device (sometimes referred to as a converter) which may serve as an interface between the System and a Subscriber's television monitor, and which may convert signals to a frequency acceptable to such monitor, and may by an appropriate selector, permit a Subscriber to view all signals of a particular service.

w. "Subscriber" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its Proposal. Failure of Grantee to provide a System as described in its Proposal, or meet obligations and comply with all provisions therein, may be deemed a violation of this Franchise.

2. Grant of Nonexclusive Authority.

a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, install, operate, upgrade, repair, replace, reconstruct, rebuild, maintain and retain in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.

b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

c. It shall be unlawful for any Person to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person shall have first obtained and shall currently hold a valid franchise. Any affiliate of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event the City cannot resolve these violations or disputes with QC, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other affiliate's compliance with applicable local, state and federal laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

d. This Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorization to operate Cable Systems within the City. Provided, however, that Grantor shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to Grantee.

In the event another Person operates a Cable System authorized by Grantor on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to Grantee under this Franchise, the Grantor shall adjust any such terms and conditions in any other provider's authorization or this Franchise so that the terms and conditions under which such other Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to Grantee.

3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person's use of the System to provide Cable Services, to the extent those would be such a requirement under this Franchise if Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section.

4. Franchise Term.

The term of the Franchise granted by the City pursuant to this ordinance shall be for a period of five (5) years, provided, however, that no less than six (6) months prior to the expiration of the initial five (5) year term, to the extent the City determines, in the City's sole discretion, that the Company has complied with this Franchise and with applicable law, the City shall have the right to extend the franchise term for an additional period so as to be co-terminus with any franchise then-held by the incumbent cable operator.

5. Compliance with Applicable Laws, Resolutions and Ordinances.

a. 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 City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local generally applicable ordinance authority, and eminent domain rights of City. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police power, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of Grantee as provided in Section herein.

b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City which may have the effect of superseding, modifying or amending the terms of this franchise related to the construction standard with the exception of Section 4.2 herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

c. In the event of any conflict between Section 4.2 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 4.2 of this Franchise shall be not be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

d. In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 4.2 of this Franchise, Grantee shall not be required to comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City. The City or Commission shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

6. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction.

7. Territorial Area Involved. This Franchise is granted for the corporate boundaries of 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. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

8. Line Extension. Grantee shall have a line extension obligation at such time that Grantee provides Cable Service to more than fifty percent (50%) of all subscribers receiving facilities-based Cable Service from both the Grantee and any other provider(s) of cable service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

9. 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 City: City of Maplewood
Attention: City Manager
1830 County Road B East
Maplewood, MN 55109-2702

If to Grantee: Qwest Broadband Services, Inc. d/b/a CenturyLink
1801 California St., 10th Flr.
Denver, CO 80202
Attn: Public Policy

With copies to: Qwest Broadband Services Inc., d/b/a CenturyLink, 200 S. 5th Street, 21st Flr. Minneapolis, MN 55402, Attn: Public Policy

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

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.

a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

b. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law.

2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work to the extent consistent with applicable statutes and rules. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration.

3. Conditions on Right-of-Way Use.

a. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.

c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of City.

The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of City.

e. 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 written notice to arrange for such temporary changes.

f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.

g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

4. **Undergrounding of Cable.** Grantee must place newly constructed System facilities underground in areas of City where all other utility lines are placed underground and may place System facilities on poles using aerial construction techniques where existing System facilities or other utility facilities are on poles or otherwise of aerial construction. 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, all pursuant to any required plans submitted with Grantee's permit application(s) and approved by City.

5. **Installation of Facilities.** No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

6. **Safety Requirements.**

a. 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 or injuries.

b. The Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

c. All System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1. **System Design and Capacity.**

a. The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). In both the FTTP and FTTN footprint, a household capable of receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

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

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

d. Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

e. Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center and at all nodes ("Node" means the transition point between optical light transmission and RF transmission of signals being delivered to and received from the Subscriber's premises). Grantee shall maintain standby power system supplies, rated at least at two (2) hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

f. Grantee shall comply with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time.

g. Grantee shall install and maintain its Cable System in accordance with the applicable requirements of the National Electrical Safety Code, and in such manner that the Cable System shall not interfere with any installations of the City or any public utility or institutional utility, or any franchisee, licensee or permittee of the City.

h. Grantee shall provide and put in use such equipment and appliances as in a manner so as to prevent injury to the wires, pipes, structures, and property belonging to the City or to any Person within the City.

2. Cable Service Availability.

Initial Build Out. No later than the second anniversary of the Effective Date of this Franchise, Grantee shall: 1) be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service; provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time, and; 2) make available and offer Cable Service to all Qualified Living Units, as indentified in the reports and maps required herein showing the total number of Qualified Living Units as of the Effective Date and quarterly thereafter. Grantee shall not deactivate any activated Remote Terminals once activated, nor withdraw the availability of Cable Service to any Qualified Living Unit (except due to non-payment or other customer compliance matter), without the prior approval of the City. In addition, Grantee commits that a significant portion of its investment will be targeted to areas below the median income in the City.

Quarterly Meetings. In order to permit the City to monitor and enforce this Franchise, the Grantee shall, upon demand, promptly make available to the City maps and other documentation showing exactly where within the City the Grantee is currently providing, or able to provide, Cable Service. Grantee shall meet with the City, not less than once quarterly, to demonstrate Grantee's compliance with the provisions of this section concerning the deployment of Cable Services in the City. In order to permit the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing on or about April 15, 2016, and continuing throughout the term of this Franchise, meet quarterly with the City and make available reports and maps showing the City the following information:

- (a) The total number of Living Units throughout the City;
- (b) The total number of Qualified Living Units as of the Effective Date and each subsequent calendar quarter;
- (c) Information demonstrating Grantee commitment that a significant portion of Grantee's initial investment and Grantee's deployment of Cable Services in the City has been targeted to households below the City's median household income; and
- (d) A list of the public buildings and educational institutions that are Qualified Living Units in the City

In addition, at each quarterly meeting the Grantee will provide to the City a written summary (on a trade secret basis if Grantee so desires) of the foregoing information.

Additional Build-Out Based on Market Success. If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section 13 herein, Grantee is actually providing Cable Service to twenty seven and one-half percent (27.5%) of the Qualified Living Units (households capable of receiving Cable Service), then Grantee agrees the minimum build-out commitment shall increase to include an additional fifteen (15%) of the total households in the City within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time.

For example, if, at a quarterly meeting with the City, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.

3. **Interruption of Service.** The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

4. **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC, as it relates to Cable Service pursuant to this Franchise, shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.

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

6. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available a Lockout Device at no additional charge to Subscribers.

7. **System Design.**

a. The System shall have the capability to carry community (PEG) programming originated from other Minneapolis/St. Paul metropolitan area franchising authorities.

b. Grantee shall provide a discrete, non-public, video interconnect network, from an agreed upon demarcation point at the City's Master Control Center to Grantee's headend. The video interconnect network shall not exceed 50 Mbps of allocated bandwidth, allowing the City and PEG operators that have agreed with Grantee to share (send and receive) live and recorded programming for playback on their respective systems.

c. Where available the Grantee shall provide the video interconnect network and the network equipment necessary for the high-priority transport of live multicast HD/SD video streams as well as lower-priority file-sharing. Grantee shall provide 50 Mbps bandwidth for each participating PEG entity to send its original programming, receive at least two additional multicast HD/SD streams from any other participating PEG entity, and allow the transfer of files. Each participating PEG entity is responsible for encoding its own SD/HD content in suitable bit rates to be transported by the video interconnect network without exceeding the 50 Mbps of allocated bandwidth.

8. System Performance..

- a. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.
- b. Special Testing. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
- c. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing.
- d. FCC Reports. The results of any tests related to the City required to be filed by Grantee with the FCC shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.
- e. Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

SECTION 5. ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.

- a. Within 120 days of Effective Date, the Grantee shall make available one (1) channel on the Basic Service Tier to be used for Government access programming. On a future date to be mutually agreed upon by the Grantee and the City, , the Grantee shall make available up to four (4) additional channels to be used for PEG access programming on the Basic Service Tier. This obligation on Grantee shall terminate 365 days after the Effective Date. These channels will be located at Channels 8056-8060 (“Access Channels”).

If the City delivers programming to Grantee in HD, then Grantee shall make the Access Channel(s) carrying such programming available to Subscribers in both HD and SD. Thus, if City delivers all PEG access programming in HD, the Grantee will provide the equivalent of ten (10) Access Channels for such programming (5 HD; 5 SD). The City has the sole discretion to designate the use of each Access Channel for public, educational, or governmental purposes.

b. Grantee shall provide a technically reliable path for upstream and downstream transmission of the Access Channels, which will in no way degrade the technical quality of the Access Channels, from an agreed upon demarcation point at the City's Master Control Center and from any other PEG access programming locations designated by the City, to Grantee's headend, on which all Access Channels shall be transported for distribution on Grantee's subscriber network. The Access Channels shall be delivered without degradation to Subscribers. Grantee may meet the obligations of this subsection by providing, free of charge and at no cost to the City, a direct fiber connection and necessary equipment to transmit PEG programming from the City's designated programming locations and the permanent location of the City's Master Control Center to the Grantee's headend ("PEG Origination Connection"). As necessary, the Grantee shall undertake construction of direct connections and necessary equipment to each of the programming origination sites as identified by the City within a reasonable period of time taking into consideration weather and related technical issues.

c. The City will give Grantee written notice detailing the point of origination and the capability sought by the City. The Access Channels may be renumbered and moved by the Grantee upon thirty (30) days' notice to Subscribers and the City; provided, that in such event the City is programming the channel(s) Grantee shall pay all reasonable costs or expenses arising out of the renumbering and moving of any of the above-listed channels including, but not limited to, equipment necessary to effect the change at the programmer's production or receiving facility (school frequency routing equipment, etc.) This paragraph shall not apply to Regional Channel 6.

d. At such time the City is programming four (4) or more of the Access Channels such channels may be made available through a multi-channel display (i.e. a picture in picture feed) on a single TV screen called a "mosaic" where a Subscriber can access via an interactive video menu any of the PEG access channels (the "Maplewood Mosaic"). The Maplewood Mosaic will be located at a Channel mutually agreed to by the Grantee and City in the area of the channel lineup where similar PEG mosaics are located. The Maplewood Mosaic will contain only Access Channels authorized by the City.

e. Video on Demand. Grantee shall provide Video on Demand service (“VOD”) for PEG access programming. The VOD service to be provided herein shall be limited to up to twenty (20) hours per month. The City will be solely responsible for determining programming priority and will be responsible for providing Grantee with good quality masters in a format determined through mutual agreement. A presentation form (stating program information, the City’s acceptance of responsibility for content, “kill” dates if applicable, and other matters) and content delivery method will be determined through mutual agreement of the parties.

2. 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 City and the public.

3. Access Rules. City, or its designee, shall implement rules for use of any access channel(s).

4. Access Support.

a. Grantee will collect from Subscribers and remit to the City a monthly PEG Fee of \$4.25 per subscriber, per month. The PEG Fee will be remitted to the City on a quarterly basis. The PEG Fee will be paid to the City at the same time as the Franchise Fee. Starting with the 2016 calendar year, the City may elect to increase, or decrease this fee based on the incumbent cable franchisee’s PEG support obligation, or the Consumer Price Index. Any such election must be made in writing to the Franchisee ninety (90) days prior to becoming effective. In no event shall the monthly per Subscriber fee be in an amount different from the incumbent cable provider. The PEG Fee may be used for operational or capital support of PEG programming. In the event the incumbent’s per Subscriber, per month collection and payment to the City is modified for any reason, including, for example, due to renewal of the incumbent’s franchise on different terms or the incumbent’s re-calculation of the amount due under its then-existing franchise, the parties agree to work cooperatively, in good faith, to modify the Grantee’s PEG support payment obligation accordingly. As deemed necessary or appropriate, the parties may agree to amend this Franchise for such purpose.

b. Grantee shall provide the City two (2) 30-second ad avails during periods in which ample unsold/unused air time on such channels exists for City public service announcements (PSAs), free of charge, during the term of the Franchise, on a run of schedule basis. The ad avails shall be produced by the City to announce, identify, or promote community television. Grantee shall also print and mail a post card promoting community programming, to households in the City subscribing to Grantee’s Cable Service at no cost to the City, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee’s standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted.

