

MINNEAPOLIS CITY COUNCIL OFFICIAL PROCEEDINGS

REGULAR MEETING OF DECEMBER 18, 2009

(Published December 26, 2009, in *Finance and Commerce*)

Council Chamber

350 South 5th Street

Minneapolis, Minnesota

December 18, 2009 - 9:30 a.m.

Council President Johnson in the Chair.

Present - Council Members Hofstede, Ostrow, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Goodman, Hodges, Samuels, Gordon, President Johnson.

Lilligren moved adoption of the agenda. Seconded.

Adopted upon a voice vote 12/18/2009.

Lilligren moved acceptance of the minutes of the regular meeting of December 4, 2009 and the adjourned session held December 7, 2009. Seconded.

Adopted upon a voice vote 12/18/2009.

Lilligren moved referral of petitions and communications and reports of the City officers to the proper Council committees and departments. Seconded.

Adopted upon a voice vote 12/18/2009.

PETITIONS AND COMMUNICATIONS

COMMITTEE OF THE WHOLE (See Rep):

FINANCE DEPARTMENT (273955)

Consolidated Redevelopment Tax Increment Financing District and Plan

COMMUNITY DEVELOPMENT (See Rep):

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT (273956)

Open Systems International, Inc: Final approval to issue bonds, as joint partnership with Hennepin County.

Land Sale (400 - 31st Ave N & 3035 - 6th St N): Project for Pride in Living, Inc.

Alliance Housing Inc (re 2600-06 - 17th Ave S): Exclusive development rights.

Parcel A (re NE side of 2nd St between 3rd & 5th Aves S): Extension of exclusive development rights to Egel Iron Partners Joint Venture, et al.

Mill District City Apartments: Agreement between the City & Excel Energy to bury power lines along 2nd St S.

2009 Revenue Bond Entitlement Carryforward.

2009 Emergency Shelter Grant Funding: Recommendations.

MAYOR (273957)

Minneapolis Public Housing Authority: Appointments of F. Clayton Tyler, Matt Gerard, Craig Pederson & Chuck Lutz as Chair.

COMMUNITY DEVELOPMENT and WAYS & MEANS/BUDGET (See Rep):

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT (273958)

Housing Replacement District (HRD) III Plan & Modificaotns to HRD Plan & HRD District II Plan.

2010 Small Business Loan Programs: Allocation to Metropolitan Consortium of Community Developers to extend City's partnership.

Issuance of Tax-Exempt Revenue Bond Financing in 2010: Authorize.

African Development Center: Allocation to extend partnership on business loan activities in 2010.

Wells Fargo Foundation Grant: Acceptance & approval of a loan program.

NEIGHBORHOOD REVITALIZATION PROGRAM (NRP) (273959)

NRP 2010 Administrative Budget.

PURCHASING (273960)

Renovations at 3347 Lyndale Ave N: Low bid of Ram Construction & Remodeling.

HEALTH, ENERGY AND ENVIRONMENT:

PUBLIC WORKS AND ENGINEERING (273961)

Minneapolis Tree Advisory Commission: Update report on Guidelines for Street Trees and Boulevards.

HEALTH, ENERGY AND ENVIRONMENT (See Rep):

HEALTH AND FAMILY SUPPORT SERVICES (273962)

Public Health Advisory Committee: Approve City Council appointments of John Schrom, Ward 9; and Debra Jacoway, Ward 8.

HEALTH, ENERGY AND ENVIRONMENT and WAYS & MEANS/BUDGET (See Rep):

HEALTH AND FAMILY SUPPORT SERVICES (273963)

School Based Clinics: Execute contract with Healthier Minnesota Community Clinic Fund to receive \$20,106 to improve space at the Roosevelt and South School Based Clinics; and Approve appropriation.

Healthy Eating Minnesota Grant: Execute contract with Hennepin County to accept \$3,500 for promotion of access to affordable fresh produce funded through Blue Cross Blue Shield; and Approve appropriation.

Public Health Emergency Response: Accept \$446,822 in federal grant funds from Minnesota Department of Health to respond to H1N1 influenza and take actions necessary to vaccinate and distribute antiviral medication in accordance with MDH and CDC guidelines; and Approve appropriation.

Medica Skyway Senior Center: Execute contract with Friends of the Medica Skyway Senior Center to accept \$60,000 for general operation of the Center during period September 1, 2009 through December 31, 2010.

INTERGOVERNMENTAL RELATIONS:

INTERGOVERNMENTAL RELATIONS (273964)

Federal/State/Local Update 20091215.

INTERGOVERNMENTAL RELATIONS (See Rep):

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT (273965)

Mpls Riverfront Corp: Report to MN Legislature.

PUBLIC SAFETY AND REGULATORY SERVICES:

LICENSES AND CONSUMER SERVICES (273966)

Salama Halal Meat (2910 Pillsbury Av S): Notice from State of Minnesota relating to unpaid taxes.

LICENSES AND CONSUMER SERVICES (273967)

Ya Baby Sports Bar (2024 Washington Av N): Business Operating Conditions relating to application for On-Sale Liquor Class C-1 with Sunday Sales License.

PUBLIC SAFETY AND REGULATORY SERVICES (See Rep):

LICENSES AND CONSUMER SERVICES (273968)

Licenses: Applications.

LICENSES AND CONSUMER SERVICES (273969)

Sporty's Pub & Grill (2124 Como Av SE): Grant On-Sale Liquor Class D with Sunday Sales License, with conditions.

Kafe 421 (421 14th Av SE): Approve License Settlement Conference recommendations relating to On-Sale Wine Class C-2 with Strong Beer License.

Maxwell's American Cafe (712 Washington Av SE): Approve License Settlement Conference recommendations relating to On-Sale Liquor Class E with Sunday Sales License.

REGULATORY SERVICES (273970)

Property at 2220 Marshall St NE: Authorize demolition of structure.

REGULATORY SERVICES (273971)

Property at 2929 11th Av S: Authorize demolition of structure.

REGULATORY SERVICES (273972)

Rental Dwelling License at 4700 Bryant Av N: Revoke license held by Todd J Cushman.

REGULATORY SERVICES (273973)

Rental Dwelling License at 607 Erie St SE: Revoke license held by Mohammed Shahidullah.

REGULATORY SERVICES (273974)

Taxicab Fuel Efficiency Standards: Authorize suspend current fuel efficiency standards contained in the Minneapolis Code of Ordinances; and Direct staff to complete a full best practices survey and report back to the PS&RS Committee.

PUBLIC SAFETY AND REGULATORY SERVICES and WAYS & MEANS/BUDGET (See Rep):

FIRE DEPARTMENT (273975)

Fire Response Fees: Increase tiered fee schedule charged to automobile insurance companies for response to personal injury accidents.

REGULATORY SERVICES (273976)

Animals: Ordinances providing hearing officers in dangerous and potentially dangerous animal appeals increased authority to impose restrictions; and requiring the owners of cats, as well as dogs, to prevent their animals from injuring others whether on or off the owner's property; and authorizing Animal Care & Control to require puppies of dangerous and potentially dangerous dogs to be spayed or neutered; and limiting the number of discounted "sibling" animal licenses per household to two; and requiring owners of declared animals to immediately report if their declared animal runs away; and increasing the fees for multiple and small animal permits.

TRANSPORTATION AND PUBLIC WORKS:

CENTERPOINT ENERGY (273977)

Utility Poles: a) Replace at 680 Lowry Ave NE; b) Install at 2010 E Hennepin Ave; and c) Install behind 4133 France Ave S.

TRANSPORTATION AND PUBLIC WORKS (See Rep):

PUBLIC WORKS AND ENGINEERING (273978)

Drinking Water Conservation Rate: Affirm water rate encouraging conservation.

Hiawatha Blue Water Partnership Project: Agreement with Minneapolis Park and Recreation Board.

RiverLake Greenway Project (Phase 3): Layout approval.

TRANSPORTATION AND PUBLIC WORKS and WAYS & MEANS/BUDGET (See Rep):

PUBLIC WORKS AND ENGINEERING (273979)

Traffic Signal Indication LED Conversion Program: Increase appropriation to be reimbursed by Xcel Energy Utility rebate funds.

ABC Parking Ramps: Amendment #2 to Mn/DOT Management Agreement.

Minnesota Pollution Control Agency: Site access agreement for monitoring equipment at Fire Station No 7.

Minnesota Public Radio: Lease agreement to locate FM translator facility at Kenwood Water Tower.

I-394 Under-Bridge Area: Lease agreement with Mn/DOT.

I-94 Under-Bridge Area: Lease agreement with Mn/DOT.

Tickles Food and Bar, Inc: Lease of 420 4th St S.

Hiawatha Maintenance Facility: a) Contract amendments with RSP Architects; b) Change order to contract with Knutson Construction Services, Inc; and c) Transfer of funds from Stormwater Design Fund to Hiawatha Maintenance Facility Project Fund.

Bid: OP 7213, Accept low bid of Fluid Technology Corporation for fiberglass reinforced pressure pipe.

WAYS AND MEANS BUDGET (See Rep):

ATTORNEY (273980)

Legal Settlements: Marlene Cariveau; and Linda Sue Garvey.

Lockridge Grindal Nauen, PLLP: Amendment to Master Legal Services Agreement.

Kennedy & Graven: Amendment to Master Legal Services Agreement.

Internal Audit Function: Ordinance amending Title 2, Chapter 17 relating to Administration: Finance Department.

Cable Communication Franchise Agreement: Ordinances repealing current Appendix H; and approving new Appendix H.

BUSINESS INFORMATION SERVICES (BIS) (273981)

City Hall Communications Hub: Memorandum of Understanding with the Municipal Building Commission.

CITY CLERK (273982)

2010 Council Budget Guidelines: Adopt.

COMMUNICATIONS (273983)

January 2010 Utility Billing Insert: Electronic utility billing.

CONVENTION & VISITORS ASSOCIATION OF GREATER MPLS (273984)

Copper Dome Repair Project: Change Order (C-27110) with John A. Dalsin & Son.

FINANCE DEPARTMENT (273985)

2010 General Appropriation Resolution: Technical amendment to footnote "ee".

Edison Youth Hockey Association: Write off outstanding debt owed to the City of Minneapolis.

HEALTH AND FAMILY SUPPORT SERVICES (273986)

American Association of Retired Persons (AARP): Agreement for tax program for seniors and low income families.

HUMAN RESOURCES (273987)

Voluntary Fitness Club Discount: Execute contract to renew program with Lifetime Fitness and implement program with 501Fit.

Minneapolis Health Reimbursement Arrangement Plan: Amendment.

Mayor & Council Salary Schedule and Car Allowance: Resolution setting the salary schedule and Car Allowance for the Mayor and the Council for the coming term 2010 - 2013.

POLICE DEPARTMENT (273988)

Minneapolis Police Department Reduction Plan: Approve plan.

PUBLIC WORKS AND ENGINEERING (273989)

Cedar Lake Trail - Phase III Project: Approve easement acquisition from the Federal

WAYS AND MEANS BUDGET and ZONING AND PLANNING (See Rep):

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT (273990)

Gift of 60 Photographs from Lake Street USA by the Harrington Company: Accept.

ZONING AND PLANNING (See Rep):

MAYOR (273991)

City Planning Commission Appointment of Erika Carter

PLANNING COMMISSION/DEPARTMENT (273992)

Zoning Code Text Amendment:

Title 20, Chapter 520: Distinguishing Senior Housing from Supportive Housing

Rezoning:

Metro Cable Network (1229 2nd Street NE)

Leif Ogren-Amdahl (3231 23rd Avenue S)

The following reports were signed by Mayor Rybak on December 22, 2009, unless noted otherwise. Minnesota Statutes, Section 331A.01, Subd 10, allows for summary publication of ordinances and resolutions in the official newspaper of the city.

REPORTS OF STANDING COMMITTEES

The COMMITTEE OF THE WHOLE submitted the following reports:

Lilligren moved to find under Council Rule 4 that the regular Council cycle is not adequate, and to consider the action of the Committee of the Whole from December 17, 2009, at this meeting. Seconded.

Adopted 12/18/2009.

Lilligren moved that City Council Rule 4 be suspended to change the time for the January 4, 2010 City Council Organization Meeting. Seconded.

Adopted 12/18/2009.

Comm of the Whole - Your Committee, having under consideration the recommendations of staff regarding the Consolidated Redevelopment Tax Increment Financing District and Plan, now recommends concurrence with the recommendations to: a) approve passage of the accompanying resolution approving the Consolidated Redevelopment Tax Increment Financing District and Plan; b) approve the tax increment allocation methodology as set forth in the Finance Department staff report, c) authorize the Finance Officer to enter into a memorandum of understanding between the City of Minneapolis and Hennepin County pursuant to the basic terms as set forth in the Finance Department staff report; and d) amend the 2010 General Appropriation Resolution by establishing the Community Planning & Economic Development agency Fund 01CON and appropriating \$10,000 to the fund.

Your Committee further recommends passage of the accompanying resolution establishing the Community Planning and Economic Development Agency Fund 01CON and appropriating \$10,000 to said Fund.

Adopted 12/18/2009. Yeas, 11; Nays, 2 as follows:

Yeas - Hofstede, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Hodges, Samuels, Gordon, Johnson.

Nays - Ostrow, Goodman.

Resolution 2009R-595, Approving the Consolidated Tax Increment Financing District Tax Increment Financing Plan, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-595

By Lilligren

Approving the Consolidated Tax Increment Financing District Tax Increment Financing Plan.

Resolved by The City Council of The City of Minneapolis:

Section 1. Recitals

1.1. Pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, the City of Minneapolis (the "City"), acting by and through its department of Community Planning and Economic Development, has been granted the authority to propose and implement city development districts, housing and redevelopment projects and tax increment financing ("TIF") districts, all pursuant to Minnesota Statutes, Sections 469.001 through 469.134, and 469.174 through 469.179, as amended, and other laws enumerated therein (collectively, the "Project Laws").

1.2. The Minnesota Legislature adopted Laws of Minnesota 2008, Chapter 366, Article 5, Section 37 (the "Special Legislation"). The City approved the Special Legislation on July 11, 2008 by Resolution 2008R-276, in accordance with Minnesota Statutes, Section 645.021, Subd. 3.

1.3. The Special Legislation authorized the City to create a new redevelopment TIF district comprised of all or part of the property located within 15 pre-1979 TIF districts that terminated on August 1, 2009. The district, to be called the Consolidated Redevelopment Tax Increment Financing District (the "District"), may be certified after January 1, 2010 and must terminate no later than December 31, 2020.

1.4. Prior to certification, the City must enter into an agreement with Hennepin County to pay the County annually out of the increment from the District an amount equal to the tax that would have been paid to the County on the captured tax capacity of the District had the District not been created.

1.5. Tax increment from the District may only be expended to pay principal and interest on bonds issued by the City or the Minneapolis Community Development Agency for Target Center, including bonds issued to repay bonds or loans, and for neighborhood revitalization purposes, which the Council intends to further define in future ordinance(s) or resolution(s).

1.6. The City has prepared, and this Council has investigated the facts with respect to, the Consolidated TIF District TIF Plan (the "Plan"). The Plan creates a new redevelopment TIF district that exists outside the boundaries of any project area, designates property to be included within the District and identifies a budget for expenditures, all pursuant to and in accordance with the Project Laws and/or the Special Legislation.

1.7. The City has performed all actions required by law to be performed prior to approval of the Plan, including, but not limited to, transmitting the proposed Plan to the Hennepin County Board of Commissioners, the School Board of Special School District No 1, neighborhood groups and the City Planning Commission for review and comment; providing the City's estimate of the fiscal and economic implications of the proposed district to the County Auditor and the Clerk of the School Board; and holding a public hearing upon published notice as required by law.

1.8. The Council believes that it is necessary and in the best interests of the City at this time to approve the Plan.

Section 2. Findings for the Adoption of the Plan

2.1. The Council hereby finds, determines and declares that the objectives and actions authorized by the Plan are all pursuant to and in accordance with the Project Laws and/or the Special Legislation.

2.2. The Council further finds, determines and declares that the Plan conforms to the general plan for the development or redevelopment of the city as a whole.

2.3. The Council further finds, determines and declares that the District is a redevelopment district pursuant to the Special Legislation.

2.4. The Council further finds, determines and declares that the reasons and facts supporting the findings in this resolution are described in the Plan.

2.5. The Council elects the method of computation provided in Minnesota Statutes, Section 469.177, Subd. 3, Paragraph (b). The Council acknowledges that, by making this election, the entire fiscal disparity contribution required of the City for development occurring within the District will be taken from the District.

Section 3. Approval of the Plan

3.1. Based upon the findings set forth in Section 2 hereof, the Plan presented to the Council on this date is hereby approved and shall be placed on file in the office of the City Clerk.

Section 4. Implementation of the Plan

4.1. After passage and publication of this Resolution and upon satisfaction of the Special Legislation requirement for an agreement with Hennepin County, the officers and staff of the City and the City's consultants and counsel are authorized and directed to proceed with the implementation of the Plan and for this purpose to negotiate, draft, prepare and present to this Council for its consideration, as appropriate, all further modifications, plans, resolutions, documents and contracts necessary for this purpose.

4.2. The request to Hennepin County for certification of the District will not be made prior to June 1, 2010, in accordance with legal requirements associated with the December 8, 2009 issuance of taxable general obligation tax increment refunding bonds for the Target Center.

4.3. As provided under Minnesota Statutes, Section 469.1781, Subdivision 7, this Council hereby authorizes the advance of revenues from other available development revenues of the City in the principal amount needed to offset any negative fund balances incurred with respect to this District as a result of expenditures incurred prior to or in excess of the collection of tax increment revenue. The interest rate paid on such advances shall be equal to the rate of interest those revenues would have generated in their fund. The term of this advance shall end upon the termination of the District, although as revenues are available in the fund for the District, the advance shall be offset by such amounts.

Adopted 12/18/2009. Yeas, 11; Nays, 2 as follows:

Yeas - Hofstede, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Hodges, Samuels, Gordon, Johnson.

Nays - Ostrow, Goodman.

RESOLUTION 2009R-596

By Lilligren

Amending the 2010 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution be amended by establishing the Community Planning and Economic Development Agency Fund 01CON and appropriating \$10,000 to said Fund.

Adopted 12/18/2009. Yeas, 11; Nays, 2 as follows:

Yeas - Hofstede, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Hodges, Samuels, Gordon, Johnson.

Nays - Ostrow, Goodman.

The COMMUNITY DEVELOPMENT Committee submitted the following reports:

Comm Dev – Your Committee, having under consideration the issuance of revenue bonds for the Open Systems International, Inc (OSI) Project at the intersection of Highway 55 and Arrowhead Rd in Medina, MN, now recommends passage of the accompanying resolution giving final approval to the issuance of up to \$17,000,000 in Taxable and Tax-exempt Limited Tax Supported Development Revenue Bonds, Common Bond Fund, in two Series 2010, to finance acquisition of land, construction and equipping of a facility providing software solutions for utilities in the electric, oil and gas, transport and water industries, to be issued under a joint partnership with Hennepin County through the Common Bond Fund and designating the bonds as bonds entitled to the security provided by Ordinance No. 87-OR-084, Chapter 424, Tax Reserve and Pledge Ordinance.

Adopted 12/18/2009.

Resolution 2009R-597, giving final approval to the Supplemental Bond Resolution and Indenture to Resolution No. 2009R-563, giving preliminary approval to a project on behalf of Open Systems International, Inc. and preliminary approval to the issuance of revenue bonds of the City of Minneapolis, passed December 4, 2009, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-597
By Goodman

Supplemental bond resolution and Indenture to Resolution No. 2009R-563, giving preliminary approval to a project on behalf of Open Systems International, Inc. and preliminary approval to the issuance of revenue bonds of the City of Minneapolis, passed December 4, 2009.

Resolved by The City Council of The City of Minneapolis:
That the basic resolution is supplemented and amended as follows:

ARTICLE I

DEFINITIONS, LEGAL AUTHORIZATION AND FINDINGS

Section 101. *Definitions.* The following terms, unless the context hereof shall require otherwise, shall have the meanings set forth below; provided, however, that any additional capitalized terms used herein and not defined herein (unless such capitalization is due solely to application of the rules of grammar) shall have the meanings assigned to such terms in the Basic Resolution or the Agreement, unless the context or use herein requires another or different meaning:

“Act of Bankruptcy” means the filing of a petition in bankruptcy with respect to a Person by or against such Person under the United States Bankruptcy Code.

“Additional Common Fund Bonds” means those Common Fund Bonds issued to pay the cost of completion of a Facility pursuant to Sections 202 and 311(d) of the Basic Resolution, Section 206 hereof and an Additional Supplemental Bond Resolution.

“Additional Supplemental Bond Resolution” means the Additional Supplemental Bond Resolution and Indenture authorizing the issuance of Additional Common Fund Bonds.

“Agreement” means the Lease Agreement relating to the Facility between the Tenant and the Issuer, as amended from time to time.

“Articles and Sections,” mentioned by number only, means the respective Articles and Sections of this Supplemental Bond Resolution so numbered.

“Authorized Newspaper” means a newspaper furnishing financial news as part of its service, printed in the English language, published weekly or daily in Minneapolis, Minnesota, or its metropolitan area, and circulated throughout the State.

“Basic Resolution” means Resolution No. 2004R-257, entitled “Amending and restating the Basic Resolution of the City of Minneapolis (A),” adopted on June 18, 2004 by the Issuer, as amended to the date hereof, including any amendments made by this Supplemental Bond Resolution.

“Bond Closing” means the date on which there is delivery of and payment for the Bonds.

“Bond Register” means the register for the registration and transfer of the Bonds kept by the Trustee on behalf of the Issuer pursuant to Section 210 hereof.

“Bond Year” means from the Bond Closing to December 31, 2010, inclusive, and thereafter the period commencing on the day after expiration of the preceding Bond Year and ending on the earlier of the day preceding the first anniversary of such commencement date or the date on which no Bonds are Outstanding.

“Bonds” means the Series 2010-1A Bonds and the Series 2010-1B Bonds, issued pursuant to the Basic Resolution and the Supplemental Bond Resolution in the aggregate principal amount specified in Section 203 hereof, as such principal amount may be adjusted by certification of the Finance Officer of the Issuer.

“Chapter 424” means Code of Ordinances, Title 16, Chapter 424, as amended.

“Code” means the Internal Revenue Code of 1986, as amended as of the date hereof, and applicable Regulations promulgated thereunder.

“*Code of Ordinances*” means the Minneapolis Code of Ordinances, as amended.

“*Computation Date*” means any of the following dates: (i) the date on which the IDB Account is first fully depleted after the date hereof; and (ii) any date on which money has been drawn from the Tax Reserve Fund as a result of a certification by the Trustee pursuant to Section 415 hereof. The IDB Account shall be deemed to have been first fully depleted on the first date that no cash, investments, or letters of credit are credited to the IDB Account.

“*Construction Fund*” means the fund by that name created pursuant to Section 403 hereof.

“*Designated Common Fund Bonds*” means Common Fund Bonds designated by the Issuer under Chapter 424 as Bonds to which Chapter 424 applies.

“*Expected Available Tax Revenue*” means the product of the total tax capacity of all taxable property in the City of Minneapolis on the Computation Date and one-half percent.

“*Financial Advisor*” means Dougherty & Company LLC.

“*Hereby*,” “*herein*,” “*hereof*,” “*hereto*,” “*hereunder*” and any similar terms refer to this Supplemental Bond Resolution as a whole; the term “*heretofore*” means before the date of execution and delivery hereof, and the term “*hereafter*” means after the date of execution and delivery hereof.

“*Interest Payment Date*” means June 1, 2010, and each June 1 and December 1 thereafter until all Bonds are paid.

“*Issuer*” means the City of Minneapolis, Minnesota.

“*Joint Powers Agreement*” means the Joint Powers Agreement, dated as of April 1, 2004, among the Issuer, Hennepin County and the Hennepin County Housing and Redevelopment Authority.

“*Other Redemption Funds*” means all funds or accounts not within the Common Bond Fund or IDB Account established by any resolution authorizing Common Fund Bonds (other than the Bonds) which are pledged to the payment of principal, premium and interest due on any such series of Common Fund Bonds on any date for which any redemption thereof was duly called.

“*Outstanding*” means when used with reference to all series of Common Fund Bonds, the same as that term is defined in the Basic Resolution and also means, when used with reference to the Bonds and as of any particular date, all Bonds theretofore and thereupon being authenticated and delivered except:

(a) any Bond canceled by the Trustee or the Paying Agent or surrendered to the Trustee or the Paying Agent for cancellation at or before said date;

(b) any Bond for payment or redemption of which money equal to the principal or Redemption Price thereof, as the case may be, with interest to the date of maturity or Redemption Date, shall have theretofore been deposited with the Trustee or any Paying Agent in trust (whether upon or prior to maturity or the Redemption Date of such Bond) and, except in the case of a Bond to be paid at maturity, of which notice of redemption shall have been duly given; and

(c) any Bond for which in lieu thereof or in substitution therefor another Bond shall have been authenticated and delivered pursuant to Section 213 hereof;

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Issuer or the Tenant or any affiliate of the Tenant shall be disregarded and deemed not to be Outstanding except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded (an “*affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; for the purposes of this definition, “*control*,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “*controlling*” and “*controlled*” have meanings correlative to the foregoing); provided, further, that Bonds so owned which have been pledged in good faith may be regarded as “*Outstanding*” if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Issuer or the Tenant or any affiliate of the Tenant. A Bond that would be considered “*Outstanding*” but for the fact that money sufficient for the payment or redemption thereof has theretofore been deposited in full with the Trustee or any Paying Agent in trust for the Holder thereof (or that the Basic Resolution has theretofore been discharged with respect to the series of which such particular Bond is a part pursuant to Article VI of the Basic Resolution) shall, for the purposes of Article III of the Basic Resolution (to the extent that a default referred

to therein or under the Agreement might adversely affect the exemption from federal income taxation of interest on any Series 2010 1A Bond) and Article VII of the Basic Resolution (to the extent that any supplement, amendment, modification or waiver referred to therein might adversely affect the exemption from federal income taxation of interest on any Series 2010-1A Bond), be deemed to be "Outstanding" unless such Bond shall be due and payable in accordance with its terms or through redemption proceedings or otherwise as provided in the Basic Resolution and herein. The Trustee shall be fully protected in requiring and relying on an Opinion of Counsel with respect to whether any such default, supplement, amendment, modification or waiver might adversely affect the exemption from federal income taxation of interest on any Series 2010-1A Bond.

"*Paying Agent*" means Wells Fargo Bank, National Association, in Minneapolis, Minnesota, and its successor or successors designated pursuant to the provisions of Article VII of the Basic Resolution and Section 204 hereof as the agent of the Issuer to receive and disburse the principal or Redemption Price of and interest on the Bonds.

"*Payment Date*" means the date on which any payment of principal of or interest on any Common Fund Bonds is due.

"*Preference Funds*" means any money credited to the Common Bond Fund or IDB Account, other than either money derived from a draw under the Letter of Credit or earnings received on amounts held by the Trustee, held by the Trustee for less than ninety-one (91) days or concerning which the depositor thereof was subject to an Act of Bankruptcy within ninety-one (91) days after deposit of such amounts with the Trustee.

"*Property Insurance and Award Fund*" means the fund by that name created pursuant to Section 406 hereof.

"*Rebate Amounts*" means any amount of money subject to rebate to the government of the United States of America pursuant to Section 148(f) of the Code and applicable Regulations.

"*Rebate Fund*" means the fund by that name created pursuant to Section 414 hereof.

"*Redemption Date*" means, when used with respect to any Bond to be redeemed, the date fixed for such redemption in accordance with the provisions hereof.

"*Redemption Fund*" means the fund by that name created pursuant to Section 411 hereof.

"*Redemption Price*" means, when used with respect to a Bond or portion thereof, the principal amount of such Bond or portion thereof plus the applicable premium, if any, payable upon redemption thereof in accordance with its terms and as provided herein.

"*Regulations*" means regulations promulgated by the Department of the Treasury of the government of the United States of America pursuant to the Code.

"*Series 2010-1A Bonds*" means the obligations of the Issuer designated the Limited Tax Supported Development Revenue Bonds, Common Bond Fund Series 2010-1A.

"*Series 2010-1B Bonds*" means the obligations of the Issuer designated the Taxable Limited Tax Supported Development Revenue Bonds, Common Bond Fund Series 2010-1B.

"*Supplemental Bond Resolution*" means this Supplemental Bond Resolution and Indenture.

"*Tax Reserve Fund*" means the fund by that name created by Chapter 424, held by the Issuer separate and apart from the Common Bond Fund.

"*Tax Reserve Requirement*" means zero Dollars (\$0) prior to the first Computation Date and, thereafter, an amount equal to twice the Expected Available Tax Revenue, determined as of the most recent Computation Date.

"*Tenant*" means Open Systems International, Inc., a Minnesota corporation, or an affiliate thereof, its successors and assigns.

"*Trustee*" means Wells Fargo Bank, National Association, in Minneapolis, Minnesota, its successors and co-trustees, as permitted under the Basic Resolution.

"*Underwriter*" or "*Underwriters*" means RBC Capital Markets Corporation and Piper Jaffray & Co.

"*Underwriting Agreement*" means the Underwriting Agreement, dated as of the date of adoption hereof, among the Underwriters, the Issuer and the Tenant.

"*United States Bankruptcy Code*" means 11 U.S.C. Sections 101 *et seq.*, as amended.

Section 102. *Legal Authorization.* The Issuer is a municipal corporation under the laws of Minnesota and is authorized under the Joint Powers Agreement and the Act to finance the Facility and to issue and sell the Bonds for that purpose in the manner and upon the terms and conditions set forth in the Basic Resolution and herein.

Section 103. *Findings.* The Issuer has heretofore determined and does hereby determine and find as follows:

(a) The Issuer is authorized by the Act to adopt this Supplemental Bond Resolution and execute and deliver the Agreement.

(b) The Issuer has made the necessary arrangements with the Tenant for the financing of the Facility, which Facility consists of certain property used in connection with the operation of a revenue producing enterprise contemplated by Minnesota Statutes, Section 469.153 Subdivision 2, which property is of the character and accomplishes the purposes provided by the Act, and the Issuer has by this Supplemental Bond Resolution authorized execution of the Agreement and all other documents in relation thereto and has specified the terms and conditions of the financing of the Facility.

(c) In authorizing the issuance of Bonds, the Issuer's purpose is and, in the Issuer's judgment, the effect thereof shall be to promote the public welfare by: the attraction, encouragement and development of economically sound commerce and industry so as to prevent, so far as possible, blighted and marginal lands and areas of chronic unemployment and the emergence of such land and areas, the development of commerce and industry to use the available resources of the community in order to retain the benefit of the community's existing investment in educational and public service facilities and to halt the movement of talented, educated personnel of mature age to other areas, thus preserving the economic and human resources needed as a base for providing governmental services and facilities, the provision of accessible employment opportunities for residents in the area, and the expansion of an adequate tax base of Hennepin County to finance the increase in the amount and cost of governmental services.

(d) The amount estimated to be necessary to finance the Facility shall require the Issuer to issue, sell and deliver the Bonds in the aggregate principal amount authorized herein.

(e) The Bonds are Common Fund Bonds within the meaning of Section 202 of the Basic Resolution and are payable from revenues derived by the Issuer from a revenue-producing enterprise and shall be on a parity of lien with all other Common Fund Bonds which have heretofore and may hereafter be issued by the Issuer and made payable from funds pledged and appropriated thereto pursuant to the Basic Resolution and hereunder.

(f) The issuance and sale of the Bonds, the execution and delivery of the Agreement and the performance of all covenants and agreements of the Issuer contained herein and in the Agreement and the Basic Resolution and of all other acts and things required under the Constitution and laws of the State to make the Agreement and the Bonds valid and binding obligations of the Issuer in accordance with their terms are authorized by the Act, the Basic Resolution and this Supplemental Bond Resolution.

(g) The Underwriters have offered to purchase the Bonds in accordance with the terms and conditions of the Underwriting Agreement and this Supplemental Bond Resolution.

ARTICLE II

AUTHORIZATION, TERMS AND PROVISIONS OF BONDS

Section 201. *Qualification under the Basic Resolution, IDB Account Resolution and Chapter 424.* The Bonds shall be issued and secured under the provisions of the Basic Resolution, and all applicable terms, covenants and conditions contained therein are hereby incorporated into and made a part hereof of the same as if said terms, covenants and conditions were set out herein in their entirety. It is hereby found, determined and declared that upon the issuance of the Bonds in accordance herewith and execution of the Agreement, the Agreement shall provide for Basic Rent, which if collected in full and when due shall be sufficient to pay the interest when due and to pay and redeem the Bonds at maturity or when required or permitted pursuant to the terms hereof. In accordance with Sections 202 and 402(d) of the Basic Resolution, at or prior to the Bond Closing for the Bonds, cash in the amount, or a Reserve Letter of Credit drawable in the amount, of the Minimum Deposit shall be delivered to or by the Issuer as required for the Bonds and further, all other conditions required to be met under Section 202 of the Basic Resolution shall have been met as have the conditions specified herein. Consistent with the provisions of the Basic Resolution and the IDB Account

Resolution, the Issuer specifically pledges to further secure the Bonds (on a parity basis with all Common Fund Bonds) with the funds held in the A Subaccount and Issuer Subaccount of the IDB Account established in accordance with the provisions of the IDB Account Resolution. The Issuer covenants to make appropriations, advances and payments in respect of the Bonds in accordance herewith and with the terms of the Basic Resolution and the IDB Account Resolution. The Bonds shall also be secured by amounts available, if any, in the Tax Reserve Fund, pursuant to Chapter 424. The Issuer hereby designates the Bonds as bonds secured by the pledge made pursuant to Chapter 424.

Section 202. *Forms Generally.* The Bonds shall be in substantially the form set forth in Schedule A hereof (Petn No. 273956) with such other appropriate insertions, omissions, substitutions and other variations as are required or permitted hereby and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be placed thereon by the officials of the Issuer executing the Bonds, as evidenced by their execution thereof. Any part of the text of any Bond may be set forth on the reverse side thereof with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, engraved, typewritten, mimeographed or otherwise reproduced or produced by a combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange, all as determined by the officials of the Issuer executing such Bonds, as evidenced by their execution thereof.

The approving opinion of Bond Counsel may be printed on the Bonds.