5. Regional Channel 6. Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by state law.

6. State and Federal Law Compliance. Satisfaction of the requirements of this Section satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.

SECTION 6. INSTITUTIONAL NETWORK (I-NET) PROVISIONS AND RELATED COMMITMENTS

1. Grantee acknowledges that the City has acquired I-Net capacity, facilities, interconnection, services and resources from existing franchised cable service providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. Grantee shall provide additional connectivity for PEG access programming purposes as provided in Section 5.1(b) and (c) above. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

2. Subscriber Network Drops to Designated Buildings.

a. Grantee shall provide, free of charge, Installation of one (1) subscriber network Drop, one (1) cable outlet, one (1) set top box or other device, if necessary, monthly Basic Cable Service to each public and private school, public library branch, police and fire station, community center and public building that requests a drop in writing, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider.

b. The above referenced institutions may add outlets at its own expense, as long as such Installation meets Grantee's standards.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law. The City may not unilaterally alter the material provisions of this Franchise.

2. Delegated Authority. The City may appoint a citizen advisory body or a Joint Powers Commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegatee of City.

3. Franchise Fee.

- a. During the term of the Franchise, Grantee shall pay quarterly to City, or properly appointed delegatee, a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
- b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.
- c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

4. Access to Records. The City shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records.

5. Reports and Maps.

- a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as required by City.
- b. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City may require. City shall make its best effort to protect proprietary or trade secret information all consistent with state and federal law.
- c. If required by the Right-of-Way Ordinance, Grantee or its affiliate, as applicable, shall make available to the City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee or its affiliate, as applicable, shall make available to the City updates of such maps, plats and permanent records annually if changes have been made in the System.

6. Periodic Evaluation.

- a. The City may require evaluation sessions one time during the term of this Franchise, upon fifteen (30) days written notice to Grantee.

b. 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, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are legally, economically and technically feasible.

SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

a. Within 30 days after the effective date and at all times thereafter, until the Grantee has liquidated all of its obligations with City, the Grantee shall furnish a bond to the City in the amount of \$100,000.00 in a form and with such sureties as reasonably acceptable to City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations 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 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 City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond.

b. The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.

c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.

d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

e. The rights reserved to City with respect to the performance bond are in addition to all other rights of 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 City may have.

2. Letter of Credit.

a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by Commission, in the amount of \$25,000.00.

b. The Letter of Credit shall provide that funds will be paid to City, as appropriate, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Section, in payment for any monies owed by Grantee to City or any person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any person as a result of any acts or omissions by Grantee pursuant to this Franchise.

c. In addition to recovery of any monies owed by Grantee to City or any person or damages to City or any person as a result of any acts or omissions by Grantee pursuant to the Franchise, City, in its sole discretion after notification to Grantee and a minimum allowance of thirty (30) days to cure, may charge to and collect from the Letter of Credit the following penalties:

i. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

ii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

iii. For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

iv. For failure to comply with any of the provisions of this Franchise, or other applicable City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph c, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues up to a maximum of 30 days.

d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed; provided, however, that no more than one penalty amount shall be imposed for each separate violation.

e. Whenever City or Commission finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph c. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of City or Commission, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Letter of Credit all penalties and other monies due City or Commission from the date of the local receipt of notice.

f. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, 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. All penalties shall continue to accrue and City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph f.

i. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

ii. Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.

g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in Paragraph A of this Section.

h. If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 8 herein as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.

i. If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

j. The collection by City, of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to either, nor shall any act, or failure to act, by City, pursuant to the Letter of Credit, be deemed a waiver of any right of City, pursuant to this Franchise or otherwise.

3. Indemnification of City.

a. 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, to the extent caused by Grantee's construction, operation, maintenance, repair or removal of the System or by any other action of Grantee with respect to this Franchise.

b. Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in the form attached hereto which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the city or that this Franchise does not satisfy the requirements of applicable state law(s). Grantee shall additionally indemnify, defend, and hold harmless 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 City's exercise, administration, or enforcement of the Franchise. On or before the Effective Date, Grantee shall execute a separate indemnity agreement in a form acceptable to the City, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise.

This obligation includes any claims by the incumbent cable operator against the City that the terms and conditions of this Franchise are less burdensome than the incumbent's franchise, or that this Franchise does not satisfy the requirements of applicable state law(s).

c. 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 Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

d. The Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

4. Insurance.

a. As a part of the indemnification provided in Section, but without limiting the foregoing, Grantee shall file with City at the time of 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. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

b. The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$500,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.

c. 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 City.

SECTION 9. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

- i. Grantee has violated material provisions(s) of this Franchise; or
- ii. Grantee has attempted to evade any of the provisions of the Franchise; or
- iii. Grantee has practiced fraud or deceit upon City.

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

2. Procedures for Revocation.

a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, City shall provide Grantee with the basis of the revocation.

b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof, used exclusively for the provision of cable service, without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof, used exclusively for the provision of cable service, without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

4. Removal After Abandonment, Termination or Forfeiture.

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System used exclusively for the provision of cable service from all Rights-of-Way and public property within City.

b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures with its affiliates provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section. The term controlling interest as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:

i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.

ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and

iii. Any other documents or information related to the transaction as may be specifically requested by the City.

d. City shall have such time as is permitted by federal law in which to review a transfer request.

e. The Grantee shall reimburse City for all the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.

g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right to purchase the System for the value of the consideration proposed in such transaction. City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.

h. City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9 hereinabove, its intention to exercise its right of purchase; or

ii. It approves the assignment or sale of the Franchise as provided within this Section.

i. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws.

2. Subscriber Privacy.

a. 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.

b. 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 or its agents for Grantee's service business use or to City for the purpose of Franchise administration, 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.

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

**SECTION 11. UNAUTHORIZED CONNECTIONS AND
MODIFICATIONS UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights City may have pursuant to this Franchise or its police powers.
3. Penalty. Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12. MISCELLANEOUS PROVISIONS

1. 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.
2. Work Performed by Others. All applicable 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 performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Ordinance. Grantee and 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 4 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. Provided, however, nothing herein shall restrict City's exercise of its police powers.

4. Compliance with Federal, State and Local Laws.

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

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

5. 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 City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by 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.

6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

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

SECTION 13. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. 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 Section.

2. Acceptance.

a. Grantee shall accept this Franchise within sixty (60) of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. 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 granted hereunder to Grantee shall be null and void.

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

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

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City or its designee.

ii. With its acceptance, Grantee shall also deliver any performance bond, letter of credit and insurance certificates required herein that are due but have not previously been delivered.

DATED _____

EXHIBIT A

PEG access channels dedicated to Maplewood

14 - Maplewood Access

15 – Maplewood Access

16 - Maplewood Government Access (originates City Hall)

18 - Maplewood Access

19 - Maplewood Access

20 - ISD 622 Educational Access (narrowcast North St. Paul, Maplewood, Oakdale, Lake Elmo)

95 - Maplewood Access

98 - Maplewood Access

801 - Maplewood Access (HD simulcast)

Indemnity Agreement

INDEMNITY AGREEMENT made this ____ day of _____, 2016, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of Maplewood, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

WITNESSETH:

WHEREAS, the City of Maplewood has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Maplewood; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys' fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: _____, 2016

By: _____

Its: _____

STATE OF LOUISIANA)
) SS
)

The foregoing instrument was acknowledged before me this _____ day of 2016, by _____, the _____ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

Notary Public
Commission Expires _____

MEMORANDUM

TO: City Council
 FROM: H. Alan Kantrud, General Counsel
 SUBJECT: **CONSIDERATION OF APPROVAL OF SECOND READING (PASSAGE) OF CABLE TELEVISION FRANCHISE ORDINANCE FOR QWEST BROADBAND SERVICES d/b/a CENTURYLINK TO PROVIDE CABLE COMMUNICATIONS SERVICES**
 DATE: February 1, 2016

INTRODUCTION

Council authorized Staff to advertise and publish its intent to franchise for cable services in August 2015 using the statutory procedure laid out in Chapter 238 of the Minnesota Statutes. The City engaged outside counsel to assist in the 238 process and a request for applications was published. The City received an application from Qwest Broadband Services d/b/a CenturyLink, held a public hearing regarding the application and worked toward the final Franchise now before you, again, for second reading.

BACKGROUND

Staff has been working on this matter for 4+ months and the attached Franchise Ordinance is the culmination of those efforts. Since this is the second reading of this item the background is not going to be fully explored here.

DISCUSSION

The Franchise Ordinance before you that you are being asked to approve in its final form this evening shall enfranchise Centurylink (aka Qwest Broadband) to begin marketing cable services to Maplewood residents alongside Comcast. From anecdotal evidence CenturyLink materials discussing their products are perhaps already being sent to Maplewood residents (they do not need a franchise to do that).

As discussed last Council meeting, this grant of authority has no effect on the services or service levels provided by Comcast. Nothing in the Franchise will create special advantages for either cable operator and no added expenses will be realized by the addition of CenturyLink to the market on the part of residential customers.

For the benefit of any member of the public who is viewing this for the first time as part of the public hearing, the below executive summary of Ordinance is provided here again:

- This is a franchise that is granted for five (5) years and is renewable for one (1) additional term. (Section 2 Article 4)

- Due to the introduction of the service to the City, CenturyLink is required to serve a minimum of 15% of the City's households within two (2) years of this Franchise taking effect. (CenturyLink has assured the City this number will be exceeded, greatly, but has been using that number as a standard in its Agreements with other cities) (Section 4 Article 2)
- CenturyLink shall meet with the City and with the aid of build-out maps, both visually and by number, show what its build-out progress is at least four (4) times per year. (Sections 4 Article 2 and 7 Article 5)
- As market-share is realized to the 27.5% point, CenturyLink commits to build-out an additional 15% within two (2) years of that point. (Section 4 Article 2)
- CenturyLink will carry PEG programming in the same manner as Comcast and shall provide 50 Mbps. (Section 4 Article 7)
- CenturyLink is obligated to one (1) channel for governmental programming with expansion to up to 5 (five) channels. (Section 5 Article 1)
- The channels shall be broadcast in both HD and SD. (Section 5 Article 1)
- Once the City programs four (4) of its channels it shall be allowed a "mosaic" or multiple-channel screen on CenturyLink's channel array displaying an active matrix menu of available programming. (Section 5 Article 1d)
- PEG support shall be equivalent to that negotiated with Comcast, currently set at \$4.25 per subscriber, per month. (Section 5 Article 4a)*
- CenturyLink shall provide two (2) PSA ads to be placed on unsold/unused air time. (Section 5 Article 4b)
- CenturyLink shall support the City's I-Net capability to the same extent as Comcast (Section 6)
- The Franchise Fee is set at five percent (5%) of gross revenues, paid quarterly. (Section 7 Article 3a)
- All obligations shall be secured by both a performance bond and a letter of credit. (Section 8 Articles 1 &2)

ADDITIONS and CHANGES IN THE NEW VERSION

The final version of this Ordinance is largely unchanged from the first and are largely small edits for verbiage-agreement and references to sections within the document but an additional INDEMNITY AGREEMENT has been added to the document, albeit as a stand-alone piece that is referenced in the Franchise (Section 8 Subd. 3b)

* A question was raised after the first reading regarding PEG and the 'promise' of it being lower and why that was not the case with this new "negotiated" franchise with CenturyLink. It is referenced in this Franchise to mirror the current rate set with the Comcast Franchise. Once this Franchise is granted, it will possible to then meet with both cable operators to determine what level of PEG is appropriate and an MOU will be able to change that number.