Section 203. *Authorization of Bonds and Terms.* Pursuant to the Basic Resolution, the Bonds are hereby authorized to be and shall be issued under and secured by the Basic Resolution and this Supplemental Bond Resolution. The Bonds and any Additional Common Fund Bonds shall bear CUSIP numbers or any other identification, notations or symbols as the Issuer may determine, and when issued shall be numbered separately from R-1 consecutively upward. The 2010-1A Bonds shall be issued in the aggregate principal amount of up to \$10,000,000, and the Series 2010 1B Bonds shall be issued in the aggregate principal amount of up to \$7,000,000. The Bonds shall bear interest from the date thereof, payable semiannually on June 1 and December 1 in each year, commencing June 1, 2010, at the interest rates per annum to be determined by the Finance Officer of the Issuer prior to the issuance of the Bonds (with the average weighted interest rate not to exceed 7.00% per annum for the Series 2010-1A Bonds and 9.00% per annum for the Series 2010-1B Bonds), and shall mature on or before December 1, 2040.

The foregoing aggregate principal amount, maturity dates and principal amounts maturing on such dates are subject to adjustment and, if adjusted, such terms shall be finally and specifically designated at Bond Closing by a certification of the Finance Officer of the Issuer. Such adjustment may include the creation of one or more serial maturities and/or term bonds that are subject to mandatory sinking fund redemption in accordance with Section 305 hereof. The Finance Officer's certification shall also establish the interest rate for each maturity of Bonds.

Section 204. *Accrual and Payment of Interest.* Each Bond shall bear interest from its date, which shall be as of the date six (6) months preceding the Interest Payment Date next following the date of authentication thereof by the Paying Agent, provided that: (a) if such date of authentication shall be an Interest Payment Date, such Bond shall be dated as of such date of authentication, (b) if such date of authentication shall be before the first Interest Payment Date, such Bond shall be dated as of the first day of the month in which such Bond was issued, and (c) if interest on such Bond shall not have been paid in full when due, then notwithstanding any of the foregoing provisions of this Section 204, such Bond shall be dated as of the date on which interest was last paid in full on such Bond. All Bonds shall be payable as to principal or Redemption Price at the principal office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, hereby designated as Paying Agent for the Bonds, or at the office of any successor Paying Agent designated by the Issuer pursuant to Article VII of the Basic Resolution, and interest on Bonds shall be payable by check or draft drawn upon the Paying Agent mailed on the Interest Payment Date to the registered Holder thereof as reflected as of the close of business on the 15th day of the month immediately preceding any Interest Payment Date at the address of such Holder as it appears on the Bond Register maintained by the Trustee. Overdue principal or Redemption Price of and (to the extent legally enforceable) overdue interest on any Bond shall bear interest at the rate borne by such Bond.

Section 205. *Conditions Precedent to the Delivery of Bonds.* In addition to the performance of such acts and the occurrence of such events as are required under Section 202 of the Basic Resolution, prior to or simultaneously with the delivery of the Bonds:

(a) there shall be delivered to the Trustee a written order by the Representative of the Issuer to authenticate and deliver the Bonds to or upon the order of the Underwriters, upon the payment to the Trustee for the account of the Issuer of a specified sum plus a specified amount of accrued interest, together with a copy of this Supplemental Bond Resolution, duly certified by the recording officer of the Issuer; and

(b) there shall be delivered to the Issuer the following items:

(i) an executed original of the Agreement and the Disbursing Agreement;

(ii) the executed original or copies thereof satisfactory to the Issuer of all Subleases of the Facility then in effect, if any;

(iii) financing statements endorsed as having been filed with the Secretary of State of the State of Minnesota and the County Recorder or Registrar of Titles of Hennepin County, Minnesota, or both, whichever is applicable, showing the interest of the Issuer in the Facility Equipment;

(iv) a policy or binder of title insurance in current ALTA form acceptable to the Issuer and Bond Counsel in an amount not less than the original principal of the Bonds insuring the Issuer's fee simple title to the Facility Premises, subject only to Permitted Encumbrances and insuring against all standard exceptions, including mechanics' liens, survey and zoning restrictions;

(v) the manually signed Opinion of Bond Counsel approving the legality of the Bonds and exclusion from gross income of interest on the Series 2010-1A Bonds;

(vi) written evidence from the Underwriters, Hennepin County, the Hennepin County Housing and Redevelopment Authority and the City of Medina consenting to the issuance of the Bonds;

(vii) an original of the Underwriting Agreement;

(viii) written acceptance by the Paying Agent and the Trustee;

(ix) evidence of insurance complying with Section 4.06 of the Agreement;

(x) all executed Construction Contracts, including any related architects' contracts and payment and performance bonds required by the Agreement, if any;

(xi) an executed original of each Guaranty; and

(xii) such other documents as Bond Counsel reasonably determines are necessary as a precondition to the delivery of the Bonds;

provided, however, that the Issuer may waive the requirement that one or more of the foregoing items be filed with the Trustee on or prior to Bond Closing, except the manually signed Opinion of Bond Counsel approving the validity of the Bonds.

Section 206. Additional Common Fund Bonds. Pursuant to the authority given in Section 202 of the Basic Resolution to issue Additional Common Fund Bonds in accordance with Section 311(d) thereof, one or more series of such Additional Common Fund Bonds may be authenticated and delivered for the purpose of financing the cost of completing the Facility. Such Additional Common Fund Bonds shall be secured by the Basic Resolution, this Supplemental Bond Resolution and the Additional Supplemental Bond Resolution providing for the issuance of the applicable series of such Additional Common Fund Bonds and shall rank on a parity of security in all respects with the Bonds and all Additional Common Fund Bonds issued and to be issued hereunder. Such Additional Common Fund Bonds may, at the election of the Issuer as provided by Chapter 424, be further secured by the Tax Reserve Fund. Such Additional Common Fund Bonds shall have such identifying designation, be in such form and denominations, be dated, mature at such time or times, bear interest at such rate or rates, be subject to redemption at such times and prices, be executed substantially in the form and manner set forth herein and contain such other provisions not inconsistent herewith and with the Basic Resolution and as the Additional Supplemental Bond Resolution providing for the issuance thereof shall fix and determine. Such Additional Common Fund Bonds shall be payable from the Common Bond Fund as provided in the Basic Resolution. Prior to the adoption of the Additional Supplemental Bond Resolution authorizing the issuance of Additional Common Fund Bonds, the Issuer and the Tenant shall enter into an amendment to the Agreement which shall provide that the Basic Rent due under the Agreement shall be increased and computed so as to amortize in full the principal or Redemption Price of and interest on such Additional Common Fund Bonds and provide for the payment of any other costs in connection therewith. The Additional Common Fund Bonds shall be issued only in accordance with Sections 202 and 311(d) of the Basic Resolution.

Section 207. Form and Denominations. All Bonds shall be in fully registered form without coupons and payable to a named Person or registered assigns. Bonds shall each be of the denomination of \$5,000 or any integral multiple thereof. The Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words as are:

(a) not inconsistent with those provisions hereof and of the Basic Resolution that are applicable to all Bonds or to Common Fund Bonds generally;

(b) necessary or desirable to comply with custom or the rules of any securities exchange or commission or brokerage board; or

(c) authorized hereby or by any Additional Supplemental Bond Resolution adopted prior to the authentication and delivery of the Bonds.

Section 208. *Execution of Bonds.* Each Bond shall be executed, as provided by law, in the name and on behalf of the Issuer by the manual or facsimile signature of its Finance Officer (or such other person acting in the stead of the Finance Officer in accordance with law). Any Bond may be signed on behalf of the Issuer by any person who, at the date of such act, shall hold the proper office, and the validity thereof shall not be impaired by the fact that one or more of such officers authorized to execute such Bond shall have ceased to hold such office on the date of delivery of such Bond.

Section 209. *Authentication of Bonds.* Each Bond shall bear thereon a certificate of authentication, substantially in the following form, manually executed by the Trustee:

“Certificate of Authentication”

This Bond is one of the Common Fund Bonds described in the within-mentioned Basic Resolution and Supplemental Bond Resolution and is one of the Bonds of the City of Minneapolis referred to herein.

WELLS FARGO BANK,
NATIONAL ASSOCIATION,
as Trustee

Dated: _____ By _____ [Manual]
Authorized Signature

Only such Bonds that bear thereon the manually executed certificate of authentication shall be entitled to any security, right or benefit hereunder and under the Basic Resolution. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication upon such Bond shall have been duly executed by the Paying Agent. The certificate of authentication upon any Bond executed as herein provided on behalf of the Issuer shall be conclusive and the only evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and under the Basic Resolution and that the Holder thereof is entitled to the security, right or benefit hereunder and under the Basic Resolution.

Section 210. *Appointment of Trustee as Transfer Agent for Bonds.* The Trustee is hereby irrevocably appointed the agent of the Issuer for the registration, transfer or exchange of Bonds. The Trustee, on behalf of the Issuer, shall maintain and keep a Bond Register for the registration and transfer of the Bonds, and upon presentation thereof for such purpose, the Trustee shall register or cause to be registered thereon and permit to be transferred thereon or to be exchanged, under such reasonable regulations as the Trustee may prescribe, any Bond entitled to registration, transfer or exchange.

Section 211. *Transfer of Bonds.* Each Bond shall be transferable only upon the Bond Register at the office of the Trustee by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such duly authorized attorney. Upon the transfer of any such Bond, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds registered in the name of the transferee of the same aggregate principal amount, series designation, maturity and interest rate as the surrendered Bond.

Section 212. *Ownership of Bonds and Effect of Registration.* The Issuer, the Trustee and any Paying Agent may treat and consider the person in whose name any Bond for the time being shall be registered upon the Bond Register as the Holder and absolute owner thereof, whether or not such Bond shall have matured, for the purpose of receiving payment of the principal or Redemption Price of and interest on such Bond and for all other purposes whatsoever, and neither the Issuer, the Trustee nor any Paying Agent shall be affected by any notice to the contrary, and payment of or on account of the principal or Redemption Price

of and interest on such registered Bond shall be made only to or upon the order of such registered owner thereof. All payments made as in this Section 212 provided shall be valid and effectual to satisfy and discharge the liability upon the several Bonds to the extent of the sum or sums so paid.

Section 213. *Bonds Mutilated, Destroyed, Stolen or Lost.* In the event that any Bond is mutilated, destroyed, stolen or lost, the Issuer shall execute and the Trustee shall authenticate and deliver, in lieu of any such mutilated, destroyed, stolen or lost Bond, a new Bond of like date and denomination as the Bond mutilated, destroyed, stolen or lost, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any such destroyed, stolen or lost Bond, there shall be first furnished to the Issuer and the Trustee evidence of such destruction, theft or loss satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Issuer and the Trustee may charge the Holder of such Bond their reasonable fees and expenses in this connection. All such Bonds so surrendered to the Trustee shall be canceled by the Trustee.

In case any such mutilated, destroyed, stolen or lost Bond has become or is about to become due and payable, the Issuer may, instead of issuing a new Bond, cause the Trustee to pay such Bond out of money held by the Trustee and available for such purpose.

The provisions of this Section 213 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, stolen or lost Bonds.

Section 214. *Payment for and Limitations on Exchanges and Transfers.* In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver the Bonds in accordance with the provisions hereof and of the Basic Resolution. The Bonds so delivered shall be in such form or denominations as shall permit the exchange or transfer for the surrendered Bonds in such manner that no gain or loss of interest results from such exchange or transfer. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Trustee. For every such exchange or transfer of Bonds, the Trustee may make a charge sufficient to reimburse the Trustee for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The cost of preparing each new Bond upon each exchange or transfer and any other expenses (except any applicable tax, fee or other governmental charge) of the Issuer or the Trustee incurred in connection with such exchange or transfer shall be paid by the Tenant pursuant to Section 2.03 of the Agreement. Neither the Issuer nor the Trustee shall be required to register, transfer or exchange Bonds for a period of fifteen (15) days next preceding any Interest Payment Date on Bonds or next preceding any selection of Bonds to be redeemed or thereafter until after the later of the first publication or mailing of notice of redemption of Bonds selected, called or being called for redemption as a whole or the portion being redeemed of any Bonds selected, called or being called for redemption in part.

Section 215. *Delivery of Temporary Bond.* In order to facilitate timely delivery of the Bonds, the Underwriters may elect, with respect to the Bonds, to receive in lieu of definitive Bonds a single temporary registered Bond that may be printed, lithographed, engraved, typewritten, mimeographed or otherwise reproduced, which Bond shall, upon the printing of the appropriate Bonds and the execution and authentication thereof, be exchanged therefor and canceled.

Section 216. *Book Entry Provisions.* Notwithstanding any provision of this Supplemental Bond Resolution to the contrary:

(a) Upon initial issuance of the Bonds the ownership of one fully registered Bond for each maturity of the Bonds shall be registered in the name of Cede & Co. ("Cede"), as nominee of The Depository Trust Company ("DTC"), New York, New York. Payments of interest on, principal of and any premium on the Bonds shall be made to the account of Cede on each payment date at the address indicated for Cede in the Bond Register kept by the Trustee in accordance with arrangements acceptable to DTC and the Trustee. DTC has represented to the Issuer that it will maintain a book-entry system in recording ownership interests of its participants (the "Direct Participants"), and the ownership interests of a purchaser of a beneficial interest in the Bonds (a "Beneficial Holder") will be recorded through book entries on the records of the Direct Participants.

(b) With respect to Bonds registered in the name of Cede, the Issuer and the Trustee shall have no responsibility or obligation to any Direct Participant or to any Beneficial Holder of such Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Direct Participant with respect to any beneficial ownership interest in the Bonds, (ii) the delivery of any Direct

Participant, Beneficial Holder or other Person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption, (iii) the payment of any Direct Participant, Beneficial Holder or other Person, other than DTC, of any amount with respect to the principal or redemption price of, or any interest on, the Bonds or (iv) any consent given or other action taken by DTC as Holder of the Bonds. With respect to the Bonds registered in the name of Cede, the Issuer and the Trustee may treat DTC as, and deem DTC to be, the absolute owner of each Bond for all purposes whatsoever including (but not limited to) (i) payment of the principal or redemption price of, and interest on, each such Bond, (ii) giving notices of purchase or redemption and other matters with respect to such Bonds and (iii) registering transfers with respect to such Bonds. The Trustee shall pay the principal or redemption price of, and interest on, all such Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to such principal or redemption price, and interest, to the extent of the sum or sums so paid. Until and unless the services of DTC as depository of the Bonds are terminated or discontinued, no Person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal or redemption price of, and interest on, the Bonds pursuant to this Supplemental Bond Resolution. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word "Cede" in this Supplemental Bond Resolution shall refer to such new nominee of DTC.

(c) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving reasonable written notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law.

(ii) The Trustee shall terminate the services of DTC with respect to the Bonds if the Issuer determines that the continuation of the system of book-entry-only transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Holders of the Bonds or is burdensome to the Trustee, and shall terminate the Services of DTC with respect to the Bonds upon receipt by the Trustee of written notice from DTC to the effect that DTC has received written notice from Direct Participants having interests, as shown in the records of DTC, in an aggregate principal amount of not less than 50% of the aggregate principal amount of the Bonds then Outstanding to the effect that: (a) DTC is unable to discharge its responsibilities with respect to the Bonds or (b) a continuation of the requirement that all of the Bonds be registered in the Bond Register in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Holders of such Bonds.

(d) Upon the termination of the services of DTC with respect to the Bonds pursuant to subsection (c)(ii)(b) hereof, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subsection (c)(i) or subsection (c)(ii)(a) hereof after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found or which, in the opinion of the Trustee, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC. In such event, the Trustee shall transfer and exchange Bond certificates as requested by DTC or Direct Participants and confirmed by DTC of like principal amount, series and maturity, in Authorized Denominations to the identifiable Beneficial Holders in replacement of such Beneficial Holders' beneficial interests in the Bonds.

(e) Notwithstanding any other provision of this Supplemental Bond Resolution to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal or redemption price of, and interest on, such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the representation letter addressed to DTC with respect to the Bonds.

(f) In connection with any notice or other communication to be provided to Holders pursuant to this Supplemental Bond Resolution by the Trustee with respect to any consent or other action to be taken by Holders, the Trustee shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent the Trustee is reasonably able to do so.

(g) Notwithstanding any provision herein to the contrary, the Trustee may agree to allow DTC, or its nominee, Cede, to make a notation on any Bond redeemed in part to reflect, for informational purposes only, the principal amount and date of any such redemption.

ARTICLE III

REDEMPTION OF BONDS

Section 301. *Privileges of Redemption and Redemption Prices.* The Bonds issued pursuant hereto which are redeemable prior to maturity shall be subject to redemption upon notice as and to the extent provided in this Article III, at such time or times, in such order, and on such other terms and conditions, in addition to and consistent with this Article III, as is provided in the form of Bonds set forth herein and as shall be provided in the forms thereof with respect to Additional Common Fund Bonds issued pursuant to Section 206 hereof consistent with the Additional Supplemental Bond Resolution pursuant to which such Additional Common Fund Bonds may be issued (but shall not be redeemed prior to maturity except as so provided). In all cases any such redemption made shall be at a price equal to the principal amount of each Bond or portion thereof to be redeemed, plus such redemption premium or differing redemption premiums, if any, as shall be set forth in said Bonds and applicable upon such redemption, together with interest accrued to the Redemption Date. Except as may be otherwise provided herein, if less than all of the Bonds then Outstanding are to be redeemed, the particular Bonds to be redeemed shall be selected by inverse order of maturity and within a maturity as set forth in Section 302 hereof.

Section 302. *Selection of Bonds to be Redeemed.* In the event of redemption of Bonds of like maturity, the Trustee shall assign a distinctive number for each \$5,000 of principal amount of each Bond to be so redeemed and shall select the principal amount to be so redeemed, using such method of selection from the assigned numbers as the Trustee shall deem proper in its discretion. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of a denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected. For the purposes of this Section 302, Bonds, or portions thereof, which have been selected for redemption shall not be deemed Outstanding, and the order of selection for such Bonds shall remain the same upon exchange or transfer thereof pursuant to Section 211 hereof.

Section 303. *Notice of Redemption.*

(a) In the case of the redemption of any Bonds, the Trustee, in accordance with the terms and provisions of all Bonds and of this Supplemental Bond Resolution, shall select the Bonds to be redeemed and shall give notice of the redemption of such Bonds. However, the Trustee shall not give notice for redemption pursuant to Section 306 hereof prior to deposit of the applicable Redemption Price in the Redemption Fund.

(b) The notice shall specify the maturities of the Bonds to be redeemed, the Redemption Date and the place or places where amounts due upon such redemption shall be payable and, if less than all of the Bonds of any like maturity are to be redeemed, the letters and numbers or other distinguishing marks of such Bonds so to be redeemed, and, in the case of a Bond to be redeemed in part only, such notice shall also specify the portion of the principal amount thereof to be redeemed. Such notice shall further state that on such Redemption Date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof or the Redemption Price of the specified portion of the principal thereof in the case of a registered Bond to be redeemed in part only, together with interest accrued to such Redemption Date, and that from and after such date interest thereon shall cease to accrue and be payable. The Trustee shall mail a copy of such notice, first-class mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days before such Redemption Date, to the registered owner of each Bond all or a portion of which is to be redeemed, at said owner's last address, if any, appearing upon the Bond Register maintained by the Trustee, but failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of any proceedings for the redemption of Bonds. Such notice shall additionally be sent to www.emma.msrb.org. Notwithstanding the foregoing, the Trustee shall, to the extent required by law, publish notice of any redemption of Bonds in an Authorized Newspaper.

(c) For the purpose of discharging Bonds as provided in Section 603 of the Basic Resolution greater than 60 days prior to a redemption date for the Bonds, notice of redemption shall be deemed given if the Issuer shall have given the Trustee irrevocable instructions to provide the notice of redemption as required in (b) above.

Section 304. *Payment of Redeemed Bonds.* Notice having been given in the manner provided in Section 303 hereof, the Bonds or portions thereof called for redemption and specified in said notice shall become due and payable on the Redemption Date specified in said notice at the applicable Redemption Prices on such Redemption Date, plus unpaid interest on the Bonds or portions thereof accrued to such Redemption Date, and upon presentation and surrender thereof at the place or places specified in the notice together with a written instrument of transfer duly executed by the registered owner or by his attorney duly authorized in writing, the Bonds or portions thereof shall be paid at the Redemption Prices, plus unpaid interest on the Bonds or portions thereof accrued to the Redemption Date. If there shall be called for redemption less than all of a Bond, the Issuer shall execute and the Paying Agent shall authenticate and cause to be delivered, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, Bonds of like series designation, interest rate and maturity in any of the authorized denominations and registered in such name or names as may be requested. If on such Redemption Date, money for the redemption of all the Bonds of any like maturity to be redeemed, together with interest thereon accrued and unpaid to such Redemption Date, shall have been on deposit with the Paying Agent so as to be available therefor on such Redemption Date and if notice of redemption thereof shall have been given as aforesaid, then from and after such Redemption Date interest on the Bonds or portions thereof of such maturity so called for redemption shall cease to accrue and become payable and said Bonds shall no longer be considered as Outstanding hereunder. All money on deposit with the Paying Agent for the redemption of particular Bonds shall be held in trust for the account of the Holders of the Bonds to be so redeemed. Any Bonds redeemed shall be paid, to the extent available, from funds held by the Trustee other than Preference Funds.

Section 305. *Sinking Fund Redemption.* In the event that the Finance Officer by certification under Section 203 hereof designates one or more term bonds, such term bonds shall be subject to mandatory sinking fund redemption, in part, in integral multiples of \$5,000, with the particular Bonds to be redeemed to be selected by the Trustee and notice of redemption to be given by the Trustee in accordance with the provisions of this Supplemental Bond Resolution. Such mandatory sinking fund redemptions shall be at a redemption price equal to one hundred percent (100%) of par, plus accrued interest to the date fixed for mandatory sinking fund redemption (the "Mandatory Sinking Fund Redemption Date").

In the event that Bonds are purchased by the Issuer or the Tenant, or Bonds are redeemed pursuant to Section 306 hereof, the Bonds so purchased, or redeemed, at the option of the purchaser (in the case of purchased Bonds) or the Issuer (in the case of redeemed Bonds), may be applied as a credit against any subsequent mandatory sinking fund redemption payment for the Bonds, and such credit shall be equal to the principal amount of Bonds so purchased or redeemed, provided that notice of such election has been delivered to the Trustee not less than sixty days prior to the date of such mandatory sinking fund redemption. In such case, the principal amount of Bonds to be redeemed on such Mandatory Sinking Fund Redemption Date shall be reduced by the principal amount of Bonds so purchased or redeemed that are delivered to the Trustee on or before the date the notice of such election has been delivered to the Trustee. Any credit given to a mandatory sinking fund redemption pursuant to this paragraph shall not affect any subsequent mandatory sinking fund redemption which shall remain payable in such amounts and on such terms as otherwise set forth herein.

Section 306. *Optional Redemption.* The Bonds maturing after December 1, 2019, are subject to redemption prior to maturity, at the option of the Issuer, in whole or in part and from time to time, on December 1, 2019, and on any Interest Payment Date thereafter, after the notice of redemption given in accordance with the terms of this Supplemental Bond Resolution, at a Redemption Price (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued interest to the Redemption Date:

<u>Redemption Date</u>	<u>Redemption Price</u>
December 1, 2019 and thereafter	100%

The terms set forth in this Section 306 are subject to adjustment and modification and if adjusted, such terms shall be finally designated by certification of the Finance Officer of the Issuer delivered in connection with Bond Closing. Such adjustment may include the addition of a redemption premium on certain dates.

Section 307. *Extraordinary Optional Redemption.* The Bonds are subject to redemption prior to maturity, at the option of the Issuer, in whole but not in part, on any date upon notice as provided in Section 303 hereof, at a Redemption Price equal to the principal amount thereof, plus accrued interest to the Redemption Date, following termination of the Agreement and prepayment by the Tenant of all amounts payable thereupon pursuant to Section 7.03 of the Agreement, which termination may occur at the election of Tenant only upon the occurrence of certain events of casualty, condemnation, changes of law, or other occurrences as described in such provision of the Agreement.

Section 308. *Taxability Redemption.* The Series 2010-1A Bonds shall be redeemed prior to maturity, in whole but not in part, on any date upon notice as provided in Section 303 hereof, if the Facility is purchased pursuant to Section 6.12 of the Agreement because interest on the Series 2010 1A Bonds has become includable in gross income for Federal income tax purposes, at a Redemption Price equal to the principal amount of the Series 2010-1A Bonds plus accrued interest to the Redemption Date; provided, however, that if interest on the Series 2010-1A Bonds has become includable in gross income for Federal income tax purposes as a result of the failure of the Tenant to comply with a requirement of the Code (as defined herein and as separately defined in the Agreement) or Regulations, or as a result of any other cause under the control of the Tenant, then the Redemption Price shall be one hundred and three percent (103%) of the principal amount of Outstanding Series 2010-1A Bonds plus accrued interest to the Redemption Date.

Section 309. *Default Redemption.* The Bonds are subject to redemption prior to maturity, at the option of the Issuer, in whole but not in part, on any date upon notice as provided in Section 303 hereof, at a Redemption Price equal to the principal amount thereof, plus accrued interest to the Redemption Date, following the occurrence of all of the following: (i) an Event of Default, as defined in the Agreement, has occurred and is continuing; (ii) the Issuer has exercised its option to declare an acceleration of all Basic Rent to become due under the Agreement pursuant to Section 8.02(a) of the Agreement; and (iii) the Issuer has determined that sufficient amounts can be derived from the Facility, proceeds of the Bonds (or any refunding bonds) available therefor, sums in the Common Bond Fund available therefor, or any combination of the foregoing amounts or otherwise to discharge the Bonds pursuant to the Basic Resolution.

ARTICLE IV

ADDITIONAL GENERAL COVENANTS AND FUNDS

Section 401. *Maintenance and Repair.* The Issuer covenants that the Issuer shall at all times use its best efforts to cause the Tenant to maintain, preserve and keep the Facility in good condition, repair and working order.

Section 402. *Recording and Filing.* The Trustee shall cause the Agreement or a short form thereof and all related financing statements concerning the Facility to be kept, recorded, and filed in such manner and in such places as may be required by law in order to fully preserve and protect the Issuer's title to and security interest in the Facility and shall cause rerecording and refiling of each financing statement and each supplement thereto as is necessary to maintain, preserve and protect such title and security interest.

Section 403. *Construction Fund.*

(a) There is hereby created and established a separate and special Construction Fund to be held by the Trustee, in which there shall be deposited at the Bond Closing or thereafter, the additional contributions, if any, required by the Agreement and the Disbursing Agreement, all proceeds of the Bonds, including capitalized interest, but excluding proceeds required to be deposited in the Common Bond Fund pursuant to Section 405 hereof and proceeds of the Bonds deposited in the Costs of Issuance Account of the Construction Fund pursuant to this Section 403. Amounts in the Construction Fund shall be withdrawn or disbursed pursuant to Section 3.03 and 3.04 of the Agreement, this Article IV, and the Disbursing Agreement.

(b) Subject to Section 413 hereof, but notwithstanding any other provision herein or in the Agreement, upon the occurrence and continuance of an Event of Default as defined in the Agreement, the Issuer may apply any amounts in the Construction Fund (i) to discharge any obligations of the Tenant under the Agreement, or (ii) to redeem Bonds if the Issuer elects to redeem all outstanding Bonds upon acceleration of the Basic Rent due under the Agreement pursuant to Section 8.02(a) of the Agreement.

(c) Subject to Section 413 hereof, but notwithstanding any other provision herein, any sums transferred from the Construction Fund as Retained Funds shall be credited and be applied by the Issuer in accordance with the applicable requirements of the Agreement. Subject to Section 413 hereof, all proceeds of the Bonds and earnings derived from the investment of such proceeds that are required by the Agreement to be held by the Trustee as Restricted Funds shall be applied in accordance with the provisions of Treasury Regulations Sections 1.142-2 and 1.144-2 and any amendments thereof or supplements thereto.

(d) Subject to Section 413 hereof, upon any purchase of the Facility by Tenant pursuant to Sections 6.09 or 7.04 of the Agreement, amounts in the Construction Fund shall be transferred to the Debt Service Account.

(e) There is hereby created and established a separate and special account in the Construction Fund to be known as the "Costs of Issuance Account" to be held by the Trustee, in which there shall be deposited at the Bond Closing any money contributed by the Tenant and designated by the Tenant to be deposited in the Costs of Issuance Account, together with proceeds of the Bonds designated by the Tenant for deposit to the Costs of Issuance Account (but in no event shall such amount which consists of proceeds of the Series 2010-1A Bonds exceed 2% of the proceeds thereof). Amounts in the Costs of Issuance Account shall be withdrawn or disbursed pursuant to the Disbursing Agreement.

(f) There is hereby created a separate and special account in the Construction Fund to be known as the "Equity Account" to be held by the Trustee, in which shall be deposited at the Bond Closing for the Bonds, and thereafter from time to time as may be required by Section 3.02 of the Disbursing Agreement, all money contributed by the Tenant to pay costs related to the Facility, the issuance of the Bonds, or other obligations under the Agreement. Amounts in the Equity Account shall be withdrawn or disbursed pursuant to the Disbursing Agreement and the Agreement, provided however, that to the extent that Facility Costs, Costs of Issuance (as defined in the Disbursing Agreement), or other costs which are the obligation of the Tenant under the Agreement or Disbursing Agreement cannot legally be paid from Bond proceeds, said amounts may be paid from the Equity Account to the extent thereof and to the extent other provision is not made for their payment.

Section 404. *Common Bond Fund.* All accrued interest on the Bonds delivered at Bond Closing, all Net Revenues with respect to the Facility and the Agreement, Basic Rent, interest accruing on past due Basic Rent, all Retained Funds, Collateral Proceeds, Prepaid Net Revenues, and all other sums payable into the Common Bond Fund pursuant hereto or the Agreement, shall be credited to the Common Bond Fund, as received, and, subject to the Tenant's rights (if any) to earnings on the Reserve Deposit pursuant to the terms of the Agreement, are hereby pledged to the Common Bond Fund to the extent and in the manner provided in the Basic Resolution and herein. Subject to Section 413 hereof, amounts deposited in the Common Bond Fund (or any subaccounts therein) shall be credited against installments of Basic Rent or to the benefit of the Tenant only as and to the extent provided in the Agreement; provided that, subject to the Agreement, earnings on sums in the Common Bond Fund (including earnings on money credited to the Debt Service Account, the Common Reserve Account, and all subaccounts therein) shall not be credited against any installments of Basic Rent or otherwise to the benefit of the Tenant, but shall accrue to the benefit of the Issuer and shall be credited and applied in accordance with the Basic Resolution. Except as otherwise set forth in the Agreement, all amounts deposited in the Common Bond Fund pursuant hereto shall secure the payment of Common Fund Bonds to the extent and in the manner provided in the Basic Resolution.

Section 405. *Debt Service Account and Common Reserve Account.*

(a) At Bond Closing the Issuer shall deposit into the Debt Service Account in the Common Bond Fund proceeds of the Bonds to the extent of interest accrued on the Bonds from their nominal issuance date to the Bond Closing. All Net Revenues with respect to the Facility or the Agreement and Basic Rent (and all interest accruing on past due amounts therefor) shall be deposited in the Debt Service Account in the Common Bond Fund, together with any amounts transferred from the Common Reserve Account which are being credited in accordance herewith or the Agreement to the benefit of the Tenant against installments of Basic Rent or other payments due under the Agreement.

(b) At Bond Closing there shall be deposited in the Common Reserve Account by the Issuer cash in an amount, or a Reserve Letter of Credit drawable in an amount, not less than the Minimum Deposit.

Any amounts drawn under a Reserve Letter of Credit shall be deposited in the Common Reserve Account. The Issuer may substitute a Reserve Letter of Credit for all or a portion of the cash deposited in the Common Reserve Account at the Bond Closing by providing a Reserve Letter of Credit for deposit therein in the amount of such withdrawal; provided, however, that the Issuer shall have first obtained a written opinion of Bond Counsel that such transaction will not cause interest on the Series 2010-1A Bonds to become includable in gross income for purposes of Federal income taxation.

(c) Any funds in the Construction Fund transferred pursuant to Section 3.04 of the Agreement and not constituting Restricted Funds shall be deposited in the Common Reserve Account as Retained Funds, together with any amounts otherwise required hereunder to be deposited in the Common Reserve Account or subaccount thereof. Amounts deposited hereunder or pursuant to the Agreement in a subaccount in the Common Reserve Account shall be credited to the benefit of the Tenant and applied, if at all, only in accordance with Sections 2.02 and 2.03 of the Agreement, and such amounts so credited, to the extent they are or become available therefor, shall be transferred from any such subaccount in the Common Reserve Account into the Debt Service Account as and to the extent such amounts are applied against payments of Basic Rent or other items due and payable under the Agreement.

Section 406. *Property Insurance and Award Fund.*

(a) The proceeds of fire and extended coverage insurance on the Facility received under the Agreement from a claim for loss in excess of \$50,000 per occurrence or \$100,000 per calendar year in the aggregate and any award in the event of Condemnation of the Facility or any part thereof as referred to in Section 5.02 of the Agreement are to be paid to the Issuer. The Issuer shall deposit all such insurance proceeds and any award received in the Property Insurance and Award Fund to be established and held by the Trustee in the event that the Trustee receives any such insurance proceeds or any such award. Any money deposited in the Property Insurance and Award Fund shall be withdrawn only for the purposes and upon the conditions stated in this Section 406.

(b) The Issuer shall first deduct from any Condemnation Award or insurance proceeds any costs reasonably incurred by the Issuer or the Tenant in connection with the Condemnation proceedings or the collection of the insurance, including, but not limited to, attorneys' fees, witness fees and any extraordinary expenses of the Issuer or the Tenant in connection therewith. The amount remaining after such payments is referred to in this Section 406 as the "Net Proceeds."

(c) In the event that the Tenant exercises its option to terminate the Agreement as provided in Section 7.03 of the Agreement, the Net Proceeds shall be deemed "Prepaid Net Revenues" under Section 101 of the Basic Resolution and shall be deposited in a separate subaccount in the Common Reserve Account and may be applied therein as provided in Section 403(d) of the Basic Resolution.

(d) Subject to Section 5.04 of the Agreement, if the conditions for termination under Section 7.03 of the Agreement do not exist or the option to terminate thereunder is not exercised, the Net Proceeds shall be retained in the Property Insurance and Award Fund, and the Tenant is required under Article V of the Agreement to restore the Facility after any such casualty or Condemnation. The following items shall be deposited with the Issuer and the Trustee before any disbursement is made from the Property Insurance and Award Fund to pay such cost of restoration:

(i) plans and specifications reasonably satisfactory to the Issuer for restoration of the Facility, which restoration the Tenant is required to effect in accordance with Section 5.01 or Section 5.02 of the Agreement, as the case may be;

(ii) a contract or contracts for the furnishing of work and materials required for restoration in accordance with the plans and specifications, with a payment and performance bond or bonds (unless otherwise agreed by the Issuer) in an aggregate amount at least equal to the total cost of restoration under the contract or contracts conditioned for the completion thereof in accordance with the plans and specifications and for the payment of all claims for labor and materials to be incorporated in the Facility in the course of restoration;

(iii) a certificate of a member of the Issuer's staff approving: (A) the plans and specifications for such restoration, (B) the contract or contracts, and (C) the payment and performance bond or bonds, if any, which approval the Issuer has agreed shall not be unreasonably withheld, provided that upon the passage of fifteen (15) days from the receipt of such plans and specifications, contracts, and bonds during which the Issuer has not given such certificate, the requirement of this subparagraph (iii) need not be satisfied; and

(iv) cash or a certified check (or a letter of credit in form and substance reasonably acceptable to the Issuer) for any amount by which the total cost of restoration as then ascertained or estimated exceeds the balance then on hand in the Property Insurance and Award Fund.

(e) After compliance with Section 406(d) hereof, where applicable, the Trustee shall pay costs of restoration to the Tenant or other persons entitled thereto, subject to customary restrictions on disbursement, as such restrictions are deemed applicable or appropriate by the Issuer; provided that, unless waived by the Issuer, not more than ninety percent (90%) of the total cost of restoration as so certified pursuant to Section 3.03 of the Agreement shall be paid until receipt by the Issuer of (i) an Opinion of Independent Counsel stating that all filings and other steps necessary to perfect the security interests and title created by the Agreement in all personal property which constitutes part of the Facility as a result of such restoration, as against third party creditors of or purchasers for value from the Tenant, have been completed and that the personal property which constitutes part of the Facility is subject to no liens and encumbrances except Permitted Encumbrances or such other encumbrances consented to by the Issuer and the Tenant, and (ii) an endorsement to the title insurance policy delivered under Section 205(b)(iv) hereof with respect to the real property constituting part of the Facility in form and substance acceptable to the Issuer. In the event that the restoration of the Facility to substantially the condition existing before a taking by Condemnation would require the furnishing of land or rights or interests in land additional to or in substitution for any part or all of the Facility Premises, the cost thereof may be added to the cost of restoration to be paid under the provisions of this Section 406 if such acquisition is authorized by the Issuer and there are filed with the Issuer evidence of the acquisition of such land or an interest therein, together with an endorsement to the title insurance policy delivered under Section 205(b)(iv) hereof in relation to such additional or substituted land and rights or interests therein, all in form and manner acceptable to the Issuer. Any additional property or rights or interest therein so acquired shall be and become part of the Facility as fully as though originally set forth and described in Exhibits A and B of the Agreement.

(f) Any Net Proceeds not used for such restoration shall, upon completion of such restoration, be credited to a separate subaccount of the Common Reserve Account in the Common Bond Fund and applied and credited in accordance with the Basic Resolution and the Agreement.

(g) All earnings on sums in the Property Insurance and Award Fund shall be credited to such fund for the purposes permitted in this Section 406.

Section 407. *Prepayment of Basic Rent.* Any prepayment by the Tenant of Basic Rent as provided in Section 7.02 of the Agreement shall be deposited in a separate subaccount of the Common Reserve Account for Retained Funds and credited and applied as provided in such Section 7.02 of the Agreement.

Section 408. *Compliance with Arbitrage Restrictions; Restriction on Yields; Rebates.*

(a) The Issuer hereby covenants and agrees, with respect to the Series 2010-1A Bonds, that the Issuer will take all actions necessary to ensure compliance with Section 148 of the Code and applicable Regulations. On the Bond Closing the Issuer shall deliver investment instructions to the Trustee, with respect to the funds and accounts held by the Trustee, setting forth the arbitrage restrictions applicable to the money and investments credited to such funds and accounts and the actions to be taken by the Trustee to determine the Rebate Amounts and the deposits to and disbursements from the Rebate Fund. The Trustee is hereby authorized to take all actions directed by the Issuer in such investment instructions and in any subsequent investment instructions delivered to the Trustee by the Issuer.

(b) The Issuer hereby finds, determines, and covenants that the Agreement, together with all other agreements heretofore or hereafter entered into by the Issuer and deemed to be "purpose investments" with respect to the Bonds, carry out and shall continue to carry out a program of economic development within the City and a "governmental program" within the meaning of Section 1.148-1(b) of the Regulations and that:

(i) said program of the Issuer involves and shall continue to involve acquisition of purpose investments;

(ii) at least ninety-five percent (95%) of all such purpose investments acquired under the program, by amount of cost outstanding, are and shall continue to be evidences of loans to be made to a combination of a substantial number of Persons representing the general public, loans to 501(c)(3) organizations, loans to provide housing and related facilities, or any combination of the foregoing;

(iii) at least ninety-five percent (95%) of all of the amounts received by the Issuer with respect to such purpose investments acquired under the program are or shall continue to be used for one or more of the following purposes: to pay the principal or Redemption Price and interest or otherwise to service

the debt on bonds or notes of the Issuer relating to the governmental program, to reimburse the Issuer or to pay for administrative costs of issuing such bonds or notes, to reimburse the Issuer or to pay for administrative and other costs and anticipated future losses directly related to the program financed by such bonds or notes, to make additional loans for the same general purposes specified in such program or to redeem and retire such bonds or notes at the next earliest possible date of redemption; and

(iv) the program documents require that any Person (or any related person, as defined in Section 144(a)(3) of the Code) with whom the Issuer may, under the program, enter into a purpose investment shall not, pursuant to an arrangement, formal or informal, purchase bonds or notes of the Issuer in an amount related to the amount of the obligations to be acquired under the program from such Person by the Issuer;

unless and to the extent that Bond Counsel determines all or any of the foregoing requirements need not be met for purposes of preventing any bonds or notes of the Issuer from becoming arbitrage bonds.

Section 409. *Compliance with Information Reporting Requirements.* The Issuer shall comply with the information reporting requirements of Section 149(e) of the Code, and the Finance Officer and other officers of the Issuer are hereby authorized to perform all such acts necessary or appropriate therefor.

Section 410. *[Intentionally Omitted].*

Section 411. *Redemption Fund.*

(a) There is hereby created and established a separate and special Redemption Fund, to be held by the Trustee as a fund separate from the Common Bond Fund and the IDB Account. Amounts deposited therein, other than Rebate Amounts, are hereby pledged solely to the payment of the Redemption Price on the Bonds duly called for redemption or repayment to the Issuer as provided herein.

(b) There shall be deposited in the Redemption Fund, all amounts to be paid as the Redemption Price on any Bonds to be called for redemption pursuant to Sections 306, 307, 308 and 309 hereof. Such amounts shall be deposited prior to notice of such redemption being given pursuant to Section 303 hereof. Earnings on the investment of amounts deposited in the Redemption Fund shall also be deposited in such fund.

(c) Subject to Section 413 hereof, amounts in the Redemption Fund shall be applied to payment when due of the Redemption Price payable on any Bonds duly called for redemption by transfer thereof to the Paying Agent on the date when due. Amounts remaining in the Redemption Fund and not required for the payment of any Redemption Price of Bonds duly called for redemption, shall be transferred by the Trustee at the direction of the Issuer.

(d) Amounts in the Redemption Fund shall be invested solely in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the Government National Mortgage Association, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Land Banks, the Export-Import Bank of the United States or the Federal Home Loan Bank; provided, however, no amounts may be invested for a period expiring later than the earlier of ninety-one (91) days or the next succeeding Interest Payment Date on which Bonds will be redeemed. Amounts in the Redemption Fund shall not be invested at a yield greater than the yield on the Series 2010-1A Bonds following 30 days from the deposit thereof unless an Opinion of Bond Counsel is obtained stating that a higher yield is permitted without causing the Series 2010-1A Bonds to become arbitrage bonds within the meaning of Section 148 of the Code.

Section 412. *Draws on the Reserve Letter of Credit.* The following shall be applicable only if there is a Reserve Letter of Credit for the Bonds:

(a) if (i) the Tenant shall fail at any time or times to pay when due (including any applicable grace period) any Basic Rent (including amounts due by acceleration), or (ii) any Basic Rent previously paid is required by law to be disgorged by the Issuer, the Trustee, or holders because of the bankruptcy or insolvency of the Tenant, or (iii) any amount is then drawable under the Basic Resolution from the applicable subaccount for Reserve Deposits established in the Common Reserve Account, then to the extent of amounts drawable the Trustee may submit a draw under the Reserve Letter of Credit, and shall provide a notice of such draw to the Tenant. Amounts so drawn shall be deposited in the Common Reserve Account, subject to withdrawal pursuant to the Basic Resolution.

(b) The Trustee shall submit a draft to fully draw under the Reserve Letter of Credit no more than forty-five (45) days and no less than thirty (30) days prior to its expiration unless (i) such expiration is on or after the date on which all principal of, premium, if any, and interest on the Bonds is paid in full, or (ii) prior to such draw an Approved Substitute Letter of Credit drawable in an amount not less than the amount drawable under

the expiring Reserve Letter of Credit shall have been delivered to the Trustee, or immediately available funds (in United States currency) in an amount equal to the amount drawable under the expiring Reserve Letter of Credit shall be delivered to the Trustee for deposit in a subaccount in the Common Reserve Account. Amounts so drawn shall be deposited in a subaccount in the Common Reserve Account.

Section 413. *Computation and Transfer of Rebate Amounts.* The Issuer shall cause the Rebate Amounts to be determined in such manner and at such times as required by Section 148 of the Code and applicable Regulations. The Issuer shall cause money to be deposited in the Rebate Fund in such amounts and at such times as to permit payment from the Rebate Fund to the government of the United States of America of all Rebate Amounts when due. Notwithstanding any term of this Supplemental Bond Resolution or the Agreement to the contrary, the Trustee shall transfer any money from any fund or account held by the Trustee to the Rebate Fund if directed to do so by the Issuer and shall deposit in the Rebate Fund any money delivered to the Trustee with directions that it be deposited in the Rebate Fund.

Section 414. *Rebate Fund.* There is hereby created and established a separate and special Rebate Fund, to be held by the Trustee as a fund separate from the Common Bond Fund and the IDB Account. There shall be deposited in the Rebate Fund all Rebate Amounts required to be transferred or deposited to such fund. The Trustee, on behalf of and at the direction of the Issuer, shall cause amounts in the Rebate Fund to be paid to the government of the United States in the amounts and on the dates required by Section 148 of the Code and applicable Regulations. The Issuer shall timely pay all Rebate Amounts to the United States which are not paid by the Trustee pursuant to the preceding sentence. Until all Rebate Amounts payable to the United States have been duly paid, amounts in the Rebate Fund shall be applied solely to such payments. Following the full and final payment to the government of the United States of all Rebate Amounts, the Trustee shall promptly transfer amounts remaining in the Rebate Fund, if any, to the IDB Account.

Section 415. *Tax Reserve Fund.* Whenever all amounts in the Common Reserve Fund and the IDB Account have been expended and all amounts have been drawn under the Letter of Credit or further draws thereunder are for any reason unavailable (or if the Letter of Credit is no longer outstanding) and the Trustee has determined that without receipt of amounts from the Tax Reserve Fund principal, interest or the Redemption Price of the Bonds would not be paid when due under the terms of the Bonds or would continue past due, the Trustee shall certify the same to the Finance Officer and shall further certify to the Finance Officer the amount then required to be received and applied to the payment of the principal, interest or Redemption Price of Outstanding Designated Common Fund Bonds in order to prevent the Issuer from defaulting on any such payment. Funds received by the Trustee from the Finance Officer shall be applied only to the payment of principal, interest or Redemption Price of Outstanding Designated Common Fund Bonds. Except as otherwise provided herein, the Issuer is under no obligation to provide money to the Trustee except from amounts in the Tax Reserve Fund that have been deposited in the Tax Reserve Fund pursuant to the terms of Chapter 424. If the amount received, together with all other amounts available to the Trustee, is not sufficient to pay all principal or Redemption Price of and interest then due on Designated Common Fund Bonds, the Trustee shall apply the balance first to pay pro rata the interest then due on all such Designated Common Fund Bonds and the Trustee shall apply any remaining balance first to the pro rata payment of principal of the then matured (but unaccelerated) Outstanding Designated Common Fund Bonds and then to the payment of all other principal due on Common Fund Bonds and other items payable from the Common Bond Fund in respect of such Outstanding Designated Common Fund Bonds.

Section 416. *Earnings Pledge.* The Issuer agrees that it shall irrevocably pledge all earnings on the IDB Account to the repayment of Common Fund Bonds on the same terms as other funds in the IDB Account (irrespective of whether, at such time or any time thereafter, the sum in the IDB Account may exceed \$10,000,000); provided, however, that no sums in the IDB Account in excess of \$20,000,000 need be pledged by reason of this Section 416.

Section 417. *Investments by Issuer.* All sums held in the funds or accounts established hereunder, to the extent practicable and permitted by the Act, will be invested as provided in Section 501 of the Basic Resolution. The Issuer, at its discretion, may allow the Tenant to direct the investment of the Reserve Deposit with respect to the Bonds. In such event, the Trustee shall value the investments in the Reserve Deposit on each January 1, April 1, July 1 and October 1, at the lower of cost or fair market value. If, pursuant to such valuation, the Reserve Deposit is less than the Minimum Deposit, the Trustee shall immediately notify the Tenant and the Issuer.

ARTICLE V

POSSESSION, USE AND RELEASE OF PROPERTY

Section 501. *Possession and Use.* Subject to the terms of this Supplemental Bond Resolution and the Agreement, until the occurrence of an "Event of Default" as defined in the Agreement, the Tenant shall be permitted to possess, use and enjoy the Facility (except cash or other personal property deposited or pledged or determined by the terms hereof to be deposited or pledged to the Issuer) as permitted under the Agreement and to receive and use the issues and profits of the Facility.

Section 502. *Conveyance for Access or Other Easement.* Subject to the terms of the Agreement, the Tenant is authorized, without consent of or notice to the Holders of any Bonds, to grant such conveyance or easement as the Issuer deems necessary to give adequate ingress or egress to and from the Facility Premises and to grant any other easement on the Facility Premises as the Issuer deems appropriate so long as the Issuer determines that such easement shall not materially impair the structural integrity of the Facility.

Section 503. *Release of Encumbered Facility Equipment.* The Issuer is authorized, without consent or notice to the Holders of any Bonds, to permit the Tenant to remove Facility Equipment from time to time in accordance with the terms and conditions set forth in Section 4.04 of the Agreement and release the same from the Issuer's security interest therein or on such other terms as the Issuer deems appropriate, so long as the Issuer determines that such removal and release shall not materially impair the structural integrity of the Facility.

ARTICLE VI

SUPPLEMENTAL AND AMENDATORY RESOLUTIONS

Section 601. *Supplemental and Amendatory Resolutions Not Requiring Consent of Holders.* The Issuer may, from time to time and at any time, without the consent of or notice to any of the Holders of any Bonds, and, when so required by this Supplemental Bond Resolution, shall adopt a resolution or resolutions supplemental hereto or amendatory hereof so as to thereby:

- (a) permit the issuance of Additional Common Fund Bonds as provided in Section 202 and Section 311(d) of the Basic Resolution;
- (b) cure any ambiguity, formal defect, omission or error herein or in any other supplemental bond resolution concerning Common Fund Bonds;
- (c) grant for the benefit of the Holders of any Common Fund Bonds or any Holders of the Bonds herein authorized any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon such Holders;
- (d) substitute or add additional equipment, machinery or land or release land or property in the manner, if any, specifically provided herein or more precisely identify any machinery forming a part of the Facility;
- (e) modify, eliminate and/or add to the provisions hereof to such extent as shall be necessary to prevent any interest on the Series 2010-1A Bonds from becoming includable in gross income for purposes of federal income taxation;
- (f) make any other change deemed by the Issuer necessary to reconcile this Supplemental Bond Resolution with the Agreement or any amendment thereto; or
- (g) make any change to this Supplemental Bond Resolution which, in the reasonable judgment of the Issuer, is not to the prejudice of any Holders of Bonds.

Section 602. *Supplemental and Amendatory Resolutions Requiring Consent of Holders.* Exclusive of supplemental and amendatory resolutions covered by Section 601 hereof and subject to the terms and provisions contained in this Section 602 and not otherwise, the Issuer, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental or amendatory resolution by the Holders of not less than fifty-one percent (51%) of the aggregate principal amount of the Bonds then outstanding, such consent being secured in accordance with the provisions of Sections 801 and 802 hereof, shall adopt such other resolution or resolutions supplemental or amendatory thereto as shall be deemed necessary and

desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein or in any other supplemental or amendatory resolution; provided, however, that nothing herein contained shall permit or be construed as permitting:

- (a) any amendment which is inconsistent with the terms and conditions of the Basic Resolution and the provisions relating to the IDB Account established by the IDB Account Resolution;
- (b) an extension of the maturity of the principal of any Bond or an extension of the interest on any Bond not held by a consenting Holder;
- (c) a reduction in the principal amount of any Bond or a reduction in the rate of interest due on any Bond not held by a consenting Holder;
- (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, except as otherwise provided herein; or
- (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental or amendatory resolution (except as otherwise provided herein or in the Agreement or any amendment thereto made without Holder consent under Section 601 hereof), without the consent of the Holders of one hundred percent (100%) of the principal amount of the Bonds (or, in the case of an amendment described in Section 602(a) hereof, all Common Fund Bonds) then Outstanding, such consent being secured in accordance with Section 801 hereof.

Anything herein to the contrary notwithstanding, a supplemental or amendatory resolution under this Article VI which adversely affects the rights of the Tenant under the Agreement shall not become effective unless and until the Tenant shall have consented in writing to the adoption and delivery of such resolution. In this regard, the Issuer shall cause notice of the proposed adoption of any such Additional Supplemental Bond Resolution, together with a copy of the proposed Additional Supplemental Bond Resolution, to be mailed by certified or registered mail to the Tenant at least twenty (20) days prior to the proposed date of adoption of any such Additional Supplemental Bond Resolution. The Tenant shall be deemed to have consented to the adoption of any such Additional Supplemental Bond Resolution if the Issuer does not receive a letter of protest or objection thereto, signed by an authorized representative of the Tenant, on or before 4:30 p.m., Central Standard or Central Daylight Time, whichever is then in effect, on the fifteenth (15th) day after the mailing of said notice and a copy of the proposed Additional Supplemental Bond Resolution to the Tenant, unless such fifteenth (15th) day falls on a Sunday or legal holiday, in which event, the letter of objection must be received on the next succeeding Business Day.

ARTICLE VII

AMENDMENT TO AGREEMENT

Section 701. *Amendments Without Holder Consent.* The Issuer and the Tenant may, without the consent of or notice to any of the Holders of Bonds, consent to any amendment to or change or modification of the Agreement to effect any change therein which, in the reasonable judgment of Bond Counsel, does not jeopardize the exclusion from gross income of interest on any Series 2007-2A Bonds for purposes of federal or State income taxation and is consistent with the terms and conditions of the Basic Resolution and this Supplemental Bond Resolution (without amendment pursuant to Section 601(e) hereof), including, but not limited to, changes for the following purposes:

- (a) to facilitate the issuance of Additional Common Fund Bonds without the consent of any Holders of Bonds as provided by Sections 202 and 311(d) of the Basic Resolution;
- (b) to meet the requirements of the provisions hereof or of the Agreement;
- (c) to cure any ambiguity, formal defect, omission or error;
- (d) in connection with any property or equipment acquired and which constitutes a part of the Facility so as to more precisely identify the same;
- (e) to prevent the Series 2010-1A Bonds from becoming arbitrage bonds within the meaning of Section 148 of the Code;
- (f) to reconcile the Agreement with any supplement or amendment to this Supplemental Bond Resolution; or
- (g) to effect any other change therein which, in the reasonable judgment of the Issuer, is not to the prejudice of any Holders of the Bonds.

Section 702. *Amendments Requiring Holder Consent.* Neither the Issuer nor the Tenant shall consent to any amendment to or change or modification of the Agreement which, in the reasonable judgment of the Bond Counsel, (a) jeopardizes the exclusion from gross income of the interest on the Series 2010-1A Bonds for purposes of Federal income taxation, or (b) is inconsistent with the terms and conditions of the Basic Resolution, except in the case of (a), such change or modification may occur only after publication of notice and receipt of the written approval or consent of the Holders of not less than 51% of the then Outstanding Bonds adversely affected thereby, such consent being procured as provided in Sections 801 and 802 hereof. If at any time the Tenant shall request the consent of the Issuer to any proposed amendment to or change or modification of the Agreement requiring Holder consent, the Issuer shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be published in the same manner as provided in Section 802 hereof.

ARTICLE VIII

MISCELLANEOUS

Section 801. *Consent of Holders.* Any consent, request, direction, approval, objection or other instrument required hereby to be signed and executed by any Holders of Bonds may be in any number of concurrent writings of similar tenor and must be in writing and signed. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Issuer or the Trustee with regard to any action taken by the Issuer or Trustee under such request or other instrument, namely:

(a) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before him the execution thereof or by an affidavit of any witness to such execution.

(b) The fact of the holding by any Person of Bonds and the amounts and numbers of such Bonds and the date of the holding of the same may be proved by a certificate executed by any trust company, bank or banker, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property of such party, the Bonds if such certificate shall be deemed by the Issuer or the Trustee, as the case may be, to be satisfactory. The Issuer or Trustee may, in its discretion, require evidence that such Bonds shall have been deposited with a trust company, bank or banker before taking any action based on such ownership.

Section 802. *Notice of Amendments.* If at any time the Issuer desires to adopt any supplemental or amendatory resolution hereto or to amend the Agreement as herein provided without consent of all of the Holders of Outstanding Bonds, unless consent of and notice to any of the Holders is not required hereunder, the Issuer shall cause notice of the proposed resolution or amendment to be published at least once in a financial periodical or newspaper of general circulation published in the City of Minneapolis, Minnesota, and shall, in addition, cause such notice to be mailed by registered mail, return receipt requested, to the Holders of all Bonds as such Holders' names and addresses appear on the Bond Register. Such notice shall set forth the nature of the proposed resolution or amendment and shall state that copies thereof are on file at the office of the Issuer for inspection by all Holders. The Issuer shall not, however, be subject to any liability to any Holder by reason of its failure to publish or mail such notice, and any such failure shall not affect the validity of such resolution or amendment when consented to and approved as herein provided. If the Holders of not less than the requisite percentage in aggregate principal amount of Bonds Outstanding at the time have consented to and approved the adoption thereof as provided in this Supplemental Bond Resolution, no Holders of any Bonds shall have any right to object to any of the terms and provisions contained therein or the operation thereof or in any manner question the propriety of the adoption thereof or enjoin or restrain the Issuer or the Tenant from adopting or executing the same or from taking any action pursuant to the provisions thereof.

Section 803. *Severability.* If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any Constitution, statute, rule or public

policy or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever and shall not affect the remaining portions of this Supplemental Bond Resolution or any part hereof.

Section 804. *Limitation of Liability.* No provision, covenant or agreement contained herein shall give rise to or impose any pecuniary liability upon the Issuer or any of either of its officers, employees or agents.

Section 805. *Authentication of Transcript.* The officers of the Issuer are directed to furnish to Bond Counsel certified copies of this Supplemental Bond Resolution and all documents referred to herein and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity and marketability of the Bonds. All such certificates and affidavits, including any heretofore furnished, shall constitute recitals of the Issuer as to the correctness of all statements contained therein made by or on behalf of such officers or the Issuer.

Section 806. *Approval of Tenant.* The Tenant has examined and given approval of this Supplemental Bond Resolution and all terms hereof and approves the sale of the Bonds as provided for herein for the price and terms set forth herein.

Section 807. *Authorization to Execute Agreement and Incidental Documents.*

(a) The Agreement, the Disbursing Agreement and the Underwriting Agreement are hereby approved in substantially the forms now on file in the offices of the Issuer, and the Finance Officer of the Issuer is authorized to execute, in the name of and on behalf of the Issuer, those documents (and all other agreements required therein or in this Supplemental Bond Resolution) in substantially the forms hereby approved, subject to changes thereto approved by the Finance Officer executing the same (which approval shall be conclusively presumed upon execution thereof) and such other documents as Bond Counsel shall consider appropriate for Bond Closing. In the event of the disability or the resignation or other absence of the Finance Officer of the Issuer, such other officers of the Issuer who may lawfully act in the Finance Officer's behalf shall, without further act or authorization of the Issuer, do all things and execute all instruments and documents required to be done or to be executed by such absent or disabled official. The Finance Officer of the Issuer is hereby authorized to deliver this Supplemental Bond Resolution and such certificates attesting to its authenticity as may be required by and to Bond Counsel, the Holders of the Bonds, the Underwriters and such other persons as the Finance Officer may deem appropriate.

(b) The delivery of the certifications referenced in Sections 203, 305 and 306 is hereby authorized and upon delivery of such certifications, if any, the terms thereof shall be conclusive as to the matters therein addressed and shall be deemed to be a part of this Supplemental Bond Resolution as if set forth fully herein.

Section 808. *Schedules.* Schedule A hereto is hereby incorporated by reference and made a part hereof as though the same shall have been set forth in full herein. Such Schedule A shall control over any contrary provisions herein not contained in such Schedule A.

Adopted 12/18/2009.

Comm Dev - Your Committee recommends passage of the accompanying resolution authorizing sale of the properties at 400 - 31st Ave N and 3035 - 6th St N to Project for Pride in Living, Inc (PPL) for \$5,000 each, subject to the following conditions:

- a) Land sale closing must occur on or before 30 days from date of City Council approval;
- b) Payment of holding costs of \$150 per month from the date of City Council approval to the date of closing if land sale closing does not occur on or before 30 days from date of approval.

The sale conditions may be waived or amended with the approval of the Director of the Department of Community Planning & Economic Development.

Adopted 12/18/2009.

Resolution 2009R-598, authorizing sale of land Vacant Housing Recycling Program, Disposition Parcel Nos. VH-316 and VH-275 at 400 - 31st Ave N and 3035 - 6th St N, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-598

By Goodman

Authorizing sale of land Vacant Housing Recycling Program, Disposition Parcel Nos. VH-316 and VH-275 at 400 - 31st Avenue North and 3035 - 6th Street North.

Whereas, the City of Minneapolis, hereinafter known as the City, has received offers to purchase and develop Disposition Parcels VH-316 and VH-275, in the Hawthorne neighborhood from Project for Pride in Living, Inc., hereinafter known as the Redeveloper; Parcels VH-316 and VH-275 being the following described land situated in the City of Minneapolis, County of Hennepin, State of Minnesota to wit:

LEGAL DESCRIPTION of VH-316; 400 31st Avenue North: The East 41.25 feet of Lots 5 and 6, Block 7, Morrison's Addition to North Minneapolis;

LEGAL DESCRIPTION OF VH-275; 3035 6th Street North: Lot 1, Duryea & Wilson's Addition to Minneapolis, Being registered land as is evidenced by Certificate of Title No. 1218793; and

Whereas, the Redeveloper has offered to pay the sum of \$5,000 each, for Parcels VH-316 and VH-275 to the City for the land, and the Redeveloper's proposal is in accordance with the applicable Redevelopment Plan and/or Program; and

Whereas, the Redeveloper has submitted to the City a statement of financial responsibility and qualifications; and

Whereas, the City has had the re-use values reviewed by an appraisal expert, stating that the re-use value opinion is consistent with the accepted methods in aiding the City in determining a re-use values for the Parcels; and

Whereas, pursuant to due notice thereof published in *Finance and Commerce* on November 27, 2009, a public hearing on the proposed sale was duly held on December 8, 2009, at the regularly scheduled Community Development Committee meeting of the City Council, at the Minneapolis City Hall, 350 South 5th Street, Room 317, at 1:30 p.m., in the City of Minneapolis, County of Hennepin, State of Minnesota;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the re-use value for uses in accordance with the Vacant Housing Recycling Program plan, as amended, is hereby estimated to be the sum of \$5,000 each for Parcels VH-316 and VH-275.

Be It Further Resolved that the acceptance of the offer and proposal is hereby determined to be in accordance with the City's approved disposition policy and it is further determined that the Redeveloper possesses the qualifications and financial resources necessary to acquire and develop the parcel in accordance with the Redevelopment Plan and/or Program.

Be It Further Resolved that the proposal be and the same is hereby accepted, subject to the execution of a contract for the sale of land and further subject to the following conditions; 1) land sale closing must occur on or before 30 days from the date this Resolution is approved by the City and 2) payment of holding costs of \$150.00 per month from the date of approval of this Resolution if the land sale closing does not occur on or before 30 days from the date of approval.

Be It Further Resolved that the sale conditions described above may be waived or amended with the approval of the Department of Community Planning and Economic Development Director.

Be It Further Resolved that upon publication of this Resolution, the Finance Officer or other appropriate official of the City be and the same is hereby authorized to execute and deliver the contract to the Redeveloper; provided, however, that this Resolution does not constitute such a contract and no such contract shall be created until executed by the Finance Officer or other appropriate official of the City.

Be It Further Resolved that the Finance Officer or other appropriate official of the City is hereby authorized to execute and deliver a conveyance of the land to the Redeveloper in accordance with the provisions of the executed contract and upon payment to the City for the purchase price thereof; provided, however, that this Resolution does not constitute such a conveyance and no such conveyance shall be created until executed by the Finance Officer or other appropriate City official of the City.

Adopted 12/18/2009.

Comm Dev - Your Committee recommends concurrence with the recommendation of the Mayor in his appointments to the Minneapolis Public Housing Authority Board of Commissioners, for two year terms beginning 1/1/2010 and expiring 12/31/2012, as follows:

- a) F. Clayton Tyler (filling vacated seat of Judy Karon);
- b) Matt Gerard (filling vacated seat of Wesley Wheeler)
- c) Craig Pederson (reappointment);
- d) Chuck Lutz, appointed as Chair for a one year term, to expire 12/31/2010.

Adopted 12/18/2009.

Comm Dev - Your Committee recommends the granting of exclusive development rights to Alliance Housing Incorporated for up to twelve months to formulate and begin implementation of a redevelopment plan on three residential parcels at 2600 – 2606 17th Ave S.

Adopted 12/18/2009.

Comm Dev - Your Committee, having under consideration an extension of Exclusive Development Rights to Eagle Iron Partners Joint Venture, Lupe Development Partners, LLC and North First Ventures, LLC for Parcel A (northeast side of 2nd St S between 3rd and 5th Aves S), now recommends approval of an extension of 24 months from the completion of title registration, as more fully set forth in the Department of Community Planning & Economic Development staff report.

Your Committee further recommends passage of the accompanying resolution authorizing the City to file an application for title registration of land designated as the Parcel A Project, for parcels of land at 428 and 300 - 2nd St S.

Adopted 12/18/2009.

RESOLUTION 2009R-599

By Goodman

Authorizing the City to file an application for title registration of land designated as the Parcel A Project.

Resolved by The City Council of The City of Minneapolis:

That the City is authorized to file an application for title registration to be signed by the Mayor and the City Clerk, pursuant to Minnesota Statutes, Chapter 508.03 (6), for the following parcels of land: 428 2nd Street South and 300 2nd Street South.

Adopted 12/18/2009.

Comm Dev - Your Committee, having under consideration the matter the construction project of the Mill District City Apartments (fronting on 2nd St S, Portland and Washington Aves S), now recommends that the proper City officers be authorized to execute an agreement by and between the City of Minneapolis and Xcel Energy to bury power poles along 2nd St S in conjunction with those for the Mill District City Apartments project, and to enter into any additional agreements or execute additional documents associated with the project.

Your Committee further recommends passage of the accompanying resolution increasing the Department of Community Planning and Economic Development (CPED) appropriation by \$250,000 to cover the City's portion of the project.

Adopted 12/18/2009.

RESOLUTION 2009R-600

By Goodman

Amending the 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution, as amended, be further amended by increasing the appropriation in the Department of Community Planning and Economic Development Park Avenue East Fund (01CPV-8900320-801509) by \$250,000 from available fund balance.

Adopted 12/18/2009.

Comm Dev - Your Committee recommends passage of the accompanying resolution authorizing the carryforward of \$11,011,512 of the unused 2009 tax-exempt revenue bond entitlement for single-family mortgage programs and \$31,252,489 for multi-family programs.

Adopted 12/18/2009.

Resolution 2009R-601, authorizing carryforward of unused private activity bond volume cap, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-601
By Goodman

Authorizing carryforward of unused private activity bond volume cap.

Whereas, the City of Minneapolis, Minnesota (the "City") is an "entitlement issuer" within the meaning of Minnesota Statutes, Section 474A.02, subd. 7; and

Whereas, the City's entitlement allocation of private activity bond volume cap for 2009 under Minnesota Statutes, Chapter 474A.03, subd. 2a is \$42,264,000; and

Whereas, the City does not expect to issue any private activity bonds in 2009 attributable to its entitlement allocation; and

Whereas, the City may, under § 146(f) of the Internal Revenue Code of 1986, as amended, and under Minnesota Statutes, Chapter 474A, "carryforward" all or a portion of the City's unused entitlement allocation; and

Whereas, it is in the best interest of the public health, safety and welfare that the City carryforward for qualified carryforward purposes its 2009 entitlement allocation remaining unused on December 31, 2009;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

1. The City hereby elects to carryforward \$11,011,512 of its 2009 entitlement allocation for qualified mortgage revenue bonds or mortgage credit certificates.

2. The City hereby elects to carryforward \$31,252,489 of its 2009 entitlement allocation for qualified residential rental bonds.

3. The Director of the Department of Community Planning and Economic Development is hereby authorized and directed to execute and cause to be filed with the Internal Revenue Service a Form 8328 specifying the amount of 2009 entitlement allocation to be carried forward as described above. The Form 8328 shall be filed with the Internal Revenue Service on or before February 15, 2010. The Director is further authorized to notify the Minnesota Department of Finance of such carryforward at such time and as required by Minnesota Statutes, Chapter 474A.

Adopted 12/18/2009.

Comm Dev - Your Committee recommends approval of up to \$413,509 of Fiscal Year 2009 Emergency Shelter Grant funds for the following projects:

a) Up to \$116,179 for Avenues for Homeless Youth, 1xxx Oak Park Ave N, by Avenues for Homeless Youth or an affiliated entity;

b) Up to \$35,000 for A Place of Hope (People Serving People), 6xx Third St S, by People Serving People, Inc. or an affiliated entity;

c) Up to \$95,000 for St. Anne's Place, at 2xxx Russell Ave N, by Ascension Place or an affiliated entity;

d) Up to \$55,000 for St. Stephen's Shelter, 2xxx Clinton Ave S, by St. Stephen's Human Services or an affiliated entity; and

e) Up to \$112,330 for ZOOM House, 3xxx Blaisdell Ave S, by Zion Originated Outreach Ministries or an affiliated entity.