FISCAL IMPACT

While this Ordinance will impact staff in that it is another agreement to manage, there are no direct budgetary expenses associated with it.

RECOMMENDATION

It is recommended that the City Council approve the attached final version of the Franchise Ordinance providing the authority for CenturyLink to provide competitive Cable Communication Services in the City of Maplewood.

ATTACHMENT

REDLINE Draft of Franchise Ordinance (reflecting changes from 1st reading)
(Please refer to Public Hearing Attachment for final version of Ordinance)

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ORDINANCE

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC D/B/A CENTURYLINK TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the development of a competitive Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

In the review of the application by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

Grantee's plans for constructing, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

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

The Franchise granted to Grantee is nonexclusive.

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the CenturyLink Cable Franchise Ordinance.

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2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

a. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §§543(b)(7).

b. "City" means City of Maplewood, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

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

d. "Cable Service" or "Service" means Cable Service as defined by Minn. Stat. § 238.01 et seq. and 47 U.S.C § 521 et seq., as may be amended from time to time.

e. "Cable System" or "System" means, unless the context clearly indicates otherwise, the Company's network or facility, , consisting of antennas, copper or fiber optic cables, transmitters and receivers, amplifiers, towers, cablecasting facilities, power supplies, pedestals, and any other equipment or facilities intended for the purpose of providing Cable Service to Subscribers in the City. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C § 522(7).

f. "Class IV Cable Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

g. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

h. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

i. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and contractual relationship established hereby.

j. "Grantee" is Qwest Broadband Services, Inc d/b/a CenturyLink, its lawful successors, transferees or assignees.

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k. "Gross Revenues" means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%) or more, from operation of its System within City to provide Cable Services including, but not limited to, all Cable Service fees, Franchise Fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, set top box fees, Lockout Device fees. The term Gross Revenues shall not include advertising revenues, FCC regulatory fees, bad debt, or any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit or refundable subscriber deposits.

l. "Installation" means the connection of the System from feeder cable to the point of connection with the Subscriber Set Top Box or other terminal equipment.

m. "Living Unit" means a distinct address as tracked in the QC network inventory used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

n. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.

o. "Mosaic Channel" means a channel which displays miniaturized media screens and related information for a particular cluster of channels with common themes. The Mosaic Channel serves as a navigation tool for subscribers, which displays the group of Access Channels on a single channel screen and also provides for easy navigation to a chosen Access Channel in the group.

p. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program video signals to Subscribers for a fee or charge, in addition to the charge for other Basic Cable Services or other Cable Services.

q. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

r. "QC" means Qwest Corporation d/b/a CenturyLink , an commonly-owned affiliate of Grantee.

s. "Qualified Living Unit" means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service.

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t. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest, and any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel waterway, easement or right-of-way, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, or dedicated for use by City, use by the general public or use compatible with Cable System operations, including other dedicated Rights-of-Way for travel purposes and utility easements.

u. "Right-of-Way Ordinance" means any ordinance of City codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

v. "Set Top Box" means an electronic device (sometimes referred to as a converter) which may serve as an interface between the System and a Subscriber's television monitor, and which may convert signals to a frequency acceptable to such monitor, and may by an appropriate selector, permit a Subscriber to view all signals of a particular service.

w. "Subscriber" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its Proposal. Failure of Grantee to provide a System as described in its Proposal, or meet obligations and comply with all provisions therein, may be deemed a violation of this Franchise.

2. Grant of Nonexclusive Authority.

a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, install, operate, upgrade, repair, replace, reconstruct, rebuild, maintain and retain in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.

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b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

c. It shall be unlawful for any Person to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person shall have first obtained and shall currently hold a valid franchise. Any affiliate of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event the City cannot resolve these violations or disputes with QC, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other affiliate's compliance with applicable local, state and federal laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

d. This Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorization to operate Cable Systems within the City. Provided, however, that Grantor shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to Grantee.

In the event another Person operates a Cable System authorized by Grantor on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to Grantee under this Franchise, the Grantor shall adjust any such terms and conditions in any other provider's authorization or this Franchise so that the terms and conditions under which such other Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to Grantee.

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3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person's use of the System to provide Cable Services, to the extent those would be such a requirement under this Franchise if Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section.

4. Franchise Term.

The term of the Franchise granted by the City pursuant to this ordinance shall be for a period of five (5) years, provided, however, that no less than six (6) months prior to the expiration of the initial five (5) year term, to the extent the City determines, in the City's sole discretion, that the Company has complied with this Franchise and with applicable law, the City shall have the right to extend the franchise term for an additional period so as to be co-terminus with any franchise then-held by the incumbent cable operator.

5. Compliance with Applicable Laws, Resolutions and Ordinances.

a. 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 City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local generally applicable ordinance authority, and eminent domain rights of City. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police power, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of Grantee as provided in Section herein.

b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City which may have the effect of superseding, modifying or amending the terms of this franchise related to the construction standard with the exception of Section 4.2 herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

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c. In the event of any conflict between Section 4.2 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 4.2 of this Franchise shall be not be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

d. In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 4.2 of this Franchise, Grantee shall not be required to comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City. The City or Commission shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

6. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction.

7. Territorial Area Involved. This Franchise is granted for the corporate boundaries of 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. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

8. Line Extension. Grantee shall have a line extension obligation at such time that Grantee provides Cable Service to more than fifty percent (50%) of all subscribers receiving facilities-based Cable Service from both the Grantee and any other provider(s) of cable service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

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9. 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 City: City of Maplewood
Attention: City Manager
1830 County Road B East
Maplewood, MN 55109-2702

If to Grantee: Qwest Broadband Services, Inc. d/b/a CenturyLink
1801 California St., 10th Flr.
Denver, CO 80202
Attn: Public Policy

With copies to: Qwest Broadband Services Inc., d/b/a CenturyLink, 200 S. 5th Street, 21st Flr. Minneapolis, MN 55402, Attn: Public Policy

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

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.

a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

b. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law.

2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work to the extent consistent with applicable statutes and rules. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration.

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3. Conditions on Right-of-Way Use.

a. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.

c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of City.

The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of City.

e. 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 written notice to arrange for such temporary changes.

f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.

g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

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4. Undergrounding of Cable. Grantee must place newly constructed System facilities underground in areas of City where all other utility lines are placed underground and may place System facilities on poles using aerial construction techniques where existing System facilities or other utility facilities are on poles or otherwise of aerial construction. 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, all pursuant to any required plans submitted with Grantee's permit application(s) and approved by City.

5. Installation of Facilities. No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

6. Safety Requirements.

a. 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 or injuries.

b. The Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

c. All System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1. System Design and Capacity.

a. The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). In both the FTTP and FTTN footprint, a household capable of receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

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

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

d. Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

e. Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center and at all nodes ("Node" means the transition point between optical light transmission and RF transmission of signals being delivered to and received from the Subscriber's premises). Grantee shall maintain standby power system supplies, rated at least at two (2) hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

f. Grantee shall comply with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time.

g. Grantee shall install and maintain its Cable System in accordance with the applicable requirements of the National Electrical Safety Code, and in such manner that the Cable System shall not interfere with any installations of the City or any public utility or institutional utility, or any franchisee, licensee or permittee of the City.

h. Grantee shall provide and put in use such equipment and appliances as in a manner so as to prevent injury to the wires, pipes, structures, and property belonging to the City or to any Person within the City.

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2. Cable Service Availability.

Initial Build Out. No later than the second anniversary of the Effective Date of this Franchise, Grantee shall: 1) be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service; provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time, and; 2) make available and offer Cable Service to all Qualified Living Units, as indentified in the reports and maps required herein showing the total number of Qualified Living Units as of the Effective Date and quarterly thereafter. Grantee shall not deactivate any activated Remote Terminals once activated, nor withdraw the availability of Cable Service to any Qualified Living Unit (except due to non-payment or other customer compliance matter), without the prior approval of the City. In addition, Grantee commits that a significant portion of its investment will be targeted to areas below the median income in the City.

Quarterly Meetings. In order to permit the City to monitor and enforce this Franchise, the Grantee shall, upon demand, promptly make available to the City maps and other documentation showing exactly where within the City the Grantee is currently providing, or able to provide, Cable Service. Grantee shall meet with the City, not less than once quarterly, to demonstrate Grantee's compliance with the provisions of this section concerning the deployment of Cable Services in the City. In order to permit the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing on or about [April 15, 2016](#), and continuing throughout the term of this Franchise, meet quarterly with the City and make available reports and maps showing the City the following information:

- (a) The total number of Living Units throughout the City;
- (b) The total number of Qualified Living Units as of the Effective Date and each subsequent calendar quarter;
- (c) Information demonstrating Grantee commitment that a significant portion of Grantee's initial investment and Grantee's deployment of Cable Services in the City has been targeted to households below the City's median household income; and
- (d) A list of the public buildings and educational institutions that are Qualified Living Units in the City

In addition, at each quarterly meeting the Grantee will provide to the City a written summary (on a trade secret basis if Grantee so desires) of the foregoing information.

Additional Build-Out Based on Market Success. If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section [13](#) herein, Grantee is actually providing Cable Service to twenty seven and one-half percent (27.5%) of the Qualified Living Units (households capable of receiving Cable Service), then Grantee agrees the minimum build-out commitment shall increase to include an additional fifteen (15%) of the total households in the City within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time.

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For example, if, at a quarterly meeting with the City, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.

3. Interruption of Service. The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

4. FCC Reports. The results of any tests required to be filed by Grantee with the FCC, as it relates to Cable Service pursuant to this Franchise, shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.

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

6. Lockout Device. Upon the request of a Subscriber, Grantee shall make available a Lockout Device at no additional charge to Subscribers.

7. System Design.

- a. The System shall have the capability to carry community (PEG) programming originated from other Minneapolis/St. Paul metropolitan area franchising authorities.
- b. Grantee shall provide a discrete, non-public, video interconnect network, from an agreed upon demarcation point at the City's Master Control Center to Grantee's headend. The video interconnect network shall not exceed 50 Mbps of allocated bandwidth, allowing the City and PEG operators that have agreed with Grantee to share (send and receive) live and recorded programming for playback on their respective systems.
- c. Where available the Grantee shall provide the video interconnect network and the network equipment necessary for the high-priority transport of live multicast HD/SD video streams as well as lower-priority file-sharing. Grantee shall provide 50 Mbps bandwidth for each participating PEG entity to send its original programming, receive at least two additional multicast HD/SD streams from any other participating PEG entity, and allow the transfer of files. Each participating PEG entity is responsible for encoding its own SD/HD content in suitable bit rates to be transported by the video interconnect network without exceeding the 50 Mbps of allocated bandwidth.

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8. System Performance..

a. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

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

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

d. FCC Reports. The results of any tests related to the City required to be filed by Grantee with the FCC shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.

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

SECTION 5. ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.

a. Within 120 days of Effective Date, the Grantee shall make available one (1) channel on the Basic Service Tier to be used for Government access programming. On a future date to be mutually agreed upon by the Grantee and the City, , the Grantee shall make available up to four (4) additional channels to be used for PEG access programming on the Basic Service Tier. This obligation on Grantee shall terminate 365 days after the Effective Date. These channels will be located at Channels 8056-8060 ("Access Channels").

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If the City delivers programming to Grantee in HD, then Grantee shall make the Access Channel(s) carrying such programming available to Subscribers in both HD and SD. Thus, if City delivers all PEG access programming in HD, the Grantee will provide the equivalent of ten (10) Access Channels for such programming (5 HD; 5 SD). The City has the sole discretion to designate the use of each Access Channel for public, educational, or governmental purposes.

b. Grantee shall provide a technically reliable path for upstream and downstream transmission of the Access Channels, which will in no way degrade the technical quality of the Access Channels, from an agreed upon demarcation point at the City’s Master Control Center and from any other PEG access programming locations designated by the City, to Grantee’s headend, on which all Access Channels shall be transported for distribution on Grantee’s subscriber network. The Access Channels shall be delivered without degradation to Subscribers. Grantee may meet the obligations of this subsection by providing, free of charge and at no cost to the City, a direct fiber connection and necessary equipment to transmit PEG programming from the City’s designated programming locations and the permanent location of the City’s Master Control Center to the Grantee’s headend (“PEG Origination Connection”). As necessary, the Grantee shall undertake construction of direct connections and necessary equipment to each of the programming origination sites as identified by the City within a reasonable period of time taking into consideration weather and related technical issues.

c. The City will give Grantee written notice detailing the point of origination and the capability sought by the City. The Access Channels may be renumbered and moved by the Grantee upon thirty (30) days’ notice to Subscribers and the City; provided, that in such event the City is programming the channel(s) Grantee shall pay all reasonable costs or expenses arising out of the renumbering and moving of any of the above-listed channels including, but not limited to, equipment necessary to effect the change at the programmer's production or receiving facility (school frequency routing equipment, etc.) This paragraph shall not apply to Regional Channel 6.

d. At such time the City is programming four (4) or more of the Access Channels such channels may be made available through a multi-channel display (i.e. a picture in picture feed) on a single TV screen called a “mosaic” where a Subscriber can access via an interactive video menu any of the PEG access channels (the “Maplewood Mosaic”). The Maplewood Mosaic will be located at a Channel mutually agreed to by the Grantee and City in the area of the channel lineup where similar PEG mosaics are located. The Maplewood Mosaic will contain only Access Channels authorized by the City.

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e. Video on Demand. Grantee shall provide Video on Demand service (“VOD”) for PEG access programming. The VOD service to be provided herein shall be limited to up to twenty (20) hours per month. The City will be solely responsible for determining programming priority and will be responsible for providing Grantee with good quality masters in a format determined through mutual agreement. A presentation form (stating program information, the City’s acceptance of responsibility for content, “kill” dates if applicable, and other matters) and content delivery method will be determined through mutual agreement of the parties.

2. 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 City and the public.

3. Access Rules. City, or its designee, shall implement rules for use of any access channel(s).

4. Access Support.

a. Grantee will collect from Subscribers and remit to the City a monthly PEG Fee of \$4.25 per subscriber, per month. The PEG Fee will be remitted to the City on a quarterly basis. The PEG Fee will be paid to the City at the same time as the Franchise Fee. Starting with the 2016 calendar year, the City may elect to increase, or decrease this fee based on the incumbent cable franchisee’s PEG support obligation, or the Consumer Price Index. Any such election must be made in writing to the Franchisee ninety (90) days prior to becoming effective. In no event shall the monthly per Subscriber fee be in an amount different from the incumbent cable provider. The PEG Fee may be used for operational or capital support of PEG programming. In the event the incumbent’s per Subscriber, per month collection and payment to the City is modified for any reason, including, for example, due to renewal of the incumbent’s franchise on different terms or the incumbent’s re-calculation of the amount due under its then-existing franchise, the parties agree to work cooperatively, in good faith, to modify the Grantee’s PEG support payment obligation accordingly. As deemed necessary or appropriate, the parties may agree to amend this Franchise for such purpose.

b. Grantee shall provide the City two (2) 30-second ad avails during periods in which ample unsold/unused air time on such channels exists for City public service announcements (PSAs), free of charge, during the term of the Franchise, on a run of schedule basis. The ad avails shall be produced by the City to announce, identify, or promote community television. Grantee shall also print and mail a post card promoting community programming, to households in the City subscribing to Grantee’s Cable Service at no cost to the City, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee’s standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted.

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5. Regional Channel 6. Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by state law.
6. State and Federal Law Compliance. Satisfaction of the requirements of this Section satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.

SECTION 6. INSTITUTIONAL NETWORK (I-NET) PROVISIONS AND RELATED COMMITMENTS

1. Grantee acknowledges that the City has acquired I-Net capacity, facilities, interconnection, services and resources from existing franchised cable service providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions' uses of the I-Net. Grantee shall provide additional connectivity for PEG access programming purposes as provided in Section 5.1(b) and (c) above. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.
2. Subscriber Network Drops to Designated Buildings.
 - a. Grantee shall provide, free of charge, Installation of one (1) subscriber network Drop, one (1) cable outlet, one (1) set top box or other device, if necessary, monthly Basic Cable Service to each public and private school, public library branch, police and fire station, community center and public building that requests a drop in writing, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider.
 - b. The above referenced institutions may add outlets at its own expense, as long as such Installation meets Grantee's standards.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law. The City may not unilaterally alter the material provisions of this Franchise.
2. Delegated Authority. The City may appoint a citizen advisory body or a Joint Powers Commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegatee of City.

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3. Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City, or properly appointed delegatee, a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.

c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

4. Access to Records. The City shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records.

5. Reports and Maps.

a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as required by City.

b. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City may require. City shall make its best effort to protect proprietary or trade secret information all consistent with state and federal law.

c. If required by the Right-of-Way Ordinance, Grantee or its affiliate, as applicable, shall make available to the City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee or its affiliate, as applicable, shall make available to the City updates of such maps, plats and permanent records annually if changes have been made in the System.

6. Periodic Evaluation.

a. The City may require evaluation sessions one time during the term of this Franchise, upon fifteen (30) days written notice to Grantee.

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b. 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, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are legally, economically and technically feasible.

SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

a. Within 30 days after the effective date and at all times thereafter, until the Grantee has liquidated all of its obligations with City, the Grantee shall furnish a bond to the City in the amount of \$100,000.00 in a form and with such sureties as reasonably acceptable to City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations 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 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 City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond.

b. The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.

c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.

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d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

e. The rights reserved to City with respect to the performance bond are in addition to all other rights of 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 City may have.

2. Letter of Credit.

a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by Commission, in the amount of \$25,000.00.

b. The Letter of Credit shall provide that funds will be paid to City, as appropriate, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Section, in payment for any monies owed by Grantee to City or any person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any person as a result of any acts or omissions by Grantee pursuant to this Franchise.

c. In addition to recovery of any monies owed by Grantee to City or any person or damages to City or any person as a result of any acts or omissions by Grantee pursuant to the Franchise, City, in its sole discretion after notification to Grantee and a minimum allowance of thirty (30) days to cure, may charge to and collect from the Letter of Credit the following penalties:

i. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

ii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

iii. For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

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iv. For failure to comply with any of the provisions of this Franchise, or other applicable City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph c, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues up to a maximum of 30 days.

d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed; provided, however, that no more than one penalty amount shall be imposed for each separate violation.

e. Whenever City or Commission finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph c. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of City or Commission, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Letter of Credit all penalties and other monies due City or Commission from the date of the local receipt of notice.

f. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, 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. All penalties shall continue to accrue and City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph f.

i. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

ii. Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.

g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in Paragraph A of this Section.

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h. If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 8 herein as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.

i. If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

j. The collection by City, of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to either, nor shall any act, or failure to act, by City, pursuant to the Letter of Credit, be deemed a waiver of any right of City, pursuant to this Franchise or otherwise.

3. Indemnification of City.

a. 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, to the extent caused by Grantee's construction, operation, maintenance, repair or removal of the System or by any other action of Grantee with respect to this Franchise.

b. Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in the form [attached hereto](#) which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the city or that this Franchise does not satisfy the requirements of applicable state law(s). Grantee shall additionally indemnify, defend, and hold harmless 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 City's exercise, administration, or enforcement of the Franchise. On or before the Effective Date, Grantee shall execute a separate indemnity agreement in a form acceptable to the City, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise.

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This obligation includes any claims by the incumbent cable operator against the City that the terms and conditions of this Franchise are less burdensome than the incumbent's franchise, or that this Franchise does not satisfy the requirements of applicable state law(s).

c. 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 Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

d. The Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

4. Insurance.

a. As a part of the indemnification provided in Section, but without limiting the foregoing, Grantee shall file with City at the time of 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. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

b. The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$500,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.

c. 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 City.

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SECTION 9. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

- i. Grantee has violated material provisions(s) of this Franchise; or
- ii. Grantee has attempted to evade any of the provisions of the Franchise; or
- iii. Grantee has practiced fraud or deceit upon City.

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

2. Procedures for Revocation.

a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, City shall provide Grantee with the basis of the revocation.

b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof, used exclusively for the provision of cable service, without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof, used exclusively for the provision of cable service, without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

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4. Removal After Abandonment, Termination or Forfeiture.

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System used exclusively for the provision of cable service from all Rights-of-Way and public property within City.

b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures with its affiliates provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section. The term controlling interest as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:

i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.

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ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and

iii. Any other documents or information related to the transaction as may be specifically requested by the City.

d. City shall have such time as is permitted by federal law in which to review a transfer request.

e. The Grantee shall reimburse City for all the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.

g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right to purchase the System for the value of the consideration proposed in such transaction. City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.

h. City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9 hereinabove, its intention to exercise its right of purchase; or

ii. It approves the assignment or sale of the Franchise as provided within this Section.

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i. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws.

2. Subscriber Privacy.

a. 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.

b. 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 or its agents for Grantee's service business use or to City for the purpose of Franchise administration, 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.

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

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SECTION 11. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights City may have pursuant to this Franchise or its police powers.

3. Penalty. Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12. MISCELLANEOUS PROVISIONS

1. 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.

2. Work Performed by Others. All applicable 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 performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

3. Amendment of Franchise Ordinance. Grantee and 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 4 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. Provided, however, nothing herein shall restrict City's exercise of its police powers.

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4. Compliance with Federal, State and Local Laws.

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

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

5. 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 City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by 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.

6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

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

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SECTION 13. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. 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 Section.

2. Acceptance.

a. Grantee shall accept this Franchise within sixty (60) of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. 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 granted hereunder to Grantee shall be null and void.

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

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

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City or its designee.

ii. With its acceptance, Grantee shall also deliver any performance bond, letter of credit and insurance certificates required herein that are due but have not previously been delivered.

DATED _____

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EXHIBIT A

PEG access channels dedicated to Maplewood

- 14 - Maplewood Access
- 15 - Maplewood Access
- 16 - Maplewood Government Access (originates City Hall)
- 18 - Maplewood Access
- 19 - Maplewood Access
- 20 - ISD 622 Educational Access (narrowcast North St. Paul, Maplewood, Oakdale, Lake Elmo)
- 95 - Maplewood Access
- 98 - Maplewood Access
- 801 - Maplewood Access (HD simulcast)

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Indemnity Agreement

INDEMNITY AGREEMENT made this _____ day of _____, 2016, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of Maplewood, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

WITNESSETH:

WHEREAS, the City of Maplewood has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Maplewood; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys' fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

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It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: _____, 2015 By: _____

_____ Its: _____

STATE OF LOUISIANA)
_____) SS
_____)

The foregoing instrument was acknowledged before me this _____ day of 2015, by _____, the _____ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

Notary Public
Commission Expires _____

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MEMORANDUM

TO: City Council
 FROM: H. Alan Kantrud, General Counsel
 SUBJECT: **SUMMARY PUBLICATION REGARDING CABLE TELEVISION FRANCHISE FOR QWEST BROADBAND SERVICES**
 DATE: February 2, 2016

INTRODUCTION

Council has passed the Franchise Ordinance enfranchising Qwest Broadband Services d/b/a CenturyLink and must now publish the Ordinance to comply with State Law to become "law."