Adopted 12/18/2009.

The COMMUNITY DEVELOPMENT and WAYS & MEANS/BUDGET Committees submitted the following reports:

Comm Dev & W&M/Budget - Your Committee, having under consideration approval of the Housing Replacement District III Plan, which establishes a third housing replacement district in the City, and Modifications to the Housing Replacement District Plan and the Housing Replacement District II Plan, now recommends passage of the accompanying resolutions a) approving the Housing Replacement District III Plan; and b) approving Modification No. 1 to the Housing Replacement District Plan and Modification No. 1 to the Housing Replacement District II Plan.

Adopted 12/18/2009.

Resolution 2009R-602, approving the Housing Replacement District III Plan and establishing the Housing Replacement District III Tax Increment Financing District, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

**RESOLUTION 2009R-602
By Goodman and Ostrow**

Approving the Housing Replacement District III Plan and establishing the Housing Replacement District III Tax Increment Financing District.

Resolved by The City Council of The City of Minneapolis:

Section 1. Recitals

1.1. Pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, the City of Minneapolis (the "City"), acting by and through its department of Community Planning and Economic Development, has been granted the authority to propose and implement city development districts, housing and redevelopment projects and tax increment financing ("TIF") districts, all pursuant to Minnesota Statutes, Sections 469.001 through 469.134, and 469.174 through 469.179, as amended, and other laws enumerated therein (collectively, the "Project Laws").

1.2. Laws of Minnesota 1995, Chapter 264, Article 5, Sections 44 through 47, as amended by Minnesota Session Laws 1996, Chapter 471, Article 7; Minnesota Session Laws 1997, Chapter 231, Article 10; Minnesota Session Laws 2002, Chapter 377, Article 7; Minnesota Session Laws 2008, Chapter 154, Article 9; and Minnesota Session Laws 2008, Chapter 366, Article 5 (collectively, the "Special Legislation") authorizes the City to establish housing replacement tax increment financing districts.

1.3. By Resolution 95R-397 duly adopted December 29, 1995 and Resolution 2008R-275 duly adopted July 11, 2008, the City approved the Special Legislation.

1.4. By Resolution 96R-210 duly adopted August 9, 1996, the City approved the Housing Replacement District Plan and created a Housing Replacement Tax Increment Financing District. By Resolution 2003R-386 duly adopted August 22, 2003, the City approved the Housing Replacement District II Plan and created Housing Replacement Tax Increment Financing District II.

1.5. It has been proposed and the City has caused to be prepared, and this Council has investigated the facts with respect to, the Housing Replacement District III Plan (the "Plan"). The Plan creates a new housing replacement TIF district (the "District"), states the City's objectives, identifies the initial group of parcels to be included in the District, describes proposed development activity and identifies a budget for expenditures, all pursuant to and in accordance with the Project Laws and the Special Legislation.

1.6. The City has performed all actions required by law to be performed prior to the adoption of the Plan, including, but not limited to, a review of the proposed Plan by all neighborhood groups and the City Planning Commission, transmittal of the proposed Plan to the Hennepin County Board of Commissioners and the School Board of Special School District No 1 for their review and comment, and the holding of a public hearing upon published notice as required by law.

Section 2. Findings and Election

2.1. The Council hereby finds, determines and declares that the objectives and actions authorized by the Plan are all pursuant to and in accordance with the Project Laws and the Special Legislation.

2.2. The Council further finds, determines and declares that the Housing Replacement District III TIF District is a housing replacement district pursuant to the Special Legislation.

2.3. The Council further finds, determines and declares that the proposed development or redevelopment would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.

2.4. The Council further finds, determines and declares that the Plan conforms to the general plan for the development or redevelopment of the city as a whole.

2.5. The Council further finds, determines and declares that the Plan will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the redevelopment of market rate housing by private enterprise.

2.6. The Council further finds, determines and declares that the parcels to be certified within the District are vacant, parcels containing vacant houses or parcels containing houses that are structurally substandard, as defined in Minnesota Statutes, Section 469.174, Subd. 10 that qualify for inclusion in the District pursuant to the Special Legislation; and that the reasons and supporting facts for this determination are retained and available by the City; and that as permitted by the Special Legislation, revenues from the District may be made available for activities eligible under the Plan related to parcels not in the District, but which would qualify for inclusion under the Special Legislation.

2.7. The Council further finds, determines and declares that the reasons and facts supporting the findings in this resolution are described in the Plan and retained and available by the City.

2.8. The Council elects the method of computation provided in Minnesota Statutes, Section 469.177, Subdivision 3, Paragraph (a). The Council acknowledges that, by making this election, the entire fiscal disparity contribution required of the City for development occurring within this district will be taken from outside the District.

2.9. The Council hereby finds, determines and declares that it is necessary and in the best interests of the City at this time to approve the Plan.

Section 3. Approval of the Plan

3.1. Based upon the findings set forth in Section 2 hereof, the Plan presented to the Council on this date is hereby approved and shall be placed on file in the office of the City Clerk.

Section 4. Implementation of the Plan

4.1. After passage and publication of this Resolution, the officers and staff of the City and the City's consultants and counsel are authorized and directed to proceed with the implementation of the Plan, and for this purpose to negotiate, draft, prepare and present to this Council for its consideration, as appropriate, all further modifications, plans, resolutions, documents and contracts necessary for this purpose.

4.2. As provided under Minnesota Statutes, Section 469.1781, Subdivision 7, this Council hereby authorizes the advance of revenues from other available development revenues of the City in the principal amount needed to offset any negative fund balances incurred with respect to this TIF District as a result of expenditures incurred prior to or in excess of the collection of tax increment revenue. The interest rate paid on such advances shall be equal to the rate of interest those revenues would have generated in their fund. The term of this advance shall end upon the termination of the TIF District, although as revenues are available in the fund for the TIF District, the advance shall be offset by such amounts.

Adopted 12/18/2009.

Resolution 2009R-603, approving Modification No 1 to the Housing Replacement District Plan and Modification No 1 to the Housing Replacement District II Plan, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-603
By Goodman and Ostrow

Approving Modification No 1 to the Housing Replacement District Plan and Modification No 1 to the Housing Replacement District II Plan.

Resolved by the City Council of the City of Minneapolis:

Section 1. Recitals

1.1. Pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, the City of Minneapolis (the "City"), acting by and through its department of Community Planning and Economic Development, has been granted the authority to propose and implement city development districts, housing and redevelopment projects and tax increment financing ("TIF") districts, all pursuant to Minnesota Statutes, Sections 469.001 through 469.134, and 469.174 through 469.179, as amended, and other laws enumerated therein (collectively, the "Project Laws").

1.2. Laws of Minnesota 1995, Chapter 264, Article 5, Sections 44 through 47, as amended by Minnesota Session Laws 1996, Chapter 471, Article 7; Minnesota Session Laws 1997, Chapter 231, Article 10; Minnesota Session Laws 2002, Chapter 377, Article 7; Minnesota Session Laws 2008, Chapter 154, Article 9; and Minnesota Session Laws 2008, Chapter 366, Article 5 (collectively, the "Special Legislation") authorizes the City to establish housing replacement tax increment financing districts.

1.3. By Resolution 95R-397 duly adopted December 29, 1995 and Resolution 2008R-275 duly adopted July 11, 2008, the City approved the Special Legislation.

1.4. By Resolution 96R-210 duly adopted August 9, 1996, the City approved the Housing Replacement District Plan and by Resolution 2003R-386 duly adopted August 22, 2003, the City approved the Housing Replacement District II Plan (collectively, the "Plans"), thereby creating a Housing Replacement Tax Increment Financing District and Housing Replacement Tax Increment Financing District II (collectively, the "Districts").

1.5. It has been proposed and the City has caused to be prepared, and this Council has investigated the facts with respect to, Modification No 1 to the Housing Replacement District Plan and Modification No 1 to the Housing Replacement District II Plan (collectively, the "Modifications"). The Modifications authorize the City to use tax increment revenues derived from any of its housing replacement districts to pay or reimburse the City's costs for acquisition and preparation of parcels located outside the districts, provided the parcels are vacant or contain a vacant or substandard house and are developed or redeveloped as market rate housing, all pursuant to and in accordance with the Project Laws and the Special Legislation.

Section 2. Findings

2.1. The Council hereby finds, determines and declares that the objectives and actions authorized by the Modifications are all pursuant to and in accordance with the Project Laws and the Special Legislation.

2.2. The Council further finds, determines and declares that the proposed development or redevelopment would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.

2.3. The Council further finds, determines and declares that the Modifications conform to the general plan for the development or redevelopment of the city as a whole.

2.4. The Council further finds, determines and declares that the Modifications will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the redevelopment of market rate housing by private enterprise.

2.5. The Council further finds, determines and declares that as permitted by the Special Legislation, revenues from the District may be made available for activities eligible under the Plan related to parcels not in the District, but which would qualify for inclusion under the Special Legislation.

2.6. The Council hereby finds, determines and declares that it is necessary and in the best interests of the City at this time to approve the Modifications.

Section 3. Approval of the Modifications

3.1. Based upon the findings set forth in Section 2 hereof, the Modifications presented to the Council on this date are hereby approved and shall be placed on file in the office of the City Clerk.

Section 4. Implementation of the Modifications

4.1. After passage and publication of this Resolution, the officers and staff of the City and the City's consultants and counsel are authorized and directed to proceed with the implementation of the Modifications, and for this purpose to negotiate, draft, prepare and present to this Council for its consideration, as appropriate, all further modifications, plans, resolutions, documents and contracts necessary for this purpose.

4.2. As provided under Minnesota Statutes, Section 469.1781, Subdivision 7, this Council hereby authorizes the advance of revenues from other available development revenues of the City in the principal amount needed to offset any negative fund balances incurred with respect to these Districts as a result of expenditures incurred prior to or in excess of the collection of tax increment revenue. The interest rate paid on such advances shall be equal to the rate of interest those revenues would have generated in their fund. The term of this advance shall end upon the termination of the Districts, although as revenues are available in the fund for the Districts, the advance shall be offset by such amounts.

Adopted 12/18/2009.

Comm Dev & W&M/Budget - Your Committee, having under consideration a request for funding of the partnership with the Metropolitan Consortium of Community Developers and the City for the Small Business Loan Programs, now recommends that the proper City officers be authorized to allocate \$140,000 to the Metropolitan Consortium of Community Developers to extend the City's partnership on small business loan programs for 2010.

Adopted 12/18/2009.

Comm Dev & W&M/Budget – Your Committee recommends that the proper City officers be authorized to take certain actions throughout 2010 in order to utilize tax-exempt revenue bond financing for various City industrial/manufacturing projects, as specifically set forth in the Department of Community Planning & Economic Development staff report.

Adopted 12/18/2009.

Comm Dev & W&M/Budget - Your Committee, having under consideration a request for funding of the partnership with the African Development Center and the City for the Alternative Financing Loan Program (AFLP) as part of the City's small business assistance programs, now recommends authorization for an allocation of \$40,000 to the African Development Center to extend the partnership on business loan activities in 2010.

Adopted 12/18/2009.

Comm Dev & W&M/Budget - Your Committee recommends that the proper City officers be authorized to accept a grant award from Wells Fargo Foundation in the amount of \$62,500, to be used to support some of the City's foreclosure program activities associated with the Neighborhood Stabilization Program (NSP).

Your Committee further recommends approval of the following:

- a) Guidelines for the Wells Fargo Foundation funded Affordability Assistance Loan;
- b) Passage of the accompanying resolution increasing the Department of Community Planning and Economic Development (CPED) appropriations; and
- c) That City staff be authorized to amend the Community Reinvestment Fund contract to add \$20,000 to cover servicing costs.

Adopted 12/18/2009.

RESOLUTION 2009R-604
By Goodman and Ostrow

Amending the 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution, as amended, be further amended as follows:

a) Increasing the appropriation in the Department of Community Planning and Economic Development (CPED) Grants Other Fund (01600-8900000-8900220) by \$62,500;

b) Increasing the appropriation in the CPED Residential Housing Fund (01SRF-8900000-8900220) by \$65,000 from the available fund balance;

c) Increasing the CPED revenue source in the Grants Other Fund (01600-8900900-321404) by \$62,500.

Adopted 12/18/2009.

Comm Dev & W&M/Budget - Your Committee recommends acceptance of the low bid submitted to the Department of Community Planning & Economic Development on OP No. 7212 from Ram Construction and Remodeling in the amount of \$124,597 to furnish and deliver all labor, materials, equipment, and incidentals necessary to complete renovations at 3347 Lyndale Ave N.

Your Committee further recommends that the proper City officers be authorized and directed to execute a contract for this project.

Adopted 12/18/2009.

Comm Dev & W&M/Budget - Your Committee, having under consideration the action of the Neighborhood Revitalization Program (NRP) Policy Board approving the NRP 2010 Administrative Budget, now recommends:

a) Approval of the 2010 NRP Administrative Budget as set forth in the NRP staff report;

b) Passage of the accompanying resolution increasing the Department of Community Planning & Economic Development (CPED) appropriation by 1,382,156 and requesting that CPED immediately transfer \$1,382,156 to the NRP's City of Minneapolis Fund 42300;

c) That the proper City officers be authorized to enter into any contracts or agreements needed to implement activities set forth in the 2010 Administrative Budget; and

d) Approval of the following staff directive:

The NRP Director and the Neighborhood and Community Relations (NCR) Department Director are directed to work together to develop and implement a plan to bring the administrative functions of the NRP program into the NCR Department by December 31, 2010.

The transition plan should ensure the following:

1. reduce or eliminate any duplication of administrative expenses
2. maximize funding for neighborhood organizations
3. provide a seamless transition for neighborhoods from NRP to the NCR Department
4. maintain the integrity of both NRP and NCR programs

The NRP Director and the NCR Department Director will draft a Memorandum of Understanding outlining the details of the transition plan. The Memorandum of Understanding (MOU) should include specific benchmarks with timelines. The MOU should include details on but not limited to the following:

- legal considerations
- NRP Assets
- information and data systems
- administrative functions
- programming
- staffing

The NRP Director and the NCR Department Director will present the MOU to the City Council at the first Committee of the Whole meeting in April, 2010.

If it is determined that satisfactory progress is being made toward established benchmark, and additional time is needed to accomplish the objective, the City Council may extend this directive another 6 months (until June 30, 2011).

Adopted 12/18/2009.

**RESOLUTION 2009R-605
By Goodman and Ostrow**

Amending the 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution, as amended, be further amended by increasing the appropriation in the Department of Community Planning and Economic Development NPR Fund (01CNR-8900800) by \$1,382,156.

Adopted 12/18/2009.

The HEALTH, ENERGY & ENVIRONMENT Committee submitted the following report:

HE&E - Your Committee recommends concurrence with the recommendation of the City Council to approve the following appointments to the Public Health

Advisory Committee for two-year terms to expire December 31, 2011:

John Schrom, Ward 9 representative

Debra Jacoway, Ward 8 representative.

Adopted 12/18/2009.

The HEALTH, ENERGY & ENVIRONMENT and WAYS & MEANS/BUDGET Committees submitted the following reports:

HE&E & W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute a contract with the Healthier Minnesota Community Clinic Fund to receive \$20,106 to provide funds for remodeling space at the Roosevelt and South School Based Clinics by creating three confidential rooms at each site. Further, passage of the accompanying resolution appropriating \$20,106 to the Department of Health & Family Support.

Adopted 12/18/2009.

**RESOLUTION 2009R-606
By Benson and Ostrow**

Amending The 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled Resolution, as amended, be further amended by increasing the appropriation for the Health & Family Support Agency in the Grants - Other Fund (01600-8600152) by \$20,106 and increasing the Revenue Source (01600-8600152-372001) by \$20,106.

Adopted 12/18/2009.

HE&E & W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute a contract with Hennepin County, as part of a Healthy Eating Minnesota Grant from Blue Cross Blue Shield of Minnesota, to accept estimated revenue in the amount of \$3,500 for promotion of access to affordable fresh produce through implementation of Homegrown Minneapolis recommendations. Further, passage of the accompanying resolution appropriating \$3,500 to the Department of Health & Family Support.

Adopted 12/18/2009.

DECEMBER 18, 2009

**RESOLUTION 2009R-607
By Benson and Ostrow**

Amending The 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled Resolution, as amended, be further amended by increasing the appropriation for the Department of Health & Family Support Agency in the Grants - Other Fund (01600-8600130) by \$3,500 and increasing the Revenue Source (01600-8600130-372001) by \$3,500.

Adopted 12/18/2009.

HE&E & W&M/Budget - Your Committee now recommends that the proper City officers be authorized to accept \$446,822 in federal grant funds from the Minnesota Department of Health for public health emergency response, to respond to public health emergencies related to H1N1 influenza and take the actions necessary to vaccinate and distribute antiviral medication in accordance with the Minnesota Department of Health and Center for Disease Control guidelines. Further, passage of the accompanying resolution \$446,822 to the Department of Health & Family Support.

Adopted 12/18/2009.

**RESOLUTION 2009R-608
By Benson and Ostrow**

Amending The 2009 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled Resolution, as amended, be further amended by increasing the appropriation for the Department of Health & Family Support Agency in the Grants - Federal Fund (01300-8600150) by \$446,822 and increasing the Revenue Source (01300-8600150-321000) by \$446,822.

Adopted 12/18/2009.

HE&E & W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute a contract with the Friends of the Medica Skyway Senior Center to accept an estimated amount of \$60,000 for general operation of the Center during the period September 1, 2009 through December 31, 2010.

Adopted 12/18/2009.

The INTERGOVERNMENTAL RELATIONS Committee submitted the following reports:

IGR - Your Committee recommends approval of the Minneapolis Riverfront Corporation Report, as set forth in the staff report of the Department of Community Planning & Economic Development, and that the proper City officers be authorized to submit said report to the Minnesota Legislature, and also to work with the Minneapolis Riverfront Corporation to integrate the report/presentation for a report to a legislative audience.

Adopted 12/18/2009.

IGR - Your Committee, having under consideration the Uganda Legislature's Bill Number 18, the Anti-Homosexuality Bill of 2009, now recommends passage of the accompanying resolution amending the City's Fiscal Year 2010 Federal Legislative Agenda (adopted February 20, 2009, as amended) by adding under the Policy Initiatives section a new paragraph to read as follows:

Human Rights Restrictions in Uganda

The Uganda Legislature is considering a law that would strengthen penalties against the promotion of homosexuality. Bill Number 18, the Anti-Homosexuality Bill of 2009 targets lesbian, gay and transgender Ugandans, their advocates and defenders and anyone who fails to report them to the authorities. The legislation would criminalize such activities as funding LGBT organizations, publishing

or broadcasting or marketing materials on homosexuality. A person guilty of promoting homosexuality could be subject to a fine or imprisonment. The City of Minneapolis opposes this legislation.

Adopted 12/18/2009.

Resolution 2009R-609, amending the Policy Initiatives section of the Fiscal Year 2010 Federal Agenda for the City of Minneapolis by inserting a section entitled "Human Rights Restrictions in Uganda", was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-609

**By Benson, Gordon, Glidden, Hofstede, Remington,
Hodges, Colvin Roy, Ostrow, Lilligren, Schiff**

Amending the Policy Initiatives section of the Fiscal Year 2010 Federal Agenda for the City of Minneapolis by inserting a section entitled "Human Rights Restrictions in Uganda."

Whereas, the Uganda Legislature is considering a law that would strengthen penalties against the promotion of homosexuality, and

Whereas, Bill Number 18, the Anti-Homosexuality Bill of 2009 targets lesbian, gay and transgender Ugandans, their advocates and defenders and anyone who fails to report them to the authorities; and

Whereas, the legislation would criminalize such activities as funding LGBT organizations, publishing or broadcasting or marketing materials on homosexuality; and

Whereas, a person guilty of promoting homosexuality could be subject to a fine or imprisonment;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the Policy Initiatives section of the Fiscal Year 2010 Federal Agenda for the City of Minneapolis be further amended by inserting a section entitled "Human Rights Restrictions in Uganda" stating as follows:

The Uganda Legislature is considering a law that would strengthen penalties against the promotion of homosexuality. Bill Number 18, the Anti-Homosexuality Bill of 2009 targets lesbian, gay and transgender Ugandans, their advocates and defenders and anyone who fails to report them to the authorities. The legislation would criminalize such activities as funding LGBT organizations, publishing or broadcasting or marketing materials on homosexuality. A person guilty of promoting homosexuality could be subject to a fine or imprisonment. The City of Minneapolis opposes this legislation.

Adopted 12/18/2009.

IGR - Your Committee, having under consideration the results of the Minneapolis City Charter Revision Work Group, now recommends approval of the following directions to staff:

A. Direct staff, including the City Attorney's Office, the Charter Revision Work Group, and affected City departments (through their designated representatives) to draft amendments to the draft City Charter proposed by the Charter Commission, as discussed with the Intergovernmental Relations Committee. The issues included are as follows:

1. Amend the proposed Charter revision to include the following as "Charter Department Heads": City Assessor, City Attorney, City Clerk, City Coordinator, Civil Rights Director, Commissioner of Health, Director of Community Planning and Economic Development, Director of Public Works, Director of Regulatory Services, Fire Chief, Police Chief, Civil Service Commissioners, and any officer in a department or agency who, by statute, Charter or ordinance, is appointed by the Mayor or City Council or by any public board the majority of whose members are members of the City Council.

2. Amend the proposed Charter revision related to the fire marshal's authority to inspect buildings without a warrant, to comply with the U.S. Constitution and state law.

3. Amend the proposed Charter revision related to the City Council imposing sanctions for violations of City ordinances.

4. Amend the proposed Charter revision to reinsert (in Chapter 4, sec. 5, or appropriate location) language related to limiting the sale of intoxicating liquor or wine to certain areas, as provided under Minn. Stat. sec. 410.121.

5. Amend the proposed Charter revision to delete the provision regarding probationary periods for City employees.

6. Amend the proposed Charter revision designating the Park Board as a "body corporate and politic".

7. Amend the proposed Charter revision to reinsert Charter Chapter 2, sec. 2, providing that all officers (elected and appointed) shall continue in office until their successors are elected or appointed and have been qualified.

8. Amend the proposed Charter revision to designate the City of Minneapolis as a "municipal corporation", as is used in the current Charter, instead of a "body corporate and politic".

9. Amend the proposed Charter revision to reinsert the City's authority to conduct special assessments.

10. Amend the proposed Charter revision to continue to allow the Public Works Department to transfer "unused funds" between projects once a project is closed.

11. Amend the proposed Charter revision to reinsert language currently contained in Charter Chapter 16, sec. 15 (Park Board), related to the City's ability to maintain its water and sewer network.

12. Amend the proposed Charter revision to reinsert language limiting the Executive Committee's jurisdiction over appointments to those offices listed in #1 above.

13. Amend the proposed Charter revision to revert to the current Charter language that provides that the Executive Committee establishes its own rules and procedures, and that further duties of the Executive Committee shall be only as prescribed by ordinance or City Council resolution.

14. Amend the proposed Charter revision to delete the provision related to the automatic appointment of a candidate who has not been approved or rejected within 60 days of the Mayor's nomination.

15. Amend the proposed Charter revision to reinsert language requiring the Mayor "address" the City Council annually, as provided in the current Charter.

16. Amend the proposed Charter revision as recommended by the Charter Commission and as suggested in #1 above to include the City Clerk as one of the department heads appointed pursuant to the Executive Committee process.

17. Amend the proposed Charter revision to reinsert language requiring that unspent monies from the "civil service fund" be returned to the City's general fund at year's end.

18. Amend the proposed Charter revision to the language of the current Charter that places only the Mayor's entire secretary in the unclassified service.

19. Amend the proposed Charter revision to reinsert language from the current Charter regarding the 10-member composition of the Planning Commission.

20. Amend the proposed Charter revision by eliminating the language converting the Park Board from a department of the City into a "body corporate and politic".

21. Amend the proposed Charter revision by eliminating the language that appears to grant the Park Board additional powers, such as the right to sue and be sued, and all the powers of a municipality.

22. Amend the proposed Charter revision as appropriate due to the drafter using the wrong version of the current Charter, resulting in outdated references such as the Planning Commission membership (Charter amended following transfer of Library Board to County) and "City Engineer" (now referred to as Director of Public Works).

23. Amend the proposed Charter revision as appropriate to ensure the uniform use of titles, terms, etc. ("chief engineer" vs. "fire chief", "city engineer" vs. "public works director").

24. Amend the proposed Charter revision to delete some of the 42 powers granted to the City by Charter, Chapter 4 that have been superseded, are obsolete, etc.

25. Amend the proposed Charter revision as appropriate to define or redefine additional terms, including "chief executive officer" as applied to the Mayor, "acts of a legislative nature", "officer", and other terms.

26. Amend the proposed Charter revision by reinserting the language regarding the prohibition against passing an ordinance at the same session of the Council at which it is introduced.

27. Amend the proposed Charter revision to reinsert the term of the police chief's appointment.
28. Amend the proposed Charter revision by reinserting language regarding the term of a police chief's appointment if a new appointee is filling out the remainder of the former chief's term.
29. Amend the proposed Charter revision to delete the provisions in the proposed Charter revision (also contained in the current Charter) related to the Mayor's power to appoint "temporary" and "special police".
30. Amend the proposed Charter revision to delete the reference to the MPD Crime Prevention Bureau from the Charter (contained in current Charter and proposed Charter revision).
31. Amend the proposed Charter revision by eliminating reference(s) to the City Planning Department.
32. Amend the proposed Charter revision to clarify to whom the Mayor must return an action s/he has vetoed, i.e., the City Clerk.
33. Amend the proposed Charter revision to provide greater specificity regarding who the City Attorney represents, the exclusive nature of the City Attorney's representation of the City and the City's boards and commissions, and the prohibition against individual board and commission members accessing City Attorney advice.
34. Amend the proposed Charter revision related to "holding over" to provide for the appointment of interim department heads if and when necessary.
35. Amend the proposed Charter revision to provide that the Budget Office and Budget Director report to Finance Officer, instead of the City Coordinator.
36. Amend the proposed Charter revision to change references to "Comptroller-Treasurer" and "Treasurer" to "Finance Officer" throughout Charter and ordinances.
37. Amend the proposed Charter revision to eliminate the requirement that City Council authorize employee payroll, in favor of the Finance Officer.
38. Amend the proposed Charter revision related to "assistant chiefs", "deputy chiefs", and "fire police" to reflect how the Fire Department currently uses these positions.
39. Amend the proposed Charter revision to delete the references to MFD "double platoon" staffing system.
40. Amend the proposed Charter revision to provide greater clarity regarding standard of cause necessary to remove officers other than Civil Service Commissioners.
41. Amend the proposed Charter revision to insert language about what happens in the event the Mayor misses the April 1st deadline to establish the City's goals and priorities.
42. Amend the proposed Charter revision to clarify the language related to the powers delegated to anyone who attends a board, committee, or other public body of which the Mayor is a member, by proxy.
43. Amend the proposed Charter revision to eliminate the requirement that "eligibility" lists are good for two years.
44. Amend the proposed Charter revision to clarify Charter language regarding returning an appointee to his or her former civil service position if his or her service as an appointed person is terminated for cause, misconduct, misfeasance, malfeasance, etc.
45. Amend the proposed Charter revision by eliminating the Charter provision related to penalties for bribery.
46. Amend the proposed Charter revision by eliminating certain provisions related to the Planning Commission that have never been complied with and/or used, including the requirement that the Commission submit an annual report each year, and the Commission's authority to "employ engineers or other persons and incur such other expenses as are deemed necessary".
47. Amend the proposed Charter revision to reinsert language specifying over whom the Civil Rights Commission has jurisdiction.
48. Amend the proposed Charter revision related to the City's powers to ensure that the proposed Charter revision does not expand the City's powers, as provided in the current Charter.
 - B. Direct staff to draft any additional Charter amendments that it deems appropriate as it reviews the Charter and prepares the amendments specified above.
 - C. Direct staff to meet with the City's Director of Labor Relations, and other appropriate staff about options regarding "rule of 3" and "rule of the list" for hiring and promotions in the new proposed charter.

D. Direct staff to report back to the Intergovernmental Relations Committee with periodic updates, and to report back in June 2010 with amendments.
Adopted 12/18/2009.

The PUBLIC SAFETY & REGULATORY SERVICES Committee submitted the following reports:

PS&RS - Your Committee, having under consideration the application of Tickle's Food & Bar Inc, dba, Tickle's Food & Bar, 420 S 4th St, for an On-Sale Liquor Class C-1 with Sunday Sales License (new business) to expire October 1, 2010, now recommends that said license be granted, subject to final inspection and compliance with all provisions of applicable codes and ordinances.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

(Published 12/22/2009)

PS&RS - Your Committee recommends passage of the accompanying resolution granting the application of Sporty's Pub & Grill, 2124 Como Av SE, for an On-Sale Liquor Class D with Sunday Sales License, subject to conditions.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

(Published 12/22/2009)

Resolution 2009R-610, granting the application of Sporty's Pub & Grill, 2124 Como Av SE, for an On-Sale Liquor Class D with Sunday Sales License, subject to conditions, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-610

By Samuels

Granting the application of Sporty's Pub & Grill, 2124 Como Av SE, for an On-Sale Liquor Class D with Sunday Sales License, subject to conditions.

Resolved by The City Council of The City of Minneapolis:

That it grants the application submitted by Johnnie Entertainment LLC, dba Sporty's Pub & Grill, 2124 Como Av SE, for an On-Sale Liquor Class D with Sunday Sales License (upgrade from beer to liquor) to expire October 1, 2010, subject to the following conditions:

1. The licensee will complete the work needed for the kitchen as per Environmental Health agreement dated August 18, 2009. It states, "Kitchen plans must be submitted and approved for the remodeling of the kitchen before May 1, 2010. The kitchen needs approved flooring, walls, and 3-compartment sink."

2. The licensee will collect all litter within 100 feet of the exterior of the building housing the licensed premises on a daily basis, in compliance with Minneapolis City Ordinance 259.125.

3. The licensee will post a prominent sign requesting customers to be respectful of the neighbors.

4. The licensee will not operate the outdoor seating area after 9:00 p.m. on a daily basis.

5. The licensee will report, to Licenses & Consumer Services, food to alcohol sales on a monthly basis for the first six months of their upgrade, and whenever requested thereafter.

6. The licensee will strictly enforce Minneapolis City Ordinance 364.30 and Minnesota State Statute 340A.502, Sales to obviously intoxicated persons. No person may sell, give, furnish, or in any way procure for another alcoholic beverages for the use of an obviously intoxicated person.

7. The licensee will not permit drinking games on the licensed premises which require or compel a participant to drink.

8. The licensee will prevent noise levels generated by the licensed premises from violating Minneapolis Noise Ordinances, Chapter 389 of the Minneapolis Code of Ordinances.

9. The licensee will provide adequate containers for cigarettes beside each door.

10. Final inspection and compliance with all provisions of applicable codes and ordinances.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

PS&RS - Your Committee recommends passage of the accompanying resolution granting applications for Liquor, Wine and Beer Licenses.

Adopted 12/18/2009.

Resolution 2009R-611, granting applications for Liquor, Wine and Beer Licenses, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-611

By Samuels

Granting Liquor, Wine and Beer Licenses.

Resolved by The City Council of The City of Minneapolis:

That the following applications for liquor, wine and beer licenses be granted, subject to final inspection and compliance with all provisions of applicable codes and ordinances (Petn No 273968):

On-Sale Liquor Class A with Sunday Sales, to expire January 1, 2010

RHM Receiver 3211 Company LLC, db a Hotel Ivy, 201 S 11th St

On-Sale Liquor Class A with Sunday Sales, to expire December 31, 2009

Food & Drink Inc, dba Barfly, 711 Hennepin Av (temporary expansion of premises December 31, 2009, 7:00 p.m. to 2:00 a.m., New Year's Eve Party)

On-Sale Liquor Class B with Sunday Sales, to expire October 1, 2010

The Bulldog NE, Inc, dba Bulldog Restaurant, 401 E Hennepin (internal transfer)

On-Sale Wine Class C-2 with Strong Beer, to expire April 1, 2010

G & D Foods Inc, dba Kafe 421, 421 14th Av SE (new manager)

On-Sale Wine Class E with Strong Beer, to expire April 1, 2010

Alma Tierra Inc, dba Alma, 528 University Av SE (internal transfer)

The Chestnut Tree Inc, dba Chestnut Tree, 4300 Bryant Av S (new business)

Off-Sale Beer, to expire April 1, 2010

Abbaa Senaa LLC, dba Cedar Country Boy, 4164 Cedar Av S.

Adopted 12/18/2009.

PS&RS - Your Committee recommends passage of the accompanying resolution granting applications for Business Licenses.

Adopted 12/18/2009.

Resolution 2009R-612, granting applications for Business Licenses, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-612

By Samuels

Granting applications for Business Licenses.

Resolved by The City Council of The City of Minneapolis:

That the following applications for business licenses (including provisional licenses) as per list on file and of record in the Office of the City Clerk under date of December 18, 2009 be granted, subject to final inspection and compliance with all provisions of the applicable codes and ordinances (Petn No 273968):

Amusement Devices; Asphalt Shingles & Roofing Manufacturer; Christmas Tree; Laundry; Confectionery; Food Manufacturer; Restaurant; Short-Term Food Permit; Sidewalk Cafe; Gasfitter Class A; Gasoline Filling Station; Heating, Air Conditioning & Ventilating Class A; Heating, Air Conditioning & Ventilating Class B; Hospital; Hotel/Motel; Motor Vehicle Dealer Used Only; Motor Vehicle Repair Garage; Motor Vehicle Repair Garage with Accessory Use; Towing Class D; Commercial Parking Lot Class A; Plumber; Precious Metal Dealer; Refrigeration Systems Installer; Rental Halls; Residential Specialty Contractor; Secondhand Goods Class A; Sign Hanger; Solid Waste Hauler; Steam & Hot Water Systems Installer; Suntanning Facility; Swimming Pool - Public; Tattooist/Body Piercer Establishment; Taxicab Limited; Taxicab Service Company; Taxicab Vehicle - Fuel Efficient; Taxicab Vehicle - Wheelchair Access; Taxicab Vehicle; Taxicab Vehicle Non-Transferable; Medical Contract Carrier; Theater Zone I; Tobacco Dealer; Combined Trades; Wrecker of Buildings Class A; Wrecker of Buildings Class B.

Adopted 12/18/2009.