BACKGROUND

To be valid in Minnesota as a, "law," of the City, Ordinances must be published in the City's Legal Newspaper. By operation of state law a City may publish a, "summary," of Ordinances that are lengthy so long as the summary complies with certain Statutory requirements. The summary statement is attached hereto for your review and approval.

DISCUSSION

Minnesota Statutes provides the following authority, guidance and requirements for publishing public notices, including Ordinances:

412.191 MEMBERS; POWERS, DUTIES.

Subd. 4. Ordinances.

Every ordinance shall be enacted by a majority vote of all the members of the council except where a larger number is required by law. It shall be signed by the mayor, attested by the clerk and published once in the official newspaper. In the case of lengthy ordinances, or ordinances which include charts or maps, ***if the city council determines that publication of the title and a summary of an ordinance would clearly inform the public of the intent and effect of the ordinance, the council may by a four-fifths vote of its members direct that only the title of the ordinance and a summary be published*** (emp. added)

The summary provided does comply with the requirements of this section as well as the further specific requirements of Section 331A.

RECOMMENDATION

It is recommended that the City Council pass the attached summary of the Franchise Ordinance enfranchising CenturyLink to provide Cable Communication Services in the City of Maplewood. This requires a super-majority vote (4/5's) to pass.

ATTACHMENT

Proposed Summary of Ordinance for Publication

Please be advised that the City of Maplewood has duly-passed the following ORDINANCE:

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC D/B/A CENTURYLINK TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

The following is a SUMMARY of the Ordinance:

This Ordinance provides the Company “Qwest Broadband, d/b/a CenturyLink” the legal authority to use publicly-owned Right of Way (ROW) to transport and deliver its commercial cable products and services to customers eligible to receive those products and services and who choose to subscribe in the geographic area of the municipality of Maplewood.

In addition to providing its own products, Company is required to support several channels dedicated to governmental and public programming free of charge by Company to its subscribers.

Further, this Ordinance requires the Company to pay to the City of Maplewood a “franchise fee” of 5% of their quarterly gross revenues derived from customers in Maplewood and shall collect a Public Educational and Government (PEG) access fee from each subscriber as well and remit the same to the City.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Maplewood, 1830 County Road B, East, Maplewood, MN 55109 or delivered upon request electronically or by U.S. Mail.

Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.

MEMORANDUM

TO: City Council

FROM: Melinda Coleman, City Manager

DATE: February 1, 2016

SUBJECT: Senior Advisory Task Force Report

Introduction

The Senior Advisory Task Force was appointed by the Maplewood City Council on September 14th. The Task Force Members include: Karla Sand, Fran Juker, Loretta Novak, Bill Dorgan, Jerry Horgan and Russell Susag. Staff members include Melinda Coleman and Neil Breneman.

Background

The Task Force met on September 22nd, October 20th, November 10th and December 15th. (Agendas are attached). The Council asked the Task Force to review the needs of Senior Citizens in the Community and to develop recommendations on how the City can assist and add to the quality of life for our senior residents.

At the Task Force meetings the members reviewed existing services and gathered information pertaining to the following:

- Senior Demographics and Poverty (15% of Maplewood residents are over 65)
- Current inventory of Services in the Maplewood Area
- Housing types and choices with location map and contact information for Senior Housing- including Nursing Care, Assisted Living and Income Based Rentals
 - 14 Maplewood Senior Rentals
 - 5 Care facilities
 - 2 Maplewood Senior Owner Facilities

With only 5% of Ramsey County's available land, there is every incentive for the community to consider different land use strategies. Density can be a comparative strength for the community in spite of size constraints.

- Transportation Services and needs
- Social Isolation, lifelong learning and community building for Seniors

The Task Force also reviewed programs in other communities including Richfield, Cottage Grove, St. Louis Park and Roseville. Members did research on programs offered by the Metropolitan Area Agency on Aging, the Block Nurse Program and the Gladstone Community Center. The Task Force also discussed the importance of community gathering places such as the MCC, National Night Out and our faith-based programs.

Kate Houston of the Metropolitan Area Agency on Aging is Project Manager for the Livable Community for all Ages. The MAAA's Blueprint for Action was presented and reviewed by the Advisory Council. The action areas are Housing, Planning and Zoning, Transportation, Health and Supportive Services, Cultures and Lifelong Learning, Strengthen Neighborhoods and Public Safety, and Civic Engagement Opportunities. Melinda explained that the City is currently addressing these actions. The Advisory Council recommends that Melinda report at a six month review meeting on the progress or implementation of these actions.

An Essential Feature of Age-Friendly Cities Checklist is available. The Checklist is based on the results of the WHO Global Age-Friendly Cities project consultation in 33 cities in 22 countries. The Checklist is a tool for a city's self-assessment and a map for charting progress.

At the Final Task Force Meeting on December 15th, the group created a list of Recommendations for City Council Consideration. These include the following:

- Create a Senior Resource Guide (See attachments for type of resources to include)
- Seek to get a Maplewood resident or staff appointed to the Met Council Transportation Advisory Board
- Ask the City Council to adopt the World Health Organization's "Features of Age Friendly Cities". (Attached)
- Foster Communication and Relationships with Maplewood Service Providers such as Gladstone Center and our Church communities. Help connect seniors to these and other social organizations
- Consider senior needs (such as sidewalks, ramps, room layout and amenities) when considering new housing and commercial developments.
- Explore funding and other resources and services that allow seniors to stay in their homes.
- Consideration of convening the Senior Task Force once a year for a month or two to review progress on these goals.

Budget Impact

There is no estimated budgetary impact projected for this discussion with the exception of staff time.

Recommendation

Staff recommends that the City Council review the report and provide direction.

Attachments

1. Task Force Agendas

**AGENDA
CITY OF MAPLEWOOD
SENIOR ADVISORY TASK FORCE**

Tuesday, September 22, 2015

1 p.m.

**Maplewood Room - Maplewood City Hall
1830 County Road B East**

1. Welcome and Introductions
2. Overview of Work Plan and Goals for Task Force
3. Brainstorming of ideas for additional goals/work plan
4. Review Housing Resources in Maplewood
5. Select next topic area and confirm October Meeting date and time
6. Other items?
7. Adjourn

AGENDA
CITY OF MAPLEWOOD
SENIOR ADVISORY TASK FORCE
Tuesday, October 20, 2015
3:30 p.m.
Maplewood Room - Maplewood City Hall
1830 County Road B East

1. Welcome – Chair, Karla Sand
2. Introductions
3. Approve Agenda
4. Review Work Plan and Goals – Melinda Coleman
 - ..City of Maplewood Statistics
5. Review Individual Assignments
 - .. Loretta Novak - block nurse program**
 - ..Bill Dorgan - other city senior programs (Cottage Grove, Roseville)**
 - ..Neil Breneman - volunteer programs**
 - ..Melinda Coleman - poverty**
 - ..Karla Sand- MBA, MAAA, SLL programs**
 - ..Fran Juker - National Night Out events**
6. Future Task Force Direction
7. Next Meeting – November 10, 2015
8. Adjourn – 4:30 p.m.

City of Maplewood
Senior Advisory Task Force
City Hall, November 10, 2015, 1:30 p.m. - 3:30 p.m.

AGENDA

1. Call to Order Chair, Karla Sand
2. Welcome, Introductions
3. Approve Agenda
4. Reports Bill Dorgan
 - Cottage Grove Karla Sand
 - Gladstone Senior Center
5. Discussion on report to Maplewood City Council Karla Sand
Melinda Coleman
 - Seniors Basic Needs for Community Living
 - Interpret and assess demographics
 - Current Services across the lifespan
 - Housing choices, special transportation options, community design, accessible public spaces
 - Social Makeup -
 - Intergenerational focus, lifelong learning, community building
 - How to meet basic needs
 - Identify partners
 - Identify other aging services
6. Assignments
7. Next Meeting
8. Adjourn

City of Maplewood
Senior Advisory Task Force
City Hall, December 15, 2015, 3:00 - 4:00 p.m.

AGENDA

1. Call to Order Chair, Karla Sand
2. Welcome, Introductions
3. Approve Agenda
4. Discussion on report to Maplewood City Council Karla Sand
Melinda Coleman
5. Announcements
7. Adjourn

SENIOR RESOURCE GUIDE INCLUSIONS:

Senior Linkage Line

Adult Day Services

Home care

Associations and Agencies (numbers/addresses?)

- Cancer, arthritis, heart disease, Alzheimer's, hearing loss etc

Aging in Place/Stay At Home

- About and contractors
- Services

Insurance

- Options
- Clarifications

Housing

- Assisted Living
 - o How to chose/evaluate various places
- Retirement communities
- Nursing facilities

Medical

- Pharmacy services
- Drug saving programs/medical aids
- Hospitals
- Hospice Services
- Supply Companies / options

Community Services

- Chore services
- Civic Engagement Opportunities
- Volunteer services
- Transportation
- Taxes
- Moving help
- Food/meals

Senior Centers

Family Caregiver Resources



Checklist of Essential Features of Age-friendly Cities

This checklist of essential age-friendly city features is based on the results of the WHO Global Age-Friendly Cities project consultation in 33 cities in 22 countries. The checklist is a tool for a city's self-assessment and a map for charting progress. More detailed checklists of age-friendly city features are to be found in the WHO Global Age-Friendly Cities Guide.

This checklist is intended to be used by individuals and groups interested in making their city more age-friendly. For the checklist to be effective, older people must be involved as full partners. In assessing a city's strengths and deficiencies, older people will describe how the checklist of features matches their own experience of the city's positive characteristics and barriers. They should play a role in suggesting changes and in implementing and monitoring improvements.

Outdoor spaces and buildings

- E Public areas are clean and pleasant.
- E Green spaces and outdoor seating are sufficient in number, well-maintained and safe.
- E Pavements are well-maintained, free of obstructions and reserved for pedestrians.
- E Pavements are non-slip, are wide enough for wheelchairs and have dropped curbs to road level.
- E Pedestrian crossings are sufficient in number and safe for people with different levels and types of disability, with non-slip markings, visual and audio cues and adequate crossing times.
- E Drivers give way to pedestrians at intersections and pedestrian crossings.
- E Cycle paths are separate from pavements and other pedestrian walkways.
- E Outdoor safety is promoted by good street lighting, police patrols and community education.

- E Services are situated together and are accessible.
- E Special customer service arrangements are provided, such as separate queues or service counters for older people.
- E Buildings are well-signed outside and inside, with sufficient seating and toilets, accessible elevators, ramps, railings and stairs, and non-slip floors.
- E Public toilets outdoors and indoors are sufficient in number, clean, well-maintained and accessible.

Transportation

- E Public transportation costs are consistent, clearly displayed and affordable.
- E Public transportation is reliable and frequent, including at night and on weekends and holidays.
- E All city areas and services are accessible by public transport, with good connections and well-marked routes and vehicles.

- Vehicles are clean, well-maintained, accessible, not overcrowded and have priority seating that is respected.
- Specialized transportation is available for disabled people.
- Drivers stop at designated stops and beside the curb to facilitate boarding and wait for passengers to be seated before driving off.
- Transport stops and stations are conveniently located, accessible, safe, clean, well-lit and well-marked, with adequate seating and shelter.
- Complete and accessible information is provided to users about routes, schedules and special needs facilities.
- A voluntary transport service is available where public transportation is too limited.
- Taxis are accessible and affordable, and drivers are courteous and helpful.
- Roads are well-maintained, with covered drains and good lighting.
- Traffic flow is well-regulated.
- Roadways are free of obstructions that block drivers' vision.
- Traffic signs and intersections are visible and well-placed.
- Driver education and refresher courses are promoted for all drivers.
- Parking and drop-off areas are safe, sufficient in number and conveniently located.
- Priority parking and drop-off spots for people with special needs are available and respected.

Housing

- Sufficient, affordable housing is available in areas that are safe and close to services and the rest of the community.
- Sufficient and affordable home maintenance and support services are available.
- Housing is well-constructed and provides safe and comfortable shelter from the weather.
- Interior spaces and level surfaces allow freedom of movement in all rooms and passageways.
- Home modification options and supplies are available and affordable, and providers understand the needs of older people.
- Public and commercial rental housing is clean, well-maintained and safe.
- Sufficient and affordable housing for frail and disabled older people, with appropriate services, is provided locally.

Social participation

- Venues for events and activities are conveniently located, accessible, well-lit and easily reached by public transport.
- Events are held at times convenient for older people.
- Activities and events can be attended alone or with a companion.
- Activities and attractions are affordable, with no hidden or additional participation costs.

Good information about activities and events is provided, including details about accessibility of facilities and transportation options for older people.

A wide variety of activities is offered to appeal to a diverse population of older people.

Gatherings including older people are held in various local community spots, such as recreation centres, schools, libraries, community centres and parks.

There is consistent outreach to include people at risk of social isolation.

Respect and social inclusion

Older people are regularly consulted by public, voluntary and commercial services on how to serve them better.

Services and products to suit varying needs and preferences are provided by public and commercial services.

Service staff are courteous and helpful.

Older people are visible in the media, and are depicted positively and without stereotyping.

Community-wide settings, activities and events attract all generations by accommodating age-specific needs and preferences.

Older people are specifically included in community activities for "families".

Schools provide opportunities to learn about ageing and older people, and involve older people in school activities.

Older people are recognized by the community for their past as well as their present contributions.

Older people who are less well-off have good access to public, voluntary and private services.

Civic participation and employment

A range of flexible options for older volunteers is available, with training, recognition, guidance and compensation for personal costs.

The qualities of older employees are well-promoted.

A range of flexible and appropriately paid opportunities for older people to work is promoted.

Discrimination on the basis of age alone is forbidden in the hiring, retention, promotion and training of employees.

Workplaces are adapted to meet the needs of disabled people.

Self-employment options for older people are promoted and supported.

Training in post-retirement options is provided for older workers.

Decision-making bodies in public, private and voluntary sectors encourage and facilitate membership of older people.

Communication and information

A basic, effective communication system reaches community residents of all ages.

Regular and widespread distribution of information is assured and a coordinated, centralized access is provided.

- Regular information and broadcasts of interest to older people are offered.
- Oral communication accessible to older people is promoted.
- People at risk of social isolation get one-to-one information from trusted individuals.
- Public and commercial services provide friendly, person-to-person service on request.
- Printed information – including official forms, television captions and text on visual displays – has large lettering and the main ideas are shown by clear headings and bold-face type.
- Print and spoken communication uses simple, familiar words in short, straightforward sentences.
- Telephone answering services give instructions slowly and clearly and tell callers how to repeat the message at any time.
- Electronic equipment, such as mobile telephones, radios, televisions, and bank and ticket machines, has large buttons and big lettering.
- There is wide public access to computers and the Internet, at no or minimal charge, in public places such as government offices, community centres and libraries.

Community and health services

- An adequate range of health and community support services is offered for promoting, maintaining and restoring health.
- Home care services include health and personal care and housekeeping.
- Health and social services are conveniently located and accessible by all means of transport.
- Residential care facilities and designated older people's housing are located close to services and the rest of the community.
- Health and community service facilities are safely constructed and fully accessible.
- Clear and accessible information is provided about health and social services for older people.
- Delivery of services is coordinated and administratively simple.
- All staff are respectful, helpful and trained to serve older people.
- Economic barriers impeding access to health and community support services are minimized.
- Voluntary services by people of all ages are encouraged and supported.
- There are sufficient and accessible burial sites.
- Community emergency planning takes into account the vulnerabilities and capacities of older people.

WHO/FCH/ALC/2007.1

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MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: Karen Haag, Director Citizen Services
SUBJECT: Consider Approval of Penalties for Alcohol Compliance Failures
DATE: January 28, 2016

Introduction

The City of Maplewood Police Department conducts compliance checks on all intoxicating liquor and tobacco license holders. Since the completion of the alcohol compliance checks in 2014 and 2015, staff has been working to propose an appropriate penalty for those establishments which did not pass. In all instances an employee failed the compliance check by selling alcohol to an underage buyer, and was issued a criminal complaint for the offense, which has been or will be prosecuted.

Background

Alcohol compliance checks have been regularly conducted since 2000. In the past, Council has opted not to establish strict guidelines for penalties, on the basis that some compliance failures are more egregious than others, and therefore may warrant stricter penalties. In addition, as part of an incentive program implemented by Council in 2005 pertaining to assessing penalties, a business' violation will be removed from its record if the business remains violation free for five (5) consecutive years following a failure.

While the City does not have specified fines for alcohol compliance failures, past practice has been to adhere to the following guidelines for imposing penalties: \$500 for the first offense, \$1,000 for the second offense, \$2000 for the third offense. In addition, and depending on the nature of the failure, suspension or possible revocation of the license may be also imposed.

Attached is statistical history of compliance failures for each alcohol and tobacco sales licensed establishment. Establishments which have incurred alcohol compliance failures in 2014 and 2015 are highlighted and, in line with past practices, proposed penalties have been recommended for each.

All establishments have been notified of the proposed civil penalty against them, and were encouraged to attend the February 8, 2016 council meeting. Staff was contacted by Sarrack's Int'l Wine & Spirits and MGM Liquor Warehouse, who indicated a representative of the establishment was unavailable to attend the February 8, 2016 council meeting. Both establishments have been requested the discussion of their violations be postponed to the March 14, 2016 council meeting, at which they plan to be in attendance.

Recommendation

Staff recommends Council consider the proposed penalties, attached.

Attachments

1. List of business with failed alcohol compliance checks in 2014-2015, and statistical history of compliance failures, within the past five (5) years.

Statistical History of Compliance Failures
of Current Alcohol and Tobacco Sales License Holders

BUSINESS NAME - ADDRESS	COMPLIANCE FAILURE	COMPLIANCE DATE	STATUS	STAFF RECOMMENDED FINE	COUNCIL APPROVED FINE/ACTION
<u>5-8 TAVERN - 2289 MINNEHAHA AVE</u>	ALCOHOL	11/14/2009	COMPLETED		03/22/2010 - APPROVED \$500 FINE
<u>A1 LIQUOR - 19 CENTURY AVE S.</u>	ALCOHOL	12/30/2015	IN PROGRESS	\$500 FINE	
<u>ACAPULCO RESTAURANT - 3069 WHITE BEAR AVE</u>	ALCOHOL	07/23/2008	COMPLETED		10/27/2008 - APPROVED \$1,000 FINE
	ALCOHOL	01/01/2004	COMPLETED		02/14/2005 - APPROVED \$500 FINE
<u>AMAROSE CONVENIENCE STORE - 3001 WHITE BEAR AVE</u>	TOBACCO	07/27/2010	COMPLETED		01/10/2011 - APPROVED \$500 FINE
	TOBACCO	12/15/2009	COMPLETED		04/26/2010 - APPROVED \$250 FINE
<u>BAMBU ASIAN CUISINE - 1715 BEAM AVE</u>	ALCOHOL	05/23/2012	COMPLETED		11/15/2012 - APPROVED \$2,000 FINE
	ALCOHOL	12/10/2010	COMPLETED		04/25/2011 - APPROVED \$1,000 FINE
	ALCOHOL	11/29/2008	COMPLETED		03/09/2009 - APPROVED \$250 FINE
<u>BIG DISCOUNT LIQUOR - 2515 WHITE BEAR AVE</u>	TOBACCO	11/24/2014	IN PROGRESS		
	TOBACCO	03/15/2012	COMPLETED		07/09/2012 - APPROVED \$500 FINE
	ALCOHOL	10/10/2006	COMPLETED		11/10/2008 - APPROVED \$500 FINE
	TOBACCO	08/02/2006	COMPLETED		08/28/2006 - APPROVED \$250 FINE
<u>BLEECHERS BAR & GRILL - 2220 WHITE BEAR AVE N</u>	ALCOHOL	12/17/2015	IN PROGRESS	\$1000 FINE	
	ALCOHOL	05/23/2012	COMPLETED		9/24/2012 - APPROVED \$500 FINE
<u>CHILI'S BAR & GRILL - 1800 BEAM AVE</u>	ALCOHOL	05/23/2012	COMPLETED		09/24/2012 - APPROVED \$1,000 FINE
	ALCOHOL	06/01/2010	COMPLETED		01/10/2011 - APPROVED \$500 FINE
<u>CHIPOTLE #1438- 3095 WHITE BEAR AVE</u>	ALCOHOL	05/23/2012	COMPLETED		9/24/2012 - APPROVED \$500 FINE

Statistical History of Compliance Failures
of Current Alcohol and Tobacco Sales License Holders

BUSINESS NAME - ADDRESS	COMPLIANCE FAILURE	COMPLIANCE DATE	STATUS	STAFF RECOMMENDED FINE	COUNCIL APPROVED FINE/ACTION
<u>COSTCO DISCOUNT LIQUOR - 1431 BEAM AVE</u>	ALCOHOL	10/23/2009	COMPLETED		03/22/2010 - APPROVED \$500 FINE
<u>CUB FOODS #30244 (GROCERY STORE) - 100 COUNTY ROAD B W</u>	ALCOHOL	12/17/2015	IN PROGRESS	\$500 FINE	
<u>CUB FOODS #31264 (GROCERY STORE) - 2390 WHITE BEAR AVE</u>	ALCOHOL	12/14/2009	COMPLETED		03/22/2010 - APPROVED \$500 FINE
<u>FLEMINGS AUTO SERVICE - 2271 WHITE BEAR AVE N</u>	TOBACCO	05/26/2014	IN PROGRESS		
	TOBACCO	10/19/2012	COMPLETED		03/11/2013 - APPROVED \$250 FINE
<u>FREEDOM VALU CENTER # 65 - 1535 BEAM AVE</u>	TOBACCO	08/13/2009	COMPLETED		03/22/2010 - APPROVED \$750 FINE
	TOBACCO	11/21/2006	COMPLETED		03/22/2010 - APPROVED \$500 FINE
	TOBACCO	08/03/2006	COMPLETED		08/26/2006 - APPROVED \$250 FINE
<u>GULDEN'S ROADHOUSE - 2999 MAPLEWOOD DRIVE</u>	ALCOHOL	05/23/2012	COMPLETED		08/13/2012 - APPROVED \$2,000 FINE
	ALCOHOL	03/05/2011	COMPLETED		02/13/2011 - APPROVED \$1,000 FINE
	ALCOHOL	11/13/2009	COMPLETED		03/22/2010 - APPROVED \$500 FINE
	ALCOHOL	10/23/2004	COMPLETED		02/14/2005 - APPROVED \$1,000 FINE
	ALCOHOL	05/12/2001	COMPLETED		06/25/2001 - APPROVED \$500 FINE
<u>HERITAGE LIQUOR - 1347 FROST AVE</u>	ALCOHOL	05/27/2010	COMPLETED		01/10/2011 - APPROVED \$1,000 FINE
	ALCOHOL	11/22/2008	COMPLETED		03/9/2009 - APPROVED \$500 FINE
<u>HOLIDAY - 280 S MCKNIGHT ROAD</u>	TOBACCO	10/19/2012	COMPLETED		03/11/2013 - APPROVED \$750 FINE
	TOBACCO	07/13/2010	COMPLETED		01/10/2011 - APPROVED \$500 FINE
	TOBACCO	12/16/2008	COMPLETED		03/22/2010 - APPROVED \$250 FINE
<u>IN "N" OUT MARKETS (PREVIOUSLY NAMED HOLIDAY) - 743 CENTURY AVE</u>	TOBACCO	12/11/2005	COMPLETED		07/24/2006 - APPROVED \$750 FINE