PS&RS - Your Committee recommends passage of the accompanying resolution granting applications for Gambling Licenses.

Adopted 12/18/2009.

Resolution 2009R-613, granting applications for Gambling Licenses, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-613

By Samuels

Granting applications for Gambling Licenses.

Resolved by The City Council of The City of Minneapolis:

That the following applications for gambling licenses be granted, subject to final inspection and compliance with all provisions of applicable codes and ordinances (Petn No 273968):

Gambling Exempt

Mobility for Independence, dba Mobility for Independence, 1622 W 31st St (Raffle February 15, 2010, Wells Fargo Bank, 1455 W Lake St)

Our Lady of Lourdes Church, dba Our Lady of Lourdes Church, One Lourdes Pl (Raffle December 6, 2009)

Pope John Paul II Catholic School, dba Pope John Paul II Catholic School, 1630 4th St NE (Raffle February 6, 2010).

Adopted 12/18/2009.

PS&RS - Your Committee recommends passage of the accompanying resolution approving License Settlement Conference recommendations relating to the On-Sale Wine Class C-2 with Strong Beer License held by Kafe 421, 421 14th Av SE.

Adopted 12/18/2009.

Resolution 2009R-614, approving License Settlement Conference recommendations relating to the On-Sale Wine Class C-2 with Strong Beer License held by Kafe 421, 421 14th Av SE, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-614

By Samuels

Approving License Settlement Conference recommendations relating to the On-Sale Wine Class C-2 with Strong Beer License held by Kafe 421, 421 14th Av SE.

Whereas, the Licenses & Consumer Services Division held a License Settlement Conference hearing on October 26, 2009 with the licensee; and

Whereas, the Public Safety & Regulatory Services Committee received Findings of Fact, Conclusions and Recommendations that concluded that on two separate occasions in a period of less than 24 months, employees of Kafe 421 sold alcohol to persons under the age of 21, in violation of the Minneapolis Code of Ordinances, State Statutes, and the established compliance check policy and procedures of the City of Minneapolis; and the licensee has paid the administrative fines associated with the compliance check failures;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the following recommendations be adopted, as more fully set forth in said Findings on file in the Office of the City Clerk and made a part of this report by reference:

1. Provide an updated alcohol service policy to Licensing, due at the time of signing this agreement to include the following:

- a. Policy and procedure given to employees regarding alcohol sales.
- b. Use of an electronic card reader system that assists employees in determining the birth date required to make a legal sale of alcohol.
- c. Whenever a staff meeting is held, alcohol service and proof of age policies will be a standing agenda item.
- d. A plan on removal of obviously intoxicated customers.
- e. The addition of the alcohol service policy on the menu for customers.
- f. The requirement of having a trained manager on site at all times.
- g. New employees must receive alcohol service training within 30 days of hire. All staff must go through an annual alcohol service training.

2. Employ a youth alcohol self-check program with decoys four times each year for the next two years and maintain documentation of the results. Have results available upon request from Licenses & Consumer Services or Minneapolis Police.

3. In lieu of a suspension, the City shall impose a \$3,000 sanction; \$2,000 shall be stayed for a period of two years from September 11, 2009 provided no same or similar violations occur and if the licensee obtains and utilizes an identification card scanner by November 6, 2009. \$1,000 is to be paid at time of signing this agreement.

Adopted 12/18/2009.

PS&RS - Your Committee recommends passage of the accompanying resolution approving License Settlement Conference recommendations relating to the On-Sale Liquor Class E with Sunday Sales License held by Maxwell's American Cafe, 712 Washington Av SE.

Adopted 12/18/2009.

Resolution 2009R-615, approving License Settlement Conference recommendations relating to the On-Sale Liquor Class E with Sunday Sales License held by Maxwell's American Cafe, 712 Washington Av SE, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-615
By Samuels

Approving License Settlement Conference recommendations relating to the On-Sale Liquor Class E with Sunday Sales License held by Maxwell's American Cafe, 712 Washington Av SE.

Whereas, the Licenses & Consumer Services Division held a License Settlement Conference hearing on September 1, 2009 with the licensee; and

Whereas, the Public Safety & Regulatory Services Committee received Findings of Fact, Conclusions and Recommendations that concluded that on two separate occasions in a period of less than 24 months Maxwell's sidewalk cafe was found to be out of compliance with the approved site plan, in violation of the Minneapolis Code of Ordinances and the established compliance check policy and procedures of the City of Minneapolis;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the following recommendations be adopted, as more fully set forth in said Findings on file in the Office of the City Clerk and made a part of this report by reference:

1. The Minneapolis Licenses & Consumer Services Division reduce the second citation from \$400 to \$200 and stay the remaining \$200 provided a comprehensive written sidewalk cafe policy will be submitted at the time of the signing of this agreement and there are no same or similar violations within two years.

2. The sidewalk cafe policy to be submitted to the Division of Licenses and Consumer Services due at the time of the signing of this agreement to include all of the following:

- a. The cafe area set up and take down procedures.
- b. diagram of approved sidewalk cafe area.
- c. define a backup system so a manager or a second designated staff member can assist if there are any questions.
- d. a system for self checking the area to insure it is in compliance.

Adopted 12/18/2009.

PS&RS - Your Committee, having under consideration taxicab fuel efficiency standards, now recommends that the proper City officers be authorized to suspend the current standards contained in Section 341.300 of the Minneapolis Code of Ordinances. Further, that City staff be directed to conduct a full best practices survey of other municipalities, meet with industry leaders, confer with the City Attorney's Office, and provide to the Public Safety & Regulatory Services Committee a complete report along with recommendations for amending the ordinance pertaining to the fuel efficiency standards for Minneapolis licensed taxicabs.

Adopted 12/18/2009.

PS&RS - Your Committee, having under consideration the property located at 2220 Marshall St NE, which has been determined by the Inspections Division of the City of Minneapolis to constitute a nuisance under the Minneapolis Code of Ordinances; and a Director's Order to Demolish the property having been issued to the property owner, which was subsequently appealed to the Nuisance Condition Process Review Panel, now recommends concurrence with the recommendation of the Panel that said Order be upheld to demolish the structure located at 2220 Marshall St NE, in accordance with the Findings of Fact, Conclusions and Recommendation on file in the Office of the City Clerk, which are hereby made a part of this report by reference.

Adopted 12/18/2009.

PS&RS - Your Committee, having under consideration the property located at 2929 11th Av S, which has been determined by the Inspections Division of the City of Minneapolis to constitute a nuisance under the Minneapolis Code of Ordinances; and a Director's Order to Demolish the property having been issued to the property owner, which was subsequently appealed to the Nuisance Condition Process Review Panel, now recommends concurrence with the recommendation of the Panel that said Order be upheld to demolish the structure located at 2929 11th Av S, in accordance with the Findings of Fact, Conclusions and Recommendation on file in the Office of the City Clerk, which are hereby made a part of this report by reference.

Adopted 12/18/2009.

PS&RS - Your Committee, having under consideration the Rental Dwelling License held by Mohammed Shahidullah for the property located at 607 Erie St SE, and a hearing having been held before an Administrative Hearing Officer who issued Findings of Fact, Conclusions and a Recommendation that the rental dwelling license be revoked, now recommends concurrence with the recommendation of the Director of Inspections that said license be revoked for failure to meet licensing standards pursuant to Sections 244.1910, 244.1930 and 244.1940 of the Minneapolis Code of Ordinances relating to not exceeding the maximum number of dwelling units allowed; that the rental property not be over-occupied or illegally occupied, and that the rental property not be converted to rooming units in violation of the Housing and Zoning Codes, as more fully set forth in the Findings of Fact on file in the Office of the City Clerk and hereby made a part of this report by reference.

Samuels moved that the report be referred back to the Public Safety & Regulatory Services Committee. Seconded.

Adopted upon a voice vote 12/18/2009.

PS&RS - Your Committee, having under consideration the Rental Dwelling License held by Todd J Cushman for the property located at 4700 Bryant Av N, now recommends concurrence with the recommendation of the Director of Inspections that said license be revoked for failure to meet licensing standards pursuant to Sections 244.1910, 244.1930, and 244.1940 of the Minneapolis Code of Ordinances relating to delinquent assessments on the rental property, as more fully set forth in Findings of Fact which are on file in the Office of the City Clerk and hereby made a part of this report by reference.

Adopted 12/18/2009.

The PUBLIC SAFETY & REGULATORY SERVICES and WAYS & MEANS/BUDGET Committees submitted the following reports:

PS&RS & W&M/Budget - Your Committee, to whom was referred ordinances amending Title 4 of the Minneapolis Code of Ordinances relating to *Animals and Fowl*, now recommends that the following ordinances be given their second reading for amendment and passage:

a. Chapter 64 relating to *Dogs, Cats, Ferrets, and Rabbits*, providing hearing officers in dangerous and potentially dangerous animal appeals increased authority to impose restrictions; and requiring the owners of cats, as well as dogs, to prevent their animals from injuring others whether on or off the owner's property; and authorizing Animal Care & Control to require puppies of dangerous and potentially dangerous dogs to be spayed or neutered; and limiting the number of discounted "sibling" animal licenses per household to two; and requiring owners of declared animals to immediately report if their declared animal runs away; and increasing the permit fees for multiple animal permits.

b. Chapter 70 relating to *Fowl, Pigeons, and Other Small Animals*, increasing the fees for small animal permits.

Adopted 12/18/2009.

Ordinance 2009-Or-188 amending Title 4, Chapter 64 of the Minneapolis Code of Ordinances relating to *Animals and Fowl: Dogs, Cats, Ferrets, and Rabbits*, amending Sections 64.30, 64.100, 64.110, and 64.135 to provide hearing officers in dangerous and potentially dangerous animal appeals increased authority to impose restrictions; and requiring the owners of cats, as well as dogs, to prevent their animals from injuring others whether on or off the owner's property; and authorizing Animal Care

& Control to require puppies of dangerous and potentially dangerous dogs to be spayed or neutered; and limiting the number of discounted "sibling" animal licenses per household to two; and requiring owners of declared animals to immediately report if their declared animal runs away; and increasing the permit fees for multiple animal permits, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-188
By Samuels
Intro & 1st Reading: 10/16/2009
Ref to: PS&RS
2nd Reading: 12/18/2009

Amending Title 4, Chapter 64 of the Minneapolis Code of Ordinances relating to Animals and Fowl: Dogs, Cats, Ferrets, and Rabbits.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 64.30 (b) of the above-entitled ordinance be amended to read as follows:

64.30. License application and fee.

(b) Minneapolis Animal Care and Control shall provide each dog and cat licensed with a metallic tag upon which shall be stamped or engraved the registration number of the dog or cat. The annual fee for a dog or cat license required by this Code shall be thirty dollars (\$30.00) for a spayed or neutered dog or cat; verification that the dog or cat has been spayed or neutered is required. A "sibling" license shall be available for spayed or neutered dogs and cats residing in the same household for an annual fee of twenty dollars (\$20.00) for each dog or cat after the initial fee of thirty dollars (\$30.00) is paid for the first dog or cat. A maximum of two (2) "sibling" licenses may be issued per household. The annual fee for an unneutered or unspayed dog or cat shall be fifty dollars (\$50.00). Individuals sixty-five (65) years of age or older shall pay a reduced annual license fee in the amount of fifteen dollars (\$15.00) for each dog or cat. A lifetime license is available for dogs and cats that are spayed or neutered and are microchipped. Certification by a licensed veterinarian that the animal is spayed or neutered is required for a lifetime license. The microchip number and manufacturer must be provided for the lifetime license to be issued. The fee for a lifetime license shall be two hundred dollars (\$200.00). There shall be no reimbursement of any license fee, including lifetime, upon the death or removal of the animal from the city and fees shall not be prorated. Animals declared dangerous and potentially dangerous are not eligible for lifetime licenses.

Section 2. That Section 64.100 (d) of the above-entitled ordinance be amended to read as follows:

64.100. Maximum number animals of the dog, cat, ferret, or rabbit kind.

(d) Any person desiring a permit shall make application to Minneapolis Animal Care and Control. Approval of application is subject to conditions prescribed by Minneapolis Animal Care and Control. The permit may be denied or cancelled at the discretion of the Manager of Minneapolis Animal Care and Control. All permits issued shall expire on January 31 of the following year after its issuance unless sooner revoked. ~~The annual fee for such permit shall be thirty dollars (\$30.00) which shall be paid at the time of application.~~ The application fee for such permit shall be seventy-five dollars (\$75.00) which shall be paid at the time of application. The annual renewal fee thereafter for such permit shall be fifty dollars (\$50.00). Minneapolis Animal Care and Control shall inspect the premises annually or as deemed necessary. Should the permit be refused or cancelled, the fee paid with application shall be retained by Minneapolis Animal Care and Control. Violations may result in an administrative fine.

Section 3. That Section 64.110 of the above-entitled ordinance be amended to read as follows:

64.110. Dangerous and potentially dangerous animals. Minneapolis Animal Care and Control is authorized to deem any animal as a dangerous animal or a potentially dangerous animal subject to the requirements under this Code and under Minnesota State Statute 347.50 subdivision (2), Dangerous Dogs and Minnesota State Statute 347.50 subdivision (3) potentially dangerous dogs. The owner or custodian of the animal must immediately comply with the confinement requirements as defined in this ordinance, even if appealing the declaration.

No off leash park permit as defined in section 64.55 shall be issued for any animal that has been declared potentially dangerous or dangerous under this Code or pursuant to state statute.

(a) For the purposes of this chapter, a person is peaceably and lawfully upon the private property of an owner or custodian when he or she is on the property in the performance of any duty imposed upon him or her by the laws of this state or any city or county, or by the laws or postal regulations of the United States, or when he or she is on the property upon express or implied invitation.

(b) Declarations shall be made by the Program Manager of Minneapolis Animal Care and Control, or the manager's designee, based on this Code and state statute. If a declaration is made, the owner of the animal shall be notified in writing. Notification shall include a copy of ordinance and statute, the report (including supplemental reports, if any) and a statement of the declaration.

(c) The manager of animal care and control will consider the following factors in determining a dangerous or potentially dangerous animal declaration:

- (1) Whether any injury or damage to a person or domestic animal by the accused animal was caused or contributed to by the actions of that person, including acts of physical abuse, tormenting, teasing or assault.
- (2) Whether a person injured by the animal was committing a trespass or other tort upon the premises occupied by the owner or custodian of the animal, or whether the person injured by the animal was committing or attempting to commit a crime.
- (3) Whether a person injured by the animal had gained uninvited and unauthorized entry onto fenced or indoor property of the owner or custodian of the animal. As used in this section, "unauthorized entry" does not include entry into a fenced residential front yard unless the yard is locked or posted to prohibit entry.
- (4) Whether any injury or damage to a person by the animal was caused while the animal was protecting or defending a person or the animal's offspring within the immediate vicinity of the animal from an unjustified attack or assault.
- (5) The size and strength of the animal (including jaw strength) and the animal's propensity to bite humans or other domestic animals.

(d) *Potentially dangerous animal*. "Potentially dangerous animal" means any animal, except an animal assisting a peace officer engaged in law enforcement duties and/or animals trained by a recognized program within an established curriculum for training animals for services such as rescue and recovery, that demonstrates any of the following behavior:

- (1) Any animal that engages in any unprovoked behavior that requires a defensive action by any person to prevent bodily harm when the person and the animal are off the property of the owner or custodian of the animal. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.
- (2) Any animal that, when unprovoked, bites a person on public or private property, causing a minor injury not resulting in muscle tears or disfiguring lacerations or requiring multiple sutures, or corrective or cosmetic surgery.
- (3) Any animal that, when unprovoked, bites, inflicts injury, or otherwise causes injury to a domestic animal off the property of the owner or custodian of the attacking animal.
- (4) Any animal that, when unprovoked, engages in any behavior that constitutes a physical threat of bodily harm to a person or domestic animal or poses an immediate threat to public safety off the property of the owner or custodian of the animal.
- (5) Any animal that has a known propensity, tendency or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals as documented by law enforcement or Minneapolis Animal Care and Control.

(e) *Dangerous animal*. "Dangerous animal" means any animal, except an animal assisting a peace officer engaged in law enforcement duties and/or animals trained by a recognized program within an established curriculum for training animals for services such as rescue and recovery, that demonstrates any of the following behavior:

- (1) Any animal that, when unprovoked, inflicts substantial bodily harm on a human being who is conducting himself or herself peacefully and lawfully. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

- (2) Any animal previously designated as a potentially dangerous animal that, after the owner or custodian has been notified of such designation, exhibits any of the behaviors described in this subsection or subsection (d)(3) of this section.
- (3) Any animal previously designated as a potentially dangerous animal, after the owner or custodian has been notified of such designation, if the owner or custodian subsequently violates any requirement of this section.
- (4) Any animal that kills another domestic animal without provocation while off the property of the owner or custodian of the attacking animal.
- (5) Any animal, when unprovoked, that repeatedly attacks or attempts to attack a person or domestic animal on private or public property. For purposes of this provision, "repeatedly" shall mean more than one (1) unprovoked attack or attempted attack occurring during the course of either a single encounter or separate encounters.
- (6) The dog's owner or custodian is in possession of training apparatus, paraphernalia or drugs intended to be used to prepare or train dogs to be fought and the dog displays evidence that it has been or will be fought.

(f) *Appeal hearing procedures.*

- (1) *Potentially dangerous animal.* Potentially dangerous declaration appeals shall consist of a record review by the manager of animal care and control, or the manager's designee, using the designated appeal form supplied by animal care and control at the time of the written request. The appeal form must be completed and returned to animal care and control with written evidence and/or affidavits that dispute the declaration within five (5) business days of notification. The owner of the animal shall be notified, in writing, of the record review results within ten (10) calendar days of receipt. There is a one hundred dollar (\$100.00) fee for an appeal of a potentially dangerous declaration. The individual conducting the review shall have authority to amend the declaration or order as appropriate and to establish specific requirements.
- (2) *Dangerous animal.* The owner or custodian of an animal that has been declared dangerous may appeal the declaration and request a hearing. The appeal request must be submitted in writing within ten (10) business days of notification. If a hearing is requested, the program manager, or the manager's designee, shall schedule a hearing within ten (10) calendar days. Dangerous declaration appeals shall consist of an appearance before the manager of animal care and control, or the manager's designee. The hearing officer shall be the manager of animal care and control, or the manager's designee. A hearing fee of two hundred fifty dollars (\$250.00) must be paid prior to scheduling the hearing. The manager of the program may set limits on the amount of evidence that may be submitted and the length of testimony offered. The individual conducting the review shall have authority to amend the declaration or order as appropriate and to establish specific requirements.
- (3) Any time after a declaration has been issued, animal care and control may seize a declared animal. All applicable fees and costs shall be the responsibility of the owner or custodian of the animal. The animal shall not be released until all fees are paid in full and compliance with all provisions of this Code is achieved. All animals seized pursuant to this subsection may be disposed of by animal care and control after fourteen (14) calendar days of notification of declaration when either the animal is not properly registered or an appeal has not been properly submitted pursuant to this section.
- (4) In the event that the declaration is overturned, all fees will be reviewed by the hearing officer or the manager of animal care and control.
- (5) The owner of the animal shall be notified by telephone of the hearing results within three (3) business days and in writing within ten (10) business days.
- (6) All decisions may be appealed to the Minnesota Court of Appeals.

(g) *Annual review requests.* If there are no additional reports of the behavior described in subsections (d) or (e) of this section within a twenty-four-month period from the date of the designation as a dangerous animal or a twelve-month period from the date of the designation as a potentially dangerous animal, the animal's owner may request a review, in writing, of the declaration designation.

The owner must provide documented evidence for review that the animal's behavior has changed due to environment, health, age, training, neutering or other relevant factor. The review request and supporting documentation must be submitted to the manager of animal care and control, and the manager, or the manager's designee, shall rule on the review request based on the record. The owner of the animal shall be notified in writing of the review results within ten (10) business days of receipt. An administrative fee of two hundred fifty dollars (\$250.00) shall be paid prior to the review.

(h) *Potentially dangerous or dangerous animal requirements.* No person may own or house a potentially dangerous or dangerous animal in the City of Minneapolis unless the animal is registered as provided in this subsection. All owners or custodians of potentially dangerous and dangerous animals shall fully comply with the following requirements, and any additional requirements established by a hearing officer, within fourteen (14) calendar days of notification of the declaration. Failure to comply shall lead to confiscation of the animal and possible disposition under subsections (k) through (n).

- (1) Microchip (must be pre-paid if animal care and control implants the microchip).
- (2) Current rabies vaccinations (must remain current on rabies vaccinations).
- (3) Current annual license for a declared animal (regardless of current license status).
- (4) Muzzle (with three (3) foot leash to be held by an adult at all times the animal is outside and not inside a proper enclosure).
- (5) Proper kennel which shall meet the following minimum specifications:
 - a. A minimum of thirty-two (32) square feet in floor area per animal that will be kept in such enclosure.
 - b. The sidewalls shall have a minimum height of five (5) feet and be constructed of eleven (11) gauge or heavier wire. If the enclosure is on any permeable surface, the fence must be buried a minimum of eighteen (18) inches. Openings in the wire shall not exceed two (2) inches, support posts shall be one and one-quarter (1 1/4) inch or larger steel pipe buried a minimum of eighteen (18) inches into the ground.
 - c. A cover over the entire kennel shall be provided. The cover shall be constructed of the same gauge wire as the sidewalls or heavier and shall have no openings greater than two (2) inches.
 - d. An entrance/exit gate shall be provided and constructed of the same material as the sidewalls and shall also have no openings greater than two (2) inches. The gate shall be self closing, self locking and shall be locked at all times the animal is in the kennel.
 - e. The kennel shall comply with all zoning setbacks requirements unless variances are obtained.
- (6) Secured area maintained inside the home where the animal will stay when persons, other than family members, are present.
- (7) Annual registration and payment of all applicable fees including submission of photographs of the required kennel and secured area and a current photograph of the animal.
- (8) The animal may not be possessed or maintained at any other location other than the owner's property.
- (9) The owner or custodian of the animal may not be a minor under age eighteen (18).
- (10) The animal shall not be subjected to neglect, suffering, cruelty, or abuse.
- (11) The location where the animal is possessed or maintained shall be kept clean and sanitary with proper and adequate food, water, ventilation, shelter and care at all times.
- (12) The owner of a potentially dangerous or dangerous animal may be required to complete an approved obedience class, at the direction of the manager of animal care and control or the manager's designee.
- (13) If the animal is to move from the approved location, written notification shall be provided to the manager of animal care and control within ten (10) business days prior to relocation.
- (14) The manager of animal care and control, or the manager's designee, shall be allowed at any reasonable time to inspect the animal and the place where the animal is located.

- (15) Minneapolis Animal Care and Control may require that any animal deemed potentially dangerous or ~~dangerous~~ and any puppies of the animal in the care and custody of the owner be sterilized at the owner's expense. Arrangements may be made at a pet hospital or clinic within the City of Minneapolis. Animal care and control shall transport the animal to the clinic and may transport back to the shelter until compliance is achieved. The owner of the animal shall make payment arrangements with the clinic prior to commencement of the procedure.

(i) *Additional dangerous animal requirements.* In addition to the requirements of subsection (h), all owners or custodians of dangerous animals shall fully comply with the following requirements within fourteen (14) calendar days of notification of the declaration. Failure to comply shall lead to confiscation of the animal and possible disposition under subsections (k) through (n).

- (1) The animal and any puppies of the animal in the care and custody of the owner shall be sterilized at the owner or custodian's expense and adequate proof of sterilization shall be submitted.
- (2) Proof of a current insurance bond in the amount of at least three hundred thousand dollars (\$300,000.00) to cover any personal injuries inflicted by the animal and payable to the injured party or parties.
- (3) A clearly visible sign posted in the front and rear of the property indicating that a "dangerous animal" is on or in the premises, meeting any requirements as designated by the manager of animal care and control.

(j) *Declared animal from other jurisdictions.* No animal that has previously been determined to be potentially dangerous, dangerous or vicious by another jurisdiction shall be kept, owned or harbored in the City of Minneapolis unless the animal's owner or custodian complies with the requirements of the applicable declaration level as defined in subsections (h) and/or (i) of this section. Potentially dangerous or dangerous animal requirements must be met prior to bringing the animal into the city. Animals in violation of this subsection are subject to impoundment and humane destruction by lethal injection after notice and a hearing (if requested) under subsection (n) of this section.

(k) *Impoundment.*

- (1) Any animal which bites a person or domestic animal and/or is subject to potentially dangerous or dangerous animal proceedings may be impounded at the discretion of animal care and control pending hearings and compliance.
- (2) All animals that have been previously declared potentially dangerous or dangerous shall be impounded at the animal care and control facility for the quarantine period and held until the final disposition is determined.
- (3) All animals found to be in violation of the requirements of this section shall be impounded.
- (4) The impounded animal's owner shall be charged for all impoundment related costs and fees.

(l) *Noncompliance, transfer or death of declared animals.*

- (1) Failure to comply with the provisions of this section may result in seizure of the animal by animal care and control and disposition pursuant to subsection (n).
- (2) The owner or custodian of any animal declared potentially dangerous or dangerous must notify Minneapolis Animal Care and Control in writing of the death of the animal within fourteen (14) days of the animal's death. If requested by animal care and control the owner or custodian must execute an affidavit under oath setting forth the circumstances of the animal's death and disposition.
- (3) If the owner or custodian of any animal declared potentially dangerous or dangerous wishes to relocate the animal based solely upon the owner or custodian relocating his or her principle residence either within or without the City of Minneapolis, the owner or custodian shall notify Minneapolis animal care and control in writing prior to such relocation. If requested by animal care and control, the owner or custodian must execute an affidavit under oath setting forth the new address of the owner or custodian where the animal will be housed.
- (4) The owner or custodian of any animal declared potentially dangerous or dangerous shall not transfer the ownership or custodianship of such an animal to another person or persons

unless the owner or custodian receives prior written approval from the manager of animal care and control. If requested by animal care and control, the owner or custodian must execute an affidavit under oath setting forth the complete name, address, and telephone number(s) of the person to whom the animal has been transferred. All applicable requirements of this section and this code must be met by the prospective new owner before the animal may be transferred.

(m) *Restriction on future ownership.*

- (1) Any person who:
 - a. has owned or owns or had custody of an animal declared potentially dangerous or dangerous or ordered destroyed and is found to be in violation of any requirement of this section; or
 - b. had owned a potentially dangerous or dangerous animal but never achieved compliance with the requirements of this section; or
 - c. has owned or had custody of more than one (1) animal declared dangerous or ordered destroyed within two (2) years; or
 - d. has owned or owns or had custody of an animal which has inflicted substantial bodily harm on a person and/or kills a domestic animal as a result of the intentional act or acts of that owner or custodian;
may be subject to restrictions on ownership or custody of other animals of the same species for a period of five (5) years after the original declaration. For the purposes of this section, custody would include any animal in the dwelling in which the person subject to the ownership restriction lives. The animal found to be in violation shall be impounded until due process is completed.
(For the purposes of this section, custody means the presence of any animal on the property of any dwelling or residence in which the restricted persons lives or resides including, but not limited to, all surrounding grounds, outbuildings and/or garages.)
- (2) Any animal owner in violation of this subsection shall be notified in writing of the violation and may request a hearing in writing within five (5) business days of receipt of the notice. If a hearing is requested, the program manager or the manager's designee shall schedule a hearing within ten (10) business days. Violation appeals shall consist of an appearance before the manager of animal care and control or the manager's designee. An administrative fee of two hundred fifty dollars (\$250.00) shall be paid prior to the scheduling of the hearing. The program manager may set limits on the amount of evidence that may be submitted and the length of any testimony offered.
- (3) The owner of the animal shall be notified, in writing, of the hearing results within ten (10) business days.
- (4) Any person convicted of a violent felony, as defined in Minnesota Statute 624.712, subdivision 5, who owns, possesses, or controls an animal weighing more than twenty (20) pounds, or an animal that the manager of animal care and control designates as posing a danger to the public's health, safety or welfare if misused by a person convicted of a violent felony, must have a prohibited animal permit to own, keep or maintain that animal. For the purposes of this section, own, keep, or maintain would include any animal in the dwelling in which the person subject to the ownership restriction lives. If there is cause to believe that an animal poses a danger to the public's health, safety or welfare if misused by a person convicted of a violent felony, the animal may be impounded pending a determination made under this article and until a permit is obtained. If the manager of animal care and control designates an animal as posing a danger to the public's health, safety or welfare if misused by a convicted felon, written notice of this designation shall be mailed to the owner or custodian of the animal. The owner or custodian must pay an application fee and apply for the prohibited animal permit within fifteen (15) calendar days after the mailing of the written notice of designation. The manager of animal care and control may deny a prohibited animal permit if he or she determines that the animal poses a danger to the public's health, safety or welfare, or may condition the issuance of the permit upon the permittee's written agreement to comply with conditions of ownership to

be determined by the manager of animal care and control. These conditions of ownership may include, but are not limited to, those found under subsections (h) and (i). A prohibited animal may subsequently be revoked by the manager of animal care and control if there is probable cause to believe that the convicted violent felon's continued ownership of the animal poses a danger to the public's health, safety or welfare. Any person violating this subsection is guilty of a misdemeanor. A person convicted of a violent felony under this article shall not include persons whose convictions were set aside, or persons whose sentences were completed ten (10) years or more in the past. "Misuse" by a convicted felon means use of an animal in a threatening or aggressive manner, or in the commission or furtherance of the commission of a crime.

- a. Any animal whose owner or keeper is in violation of this subsection shall be impounded, or impounded subject to destruction, at the owner's expense.
- b. An animal that poses a danger to the public health, safety or welfare if misused by a convicted felon under this section means any of the following:
 1. An animal weighing more than twenty (20) pounds;
 2. An animal which has been designated a potentially dangerous or dangerous animal under subsections (d) or (e) of this section;
 3. An animal designated by the manager of animal care and control as posing a danger to the public's health, safety or welfare if misused by a convicted felon based upon the following factors:
 - i. The nature of any complaints regarding the animal.
 - ii. The strength of the animal, including jaw strength.
 - iii. The animal's tolerance for pain.
 - iv. The animal's tendency to refuse to terminate an attack.
 - v. The animal's propensity to bite humans or other domestic animals.
 - vi. The animal's potential for unpredictable behavior.
 - vii. The animal's aggressiveness.
 - viii. The likelihood that a bite by the animal will result in serious injury. This subsection shall not apply to any assistance animal, including guide animals, signal animals and service animals, trained or in training to assist a qualified individual with a disability.

(n) *Disposition of animals.*

- (1) The Program Manager at Minneapolis Animal Care and Control is authorized to order the destruction or other disposition of any animal which:
 - a. Kills a person, or
 - b. Has bitten one (1) or more persons on two (2) or more occasions, or
 - c. Has caused substantial bodily injury or disfigurement as defined in subsections (d) or (e) of this section, or
 - d. Has engaged in an attack on or exhibited unusually aggressive behavior towards any person or domestic animal under circumstances that would indicate danger to the safety of the person or animal, or
 - e. Is prohibited by or found to be in violation of subsections (g), (h), (i), (j) or (l) of this section, or
 - f. Is prohibited by section 74.50 of this Code.
- (2) In determining the disposition of the animal the manager of animal care and control will determine the potential of the animal to pose a danger to the public's health, safety or welfare based upon the following factors:
 - a. The animal weighing more than twenty (20) pounds;
 - b. The strength of the animal, including jaw strength;
 - c. The animal's tolerance for pain;
 - d. The animal's tendency to refuse to terminate an attack;
 - e. The animal's propensity to bite humans or other domestic animals;
 - f. The animal's potential for unpredictable behavior;
 - g. The animal's aggressiveness;

- h. The likelihood that a bite by the animal will result in serious injury.
This subsection shall not apply to any assistance animal, including guide animals, signal animals and service animals, trained or in training to assist a qualified individual with a disability.

(3) *Procedure.*

- a. The owner or custodian of the offending animal shall be notified in writing as to the reasons the animal is subject to disposition or destruction under this subsection and where applicable, copies of all reports received by animal care and control that were utilized to determine the disposition.
- b. The owner shall have three (3) business days after the date of notification to request a hearing to appeal a destruction order. If a hearing is requested, it shall be scheduled within ten (10) business days. The hearing officer shall be the manager of animal care and control or the manager's designee and shall have authority to amend the declaration or order as appropriate.
- c. If a hearing is not requested within three (3) business days of the notification, the animal may not be destroyed until a minimum of five (5) business days have passed since the issuance of the order.
- d. If the animal has bitten a person, it shall remain at a designated animal care and control facility through the end of the quarantine period as required pursuant to section 66.40. At the conclusion of the quarantine period the animal shall be subject to further disposition as defined in this Code and may be held at the owner's expense until a disposition is determined.
- e. Unclaimed animals shall be subject to disposition without notice to the owner or custodian after the mandatory hold period as established in section 62.40. Unclaimed animals shall include animals declared potentially dangerous or dangerous if in the custody of animal care and control and not in full compliance with the requirements of this section.
- f. All applicable fees are subject to payment within twenty (20) days for any identified owners and shall be invoiced. All unpaid fees may be forwarded to a collection agency for processing.

(o) *Concealing of dangerous animals.* Any person who harbors, hides or conceals an animal found to be potentially dangerous or dangerous by animal care and control which has been ordered into custody for disposition shall be guilty of a misdemeanor.

(p) *Conditioning and training equipment prohibited.* No person shall use or possess any device, equipment, treatment or products for the strengthening or conditioning of an animal with the intent to enhance the animal's ability to inflict bodily injury upon human beings or domestic animals on public or private property.

(q) *Fees.* Fees under this section may include, but are not limited to, impound, kennel, license, penalties, hearing, registration and euthanasia fees. All applicable fees shall be defined by this Code and/or included in the licenses and annual billing fees schedule or in the schedule of civil fines for administrative offenses resolution, and duly approved by city council.

Impound fee . . .	\$100.00
Daily kennel fee, per day . . .	25.00
Microchip fee . . .	35.00
Euthanizing fee . . .	75.00
Rabies vaccination . . .	20.00
Sedation, if necessary . . .	20.00
Annual license fee . . .	75.00
Annual registration:	
Potentially dangerous . . .	100.00
Dangerous . . .	200.00
Appeal hearing fee:	
Dangerous . . .	250.00
Potentially dangerous . . .	100.00
Prohibited animal permit . . .	250.00
Annual County Registration fee—Determined by Hennepin County	

Section 4. That Section 64.135 of the above-entitled ordinance be amended to read as follows:

64.135. Public protection from dogs and cats. Any person owning or having care, control or custody of a dog or cat shall at all times prevent the dog or cat from attacking, biting or otherwise causing injury or attempting to cause injury to any person engaged in a lawful act or causing injury or attempting to cause injury to a domestic animal on or off the property of the owner.

Adopted 12/18/2009.

Ordinance 2009-Or-189 amending Title 4, Chapter 70 of the Minneapolis Code of Ordinances relating to *Animals and Fowl: Fowl, Pigeons, and Other Small Animals*, amending Section 70.10 to increase the fees for small animal permits, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-189
By Samuels
Intro & 1st Reading: 10/16/2009
Ref to: PS&RS
2nd Reading: 12/18/2009

Amending Title 4, Chapter 70 of the Minneapolis Code of Ordinances relating to Animals and Fowl: Fowl, Pigeons, and Other Small Animals.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 70.10 of the above-entitled ordinance be amended to read as follows:

70.10. Permit required. (a) No person shall anywhere in the city keep, harbor, or maintain care, custody, or control over any small animal or any fowl such as a chicken, turkey, duck, or pigeon, without obtaining a permit issued by Minneapolis Animal Care and Control.

(b) The Manager of Minneapolis Animal Care and Control may grant permit pursuant to this section after the applicant has sought the written consent of at least eighty (80) percent of the occupants of the several descriptions of real estate situated within one hundred (100) feet of the applicant's real estate. Such written consent shall be required on the initial application and as often thereafter as the Manager of Minneapolis Animal Care and Control deems necessary.

(c) No permit shall be granted to keep any animal, fowl, or pigeon within a dwelling unit or part thereof, nor on any real estate which contains three (3) or more dwelling units.

(d) This section shall not apply to dogs, cats, ferrets, or rabbits nor to veterinarians or licensed pet shops or licensed kennels.

(e) Application for permit. Any person desiring a permit under this chapter shall make written application to Minneapolis Animal Care and Control Approval of application is subject to conditions prescribed by Minneapolis Animal Care and Control. Failure to adhere to conditions is cause for cancellation of the permit and/or result in an administrative fine.

(f) Duration of permit. All permits issued shall expire on January 31 of the following year after its issuance unless sooner revoked. ~~The annual fee for such permit shall be thirty dollars (\$30.00) which shall be paid at time of application.~~ The application fee for such permit shall be fifty dollars (\$50.00) which shall be paid at the time of application. The annual renewal fee thereafter for such permit shall be forty dollars (\$40.00). Minneapolis Animal Care and Control will inspect the premise annually or as deemed necessary.

(g) Five-year permit. The fee for a five-year permit will be one-hundred fifty dollars (\$150.00). All five-year permits issued shall expire on January 31 of the year following the fifth year after its issuance unless sooner revoked. Minneapolis Animal Care and Control will inspect the premise annually or as deemed necessary.

(g h) Refusal to grant permit. Minneapolis Animal Care and Control may refuse a permit to keep or maintain animals or fowl hereunder for failure to comply with the provisions of this chapter, and shall refuse a permit if such animals or fowl should not be kept upon the premises described in the application

for the permit. If any such permit is refused, the fee paid with the application shall be retained by Minneapolis Animal Care and Control.

(h) Enforcement. Minneapolis Animal Care and Control shall enforce the provisions of this chapter.
Adopted 12/18/2009.

PS&RS & W&M/Budget - Your Committee, having under consideration the fee charged to the Automobile Insurance Personal Injury Fund for emergency medical care provided by the Fire Department at the scene of motor vehicle accidents, now recommends that report passed March 10, 2006 be amended to increase the tiered fee schedule from \$560 to \$577 per patient for each engine company response, and from \$700 to \$721 per patient for each ladder/rescue company response.
Adopted 12/18/2009.

The TRANSPORTATION & PUBLIC WORKS Committee submitted the following reports:

T&PW - Your Committee recommends passage of the accompanying resolution affirming that the City of Minneapolis has met the requirements of Minnesota Statutes by utilizing a rate structure that encourages water conservation.
Adopted 12/18/2009.

Resolution 2009R-616, affirming that the City of Minneapolis has met the requirements of Minnesota Statutes by utilizing a rate structure that encourages water conservation, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-616
By Colvin Roy

Affirming that the City of Minneapolis has met the requirements of Minnesota Statutes, Section 103G.291, Subd 4, by utilizing a rate structure that encourages water conservation.

Whereas, water is a valuable resource and all cities have a role in being responsible stewards for this shared resource; and

Whereas, the City of Minneapolis recognizes and appreciates the importance of water conservation; and

Whereas, water treatment professionals recognize the higher operational costs associated with treating surface water for consumption as the trade-off for better utilization of a natural resource; and

Whereas, the unique costs of treating surface water for consumption result in drinking water rates in the City of Minneapolis that are higher than conservation rates for communities utilizing ground water; and

Whereas, the City of Minneapolis is experiencing a conservation trend in its city with a noticeable downward consumption trend over the past eight years; and

Whereas, the City of Minneapolis is meeting the legislative intent of Minnesota Statutes, Section 103G.291, Subd 4;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the City of Minneapolis submits that it has met the requirements of Minnesota Statutes, Section 103G.291, Subd 4, by utilizing a rate structure that encourages conservation.

Adopted 12/18/2009.

T&PW - Your Committee recommends that the proper City officers be authorized to negotiate agreements with the Minneapolis Park and Recreation Board for the final phase of the Blue Water Partnership.

Adopted 12/18/2009.

T&PW - Your Committee recommends approval of the layout for the RiverLake Greenway Project, Phase 3, from I-35W to W River Parkway, as set forth in Petn No 273978, on file in the office of the City Clerk.

Adopted 12/18/2009.

The TRANSPORTATION & PUBLIC WORKS and WAYS & MEANS/BUDGET Committees submitted the following reports:

T&PW & W&M/Budget - Your Committee, having under consideration the Traffic Signal Indication LED Conversion Program, now recommends passage of the accompanying resolution increasing the appropriation and revenue for the program by \$32,565, to be reimbursed by Xcel Energy Utility Company rebate funds designated for energy consumption reduction programs.

Adopted 12/18/2009.

**RESOLUTION 2009R-617
By Colvin Roy and Ostrow**

Amending The 2009 Capital Improvement Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution, as amended, be further amended by increasing the appropriation for the PW-Transportation Capital Agency in the Capital Improvements Fund (4100-9010943 CTR903SG090) by \$32,565, to be reimbursed by Xcel Energy Utility Company rebate funds.

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee, having under consideration Management Agreement No 66310 with the Minnesota Department of Transportation defining the ownership and management responsibilities for the ABC Parking Ramps, now recommends approval of Amendment No 2 to the agreement to allow appropriate funding levels for operations and improvements to the ramps.

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute a lease agreement with the State of Minnesota, acting on behalf of the Minnesota Pollution Control Agency, for space at Fire Station No 7, located at 2000 Franklin Ave E, to house equipment for ambient air quality monitoring, effective November 2009 through November 2011. Annual revenues will be directed to the Property-Internal Service Fund (06200).

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends that the proper City officers be authorized to negotiate and execute a five-year lease agreement with Minnesota Public Radio (MPR) for the purpose of locating and operating an FM translator facility at the Kenwood Water Tower. Revenue will be directed to the Property-Internal Service Fund (06200).

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends that the proper City officers execute an Amendment of Commercial Lease No 27732 (City Contract C-21606) with the Minnesota Department of Transportation (Mn/DOT) to provide for City use of Mn/DOT I-394 under-bridge land in the vicinity of Aldrich and West Linden Avenues, effective January 1, 2010 through December 31, 2014, at a rental rate of \$1,466.67 per month.

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends that the proper City officers execute an Amendment of Commercial Lease No 27731 (City Contract C-21506) with the Minnesota Department of Transportation (Mn/DOT) to provide for City use of three (3) I-94 under-bridge parking lots, effective January 1, 2010 through December 31, 2014, with 50% of the net revenues to be paid to Mn/DOT.
Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends that the proper City officers be authorized to negotiate and execute a 65-month lease, to include renewal options, with Tickle's Food and Bar, Inc., for retail and storage space at 420 4th St S (Haaf Municipal Parking Ramp), contingent upon the approval of all appropriate business and liquor licenses. Revenue from the lease will be deposited into the Parking Fund.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

(Published 12/22/2009)

T&PW & W&M/Budget - Your Committee, having under consideration the design and construction of the Hiawatha Maintenance Facility at 26th St E and Hiawatha Ave S, now recommends:

a) Authorizing the execution of Amendment No 2 to Contract C-24862 with RSP Architects, increasing the contract by \$149,000, for a revised contract total of \$1,224,000, to allow for architectural and engineering design services not included in the original scope of the contract;

b) Passage of the accompanying resolution transferring \$166,000 from the Stormwater Design Fund to the Hiawatha Maintenance Facility Project to cover expenses related to the completion of the design and build-out of the second floor of the Hiawatha Maintenance Facility in order to provide finished space for the Surface Water and Sewers engineering group;

c) Authorizing the execution of Amendment No 3 to Contract C-24862 with RSP Architects, increasing the contract by \$51,000, for a revised contract total of \$1,275,000, to provide design services related to the build-out of the second floor office space; and

d) Authorizing the execution of Change Order No 3 to Contract C-26655 with Knutson Construction Services, Inc., increasing the contract by \$238,500, for a revised contract total of \$10,604,870, to allow for construction services related to the build-out of the second floor office space.

Adopted 12/18/2009.

RESOLUTION 2009-618
By Colvin Roy and Ostrow

Amending The 2009 Capital Improvement Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled resolution, as amended, be further amended by:

a) Decreasing the appropriation in the Stormwater Design Fund (07300-6300200-600096063) by \$166,000; and

b) Increasing the appropriation in the Hiawatha Maintenance Facility Project Fund (04100-9010923-CPSD0208 - Revenue Source 3455) by \$166,000.

Adopted 12/18/2009.

T&PW & W&M/Budget - Your Committee recommends acceptance of the low responsive bid submitted to the Public Works Department on OP No 7213 from Fluid Technology Corporation, in the amount of \$74,122, to furnish and deliver fiberglass reinforced pressure pipe to the City of Minneapolis Public Works Water Division.

Your Committee further recommends that the proper City officers be authorized and directed to execute a contract for said service, all in accordance with City specifications and contingent upon approval of the Civil Rights Department.

Adopted 12/18/2009.

The WAYS & MEANS/BUDGET Committee submitted the following reports:

W&M/Budget - Your Committee recommends passage of the accompanying resolution authorizing the settlement of legal matters, as recommended by the City Attorney.

Adopted 12/18/2009.

Resolution 2009R-619, authorizing settlement of *Marlene Cariveau v. City of Minneapolis*, and *Linda Sue Garvey v. City of Minneapolis*, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-619

By Ostrow

Authorizing legal settlement.

Resolved by The City Council of The City of Minneapolis:

That the City Attorney is authorized to proceed with the following settlements:

a) *Marlene Cariveau v. City of Minneapolis*, by payment of \$4,000 to Marlene Cariveau and James Cariveau, and their attorney, Thomas F. DeVincke, from the Internal Service Self Insurance Fund (06900-1500100-145607).

b) *Linda Sue Garvey v. City of Minneapolis*, by payment of \$50,000 to Linda Sue Garvey, her attorney, Daniel E. Meshbesh, and Minnesota Workers' Compensation Assigned Risk Plan, from the Internal Service Self Insurance Fund (06900-1500100-145400).

Further, authorize the City Attorney's Office to execute any documents necessary to effectuate the settlements.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends that the proper City officers be authorized to further amend the Master Agreement for Legal Services between the City of Minneapolis and Lockridge, Grindal, Nauen, P.L.L.P., so that the total compensation and reimbursable expenses may be increased by an additional \$300,000 for a total amount of \$1,500,000 for the term of the Master Agreement.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends that the proper City officers be authorized to further amend the Master Agreement for Legal Services between the City of Minneapolis and Kennedy & Graven (C-24508), so that the total compensation be increased by an additional \$300,000 for a total amount of \$600,000 for the term of the Master Agreement.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute a Memorandum of Understanding with the Municipal Building Commission regarding the Communications Hub located in City Hall.

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration the 2010 Council Budget Guidelines, as set forth in Petn No 273982 on file in the Office of the City Clerk, now recommends approval.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends passage of the accompanying resolution authorizing car allowance for each member of the City Council for 2010 through 2013 and setting the salary schedule for 2010 through 2013 for the Mayor and Council Members.

Benson moved to substitute a new resolution for the above entitled resolution. Seconded.

Adopted. Yeas, 7; Nays, 6 as follows:

Yeas - Hofstede, Lilligren, Remington, Benson, Goodman, Samuels, Johnson.
Nays - Ostrow, Schiff, Colvin Roy, Glidden, Hodges, Gordon.
The report was adopted 12/18/2009. Yeas, 7; Nays, 6 as follows:
Yeas - Hofstede, Lilligren, Remington, Benson, Goodman, Samuels, Johnson.
Nays - Ostrow, Schiff, Colvin Roy, Glidden, Hodges, Gordon.

Resolution 2009R-620, authorizing car allowance for each member of the City Council for 2010 - 2013 and setting the salary schedule for 2010 - 2013 for the Mayor and Council Members, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-620
By Johnson

Authorizing car allowance for each member of the City Council for 2010 through 2013 and setting the salary schedule for 2010 through 2013 for Mayor and Council Members.

Whereas, Laws of Minnesota, 1963, Chapter 727, authorizes the City Council by ordinance to provide for the payment of automobile allowance to any City officer or employee who officially uses his or her own automobile for the performance of public duties, and

Whereas, the City of Minneapolis has authorized the payment of automobile allowances in Minneapolis Code of Ordinances, Chapter 20, Article IX; and

Whereas, Laws of Minnesota, 1971, Chapter 744, Section 3, authorizes the City Council by resolution to fix the annual salary of the Mayor and each Council Member prior to the commencement of the term to which the Mayor and Council Member has been elected; and

Whereas, the City Council last set the salary schedule for the Mayor and Council Members on December 23, 2005;

Now, Therefore, Be It Resolved, by the City Council of the City of Minneapolis:

That the salary schedule for the Mayor and each Council Member for the four year term commencing January 4, 2010, and ending January 1, 2014, shall be set in the following fashion: for the initial year of the term and for each succeeding year of the term, the percentage salary increase for the Mayor and each Council Member shall be the average percentage salary increase, inclusive of step increases, of the collective bargaining agreements approved by the City Council in the preceding year.

Be It Further Resolved, that for the four-year term commencing January 4, 2010, and ending January 1, 2014, each member of the City Council shall be entitled to either the automobile allowance equal to the Type A automobile allowance provided for in or the automobile allowance equal to the Type B automobile allowance provided for in Minneapolis Code of Ordinances, Chapter 20, Article IX.

Adopted 12/18/2009. Yeas, 7; Nays, 6 as follows:

Yeas - Hofstede, Lilligren, Remington, Benson, Goodman, Samuels, Johnson.
Nays - Ostrow, Schiff, Colvin Roy, Glidden, Hodges, Gordon.

W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute an agreement with the American Association of Retired Persons (AARP) for use of City facilities and computer systems to provide a tax preparation program for seniors and low income persons.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends that the proper City officers be authorized to execute the contracts necessary to renew the discount program with Lifetime Fitness and implement a discount program with 501Fit (Petn 273987).

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration the City of Minneapolis Health Reimbursement Arrangement Plan (the "Plan"), now recommends that the proper City officers be authorized to execute amendments to the Plan to allow administrative fees to be charged against the accounts of Plan members who have separated from service. Specifically, an administration fee of \$1.50 per month would be charged beginning the January 1st following the year in which a former employee incurred a one (1) year break in service.

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration the Convention Center Copper Dome Repairs, now recommends approval of Change Order No. 1 increasing Contract #C-27110 with John A. Dalsin & Son, Inc., by \$55,176, for a new contract total of \$288,066.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends approval of the January 2010 utility billing insert on behalf of the Finance - Utility Billing providing information about the services people receive for their utility bill, encouraging people to sign up to get their bill electronically, and listing the ways they can pay their utility bill.

Adopted 12/18/2009.

W&M/Budget - Your Committee recommends passage of the accompanying resolution amending Resolution 2009R-586 entitled "2010 General Appropriation Resolution", passed by the City Council on December 7, 2009, by making a technical correction to footnote "ee".

Adopted 12/18/2009.

RESOLUTION 2009R-621

By Ostrow

Amending The 2010 General Appropriation Resolution.

Resolved by The City Council of The City of Minneapolis:

That the above-entitled Resolution, as amended, be further amended to read as follows:

- "ee) 1. Increase transfer from Convention Center Fund to General Fund by \$250,000;
2. Increase appropriation to MPD by \$250,000 for horse patrol funding for convention related public safety activities;
3. Direct the MPD to reduce the mounted patrol to one shift;
4. Direct MPD to fund \$100,000 chaplain through contractual savings related to the closing of the health lab;
5. Reduce sworn layoffs by 7 positions;
6. Direct the MPD to achieve no less than \$200,000 in savings through re-organization of the department; and
- ~~7. Reduce the one-time contingency appropriation in 2010 by \$1.5 million and further reduce the reduction in the five-year financial direction by \$1.5 million in 2011; and~~
- ~~8~~7. Direct the Police Chief to examine the re-establishment of mandatory fitness testing within the department, including costs and to report back to proper Council committees by the end of January, 2010. If testing is not implemented by the conclusion of 2010, the department will evaluate elimination of the health club memberships and report back to proper Council committees."

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration the outstanding charges owed by the Edison Youth Hockey Association in the amount of \$186,818.37, now recommends that the outstanding debt be written off.

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration a report from staff in accordance with the 2010 Budget adoption, footnote "ii", directing staff to report back with a plan for the reduction of 16 positions in the Police Department through attrition to achieve a savings of \$2,000,000, now recommends approval of said plan (Petn No 273988).

Adopted 12/18/2009.

W&M/Budget - Your Committee, having under consideration the Cedar Lake Trail Phase III project (Petn 273989), now recommends passage of the accompanying resolution authorizing the execution of easements from the Federal Reserve Bank of Minneapolis.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

(Published 12/22/2009)

Resolution 2009R-622, approving a Trail Easement Agreement for Cedar Lake Trail - Phase III, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-622

By Ostrow

Approving Trail Easement Agreement for Cedar Lake Trail – Phase III.

Whereas, the City of Minneapolis (the "City") completed Phase I and Phase II of the Cedar Lake Trail between the West City limits and Royalston Avenue in 1995; and

Whereas, extension of the Cedar Lake Trail from Royalston Avenue to the Mississippi River ("Cedar Lake Trail Phase III a/k/a Cedar Lake Bike Trail Phase III") is a high priority for the City of Minneapolis ("City") and its residents; and

Whereas, the Federal Reserve Bank of Minneapolis ("Bank") located at 90 Hennepin Avenue, owns property lying between Azine Alley and West River Parkway which the City desires to cross with the Cedar Lake Trail – Phase III, and which is legally described in Exhibit A attached hereto; and

Whereas, the City staff and counsel retained by the City have negotiated a proposed Trail Easement Agreement which, if approved, will authorize the City to construct, operate, maintain and repair the Cedar Lake Trail across the Bank property in accordance with plans and specifications prepared on behalf of the City and approved by the Bank; and

Whereas, the trail easement parcel is legally described on Exhibit B attached hereto; and

Whereas, construction of the trail is scheduled to be commenced and completed in 2010; and

Whereas, under the proposed Trail Easement Agreement and pursuant to an independent appraisal of the damages caused by the City's acquisition of the easement, the City will pay the Bank \$265,100 (which is the appraised value) in full satisfaction of all compensation agreed to be due as a result of the City's purchase of the easement;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

Upon approval of the proposed easement by the City Attorney and execution and delivery of the easement on behalf of the Federal Reserve Bank of Minneapolis, the City Contracting Officer is authorized to execute the easement on behalf of the City and to pay the Bank the amounts described in the easement.

EXHIBIT A

Legal Description of Bank Property

Par 1: Tracts B, C & L, Registered Land Survey No. 1684, Hennepin County, Minnesota.

Par 2: Tracts A, D, E, F, G, H, I, J & K, Registered Land Survey No. 1684, Hennepin County, Minnesota, except that part of said Tracts embraced within the part of said Survey lying Westerly of "Line A" described as follows:

Commencing at said most Easterly corner of Block 11, Town of Minneapolis; thence South 44 degrees 12 minutes 47 seconds West (basis for bearings is the Minnesota Coordinate System South Zone) 61.55 feet; thence North 45 degrees 41 minutes 17 seconds West, 6.30 feet; thence South 44 degrees 13 minutes 02 seconds West, 23.49 feet; thence North 45 degrees 46 minutes 58 seconds West, 100.00 feet; thence South 44 degrees 13 minutes 02 seconds West, 72.50 feet to said Northeasterly line of the Northwesterly-Southwesterly alley in Block 11, Town of Minneapolis; thence North 45 degrees 46 minutes 58 seconds West, along said Northeasterly line, 88.39 feet to the beginning of said described "Line A"; thence North 7 degrees 20 minutes 19 seconds West, 29.45 feet; thence North 5 degrees 52 minutes 15 seconds West, 64.51 feet; thence North 5 degrees 21 minutes 18 seconds West, 232.39 feet; thence Northerly and Northeasterly 365.31 feet along a tangential curve concave to the East, having a radius of 280.00 feet and a central angle of 74 degrees 45 minutes 07 seconds; thence North 69 degrees 23 minutes 49 seconds East, tangent to said curve a distance of 50 feet and there said "Line A" terminating.

Subject to an easement Agreement dated June 27, 1995 recorded August 21, 1995 as Doc No 6465369 by and between The Market Hotel Limited Partnership, a Michigan limited partnership, and The Federal Reserve Bank of Minneapolis, a United States corporation; (as to above land exc I, J & K)

Together with an easement to develop and maintain a public plaza on lands adjoining the above-described land as described in Doc No 2563173; (as to above land except Tracts I, J & K)

Together with an easement for installing and maintaining utility lines and ingress and egress over adjoining lands as more fully described in Doc No 2563172; (as to above land except Tracts I, J & K)

EXHIBIT B

Legal Description of Easement Tracts

Legal Description of the Trail Easement Tract.

Tract A, REGISTERED LAND SURVEY No. 1684, Hennepin County, Minnesota except that part of said Tract embraced within the part of said Survey lying Westerly of Line A described as follows:

Commencing at the most Easterly corner of Block 11, Town of Minneapolis; thence South 44 degrees 12 minutes 47 seconds West (basis of bearings is the Minnesota Coordinate System, South Zone) 61.55 feet; thence North 45 degrees 41 minutes 17 seconds West, 6.30 feet; thence South 44 degrees 13 minutes 02 seconds West, 23.49 feet; thence North 45 degrees 46 minutes 58 seconds West, 100.00 feet; thence South 44 degrees 13 minutes 02 seconds West, 72.50 feet to the Northeasterly line of Northwesterly-Southeasterly alley in Block 11, Town of Minneapolis; thence North 45 degrees 46 minutes 58 seconds West, along said Northeasterly line, 88.39 feet to the point of beginning of said described "Line A"; thence North 7 degrees 20 minutes 19 seconds West, 29.45 feet; thence North 5 degrees 52 minutes 15 seconds West, 64.51 feet; thence North 5 degrees 21 minutes 18 seconds West, 232.39 feet; thence Northerly and Northeasterly 365.31 feet along a tangential curve concave to the East having a radius of 280.00 feet and a central angle of 74 degrees 45 minutes 07 seconds; thence North 69 degrees 23 minutes 49 seconds East, tangent to said curve a distance of 50 feet and there said Line A terminating.

Said easement lies 9.00 feet to the right of and 11.00 feet to the left of the following described "Line Z."

"Line Z" is described as commencing at the most northerly corner of said Tract A; thence on an assumed bearing of South 69 degrees 45 minutes 51 seconds West, along the north line of said Tract A, a distance of 1.99 feet to the point of beginning of said "Line Z"; thence South 19 degrees 48 minutes 33 seconds East a distance of 145.00 feet to a point hereinafter called "Point B"; thence continue South 19 degrees 48 minutes 33 seconds East a distance of 121.51 feet and said "Line Z" there terminating.

AND

That part of said aforescribed Tract A described as follows:

Beginning at the point of termination of said "Line Z"; thence North 70 degrees 11 minutes 27 seconds East a distance of 1.72 feet to the east line of said Tract A; thence South 19 degrees 45 minutes 02 seconds East, along said east line, a distance of 31.00 feet; thence South 70 degrees 14 minutes 58 seconds West a distance of 10.68 feet to the intersection with the southwesterly extension of a line lying 9.00 feet westerly of said "Line Z"; thence North 19 degrees 48 minutes 33 seconds West, along said southwesterly extension, a distance of 30.99 feet to a point 9.00 feet southwesterly of the point of termination of said "Line Z"; thence North 70 degrees 11 minutes 27 seconds East a distance of 9.00 feet to the point of beginning.

Legal Description of Construction Easement Tract:

A 30.00 foot temporary easement for construction purposes that lies westerly of and adjoining said first above described Trail Easement Tract and also lying northerly of the following described "Line C" and its extensions:

"Line C" is described as beginning at the aforescribed "Point B"; thence South 70 degrees 11 minutes 27 seconds West a distance of 39.00 feet and said "Line C" there terminating.

ALSO TOGETHER WITH a 15.00 foot temporary easement for construction purposes that lies westerly of and adjoining said first above described Trail Easement Tract and lying southerly of the aforescribed "Line C" and also lying northerly of the following described "Line D" and its extensions:

"Line D" is described as beginning at the point of termination of the aforescribed "Line Z"; thence North 70 degrees 11 minutes 27 seconds West a distance of 24.00 feet and said "Line D" there terminating.

ALSO TOGETHER WITH a temporary easement for construction purposes over, under and across the aforescribed Tract A described as follows:

Commencing at the point of termination of said "Line Z"; thence South 70 degrees 11 minutes 27 seconds West a distance of 9.00 feet to the point of beginning; thence South 19 degrees 48 minutes 33 seconds East a distance of 30.99 feet; thence North 70 degrees 14 minutes 58 seconds East a distance of 10.68 feet to the East line of said Tract A; thence southerly along said East line a distance of 35.00 feet; thence South 70 degrees 11 minutes 27 seconds West a distance of 26.06 feet to the intersection with the southwesterly extension of a line lying 24 feet westerly of said "Line Z"; thence North 19 degrees 48 minutes 33 seconds West, along said southwesterly extension, a distance of 66.00 feet to the point of intersection with a line bearing South 70 degrees 11 minutes 27 seconds West from the point of beginning; thence North 70 degrees 11 minutes 27 seconds East a distance of 15.00 feet to the point of beginning.

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009

W&M/Budget - Your Committee, to whom was referred the following ordinance amending Title 2, Chapter 17 of the Minneapolis Code of Ordinances relating to Administration: Finance Department, relating to provisions for internal audit of the financial functions of the City, now recommends that said ordinance be given its second reading for amendment and passage.

Gordon moved to amend Section 17.90 of the ordinance to add the following to the existing language:

"The Audit Committee shall be made up of seven (7) six (6) members, which shall include the chair of the Ways and Means/Budget Committee, two (2) members of the City Council to be appointed by the City Council President, one of the elected at-large members of the Board of Estimate and Taxation to be elected by the Board of Estimate and Taxation and three (3) citizen members."

Lost for lack of second.

The report was adopted 12/18/2009. Yeas, 12; Nays, 1 as follows:

Yeas - Hofstede, Ostrow, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Goodman, Hodges, Samuels, Johnson.

Nays - Gordon.

Ordinance 2009-Or-190 amending Title 2, Chapter 17 of the Minneapolis Code of Ordinances relating to *Administration: Finance Department*, relating to provisions for internal audit of the financial functions of the City, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-190
By Hodges
Intro & 1st Reading: 12/4/2009
Ref to: W&M
2nd Reading: 12/18/2009

Amending Title 2, Chapter 17 of the Minneapolis Code of Ordinances relating to Administration: Finance Department.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 17.80 of the above-entitled ordinance be amended to read as follows:

17.80 Provision for internal audit Office of Internal Auditor. (a) The board of estimate and taxation shall assume responsibility for internal audit of the financial functions of all city departments, boards and commissions, including the Minneapolis Community Development Agency (MCDA) There shall be an independent Office of Internal Audit which is charged with conducting financial, fiscal compliance, and financial procedure audits of all city departments, boards and commissions. The Office of Internal Audit shall conduct audits of individual financial transactions, contracts and franchises of the City; and shall generally audit the financial and accounting systems and procedures administered by the Finance Department and other city departments, boards and commissions for compliance with generally accepted accounting principles, best financial management practices, and any applicable laws and regulations governing the financial practices of the City. The Office of Internal Audit shall be under the control and supervision of the Internal Auditor.

(b) The board of estimate and taxation shall determine the means by which to provide the internal audit capability The Internal Auditor shall organize and administer the Auditor's office to operate without interference or other influence that might adversely affect an independent and objective judgment of the auditor.

(c) The board of estimate and taxation shall implement an audit program which will: The Office of Internal Audit shall adhere to the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors and such other standards set by other bodies that apply to internal audit practices of local governments to conduct the auditor's work and be independent as defined by the standards.

(1) Establish guidelines, policies, and procedures for the conduct of periodic internal audits.

(i) Audit reports will be made to the board which will include evaluation of audit findings and recommendations to correct deficiencies.

(ii) Copies of audit reports will be furnished the finance officer.

- (2) Initiate investigation by the internal auditor (within applicable laws) of alleged or suspected misappropriation (fraud), misappropriation, or other misuse of city funds:
 - (i) Reports shall be made by the internal auditor to the board for its determination of the appropriate course of action.
 - (ii) Copies of audit reports will be furnished the finance officer.
 - (3) Provide assistance to city departments, boards, commissions, and the MCDA for evaluation of financial controls when so requested by the board of estimate and taxation, the finance officer, or the agency concerned.
 - (4) Communicate with the finance officer, department heads, elected officials, citizens and others regarding city financial reports and statements which have been prepared by the internal auditor, the adequacy and effectiveness of the city's internal financial controls, the findings of audits and other services performed by the internal auditor, and any other matters concerning the city's financial functions which relate to internal auditing.
 - (5) Evaluate the effect of corrective actions taken by departments (boards, commissions or the MCDA) to correct deficiencies reported by the internal auditor.
- (d) The internal auditor shall, at the direction of the board, implement a comprehensive audit plan to review and evaluate the adequacy and effectiveness of the city's internal system of financial controls to ensure: The Mayor and City Council shall provide the Office of Internal Audit with its own budget.
- (1) The reliability and integrity of financial records and reports.
 - (2) That policies and procedures, ordinances and statutes are complied with.
 - (3) That assets are safeguarded from loss.
- (e) The internal auditor shall:
- (1) Conduct special reviews at the request of the finance officer, departments and/or the board.
 - (2) Conduct special investigations (within applicable laws) into all alleged or suspected misappropriation or misuse of city funds.
 - (3) Appraise the adequacy of action taken by departments to correct reported deficiencies.
 - (4) Report all audit findings to the board.
- (e) Reserved.
- (f) The auditor shall have full, free and unrestricted access to the records, property, and personnel of all city departments, boards and commissions, including the MCDA, in order to conduct internal audits.
- (g) Expenses incurred in support of the audit function shall not be counted as part of the one-fifteenth mill levy allowed in Chapter 15, Section 3 of the City Charter.
- (h) The internal auditor shall work closely with independent auditors and furnish applicable work papers to the independent auditor when appropriate.
- (i) Organizations receiving funds originating or passed through by the city (including but not limited to the MCDA, youth coordinating board (YCB), and the neighborhood revitalization program (NRP)) will allow the internal auditor access to all documents, records, etc., To ensure that adequate internal controls are in place and operating effectively, regarding the expenditure of those funds relating to the city.

Section 2. That Section 17.90 of the above-entitled ordinance be amended to read as follows:

17.90. Amendments Audit Committee. The city council reserves the right to amend this chapter and to make further and different provision for the reorganization, consolidation or delegation of the duties and responsibilities of the fiscal management functions of the city and other administrative changes to the extent permitted by Minnesota Laws 1983, Chapter 160. (a) To ensure independence of the audit function, there shall be an Audit Committee. The Audit Committee shall be made up of six (6) members, which shall include the chair of the Ways and Means/Budget Committee, two (2) members of the City Council to be appointed by the City Council President and three (3) citizen members. The two (2) Council President appointments shall be for a two (2) year term and shall be made in January of each even-numbered year. The Council President shall appoint the chairperson of the Audit Committee. The three (3) citizen members shall be residents of the City who are not past or current city employees, are not past or current elected officials of the City Council or any of its boards or commissions, and who have expertise in auditing, preferably internal or management auditing, or financial management. The citizen members shall be appointed to a three (3) year term and no citizen

member shall be appointed for more than two (2) terms. The three citizen members shall be appointed as follows: one (1) by the Mayor, one (1) by the City Council through the open appointments process, and one (1) by the Minneapolis Park and Recreation Board. The Audit Committee shall meet a minimum of four (4) times per year.

(b) The Audit Committee shall be responsible for the oversight of the City's internal audit function, financial reporting practices, internal controls, compliance with applicable law and regulation relating to financial controls and other related matters.

(c) The Audit Committee shall:

- (1) appoint and remove the Internal Auditor;
- (2) review and approve the Internal Auditor's annual audit plan;
- (3) review the audit reports directed to it and make recommendations to the City Council on the appropriate course of action on any such audit reports;
- (4) monitor the Internal Auditor's results and follow-up activity; and
- (5) review reports of the State Auditor prepared for any of the city's departments, boards and commissions.

Section 3. That Section 17.100 of the above-entitled ordinance be amended to read as follows:

17.100. Internal auditor appointment Appointment and Removal of Internal Auditor; Organization of Office. Pursuant to Chapter 473, Section 17 of Minnesota Laws 1986, the board of estimate and taxation or the board of estimate and taxation's designee may appoint a person to the position of internal auditor (a) A majority of the Audit Committee shall appoint the Internal Auditor. The Internal Auditor shall serve at the will of the Audit Committee. A majority vote of the Audit Committee is required to remove the Internal Auditor.

(b) The Internal Auditor may appoint such other employees as may from time to time be authorized by the City Council who shall be in the classified service.

(c) The Internal Auditor shall have the following qualifications:

- (1) Knowledgeable in financial and performance auditing, public administration and public financial and fiscal practices; and
- (2) Licensed as a certified public accountant or certified internal auditor.

(d) For administrative purposes, the City Coordinator shall provide administrative supervision for the Internal Auditor and support for the Office of Internal Audit and shall assist the Audit Committee with the hiring and performance review process for the Internal Auditor.