Statistical History of Compliance Failures
of Current Alcohol and Tobacco Sales License Holders

BUSINESS NAME - ADDRESS	COMPLIANCE FAILURE	COMPLIANCE DATE	STATUS	STAFF RECOMMENDED FINE	COUNCIL APPROVED FINE/ACTION
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JAKE'S CITY GRILLE - 1745 BEAM AVE E.
ALCOHOL 12/17/2015 IN PROGRESS \$500 FINE

KNOWLAN'S SUPERMARET - 2720 STILLWATER ROAD
TOBACCO 05/29/2014 IN PROGRESS
TOBACCO 12/22/2005 COMPLETED 08/23/2006 - APPROVED \$600 FINE

LANGER AT EDIBURGH - KELLER GOLF COURSE - 2166 MAPLEWOOD DRIVE
TOBACCO 06/18/2015 IN PROGRESS

MAPLEWOOD KWIK MART - 2150 MCMENEMY
TOBACCO 03/15/2012 COMPLETED 07/09/2012 - APPROVED \$250 FINE
TOBACCO 10/19/2007 COMPLETED 04/12/2010 - APPROVED \$250 FINE

MAPLEWOOD TOBACCO OUTLET PLUS - 2515 WHITE BEAR AVE #A17
TOBACCO 06/18/2015 IN PROGRESS

MAPLEWOOD WINE CELLAR - 1281 FROST AVE
TOBACCO 07/13/2010 COMPLETED 01/10/2011 - APPROVED \$250 FINE
ALCOHOL 11/13/2009 COMPLETED 03/22/2010 - APPROVED \$500 FINE

MERWIN LIQUORS - 1700 RICE STREET
ALCOHOL 08/15/2014 IN PROGRESS \$2,000 FINE

11/15/2012 - APPROVED \$1,000 FINE
04/12/2010 - APPROVED \$500 FINE

MGM LIQUOR WAREHOUSE - 2950 WHITE BEAR AVE - OPENED 01/22/2007
ALCOHOL 12/17/2015 IN PROGRESS \$2,000 FINE

07/09/2012 - APPROVED \$2,000 FINE
01/10/2011 - APPROVED \$1,000 FINE
04/12/2010 - APPROVED \$500 FINE
04/12/2010 - APPROVED \$250 FINE

Statistical History of Compliance Failures
of Current Alcohol and Tobacco Sales License Holders

BUSINESS NAME - ADDRESS	COMPLIANCE FAILURE	COMPLIANCE DATE	STATUS	STAFF RECOMMENDED FINE	COUNCIL APPROVED FINE/ACTION
<u>NOODLES AND COMPANY - 2865 WHITE BEAR AVE</u>					
	ALCOHOL	12/17/2015	IN PROGRESS	\$1,500 FINE	
	ALCOHOL	08/15/2014	IN PROGRESS	\$500 FINE	
<u>OSAKA SUSHI & HIBACHI - 1900 COUNTY ROAD D.E.</u>					
	ALCOHOL	12/17/2015	IN PROGRESS	\$500 FINE	
<u>OUTBACK STEAKHOUSE - 1770 BEAM AVE</u>					
	ALCOHOL	03/05/2011	COMPLETED		07/09/2012 - APPROVED \$1,000 FINE
	ALCOHOL	11/29/2008	COMPLETED		04/12/2010 - APPROVED \$500 FINE
<u>PARTY TIME LIQUOR - 1835 LARPENITEUR AVE</u>					
	ALCOHOL	07/16/2008	COMPLETED		11/10/2008 - APPROVED \$1,000 FINE
	ALCOHOL	07/06/2006	COMPLETED		08/26/2006 - APPROVED \$500 FINE
<u>SARRACK'S INT'L WINE & SPIRITS - 2305 STILLWATER</u>					
	ALCOHOL	12/30/2015	IN PROGRESS	\$2,000 FINE	
	ALCOHOL	03/05/2011	COMPLETED		02/13/2012 - APPROVED \$2,000 FINE AND A 3-DAY SUSPENSION OF LICENSE
	ALCOHOL	12/20/2010	COMPLETED		04/25/2011 - APPROVED \$2,000 FINE
	ALCOHOL	11/13/2009	COMPLETED		03/22/2010 - APPROVED \$1,000 FINE
	ALCOHOL	10/10/2006	COMPLETED		10/27/2008 - APPROVED \$500 FINE
<u>STARGATE DANCE CLUB - 1700 RICE ST N</u>					
	ALCOHOL	12/04/2011	COMPLETED		07/09/2012 - APPROVED \$500 FINE
<u>SUPERAMERICA #4089 - 11 CENTURY AVE N</u>					
	ALCOHOL	03/05/2011	COMPLETED		02/13/2012 - APPROVED \$500 FINE
<u>THE DOG HOUSE BAR & GRILL - 2029 WOODLYN</u>					
	ALCOHOL	03/05/2011	COMPLETED		02/13/2012 - APPROVED \$500 FINE
<u>THE PONDS AT BATTLE CREEK GOLF COURSE - 601 CENTURY AVE S</u>					
	ALCOHOL	05/20/2010	COMPLETED		05/09/2011 - APPROVED \$500 FINE
	ALCOHOL	01/01/2004	COMPLETED		02/14/2005 - APPROVED \$500 FINE
<u>TIKI HUT - 1820 RICE STREET N</u>					
	ALCOHOL	12/17/2015	IN PROGRESS	\$500 FINE	

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Steven Love, City Engineer / Deputy Public Works Director
Jon Jarosch, Civil Engineer II

DATE: January 21, 2016

SUBJECT: Beebe Road Street Improvements, Project 13-10

- a. Consider Approval of Resolution Approving Plans and Specifications and Advertising for Bids
- b. Consider Approval of Resolution Ordering Preparation of Assessment Roll

Introduction

Final plans and specifications for the above referenced project have been completed and are ready to be advertised for bids. The bid opening for this project is tentatively proposed for 2:00 p.m., Wednesday, March 2, 2016. The next step after approving the advertisement for bids is ordering the preparation of the assessment roll.

Background

The feasibility report was accepted and plans ordered to design at the November 9, 2015 City Council meeting. On November 23, 2015 the project was ordered after the Public Hearing was held. It is anticipated an Assessment Hearing will be held on March 14, 2016 with an award of bid considered on that date as well.

An open house meeting is planned for March 2, 2016 at the Maplewood Community Center. At the open house city staff will give a brief presentation on assessments, provide an opportunity for residents to view the design plans, and will be available to answer questions about the project or assessments.

Discussion

The aging and deteriorating condition of Beebe Road lying north of Larpenteur Avenue and south of Holloway Avenue (see attached project location map) presents an ongoing maintenance problem for the City of Maplewood Street Department. The condition of the existing street also represents a decreased level of service for the residents of Maplewood, with the City receiving numerous complaints from area residents about substandard street conditions.

The proposed project is focused primarily on fixing the condition of the bituminous pavement. Staff is recommending reclaiming the top 10 inches of the street section. By reclaiming, grinding, the top 10 inches of the street section, the crushed bituminous is blended with the underlying aggregate to form new base material to support the road. After the road has been reclaimed and excess material removed, the road base will be reshaped to provide adequate

drainage. The new base material will be compacted and a new bituminous pavement surface will be installed.

The feasibility study found that the project is feasible, necessary, and cost effective from an engineering standpoint. The City Council approved and accepted the feasibility study on November 9, 2015 as mentioned above.

Budget Impact

The total project cost, based on the current design plans, is estimated at \$1,449,431.32. On November 9, 2015 the finance director was authorized by the City Council to make the financial transfers necessary to implement the financing plan for the project. A project budget of \$1,522,296 was established based on the engineer estimate within the approved feasibility study report. The approved financing plan is as follows:

ESTIMATED PROJECT COST RECOVERY		
FUNDING SOURCE	TOTAL AMOUNT	% OF TOTAL PROJECT
G.O. IMPROVEMENT BONDS	\$217,846	14%
SANITARY SEWER FUND	\$173,896	11%
ENVIRONMENTAL UTILITY FUND	\$86,790	6%
SPECIAL BENEFIT ASSESSMENT BONDS	\$302,944	20%
St. Paul W.A.C. FUND	\$7,910	0.5%
State Aid FUNDS	\$725,000	48%
St. Paul Water	\$7,910	0.5%
TOTAL FUNDING	\$1,522,296	100%

Similar to past practice and policy, the City hired an independent appraisal firm to ascertain an opinion of special benefit received by properties within the neighborhood project area. The opinion found that the City's proposed assessment rate of \$3,450.00 per parcel is justifiable. An Assessment Hearing will likely be held on March 14, 2016 to specifically address the proposed assessments. Prior to that meeting the City Council would adopt the roll and officially call for the hearing. All assessable residential and commercial/multi-family parcels will receive official notice prior to the Assessment Hearing.

Recommendation

It is recommended that the City Council approve the attached resolutions for the Beebe Road Street Improvements, City Project 13-10, Approving Plans and Advertisement for Bids and Ordering the Preparation of the Assessment Roll.

Attachments

1. Resolution Approving Plans and Advertising for Bid
2. Resolution Ordering Preparation of Assessment Roll
3. Project Location Map

RESOLUTION
APPROVING PLANS
ADVERTISING FOR BIDS

WHEREAS, pursuant to resolution passed by the City Council on November 9, 2015 plans and specifications for the Beebe Road Street Improvements, City Project 13-10, have been prepared by (or under the direction of) the City Engineer, who has presented such plans and specifications to the council for approval,

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

1. Such plans and specifications, a copy of which are attached hereto and made a part hereof, are hereby approved and ordered placed on file in the office of the City Engineer.

2. The City Clerk or office of the City Engineer shall prepare and cause to be inserted into the official paper and Finance and Commerce an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published twice, at least twenty-one days before the date set for bid opening, shall specify the work to be done, shall state that bids will be publicly opened and considered by the council at 2:00 p.m. on the 2nd day of March, 2016, at city hall and that no bids shall be considered unless sealed and filed with the clerk and accompanied by a certified check or bid bond, payable to the City of Maplewood, Minnesota for five percent of the amount of such bid.

3. The City Clerk and City Engineer are hereby authorized and instructed to receive, open, and read aloud bids received at the time and place herein noted, and to tabulate the bids received. The council will consider the bids, and the award of a contract, at the regular city council meeting of March 14, 2016.

Approved this 8th day of February 2016.

RESOLUTION
ORDERING PREPARATION OF ASSESSMENT ROLL

WHEREAS, the City Clerk and City Engineer will receive bids for the Beebe Road Street Improvements, City Project 13-10,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA that the City Clerk and City Engineer shall forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece or parcel of land abutting on the streets affected, without regard to cash valuation, as provided by law, and they shall file a copy of such proposed assessment in the city office for inspection.