Section 4. That Chapter 17 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 17.110 to read as follows:

17.110 Powers and Duties of Internal Auditor. (a) The Internal Auditor shall:

- (1) Establish guidelines, policies, and procedures for the conduct of periodic internal audits.
- (2) Develop an annual audit plan to be submitted to the Audit Committee for approval.
- (3) Conduct investigations of alleged or suspected impropriety, fraud, misappropriation, or other misuse of city funds, shall seek advice from the City Attorney as appropriate and report any suspected criminal activity to appropriate law enforcement authorities.
- (4) Appraise the audit committee on the adequacy of action taken by departments to correct report deficiencies.
- (5) Implement a comprehensive audit plan to review and evaluate the adequacy and effectiveness of the city's internal system of financial controls to ensure:
 - a. The reliability and integrity of financial records and reports.
 - b. Compliance with policies, procedures, ordinances, rules and statutes related to expenditures and financial controls.
 - c. That assets are safeguarded from loss.
- (6) Coordinate with external auditors and assist in the implementation of corrective actions recommended by external auditors as appropriate.
- (7) Submit an annual report to the Mayor and City Council indicating audits completed, major findings, corrective actions taken by administrative managers, and significant findings which have not been fully addressed by management.

(b) The Internal Auditor may:

- (1) Subject to the approval of the Audit Committee, conduct special reviews and programmatic reviews at the request of the Mayor, City Council, Finance Officer, city departments, boards and commissions.
- (2) Provide assistance to city departments, boards and commissions for evaluation of financial controls.

Section 5. That Chapter 17 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 17.120 to read as follows:

17.120 Annual Audit Plan. (a) The Internal Auditor shall submit an annual audit plan for review and approval by the Audit Committee.

(b) The annual audit plan shall include, at a minimum, the following information: the scope of each audit the Office of Internal Audit intends to conduct, including a summary of the nature and scope of each audit to be conducted, identifying the department, board, commission, service, program, function, and/or policy to be audited; and each potential audit objective to be addressed.

(c) The annual audit plan may be amended, with approval of the Audit Committee. The Internal Auditor may request an amendment independently, or at the request of the Audit Committee.

(d) Notwithstanding subsection (c), the Internal Auditor may initiate, conduct, or expand the scope of an audit or investigation if the Internal Auditor determines that:

- (1) fraud, abuse, or illegality may have or is occurring; or
- (2) an audit finding requires expansion of the scope of an audit or investigation in progress.

Section 6. That Chapter 17 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 17.130 to read as follows:

17.130 Access to Records and Property. (a) The auditor shall have full, free and unrestricted access to the records, property, and personnel of all city departments, boards and commissions, in order to conduct internal audits.

(b) Organizations receiving funds originating or passed through by the city (including but not limited to the Minneapolis Community Development Agency (MCDA), Youth Coordinating Board (YCB), and the Neighborhood Revitalization Program (NRP)) will allow the Internal Auditor access to all documents and records to ensure that adequate internal controls are in place and operating effectively, regarding the expenditure of those funds relating to the city.

Section 7. That Chapter 17 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 17.140 to read as follows:

17.140. Amendments. The City Council reserves the right to amend this chapter and to make further and different provision for the reorganization, consolidation or delegation of the duties and responsibilities of the fiscal management functions of the city and other administrative changes to the extent permitted by Minnesota Laws 1983, Chapter 160.

Adopted 12/18/2009. Yeas, 12; Nays, 1 as follows:

Yeas - Hofstede, Ostrow, Schiff, Lilligren, Colvin Roy, Glidden, Remington, Benson, Goodman, Hodges, Samuels, Johnson.

Nays - Gordon.

W&M/Budget - Your Committee, to whom was referred the following ordinances amending Appendix H of the Minneapolis Code of Ordinances relating to *Minneapolis Cable Communication Franchises*, now recommends the following:

- a) That said ordinances be given their second reading for amendment and passage:
 1. Repealing the current Appendix H
 2. Adding a new Appendix H
- b) Approval of the proposed Indefeasible Right of Use agreement regarding the existing "Alternative Network";
- c) Approval of the proposed Indefeasible Right of Use agreement of Certain Dark Fibers; and
- d) Authorize proper City officers to execute said agreements.

Adopted 12/18/2009.

DECEMBER 18, 2009

Ordinance 2009-Or-191 repealing Appendix H of the Minneapolis Code of Ordinances relating to *Minneapolis Cable Communication Franchises*, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-191
By Ostrow
Intro & 1st Reading: 7/31/2009
Ref to: W&M
2nd Reading: 12/18/2009

Repealing Appendix H of the Minneapolis Code of Ordinances relating to Minneapolis Cable Communication Franchises.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Appendix H of the Minneapolis Code of Ordinances be and is hereby repealed.

CHAPTER 1. KBL CABLESYSTEMS OF MINNEAPOLIS LIMITED PARTNERSHIP, A MINNESOTA LIMITED PARTNERSHIP, WITH KBL CABLESYSTEMS OF MINNEAPOLIS, INC., A MINNESOTA CORPORATION, AS ITS CONTROLLING GENERAL PARTNER D/B/A PARAGON CABLE[±]

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Franchise," hereinafter "franchise," and it shall become a part of the ordinances of the city.

Section 2. Definitions. For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning, unless it can be reasonably inferred that a meaning particular to the cable communications industry should be utilized, in which case meanings or definitions used by the FCC shall apply.

(a) *Alternative network* shall mean fiber optic institutional network set forth in the company's project plan dated March 12, 1990, as modified by the alternative network design description dated September 21, 1990 (Petition No. 253445).

(b) *Apartment* shall mean any building with two (2) or more residential units.

(c) *Basic service* shall mean all subscriber services subject to the regulation by the city.

(d) *Cable communications system or CATV system* shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals located in the city.

(e) *City* is the City of Minneapolis, a municipal corporation, in the State of Minnesota.

(f) *Glass TV channel* means a signaling path provided by the cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

(g) *Commencement date* shall mean December 1, 1982.

(h) *Company* is KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota limited partnership ("KBL CMLP") with Time Warner Cable Inc. as its controlling general partner, the grantee of rights under this ordinance awarding a franchise, or company's legal successor, transferee, or assignee. Company is doing business as Time Warner Cable ("TWC").

Company, as defined herein, is a successor in interest to the rights held by those legal entities designated as "Company" in the previous enactments of this definition.

(i) *Connection* shall mean the attachment of the drop to the first radio or television set or to an electronic terminal device or converter of the subscriber.

(j) *Converter* means an electronic device which converts signals to a frequency not susceptible to interference with the television receiver of a subscriber, and, by an appropriate channel selector, also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations.

(k) *Council* shall mean the governing body of the City of Minneapolis.

(l) *Dedication* shall mean those rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.

(m) *Drop* shall mean the coaxial cable that connects the facility to the nearest feeder cable of the cable network.

(n) *Easement* shall mean those rights-of-way owned by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.

(o) *FCG* shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(p) *Gross annual revenues* shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest, from or in connection with the operation of the cable communications system governed by this ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service, monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, income earned from deposits (but not deposits themselves), studio rental, production equipment, personnel fees, and advertising revenues; however, this shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. A reasonable amount may be deducted by company from gross annual revenues to reflect uncollectible accounts. Uncollectible accounts shall be determined by the company's independent auditors, applying generally accepted accounting principles. The city shall have the right to conduct an independent audit of all transactions resulting in deductions from company's gross revenues, to determine whether or not said deductions are consistent with the terms and conditions of this provision. Said audit will be conducted in accordance with the provisions of Article II, Section 13. Company shall fully cooperate with city and shall provide city with all information, books, data and other records required by city to perform an audit.

(q) *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.

(r) *Offering of the company or offerings* shall mean that document defining the state-of-the-art cable system provided by the company to the City of Minneapolis and incorporated herein, including Addendum A.

(s) *Parental control device* is an optional mechanical or electrical capability or accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the cable communications system.

(t) *Premium/pay service* shall mean those services which are not subject to regulation by the city.

(u) *Public property* is any real property owned by the city other than a highway, sidewalk, easement or dedication.

(v) *Residential subscriber service* shall mean any cable communications service provided on that part of the cable communications system's electronic frequency spectrum allocated for residential use as defined in Addendum A, section 1A(2) to the Minneapolis cable communications franchise ordinance.

(w) *Residential subscribers* shall mean any person or entity who subscribes to all or part of the residential subscriber services provided by company, whether or not a fee is paid for such service.

(x) *Residential unit* shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.

(y) *Scrambler/descrambler* refers respectively to the equipment installed to the cable communications system's headend equipment and subscriber terminal used to isolate pay cable and

other ancillary service channels from basic service which is accomplished by electronically distorting the signal prior to its transmission through the cable communications system and reconstituting the signal at each authorized location for subsequent display.

(z) *Sidewalk* is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, and which is not on private lands.

(aa) *Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city and the company to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

Section 3. Grant. The city hereby grants to the company a nonexclusive cable communications system franchise subject to all the terms and conditions as herein provided.

Section 4. Rights and privileges of company. The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, rights-of-way, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable communications system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical and/or data signals and the right to transmit the same to the inhabitants of the city on the terms and conditions hereinafter set forth, subject to all applicable laws and regulations.

Section 5. Agreement, location of agreement. Upon adoption of this franchise and execution hereof by the company, the company agrees to be bound by all the terms and conditions contained herein.

The company also agrees to provide all services or offerings specifically set forth in the "offering of the company" to provide cable communications service within the boundaries of the City of Minneapolis; and, by its acceptance of this franchise, the company specifically acknowledges and agrees that the "offering of the company," including all promises, offers, representations and inducements contained therein is specifically incorporated by reference and made an integral part of this franchise and this ordinance. The company further agrees and acknowledges that all promises, offers, representations and inducements contained in the "offering of the company" were freely and voluntarily made to the city by the company.

The original documents listed above shall be permanently kept and filed in the office of the city clerk, and the originals or reproductions thereof shall be available for inspection by the public during normal business hours. The "offering of the company" shall be reproduced at the expense of the company and shall be available at the following locations:

- (a) Office of the city clerk, three (3) copies.
- (b) Cable communications officer, ten (10) copies.
- (c) Municipal information library, three (3) copies.
- (d) Office of the city attorney, three (3) copies.
- (e) Local office of the company, two (2) copies.
- (f) Main branch of the Minneapolis Public Library, one copy.

Whenever the City of Minneapolis enacts any amendment to the Minneapolis Cable Communications Ordinance which is accepted by the company, the company shall, to the extent such amendment changes any term, condition, promise, offer, representation or inducement contained in the "offering of the company," incorporate such amendment into the "offering of the company" no later than ninety (90) days after the effective date of said amendatory ordinance. The company shall, at its own expense, produce sufficient copies of those portions of the "offering" which have been affected by the enactment of the amendatory ordinance to enable distribution of amended portions of the "offering" to the locations delineated in the preceding paragraph of this section. The "offering" shall accurately incorporate any

amendments or modifications made thereto. The integration and incorporation of amendatory language into the company's "offering" shall be subject to the approval of the cable officer. Furthermore, to the extent that Addendum A of the Minneapolis Cable Communications Franchise Ordinance is inconsistent with any ordinance amending this ordinance, said Addendum A shall be conformed within a reasonable time to reflect changes made in said amendatory ordinance, without further formal council action.

In the event of conflicts or discrepancies between any part of the "offering of the company" and the provisions of this ordinance, those provisions which provide the greatest benefit to the city, in the opinion of the council, shall prevail.

Section 6. Term. The term of the franchise to be granted by the city pursuant to this ordinance shall be for a period up to and including November 30, 2004, provided, that in the event that the extension of the franchise term provided for herein is deemed to deprive the city of rights otherwise preserved to it by the Cable Communications Policy Act of 1984 (CCPA), which are presently "grandfathered" by virtue of the fact that this franchise was enacted prior to the effective date of the CCPA, the franchise shall be only for a period of fifteen (15) years from and after December 1, 1982, and renewal shall take place through negotiation or in accordance with the renewal requirements herein or in accordance with the requirements of Section 626 of the CCPA, prior to December 1, 1997.

Any successor in interest to this franchise, initially granted by the city to Northern Cablevision of Minneapolis, Inc., shall assume and perform all of Northern Cablevision of Minneapolis, Inc.'s obligations to the city pursuant to this ordinance, the amendments hereto and acceptances hereof.

Any successor in interest to this franchise shall also assume and perform all obligations to the city entered into by any former successor in interest, transferee or assignee of those rights initially granted to Northern Cablevision of Minneapolis, Inc. Said obligations are to be performed as required by this ordinance, the amendments thereto and acceptances thereof.

Section 7. Approval by Minnesota Cable Communications Board. Pursuant to Minnesota Statutes, Section 238.09, this franchise ordinance shall be subject to the approval of the Minnesota Cable Communications Board.

Section 8. Area. This franchise is granted for the below-described area of the City of Minneapolis as it exists and as the city's borders may from time to time be changed:

All that part of the City of Minneapolis lying northerly and easterly of the following center line: Beginning at the intersection of 45th Street West and France Avenue South; thence easterly along the center line of 45th Street West to the point of intersection with Upton Avenue South; thence southerly along the center line of Upton Avenue South to the point of intersection with 47th Street West.

All that part of the City of Minneapolis lying northerly and westerly of the following center line: Beginning at the intersection of Upton Avenue South and 47th Street West to the point of intersection with Lake Harriet Parkway; thence southerly, easterly, and northerly along the center line of Lake Harriet Parkway to the point of intersection with 46th Street West; thence easterly along the center line of 46th Street West to the point of intersection with Golfax Avenue South; thence northerly along the center line of Golfax Avenue South to the point of intersection with 45th Street West; thence easterly along the center line of 45th Street West to the point of intersection with Pleasant Avenue South; thence northerly along the center line of Pleasant Avenue South to the point of intersection with 42nd Street West; thence easterly along the center line of 42nd Street West to the point of intersection with Nicollet Avenue South; thence northerly along the center line of Nicollet Avenue South to the point of intersection with West Lake Street West; thence easterly along the center line of West Lake Street to the point of intersection with 1st Avenue South; thence northerly along the center line of 1st Avenue South to the point of intersection with 25th Street East; thence easterly along the center line of 25th Street East and the extension thereof to the point of intersection with 3rd Avenue South; thence continuing easterly along the center line of 25th Street West and the extension thereof to the point of intersection with the center line of Interstate 35W; thence northerly along the center line of Interstate 35W to the point of intersection with 24th Street East; thence easterly along the center line of 24th Street East to the point of intersection with 10th Avenue South; thence northerly along the center line of 10th Avenue South to the point of

intersection with 21st Street East; thence easterly along with the center line of 21st Street East to the point of intersection with Bloomington Avenue South; thence northerly along the center line of Bloomington Avenue South to the point of intersection with Franklin Avenue East; thence easterly along the center line of Franklin Avenue East to the point of intersection with Cedar Avenue South; thence northerly along the center line of Cedar Avenue South and the Cedar Avenue Bridge to the point of intersection with 2nd Street Southeast; thence southerly and easterly along the center line of 2nd Street Southeast to the point of intersection of 11th Avenue Southeast; thence northerly and easterly along the center line of 11th Avenue Southeast and the extension thereof to the point of intersection with the center line of Como Avenue; thence easterly along the center line of Como Avenue to the easterly boundary line of the City of Minneapolis and there terminating.

Section 9. Franchise fees and costs. (a) *Franchise fee.* The city shall, by ordinance, set a franchise fee of five (5) per cent of the company's gross annual revenues, which fee may be subject to renegotiation at such time as laws and regulations permit. The company and the city shall cooperate in obtaining any necessary approval from the FCC.

(b) *Advance on franchise fees.* Within sixty (60) days of the commencement date, the company shall initiate franchise fee payment to the city at the rate of twenty-five thousand dollars (\$25,000.00) for the first year, and at a minimum rate of seventy-five thousand dollars (\$75,000.00) each year thereafter, until the year in which the computed franchise payment of five (5) per cent of gross revenues first exceeds the amount of seventy-five thousand dollars (\$75,000.00). These payments are to be considered in advance of franchise payments and shall be credited in future years to those franchise fees that exceed two hundred fifty thousand dollars (\$250,000.00). Such advance fees shall not be recoverable from the city in the event that the aggregate of future franchise fees does not exceed the total amounts of the advances. Interest earned by the city on such advance payments shall not be considered a part of the franchise fee.

Section 10. Police powers. In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to safety and welfare of the public; and, it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

Any conflict between the provisions of this franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the city, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the company or cable communications system which contains provisions inconsistent with this franchise shall prevail only if upon such exercise, the city finds an emergency exists constituting a danger to health, safety, property or general welfare or the city finds such exercise is mandated by law.

Section 11. Cable communications franchise required. No cable communications system shall be allowed to occupy or use the streets of the city or be allowed to operate without a cable communications franchise.

Section 12. Reserved.

Section 13. Use of company facilities. The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the company any wires and pole fixtures that do not unreasonably interfere with the cable communications operations of the company; provided however, that the city will hold the company harmless for any damages resulting from the city's negligent installation or use of said wires and/or poles or pole fixtures.

Section 14. Rates. The city shall initially set, by ordinance, rates in accordance with the company's "offering" for a cable communications franchise. Company shall not increase the initial rate for Tier I programming before December 31, 1988. The procedure to change subscriber rates for Tier I programming other than the optional pay services or programming or equivalent services of any unregulated service tiers, as available, or programming of the same type as outlined in Addendum A, Section 1C1e(3)(g), shall be in accordance with Article III, Sections 2 and 5, and increases in rates shall be based upon the concept of fair and reasonable rates to both the company and subscribers which, in the aggregate, meet all applicable costs of service provided by the company including fair return on invested capital, assuming efficient and economical management. Individual residential subscriber

contracts, if any, may not exceed twelve (12) months unless after twelve (12) months the contract may be terminated without penalty at the option of the subscriber.

~~(b) Rates for all residential subscriber services and residential subscriber installations to be nondiscriminatory. Rates for all residential subscriber services and residential subscriber installations shall be nondiscriminatory. Rates for residential subscriber services and residential subscriber installation shall not be considered discriminatory when said rates are uniform throughout the city for all residential subscribers, are imposed in accordance with specific exemptions stated in this section or are imposed in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, such as bulk monthly rates, nonstandard installations, waiver of installation fees for thirty (30) days after service is first available to each home, etc.~~

~~For purposes of this section, nonuniform rates or charges, established for the purpose of experimentation, test marketing, research and development or promotion, shall not be considered discriminatory, providing that the procedures set out herein are complied with.~~

~~Sixty (60) days prior to the implementation of nonuniform rates or charges for the purpose of experimentation, test marketing, research and development or promotion, the company shall provide written notice to the city's cable officer, clearly identifying each proposed nonuniform rate or charge and the purpose for its implementation. An expiration date shall be included for each rate or charge established for experimentation, test marketing, research and development or promotion, not to exceed twelve (12) months from the date each such charge or rate is implemented.~~

~~If the company desires to extend any nonuniform rate or charge implemented for the purpose of experimentation, test marketing, research and development or promotion beyond the expiration date, the company shall, thirty (30) days prior to the expiration of the rate or charge, provide written notice to the city's cable officer, specifying each and every reason for requesting an extension. If the company proposes to extend a rate or charge beyond twelve (12) months from the date of implementation, the city, through its cable officer, reserves the right to require the company to make an application for exemption pursuant to the conditions set out below in this section. If the company proposes to impose nonuniform rates or charges for experimentation, test marketing, research and development or promotion similar to nonuniform rates previously implemented by the company pursuant to this section, the city reserves the right to require company to make an application for exemption pursuant to the conditions set out below in this section.~~

~~An application to create an exemption not contained herein or within the cable franchise or rate ordinances shall be made in accordance with Article III, section 2, of this ordinance. After the city has accepted the company's application to create a new exemption in accordance with the application procedures set out in Article III, section 2, of this ordinance, the city shall make a determination to accept, reject, limit or modify the proposed exemption within one hundred twenty (120) days from the date the company's application is accepted by the city. If the city fails to act on the company's application for exemption within one hundred twenty (120) days after acceptance of company's application, the exemption shall be deemed approved and shall not be considered discriminatory. Any time limit can be waived with the consent of both the city's governing body and the company.~~

~~If the company establishes and implements rates or charges for residential subscriber services or residential subscriber installations that are not uniform throughout the city for all residential subscribers, are not established or implemented in accordance with specific exemptions stated in this section or are not established or implemented in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, said rates shall be considered discriminatory and shall also be considered a material violation of this franchise agreement and the city may impose penalties or take other action in accordance with Article III, sections 13, 14 and/or 15 of this franchise ordinance and agreement.~~

~~The city shall not arbitrarily or capriciously refuse to create an exemption requested by company in accordance with the procedures set out in this section. If the city does not approve an exemption requested by company pursuant to this section, the city shall make written findings, within thirty (30) days after such decision, stating its reasons for not approving the exemption requested by company.~~

~~Nothing contained herein shall be construed to be rate regulation in contravention of applicable state or federal law, regulation or rule or authorization for such regulation.~~

Nothing in Article I, section 14(b) shall be deemed to create a remedy in favor of private parties or to create a third party cause of action arising from alleged violations or noncompliance with this section, and the city shall be the exclusive authority to compel enforcement of Article I, section 14(b).

Section 15. Costs. Costs to be borne by the company shall include, but shall not be limited to, all costs incurred by the city, its staff, appointees, or elected officials in assessing the need for franchising a cable communications system, as set forth in the acceptance agreement executed by the company on April 6, 1982. Such costs also include, but are not limited to, publications of notices prior to any public meeting provided for pursuant to this franchise, and the costs incurred by the city in its study, preparation of proposal documents, evaluation of all applications, and examination of applicants' qualifications. The company shall pay to the city in full and final payment of its obligation to reimburse the city under the terms of the acceptance agreement of April 6, 1982, the amount of three hundred fifty thousand dollars (\$350,000.00) less all amounts previously paid.

Section 16. Notices. All notices from the company to the city pursuant to this franchise, unless otherwise designated, shall be to the city clerk and to the cable communications officer. The company shall maintain within the city, throughout the term of this franchise, an address for service of notices by mail. The company shall also maintain within the city, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

Section 17. Letter of credit. (a) Within ten (10) days of the commencement date, the company shall deposit with the city a letter of credit from a local financial institution in the amount of one hundred thousand dollars (\$100,000.00). The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to ensure the faithful performance by the company of all provisions of this franchise. The letter of credit shall be used also to ensure compliance by the company with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under this franchise, and to secure the payment by the company of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(b) If the company fails to pay the city any compensation to which it is entitled under this ordinance, the city finance officer shall, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof in such sums as are sufficient to recover for the city any compensation to which it is entitled under this ordinance, together with any interest that may be due as a result of the company's failure to make timely payment.

If the company fails, within ten (10) days after notice by the city, to pay the city any taxes due and unpaid or any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with this franchise, the city finance officer, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, shall, after the expiration of the ten-day period, withdraw from the financial institution holding the letter of credit an amount sufficient to recover the unpaid taxes or the damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with the franchise, together with interest thereon.

If the company fails, within ten (10) days after notice by the city, to comply with any provision of this franchise which the cable communications officer and the city attorney reasonably determine can be remedied by demand on the letter of credit, and such determination is made after the company has been provided due process as set forth in Article III, section 14, the city finance officer shall immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof, together with interest accrued from the date of notice.

If the cable communications officer shall find that the company has violated one or more of the terms, conditions or provisions of Article III, Section 13 and the company does not dispute the finding, or the finding of violation is sustained by the city council after due process as outlined in Article III, section 14, the city finance officer shall request and receive from the financial institution holding the letter of credit all penalties assessed until the company has satisfactorily remedied the term, condition or provision violated.

No penalty shall be imposed by the city against the company for any violation of this franchise without the company being afforded due process of law.

All monies drawn against the letter of credit shall be placed in the city's general fund. Interest, when accrued pursuant to Article I, section 17, shall be at the current prime rate.

(e) Whenever the city shall receive payment of any amount against the letter of credit pursuant to Article I, section 17, the company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to restore the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within ten (10) days after the company has been tendered delivery by registered mail, return receipt requested, of the notice from the city finance officer of the reason for the withdrawal, the date of withdrawal and the amount thereof. The finance officer and the cable communications officer shall be sent a verified statement from the local financial institution holding the letter of credit showing restoration of the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within twenty-four (24) hours after receipt by said financial institution of sufficient funds from the company to restore said letter of credit to one hundred thousand dollars (\$100,000.00).

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

(e) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the city clerk, city attorney and cable communications officer, by registered mail, of a written notice of such intention to cancel or not to renew. This letter of credit shall not be subject to cancellation while the company is in default."

(f) Neither withdrawal of money by the city pursuant to this provision nor wording contained herein shall be construed as a limitation of the company's right to contest penalties under Article III, section 14.

(g) The letter of credit shall be filed with the city finance officer.

Section 18. Bonds. (a) Upon the commencement date, the company shall file with the city clerk and shall maintain, until construction is completed or until company has complied with the terms of 85-Or-153, whichever occurs last, the following bond which shall be purchased from a company licensed to do business in Minnesota: A faithful performance and labor and material bond running to the city in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this agreement and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of property of the company, plus costs and reasonable attorney's fees up to the full amount of the bond.

(b) Following the completion of the bonding requirement of section 18(a) above and prior to the commencement of any new construction, the city council may require the company to file with the city finance officer and to maintain throughout the term of this agreement, a labor and material payment bond up to a sum of two hundred fifty thousand dollars (\$250,000.00), said bond to be placed with a company licensed to do business in the State of Minnesota. The company shall notify the city by registered mail, return receipt requested, of all new construction. The company may incorporate this bond coverage into the bond in and for the amount required under subsection (c) below which shall thereby satisfy this requirement.

(c) Following the completion of the bonding requirement of section 18(a) above and until such time as the company has liquidated all of its obligations with the city, the city shall require the company to file with the city finance officer and to maintain throughout the term of this agreement a faithful performance bond running to the city up to the penal sum of two hundred fifty thousand dollars (\$250,000.00) conditioned upon the faithful performance of the company of all terms and conditions of this agreement and upon the further condition that in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and

severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property to the company plus costs and reasonable attorney's fees up to the full amount of the bond. Said bond shall be purchased from a company licensed to do business in Minnesota.

(d) The bonds shall be subject to the approval of the city attorney and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city finance officer, city attorney and the cable communications officer, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by surety while the company is in default."

(e) The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under this franchise or any other law.

Section 19. Liability and insurance. (a) The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair and/or operation of its cable communications system or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of this franchise. In the event that suit shall be brought or that recourse or damages shall be sought against the city either independently or jointly with the company on account thereof, the company, upon notice by the city, shall defend the city in any such suit or action at the cost of the company, and, in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom. The company and the city shall not be liable for the acts or omissions of the Minneapolis Telecommunications Network, Inc. ("MTN") nor shall the company or the city be liable or responsible for any costs or expenses for representation, indemnification, or insurance relating to the MTN. Pursuant to this section, the company shall indemnify and insure the city or the MTN for any public interest and/or public service programming which the company may undertake pursuant to an agreement with the city or with the MTN pursuant to Article III, Sections 8 and 9.

(b) The company shall pay, and by its acceptance of the franchise specifically agrees that it will pay, all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents.

(c) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance with a company licensed to do business in the State of Minnesota insuring the city and the company with regard to all damages mentioned in subsection (a) in the minimum amount of:

- (1) Two million dollars (\$2,000,000.00) for property damage to any one person;
 - (2) Two million dollars (\$2,000,000.00) for property damage in any one accident;
 - (3) Two million dollars (\$2,000,000.00) for personal injury to any one person; and
 - (4) Two million dollars (\$2,000,000.00) for personal injury in any one accident; and
 - (5) Twenty-five million dollars (\$25,000,000.00) excess liability insurance for personal injury and property damage combined.
- (6) Insurance policies obtained by company pursuant to this provision shall satisfy the insurance requirements set forth in Appendix H, Chapter 2, Article I, Section 18.

(d) The initial insurance policy or policies obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy or policies, along with written evidence of payment of required premiums, shall be filed and maintained with the city finance officer during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The company shall immediately advise the city attorney and cable communications officer of any litigation that may develop that would affect this insurance.

(e) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to or shall limit the liability of the company under any franchise issued hereunder for

damages.

(f) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the city finance officer, city attorney and cable communications officer, by registered mail, of written notice of such intention to cancel or not to renew."

(g) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(h) The company shall be liable and/or responsible only for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, Section 8.

Section 20. Indemnification. The company shall, at its sole cost and expense, 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 for the acts or omissions of the company, its officers, employees, or agents (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith):

(a) Arising out of any claim based on operation of the franchise by the company or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of the franchise;

(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to MTN unless otherwise provided in an agreement between the company and the city or the company and the MTN);

(c) Arising out of the company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the company in its business hereunder; and

(d) Arising out of any claim wherein damages or any other relief is sought as a result of the city's cable communication franchising or amendment procedure or as a result of the granting of this franchise or any amendment thereto.

The foregoing indemnity is conditioned upon the following: The city shall give the company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with the company and participating in the defense of any litigation by its own counsel at the company's cost and expense. Costs and expenses shall include the reasonable value of any services rendered by the city attorney or his assistants or any employee of the city or its agents. The city's failure to give such notice or cooperate in the representation regarding such claims, actions or proceedings shall void any and all company responsibilities and liabilities relating to the representation, indemnification or other obligations therefrom.

No recovery by the city of any sum by reason of the letter of credit required in Article I, section 17, hereof shall be any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section.

Section 21. Affirmative action and women/minority business programs. (a) [Generally.] The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The company shall comply at all times with all other requirements of federal, state and local laws and regulations, and the requirements of all orders authorized by city action relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

(b) *Company's EEO commitment.* Throughout the term of the franchise, the company shall comply with and be subject to the nondiscrimination requirements as set forth in the Minneapolis Code of Ordinances, Chapter 25 [sic], section 139.50, as amended, and except as otherwise provided herein, the requirements of which are incorporated herein by reference. The company shall strictly adhere to

the equal employment opportunity requirements of the federal government as well as to the requirements of state and local laws and regulations:

(e) *Affirmative action employment plan.* The company, its assigns, subcompanies, subsequent purchaser, or successors shall prepare and provide to the city for its approval a written affirmative action plan within sixty (60) days after the commencement date, or in the case of an assignment, grant, or sale of the franchise, not later than thirty (30) days prior to the date of such assignment, grant or sale. The company shall not commence construction prior to the approval of such plan by the city. The company reserves the right to amend the affirmative action plan for the operations work force during the term of the franchise subject to city approval. The affirmative action plan shall include but not be limited to the following:

- (1) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's operations work force during the post-construction term of the franchise. The company shall make those efforts consistent with statutory and city regulations, policies and programs, and shall further attempt to achieve a goal of twenty-five (25) per cent of its operations work force consisting of minorities and fifty (50) per cent of its operations work force consisting of women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.
- (2) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's construction work force throughout the construction of the system. The company, and its subcontractors, shall make those efforts consistent with statutory and city regulations, policies and programs, as amended from time to time, to achieve the city's established construction work force goals for minorities and women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.
- (3) Minimum goals for the utilization of minority business enterprises (MBE's), which the company will use its best efforts to achieve, shall be established at twenty (20) per cent and for women's business enterprise (WBE's) at ten (10) per cent. The goals for women's and minority business participation shall be reported separately, shall apply throughout the post-construction term of the franchise, and shall be applicable to all capital expenditures by the company including, without limitation, contracts and purchase orders for the acquisition of goods, services (including professional services), materials, supplies and equipment used in the construction, maintenance, and operation of its cable television system. Maximum use shall be made of the city's listing of MBE/WBE businesses. "Services," for purposes of this section, shall not include purchases of programming or other premium services.
- (4) A plan to employ and retain in employment to the maximum extent feasible persons who are handicapped.
- (5) A training program or scholarship or funding equivalent, for available positions, which utilizes local resources and which ensures the hiring, promotion, and retention of women, minorities and handicapped persons.
- (6) Assignment of an affirmative action coordinator by the company to develop, implement, and monitor the affirmative action plan and act as liaison with the city in all matters regarding affirmative action and women/minority business enterprise participation.
- (7) Other provisions normally part of an affirmative action plan including but not limited to an affirmative action/EEO policy statement, methods for dissemination of the policy and plan, recruitment of employees, complaint procedure, subcontractor responsibility, and audit and reporting systems. The company shall provide to the city's affirmative action officer written reports in a form acceptable to the city of the company's compliance with the affirmative action plan. Such reports shall be submitted to the city each quarter and no later

than ten (10) working days following the end of the quarter in which the reported activity occurred:

- (8) As used herein, (1) "minority" or "minorities" means Blacks, Hispanics, Asian/Pacific Islanders, American Indians, and Eskimos; and (2) "minority" or "women's business enterprise" means a business at least fifty-one (51) per cent of which is owned and controlled by minorities or women or, in the case of a publicly owned corporation, at least fifty-one (51) per cent of the stock of which is owned by minorities or women and whose management and daily business operations are controlled by one or more such individuals.

(d) *CETA eligible.* The company shall develop a plan to employ and retain in employment to the maximum extent feasible Minneapolis residents who are CETA eligible or who are eligible for other federal or state job training programs. The company shall submit such a plan as an addendum to the affirmative action plan and shall submit reports as an addendum to the affirmative action reports.

(e) *Local purchasing and hiring policy.* The company shall establish a policy of utilizing locally based firms for purchases and construction subcontracts, and employing local residents within its own operations, to the maximum extent feasible. The company shall provide the city with a written report of local purchasing and hiring achievement each three (3) months for the duration of the franchise.

(f) *Penalties.* The city, in its sole judgment, upon recommendation of the affirmative action officer, shall determine whether the company has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section. If the city, after due process in accordance with Article III, section 14, finds that the company has not made such best efforts, the city shall apply the following:

- (1) A fine of one thousand dollars (\$1,000.00) per day for each day in which the company fails to comply with the reporting requirements set forth in this section. Imposition of said penalty shall be stayed for five (5) working days after each report is due in the event that the company should file the report during that period.
- (2) A fine of not less than two thousand dollars (\$2,000.00) per month or more than twenty thousand dollars (\$20,000.00) per month for each month in which the company is otherwise determined not to be in compliance with this section, that is, whether it has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section.