FURTHER, the City Clerk shall, upon completion of such proposed assessment notify the City Council thereof.

Approved this 8th day of February 2016.



Beebe Road Street Improvements
 Project Location Map
 City Project 13-10



MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Steven Love, City Engineer / Deputy Public Works Director
Jon Jarosch, Civil Engineer II

DATE: January 22, 2016

SUBJECT: Lakewood-Sterling Area Street Improvements, Project 15-11

- a. Consider Approval of Resolution Approving Plans and Specifications and Advertising for Bids
- b. Consider Approval of Resolution Ordering Preparation of Assessment Roll

Introduction

Final plans and specifications for the above referenced project have been completed and are ready to be advertised for bids. The bid opening for this project is tentatively proposed for 10:00 a.m., Wednesday, March 2, 2016. The next step after approving the advertisement for bids is ordering the preparation of the assessment roll.

Background

The feasibility report was accepted and plans ordered to design at the November 9, 2015 City Council meeting. On November 23, 2015 the project was ordered after the Public Hearing was held. It is anticipated an Assessment Hearing will be held on March 14, 2016 with an award of bid considered on that date as well.

An open house meeting is planned for March 9, 2016 at the Maplewood Community Center. At the open house city staff will give a brief presentation on assessments, provide an opportunity for residents to view the design plans, and will be available to answer questions about the project or assessments.

Discussion

The Lakewood/Sterling Area Street Improvements project, City Project 15-11 consists of two separate areas. The Lakewood area, which is being referred to as Area #1, consists of the streets shown on the attached Project Location Map lying north of Carver Avenue and south of Highwood Avenue. These streets are part of the City's work plan as a result of the adoption of the Gas Franchise Fee.

The Sterling Street Area, which is being referred to as Area #2, consists of that part of Sterling Street shown on the attached Project Location Map lying north of Linwood Avenue and south of London Lane. This portion of Sterling Street is scheduled for street improvements in 2016 according to the 2016-2020 Maplewood Capital Improvement Plan (CIP).

The aging and deteriorating condition of roads shown on the project location maps for Area #1 and Area #2 presents an ongoing maintenance problem for the City of Maplewood Street

Department. The condition of the existing streets also represents a decreased level of service for the residents of Maplewood, with the City receiving numerous complaints from area residents about substandard street conditions.

The proposed project for both areas is focused primarily on fixing the condition of the bituminous pavement. Staff is recommending reclaiming the top 8 inches of the street section. By reclaiming, grinding, the top 8 inches of the street section, the crushed bituminous is blended with the underlying aggregate to form new base material to support the road. After the road has been reclaimed and excess material removed, the road base will be reshaped to provide adequate drainage. The new base material will be compacted, and a new bituminous pavement surface will be installed.

The feasibility study found that the project is feasible, necessary, and cost effective from an engineering standpoint. The City Council approved and accepted the feasibility study on November 9, 2015 as mentioned above.

Budget Impact

The total project cost is estimated at \$1,939,109.84. On November 9, 2015 the finance director was authorized by the City Council to make the financial transfers necessary to implement the financing plan for the project. A total project budget of \$1,890,364 was established. The approved financing plan is as follows:

ESTIMATED PROJECT COST RECOVERY		
AREA #1		
(LAKEWOOD AREA)		
FUNDING SOURCE	TOTAL AMOUNT	% OF TOTAL PROJECT
GAS FRANCHISE FEE FUND	\$520,000	46%
SPECIAL BENEFIT ASSESSMENT	\$529,575	47%
ENVIRONMENTAL UTILITY FUND	\$26,189	2%
SANITARY SEWER FUND	\$47,535	4%
ST PAUL W.A.C. FUND	\$14,117	1%
AREA #1 FUNDING	\$1,137,417	100%
AREA #2		
(STERLING AREA)		
FUNDING SOURCE	TOTAL AMOUNT	% OF TOTAL PROJECT
G.O. IMPROVEMENT BONDS	\$368,760	49%
SPECIAL BENEFIT ASSESSMENT	\$312,475	42%
ST. PAUL WATER	\$4,757	1%
ST. PAUL W.A.C. FUND	\$4,757	1%
ENVIRONMENTAL UTILITY FUND	\$43,648	6%
SANITARY SEWER FUND	\$18,550	2%
AREA #2 FUNDING	\$752,947	100%
TOAL PROJECT FUNDING	\$1,890,364	

The proposed project is designed with two bid alternate options. The first bid alternate includes the full depth pavement reclamation and pavement replacement of Moreland Court lying east of McKnight Road. The second bid alternate includes the pavement removal and replacement of Sterling Street lying north of Carver Avenue and south of Schadt Drive. These bid alternates allow the City to adjust the scope of improvements to conform to budgetary constraints while

maximizing the work completed. In essence, this would allow the bids to be received and the city can choose the scope of the project based on the cost it is comfortable with in order to proceed.

Similar to past practice and policy, the City hired an independent appraisal firm to ascertain an opinion of special benefit received by properties within the neighborhood project area. The opinion found that the City's proposed assessment rate of \$3,450.00 per parcel is justifiable. An Assessment Hearing will likely be held on March 14, 2016 to specifically address the proposed assessments. Prior to that meeting the City Council would adopt the roll and officially call for the hearing. All assessable residential and commercial/multi-family parcels will receive official notice prior to the Assessment Hearing.

Recommendation

It is recommended that the City Council approve the attached resolutions for the Lakewood-Sterling Area Street Improvements, City Project 15-11, Approving Plans and Advertisement for Bids and Ordering the Preparation of the Assessment Roll.

Attachments

1. Resolution Approving Plans and Advertising for Bid
2. Resolution Ordering Preparation of Assessment Roll
3. Project Location Map

RESOLUTION
APPROVING PLANS
ADVERTISING FOR BIDS

WHEREAS, pursuant to resolution passed by the City Council on November 9, 2015 plans and specifications for the Lakewood-Sterling Area Street Improvements, City Project 15-11, have been prepared by (or under the direction of) the City Engineer, who has presented such plans and specifications to the council for approval,

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

1. Such plans and specifications, a copy of which are attached hereto and made a part hereof, are hereby approved and ordered placed on file in the office of the City Engineer.

2. The City Clerk or office of the City Engineer shall prepare and cause to be inserted into the official paper and Finance and Commerce an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published twice, at least twenty-one days before the date set for bid opening, shall specify the work to be done, shall state that bids will be publicly opened and considered by the council at 10:00 a.m. on the 2nd day of March, 2016, at city hall and that no bids shall be considered unless sealed and filed with the clerk and accompanied by a certified check or bid bond, payable to the City of Maplewood, Minnesota for five percent of the amount of such bid.

3. The City Clerk and City Engineer are hereby authorized and instructed to receive, open, and read aloud bids received at the time and place herein noted, and to tabulate the bids received. The council will consider the bids, and the award of a contract, at the regular city council meeting of March 14, 2016.

Approved this 8th day of February 2016.

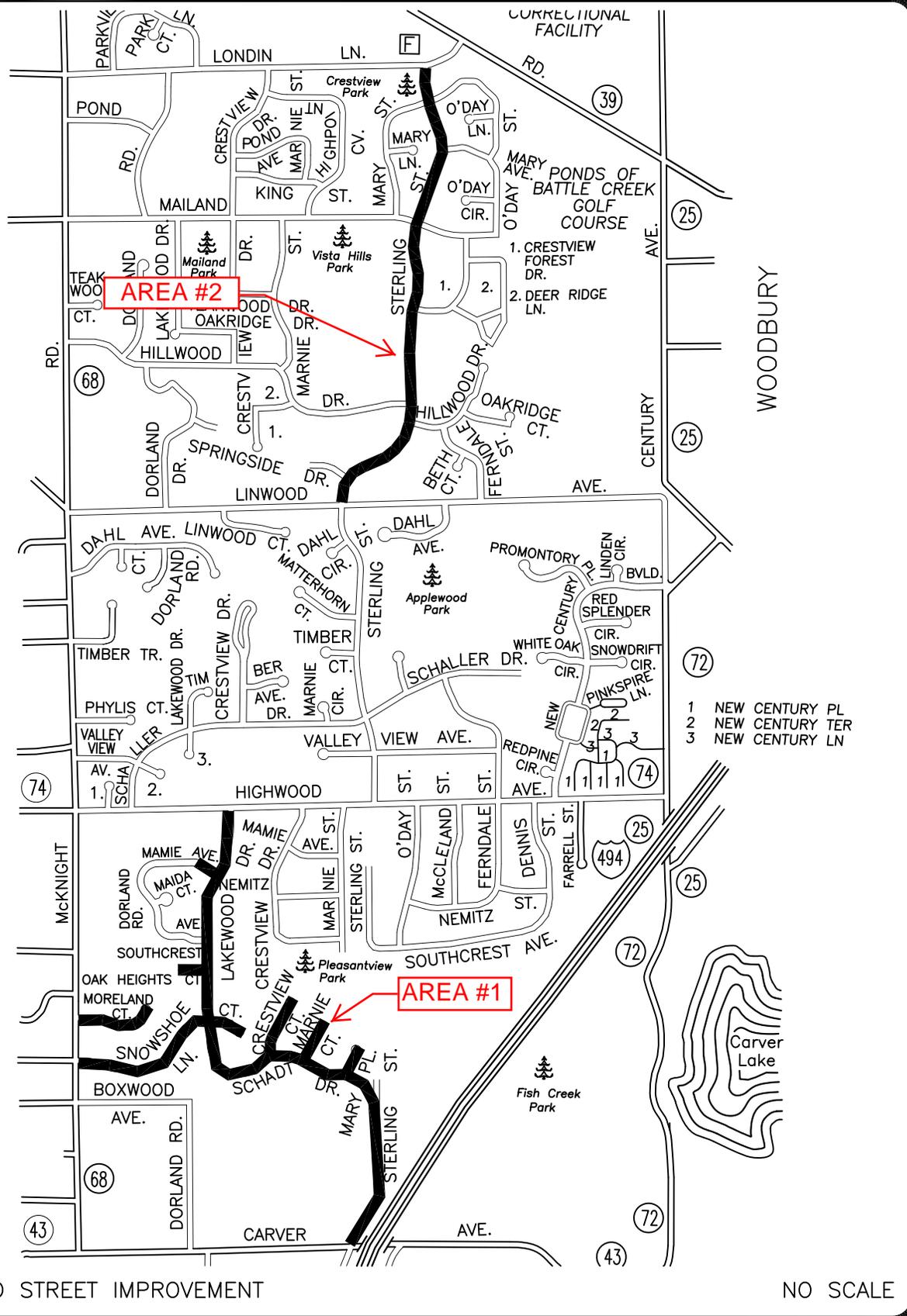
RESOLUTION
ORDERING PREPARATION OF ASSESSMENT ROLL

WHEREAS, the City Clerk and City Engineer will receive bids for the Lakewood-Sterling Area Street Improvements, City Project 15-11,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA that the City Clerk and City Engineer shall forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece or parcel of land abutting on the streets affected, without regard to cash valuation, as provided by law, and they shall file a copy of such proposed assessment in the city office for inspection.

FURTHER, the City Clerk shall, upon completion of such proposed assessment notify the City Council thereof.

Approved this 8th day of February 2016.



- 1. HUNTINGTON CT.
- 2. OAKRIDGE LN.

- 1. CURRIE CT.
- 2. VALLEY VIEW CT.
- 3. LAKEWOOD CT.

- 1 NEW CENTURY PL
- 2 NEW CENTURY TER
- 3 NEW CENTURY LN

Lakewood / Sterling Area Street Improvements

Project Location Map

City Project 15-11