Section 22. Rights of individuals. (a) *Invasions of privacy and of personal rights prohibited.* In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting therefrom, the company shall take any and all necessary action to prevent an invasion of a subscriber's or general citizen's right to privacy or other personal rights as such rights are delineated and defined by applicable law. The company shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(b) No signals, including signals of a Class IV cable communication channel, shall be transmitted from a subscriber's terminal, dwelling or place of business except as required to provide a service authorized by the subscriber. The company, the city and any other person shall neither initiate nor use any procedure or device for procuring information or data from a subscriber's terminals or terminal by any means, without the prior valid authorization of the affected subscriber. Valid authorization shall mean written approval from the subscriber which shall not have been obtained from the subscriber as a condition of service, except in those situations in which the nature of the service provided requires authorization or authorization is needed to allow for billing. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provisions. After the first year of authorization and during the month of the year of the authorization's initial signing, the company shall, for each year said authorization is in effect without revocation, mail a notice to each authorizing subscriber informing him or her of their right to revoke said authorization for transmission from their terminal. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. It shall not be considered a penalty to terminate service in those situations where the subscriber revokes or fails to renew authorization when the nature of the service provided requires authorization or authorization is

needed for billing. Such authorization shall be required for each type or classification of signals transmitted from a subscriber's terminal, dwelling or place of business:

(c) Neither the company, the city, their agents, their employees nor anyone else shall sell, provide or otherwise make available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business, including but not limited to lists of names and addresses of subscribers or any list which identifies, by name, subscriber viewing habits or personalized data pertaining to a subscriber's use of any of the company's services without the specific, written authorization of the subscriber to which the personalized data pertains. Data or information gathered by the company as a result of the subscriber's written authorization shall be made available to the authorizing subscriber in an understandable fashion, upon request, and, where applicable, shall specify the purpose for which the information is being gathered and to whom and for what fee the information is being sold:

(d) For purposes of this section, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specified services provided by or through the company. Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the same or availability of "nonpersonalized" or "aggregated data" which is not personalized data as defined herein.

(e) Neither the company, the city, nor any of their agents shall tap or monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever, without the prior valid authorization of the affected subscriber as defined above, except routine maintenance of the system, polling with audience participation or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.

(f) Written permission need not be obtained by the company from the subscriber for electronic verification of systemwide integrity or monitoring for the purpose of billing, provided that such electronic verification shall not monitor individual viewing patterns or practices without the valid authorization of the subscriber in accordance with the provisions of Article I, section 22(c):

Additional permission of property owners may be required. In addition to the company's right to construct its system in the city's public streets and right-of-ways under this ordinance, the company shall have the right to negotiate with utility companies and other owners (or tenants in possession) for the use of easements or servitudes. Where a property owner or tenant in possession has granted such an easement or servitude to another and when a company has acquired the right to use such easement or servitude, the company shall not be required to obtain written permission of the property owner or tenant in possession unless the company elects to do so.

Landlord-tenant. The company shall be required to provide service to individual units of multiple housing facilities, including but not limited to apartment buildings, condominiums, and cooperative housing, with all services offered to other dwelling units within the city, so long as the owner or management of the facility consents in writing, if requested by the company, to the following:

- (a) To the company's providing of the service to units of the facility;
- (b) To reasonable conditions and times for the installation, maintenance and inspection of the system on the facility premises;
- (c) To reasonable conditions promulgated by the company to protect the company's equipment and to encourage widespread use of the system; and
- (d) To not demand or accept payment from the company for permitting the company to provide service to the facility and to not discriminate on rental charges, or otherwise, between tenants who receive cable service and those who do not.

Section 23. Public notice. A public hearing before the appropriate city council committee shall be held prior to passage of any amendment to this ordinance. Notice of such hearing shall be by publication at least once in a local newspaper of general circulation at least seven (7) days prior to the hearing, and, commencing on the fifth day prior to the hearing, the company shall notify its subscribers of the hearing by announcement on at least one channel of its cable communications system, between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days. Such announcement shall be made on the most appropriate nonpremium/nonpay channel on which such announcement is feasible subject

to approval of the cable communications officer. The city clerk shall be responsible for delivering the text of all announcements to the company in time for proper scheduling.

Section 24. Service of process and consent to jurisdiction. The company, KBL and KBLCOM shall designate an agent within the city upon whom process against them may be served on behalf of the city or any other party in enforcing this franchise or in asserting any other right or claim. The company, KBL and KBLCOM, for such purposes, and any other purposes, hereby consent to, and submit to, the laws, jurisdiction and courts of the State of Minnesota; provided, however, that KBLCOM and KBL shall not be construed to be doing business within the State of Minnesota solely as a result of this provision.

Section 25. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 26. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 27. Certificate of confirmation. The franchise shall cease to be of any force and effect if the company fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Minnesota Cable Communications Board; provided, however, that the company may operate its cable communications system while the application for renewal is under consideration by the board.

Section 28. Time of the essence. Whenever this ordinance shall set forth any specific time for an act to be performed by or on behalf of the company or the city, such time shall be deemed of the essence. Any failure of the company to perform within time allotted shall always be sufficient grounds for the city to invoke an appropriate penalty including possible revocation of the franchise, pursuant to the due process procedures of Article III, section 14.

ARTICLE II. CABLE COMMUNICATIONS SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

Section 1. Commitment by company. The commitment of the company is contained in the "offering of the company." The company agrees to perform all services or offerings set forth in its "offering," including all promises, offers, representations and inducements contained therein. The company further agrees that certain portions of its "offering" or a summary thereof may be set forth as Addendum A to this franchise ordinance and that said Addendum A shall contain those portions of the "offering of the company" or a summary thereof deemed by the city and the company to be of most use to the subscriber. The fact that certain portions of the company's "offering" or a summary thereof are reproduced as Addendum A shall not be construed so as to make it appear that those portions of the "offering" reproduced in Addendum A have more significance or importance than portions not reproduced. The company specifically reaffirms that the entire "offering of the company" is incorporated into this ordinance by reference. In the event of conflict or discrepancies between any parts of the "offering of the company" and Addendum A, those provisions which provide the greatest benefit to the city, in the opinion of the city council, shall prevail.

Section 2. Service availability and record request. The company shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the company in areas where service is being provided. This record shall be available for public inspection at the local office of the company during regular office hours.

Section 3. Cable communications system construction. (a) *Construction map and schedule.*

- (1) *Map and plan.* The company has submitted a construction plan which is incorporated herein by reference and made a part hereof in Addendum A. The plan consists of a map of the entire franchise area and clearly delineates division of the city into five (5) construction zones per franchise area, indicating the date upon which construction shall be completed in each zone as defined in Addendum A and Article II, section 3 herein. The construction plan shall be made available for public inspection during normal business hours at the main office of the company at the company's expense.

- (2) *Construction permits.* Notwithstanding any other provision of this ordinance, the company shall make a good faith and diligent effort to obtain all necessary permits and clearances within a reasonable time. Within sixty (60) days after the commencement date, the company shall apply for all permits and clearances needed to begin construction or maintain, upgrade or otherwise change the cable system. Company shall pay for all permits acquired from city through July 1, 1988, after which payment for future permits shall be considered to be part of the franchise fee. Nothing contained herein shall relieve company of their obligation to furnish insurance, bonds or such other securities or assurances as may be required in the Minneapolis Code of Ordinances for obtaining permits, clearances, etc.
- (3) *Start of construction.* Substantial construction in accordance with the plan submitted by the company shall start within seven (7) months after the commencement date. Within three (3) months and five (5) months after the commencement date, the company shall report to the city and may request a change in its construction start date.
- (4) *Completion of individual construction zones.* The company shall complete construction of individual zones set forth below pursuant to the construction plan in Addendum A:

TABLE INSET:

<i>Map Construction Zone</i>	<i>Completion Date (months from commencement date)</i>
I	No later than 12
II	No later than 18
III	No later than 24
IV	No later than 30
V	No later than 36

Within each zone, the company shall install and deliver residential service to all residents requiring a standard installation within sixty (60) days after all residential distribution cable within the zone has been energized and the resident has ordered such service.

- (5) *Completion of system construction.* The company shall complete system construction so as to offer residential service to all residents requiring a standard installation within thirty-six (36) months after the commencement date. Consistent with sound engineering practice, construction shall be essentially concurrent in all areas of the city, so that no geographic portion of the city is discriminated against in receiving prompt service.

(b) *Early construction and extension.* Nothing in this section shall prevent the company from constructing the system earlier than planned. However, any delay in the zone or system construction beyond the times specified in this section for commencement of construction, for completion of construction for any zone, or for completion of construction, shall require application to and consent by the city council. The city may not arbitrarily withhold consent for delay when the company has shown good cause for such delay provided that the city may attach reasonable conditions to ensure performance. Good cause for delay shall be presumed when the company shows, to the satisfaction of the council, that such delay was beyond its control or was not foreseeable. The company shall notify the city as soon as possible of any anticipated or actual delay.

(c) *Penalties for delay in construction.* The city may at its sole option apply any of the following penalties in connection with delays in completion of construction in accordance with the schedules due to causes which are within the company's reasonable control or which are reasonably foreseeable.

- (1) *Failure to commence construction.* If, after the construction starting date indicated in subparagraph (a)(3) above, the company has not substantially commenced construction and thereafter the company does not substantially commence construction within thirty (30) days of written notice of such failure from the city, subject to the procedural provisions of Article III, section 14, the city may impose a financial penalty of up to ten thousand

dollars (\$10,000.00) per day for each day the company fails to substantially commence construction, or may commence termination proceedings, or both.

For any schedule delay that may occur, the burden of proof shall be on the company to demonstrate that such delay was beyond its reasonable control or was not reasonably foreseeable.

- (2) *Failure to complete construction zone.* Upon a failure to meet construction completion schedules for the first four (4) construction zones as specified herein and in Addendum A, the city may impose a penalty of up to five hundred dollars (\$500.00) per day for each construction zone violation up to six (6) months and up to one thousand dollars (\$1,000.00) per day penalty, or reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or termination of the franchise, or both, for violations greater than six (6) months, subject to the due process provisions of Article III, section 14. Construction shall be deemed to be completed when the system is energized so as to offer residential service to all residents within the zone who require a standard installation.
- (3) *Failure to complete construction of system.* Upon a failure to complete construction of the system as set forth in Addendum A and offer services to all residents of the city as set forth in Article II, section 3 and Addendum A, and after thirty (30) days' notice by the city, the city may reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or the city may impose a fine up to a maximum of ten thousand dollars (\$10,000.00) per day for each day of violation, or both, subject to the due process provisions of Article III, section 14. In addition, where the company has failed to complete construction of the system as set forth in Addendum A and Article II, section 3 herein, and after sixty (60) days' notice by the city, the city may terminate the franchise, subject to the provisions of Article III, section 15.
- (4) *Noncumulative penalties.* The company shall pay all penalties imposed in accordance with the procedures required in Article III, section 14, for the phase of construction for which said penalty is imposed. When construction of said phase is completed, and if the company has paid all construction penalties properly imposed, the commencement and completion dates for any and all subsequent construction phases shall be adjusted to follow immediately thereafter. No fines shall be levied which result from delays in completion of an earlier phase if subsequent phases are completed within their initially proposed schedules, commencing from the new and adjusted date.

(d) *Service to residences mandatory.* The company shall offer residential service to all residences within the City of Minneapolis. However, should the company determine that provision of service to a residence or an area would be uneconomic, the company may apply to the cable communications officer for a temporary waiver from the requirement that such service be provided. Such application shall be in writing and shall set forth the factors upon which the company determined that provision of the service in question would be uneconomic.

In determining whether to grant such a temporary waiver, the cable communications officer shall consider, among other factors:

- (1) The amount of the additional cost involved in providing the service;
- (2) The likelihood of substantial short-term population growth in the area surrounding the residence; and
- (3) Any other circumstances which would assist the company in recovering its additional investment required to provide the service without unduly burdening other subscribers.

Such a waiver shall not be unreasonably withheld. The city may reconsider its decision to issue the temporary waiver at any time upon thirty (30) days notice to the company.

If the cable communications officer should deny the company's request for a temporary waiver, such denial shall be in writing and state the reason(s) therefor. The company shall have the right to appeal the decision to the city council within ten (10) days of receipt of the cable communications officer's written order. Such appeal and any subsequent proceedings shall be governed by the due process provisions contained in Article III, section 14 herein.

(e) *New development undergrounding.* In cases of new construction of property development where utilities are to be placed underground, the developer, utility or property owner shall give the

company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the company's expense, provided that such reasonable notice shall be given in writing to the company prior to the obtaining of a permit by the developer, utility or property owner from the city for the work to be performed. The company shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer, utility or property owner, unless the work to be performed by the company shall necessitate expenditures by the developer, utility or property owner solely to accommodate the facilities of the company in which case the company shall bear that part of the cost; except that if the company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer, utility or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by the company. Except for the notice of the particular date on which trenching will be available to the company, any notice provided to the company by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the company prior to approval of the preliminary plat request.

(f) *Special agreements.* Nothing herein shall be construed to prevent the company from serving areas not covered under this section upon agreement with developers, property owners or residents.

(g) *Areawide interconnection of CATV systems.*

(1) The company shall comply with the rules and regulations established by the Minnesota Cable Communications Board (Chapter 15, 4 M.C.A.R. Sections 4.220 through 4.229) and cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.

(2) Upon city request, the company shall negotiate in good faith to interconnect the cable television system with neighboring cable systems. Within three (3) months of a city request, the company shall report to the city the results of the negotiations. Notwithstanding the above, the company is committed to, and shall, interconnect the cable system with all cable systems operated in the Minneapolis-St. Paul metropolitan area no later than six (6) months after a finding by the city that such interconnection is in the public interest and consistent with applicable Minnesota statutes.

(h) *Construction cost.* The company has estimated that the cost of the cable television system during the initial build period years will be forty-three million dollars (\$43,000,000.00).

(i) *Completion of MCDA residential multiple dwelling units.* The city shall use its good faith efforts to negotiate and execute bulk monthly service contracts with the company for multiple dwelling units owned by the Minneapolis Community Development Agency ("MCDA"). The MCDA shall provide reasonable access to its residential facilities and their occupants for maintenance, marketing, installation, and door-to-door sales by the company. The company shall construct and offer service pursuant to Article II, [section] 3(d) to MCDA residential multiple dwelling units which have executed wiring agreements with the company.

Section 4. Company services. The company shall provide at least the following services:

(a) *Standard installation.* Standard installation consisting of an aerial drop, not exceeding one hundred fifty (150) feet, from a single pole attachment to the customer's residence. Drops in excess of one hundred fifty (150) feet, concealed wiring, and all underground drops shall be charged according to the rate ordinance. An underground drop of not more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.

(b) *Project rewiring.*

(1) The company shall provide service to prewired projects according to the terms and conditions and at such rates provided in the rate ordinance.

(2) The company shall review and approve methods and materials, supply specifications, technical assistance, and material according to the rate ordinance.

(3) The company shall prewire a project upon request according to rate ordinance.

(c) *Deposits.* The company may require a deposit for materials and services according to the rate ordinance.

(d) *Additional outlets.* The company shall provide additional outlets as customers may request according to the rate ordinance.

(e) *Buildings of public, private and parochial schools and colleges and local governmental units.* The company shall provide installation and service to buildings of public, private and parochial schools and colleges; and local governmental units according to the rate ordinance.

(f) *Transfers.* When a current customer moves from one address within the franchised area to a second address within the franchised area and there is no lapse in service, the company shall transfer service at a rate according to the rate ordinance.

(g) *Reconnection.* The company shall restore service to customers wishing restoration of service provided the customer shall first satisfy any previous obligations owed and after the customer makes payment of the reconnection charge and the customer pays a deposit, if one is required, in accordance with the rate ordinance.

(h) *Relocation or extension of cable.* When a current customer requests that an extension or relocation of said customer's cable service be made, the company shall do so according to the rate ordinance.

(i) *Service calls.* The company shall provide cable communication test and repair services to customer's premises pursuant to the rate ordinance.

Section 5. Construction and technical standards. (a) *Compliance with construction and technical standards.* The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinance, construction standards, governmental requirements, FCC board regulations, and detailed standards submitted by the company. In addition, the company shall provide the city, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(b) *Additional specifications.* Construction, installation and maintenance of the city's cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

The company shall at all times comply with:

- (1) National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;
- (2) National Electrical Code of the National Fire Protection Association;
- (3) Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and
- (4) Other applicable federal, state and local zoning regulations.

In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure, required by the United States Department of Transportation.

All working facilities and conditions used during construction, installation and maintenance of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration.

Leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.

The company shall provide standby power generating capacity at the cable communications system control center and at all hubs. The company shall maintain standby power system supplies, rated at least at four (4) hours' duration, throughout the distribution networks.

The company shall provide the system capability which will permit the city or civil defense authorities to transmit an emergency alert signal to all participating subscribers. The company shall also provide an emergency audio override capability to permit the city to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. This

capability shall be fully operational at the initial activation date of the cable system. The company shall designate a channel which will be used for emergency broadcasts of both audio and video. The company shall also provide emergency text captioning, on at least five (5) channels on each cable, or to the extent technically feasible. The company shall cooperate with the city in the use, operation of and testing of the emergency alert override system.

(e) *State-of-the-art system.* Pursuant to Addendum A, section 1, which requires the company to provide a state-of-the-art cable system and franchise ordinance, the city shall have the right, prior to commencement of construction of the system, to determine whether the state-of-the-art has changed and, at its discretion, to require such changes be incorporated into the offering and the franchise ordinance where technologically and economically feasible. Failure by the company to begin or complete a state-of-the-art cable system as may be determined by the city shall be grounds for termination and forfeiture pursuant to the due process provisions of Article III, section 14.

(d) *Applicable technical standards.* The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart R (Technical Standards), shall apply. However, because of the recent development of interactive and other innovative services, modifications of FCC Standards, as presented in the specifications below, are considered necessary to meet system service objectives:

(1) *Forward signals; Class I channels.* The cable system shall have a technical capacity of four hundred forty (440) Mhz. The combined forward trunk and distribution system shall deliver signals to each subscriber's TV receiver that will meet or exceed the following specifications at the mean system temperature plus or minus seventy (70) degrees Fahrenheit. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set-top converters:

- a. Carrier-to-noise ratio: 44 dB
- b. Carrier-to-synchronous-cross-modulation ratio: 56 dB
- c. Carrier-to-second-order-beat ratio: 66 dB
- d. Carrier to composite triple beat: 53 dB
- e. Envelope delay: 150 ns maximum
- f. Hum modulation: 45 dB
- g. Ghosts and echoes: 40 dB
- h. Subscriber visual signal level at subscriber terminal: 0 dB MV
- i. Channel frequency response: ± 1.5 dB
- j. Adjacent channel level variation: 2 dB

(2) *Reverse signals.* The reverse channels shall have the capability of providing return signals from any subscriber tap to the extreme end of any geographic area without noticeable signal degradation or interference:

- a. The system capability shall include transmission of color video, black and white video, and both low and high speed data, whether analog or digital.
- b. If necessary to prevent the build-up of noise and distortion products, the area shall be divided into sections, and subtrunks run to central hub within the area. Equivalent alternatives such as addressable taps or switches may be utilized.

(3) No more than +54 dBmV output level shall be required out of any customer interface device to meet the system specifications:

(4) Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission:

(5) For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel, shall meet the specifications of subsection (a) above:

(e) *Performance testing.* The company shall perform all tests necessary to determine compliance with the technical standards of FCC 76.601.

- (1) Tests shall include the following, as a minimum:
- Preconstruction,
 - Initial proof of performance,
 - Annual compliance tests,
 - Tests in response to subscriber complaints,

Monthly monitor:

Written records of test results shall be maintained and shall be available for city inspection upon request.

- (2) The tests for the cable system shall be performed periodically, at intervals of no greater than every six (6) months, a minimum of twenty (20) subscriber television receivers, located throughout the service area. At least eight (8) of these locations shall be at the far end of the distribution trunk cables. The tests shall be witnessed by representatives of the city, and written test reports shall be submitted to the city. If more than ten (10) per cent of the locations tested fail to meet the performance standards, the company shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated for at least twenty (20) different locations. If a second test results in failure of more than ten (10) per cent, the city may at its sole option reduce affected subscriber rates by an amount reasonably related to the degraded service, unless the circumstances of the failure are caused by conditions which are beyond the company's reasonable control or which are not reasonably foreseeable.

Section 6. System construction standards. (a) *Authorization to commence construction.*

Within ninety (90) days of the granting of the franchise, the company shall apply for all necessary governmental permits, licenses, certificates and authorizations.

Permission by the company for commencement of construction of the cable communications system authorized herein is granted herewith, after the company has given the department of inspections, the cable communications officer and the city engineer reasonable written notice of the proposed construction thereof, so as to coordinate all work between the city and the company. Construction may commence subject to the approval of the department of inspections and the city engineer.

Neither the review of plans by the city nor the granting of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warrant by the city of the company's communications system. The company shall not assert the fact that the city has preformed any prior review of its plans or exercised any ministerial function in granting permits, licenses, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the city harmless pursuant to Article I, section 20.

The city engineer and the department of inspections shall have the right to request that the company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each city department to fulfill its obligations under this franchise and other applicable laws and regulations.

(b) *Power to contract.* Upon grant of this franchise to construct and maintain a cable communications system in the city, the company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or out of the city to whatever extent such contract or contracts may be expedient and of advantage to the company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers, and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, the company will use steel, cable, materials and electronic devices, all of specialized and advanced design and type. In the construction and operation of its system, the company will employ personnel and subcontractors with training, skill and experience in electronics and communications. It shall not be deemed a breach of this provision or of this franchise if the company shows that material or personnel are not available to the company due to war or similar official national emergency, or if the company receives the consent of the city council.

(c) *Interference with persons and improvements.* The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(d) *Minimum interference with public ways.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.

(e) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway, foundation or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the city engineer. If the company fails to promptly restore any street or public place in accordance with this provision, the city shall have the right to put such street or public place back into good condition at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city, together with an additional sum as liquidated damages to be determined by the city.

(f) *Relocation of the facilities.* Whenever the city shall, during the period of this franchise, undertake any public improvement or authorize any project or action for a public purpose, which affects cable communications equipment, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles, and improvement, project or action for a public purpose at the company's expense, upon reasonable notice to the company of the undertaking of such public improvement, project or action for a public purpose by the city.

In addition, the company is put on notice of and accepts the provisions of section 99.850 of the Minneapolis Code of Ordinances governing the placement of overhead distribution lines underground and agrees that for the purposes of placing overhead distribution lines underground, section 99.850 will apply to the company.

(g) *Interference with utilities.* The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such poles or other fixtures placed in any street shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

(h) *Easements.* All necessary easements over and under private property shall be arranged for by the subscribers or the company.

(i) *Maps and records.* The city shall have the right to inspect and examine at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the company. The company shall keep accurate maps and records of all of its facilities and make available such maps and records as requested by the city pursuant to the provisions of Article II, section 13. In addition, the company shall keep current records and plats on all underground facilities they own or operate. Such plats and records are to be available to all utilities and the city immediately upon request.

Section 7. System maintenance standards. (a) *Cooperation with building movers.* The company shall, on the request of any person holding a building mover permit, issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, rising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(b) *Tree trimming.* The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company at the cost of the company. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

(c) *Maintenance of system.* The company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.

(d) *Efficient service and repairs.* The company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of

minimum system use. All costs incurred in making such repairs and adjustments shall be borne by the company except as otherwise provided for in this ordinance.

(e) *Interference with reception.* The company shall not allow its cable or other operations to interfere with broadcast reception of persons not served by the company.

Section 8. Continuity of service mandatory. (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify, or sell the system, the company shall undertake all reasonable efforts to ensure that all subscribers receive continuous, high quality, uninterrupted service regardless of the circumstances.

In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the city, new franchisees or operator in maintaining continuity of service to all subscribers. During such period, the company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) Six (6) months' notice shall be given by either party of an intent to discontinue all or any part of the operation of the system upon expiration of this franchise, and if such notice is not given at least six (6) months prior to such expiration date, the franchise shall be deemed to be extended for six (6) months and thereafter for another six (6) months' period (but not to exceed a total of twelve (12) months). The company agrees that upon final termination of this franchise or any extension thereof, the city shall have the right to continue operation of the system for a period not to exceed twenty-four (24) months. If prior to the end of such period in which the city is exercising the right to continue operation of the system, the city has initiated proceedings to acquire the system, then such period shall be extended for such further time as may be required to complete acquisition. The city may designate an operator or assume operation itself for such purpose and shall collect the revenues from such operation, shall pay the costs of such operation, and shall pay to the company fair compensation for the temporary use of the system after the franchise has expired.

Section 9. Complaint procedure. (a) During the term of this franchise, and any renewal thereof, the company shall maintain within the city a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing disputes, and similar matters. The office must be reachable by a local, toll-free telephone call, and provide the city with the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, billings, and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. The company shall provide the means to accept telephone complaint calls in person twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved within three (3) calendar days. Upon notification by a subscriber, the company shall credit a subscriber's account on a pro rata basis for loss of service exceeding forty-eight (48) continuous hours within a thirty-day period. An accurate and comprehensive file shall be kept by the company of any and all complaints regarding the cable system. A procedure shall be established by the company by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the city. Complete records of the company's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.

(b) A summary of complaints, identifying the number and nature of complaints and their disposition, in a form approved by the city, shall be completed for each month and submitted to the city by the tenth day of the succeeding month.

(c) An annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the company shall be submitted to the city on or before March thirty-first of each year. The surveys required to make said report shall be conducted in conformity with such requirements, including supervision, as the city may prescribe.

(d) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the

employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.

(e) "Complaints" for purposes of this section do not include individual requests for service arising from partial systemwide malfunction; requests for service where no in-home visit is required; connection, disconnection, or reconnection requests; changes in services or programming received; or similar requests which do not relate to the quality of present service, equipment malfunction, or billing disputes between customer(s) and the company.

Section 10. Company rules and regulations. The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at the company's expense and be readily available to subscriber.

Section 11. Payment of fees and penalties. (a) The franchise fee and any other cost or penalties assessed shall be payable except as otherwise specified in this franchise agreement, quarterly, to the city finance officer's office and the company shall file a complete and accurate verified statement of all gross receipts within the city during the period for which said quarterly payment is made, and said payment shall be made to the city not later than forty-five (45) days after the expiration of the quarter when due.

(b) The city shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the company by the city which notice shall include a copy of the audit report.

(c) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of twelve (12) per cent.

Section 12. Transfer of ownership or control. (a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person nor shall ownership or control of the controlling general partner be transferred or assigned in any manner without the prior written consent of the city council and in compliance with applicable rules of the Minnesota Cable Communications Board. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise.

(b) The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein includes not only major stockholders, general partners and limited partners, but also includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the company shall assist the city in any such inquiry.

(c) The consent or approval of the council to any transfer of the company shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.

(d) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.

(e) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.

(f) The hypothecation, pledge or mortgage of both the franchise and its assets by the company as security for debt shall not require city approval. In the event of hypothecation, pledge or mortgage of both the franchise and its assets by company, the company shall provide notice to the city of its action and fully disclose the terms and amounts of any hypothecation, pledge or mortgage to the city's cable officer within fifteen (15) days of any such hypothecation, pledge or mortgage:

Section 13. Reports and availability of books and records. (a) *Annual report.* Within one hundred twenty (120) days following the close of each company fiscal year, during the term of the franchise, the company shall submit a written annual report, in a form approved by the city, including, but not limited to, the following information:

- (1) A summary of the previous year's (or, in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;
- (2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds, covering all years since the beginning of the franchise;
- (3) A current statement of costs of construction by component categories;
- (4) A projected income statement, balance sheet, statement of sources and applications of funds, and statement of projected construction for the next two (2) years;
- (5) A reconciliation between previously projected construction and/or financial estimates, as the case may be, and actual results;
- (6) A list of the company's officers, members of its board of directors, and other principals of the company;
- (7) A list of stockholders or other equity investors holding five (5) per cent or more of the voting interest in the company and its parent, subsidiary and affiliated corporations and other entities, if any;
- (8) To the extent that money, other than profits, is paid to a parent, subsidiary, or other person affiliated with the company, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of "home office" overhead);
- (9) The company shall maintain its books and records solely for the information of the city in such detail such that revenues and expenditures, including direct and indirect investment and costs associated with institutional capacity and services shall be easily identifiable. The company shall provide a clearly stated analysis of the current and periodic to-date investment in and results of operations of the institutional network. The company also agrees to make its financial records available to inspection by the city, upon request.

(b) *Annual plant survey report.* Simultaneously with the annual report required by subsection (a), the company shall submit to the city an annual plant survey report which shall be a complete survey of the company's plant and a full report thereon. Said report shall include, but not be limited to, an appropriate engineering evaluation including suitable electronic measurements and shall be conducted in conformity with such requirements, including supervision, as the city may prescribe. Said report shall be in sufficient detail to enable the city to ascertain that the technical standards of the FCC and/or the franchise are achieved and maintained. At the city's request, but no more often than once per three (3) years, the company and the city shall agree upon the appointment of a qualified independent engineer to evaluate the technical performance of the cable system. The cost of such evaluation shall be borne by the company.

(c) *Other petitions and applications.* The company shall submit to the city copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the company to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. The company shall submit such documents to the city simultaneously with their submission to such courts, agencies and bodies; and within five (5) days after their receipt from such courts, agencies and bodies. The results of any tests required by the FCC shall be filed within ten (10)

days of the conducting of such tests with the Minnesota Cable Communications Board. The company hereby waives any right to claim confidential, privileged or proprietary rights to such documents. However, information otherwise confidential by law and so designated by the company, which is submitted to the city shall be retained in confidence by the city and its authorized agents and shall not be made available for public inspection.

(d) A copy of each of the company's annual and other periodic public reports, if issued, and those of its parent, subsidiary and affiliated corporations and other entities, if issued, as the city requests and is reasonably appropriate, shall be submitted to the city within five (5) days of grantor's request or upon availability of the report after request.

(e) The company shall submit to the city copies of all income tax returns and reports which are filed with the local, state or federal governments pertaining to its cable system in the franchise area within five (5) days of the date on which such reports are filed.

(f) Within one hundred twenty (120) days after the end of each fiscal year of KBLCOM, the company shall submit a written annual report for its guarantor which shall include a consolidated financial statement which includes a statement of income, revenues and expenses, a statement of cash flow and balance sheet and footnotes, thereto, as of and for the period ended with its most recent fiscal year end, in sufficient detail to facilitate reasonable financial analysis of the consolidated financial statements. The consolidated financial statements shall have been certified as to their fair statement in conformity with generally accepted accounting principles, consistently applied, by the guarantor's chief financial officer. This certification shall be accompanied by a letter from the certified public accountants ("CPA") who are currently auditing the books and records of the guarantor's parent company. The letter shall state that, based upon the CPA's reading of the consolidated financial statements presented to the city by the guarantor and the results of the procedures utilized in their audit of the guarantor's parents' consolidated financial statements, that nothing came to their attention that would lead them to believe that the guarantor's certified consolidated financial statements were not prepared in accordance with general accounting principles, consistently applied. The guarantor shall provide such additional detail of the consolidated financial statements and other financial and operating data as may be reasonably required and necessary to facilitate financial analysis.

(g) The company shall submit to the city such other information or reports in such forms and at such times as the city may request or require.

(h) The company shall allow the city to make inspections of any of the company's facilities and equipment at any time upon one day's prior notice, or, in case of emergency, upon demand without prior notice.

(i) The company shall maintain an office within the franchise area and shall produce upon reasonable notice complete and accurate books and records. The city shall have the right to inspect at any time upon reasonable notice during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the company which relate to the operation of the cable system, provided where volume and convenience necessitate, the company may require inspection to take place on company premises. Access to the aforementioned records shall not be denied by the company on the basis that said records contain confidential, privileged, or proprietary information except that grantee shall not be required to disclose any information regarding projects undertaken strictly for research and development.

All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours. Company, KBL and KBLCOM recognize that certain information submitted is open to public inspection and subject to the Minnesota Government Data Practices Act, M.S. Sec. 13.01, et seq. Company, KBL, and KBLCOM are responsible for familiarizing themselves with this law. Certain data is protected from disclosure under this law, such as security information, trade secret information and labor relations information. Company, KBL and KBLCOM understand and agree that in the event that the city receives a request from another party to disclose any information which the company, KBL and KBLCOM deem to be protected under the Minnesota Government Data Practices Act, the city will tender to company, KBL and KBLCOM the defense of any request to compel disclosure. By submitting information that

company, KBL and KBLCOM deem exempt from disclosure, company, KBL and KBLCOM agree to defend and hold harmless the city from any claim for disclosure, including but not limited to the city's expenses, including out-of-pocket costs and attorney's fees incurred by the city, as well as any judgment entered against the city for any damages or for the attorney fees or costs and disbursements of the party requesting disclosure from the city.

(j) All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours.

(k) The refusal, failure, or neglect of the company to file any of the reports required under this section, or as the city may direct, shall be deemed a material breach of the franchise, and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.

(l) Any materially false or misleading statement or representation made knowingly by the company in any report required under the franchise shall be deemed a material breach of the franchise and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.

(m) All reports and records required under this or any other section shall be furnished at the sole expense of the company.

(n) The company shall retain the services of a marketing consultant at its own expense to review and comment upon the marketing plan dated April 18, 1986, as submitted to the city. A copy of the consultant's report shall be submitted to the city no later than October 1, 1986. Commencing on January 1, 1987, the company shall submit marketing status reports to the city on a quarterly basis in the form prescribed by the cable office. Such quarterly reports shall include, but not be limited to new initiatives of the company.

Section 14. Removal of cable communications system. At the expiration of the term for which this franchise is granted unless such franchise is renewed, or upon its termination as provided herein, the company shall forthwith, upon notice by the city, remove, at its own expense, all designated portions of the cable communications system from all highways, streets, sidewalks, easements, dedications and public property within the city. If the company fails to do so, the city may perform the work at the company's expense. A bond or bonds placed with a company licensed to do business in the State of Minnesota in the total amount of five hundred thousand dollars (\$500,000.00) shall be furnished to cover this expense; said bond to be approved by the city attorney. Said bond may be incorporated, at the company's option, as part of the bonds required of the company in Article I, section 18. However, nothing contained in Article I, section 18, shall be construed as reducing or waiving the requirement of the company to maintain coverage of five hundred thousand dollars (\$500,000.00) under this provision.

The bond required under this provision shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by the surety while the company is in default."

Section 15. Abandonment of service. Notwithstanding the provisions of this franchise, the company shall not abandon any cable communications service or any portion thereof without having given three (3) months' prior written notice to the city and the Minnesota Cable Communications Board. The company shall not abandon any cable communications service or any portions thereof without compensating the city for damages resulting to it from such abandonment. For purposes of this section, "service" shall mean the aggregate cable communications system.

ARTICLE III. ADMINISTRATION AND REGULATION

Section 1. Rules and regulations. (a) In addition to the inherent powers of the city to regulate and control this franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional reasonable regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise.

(b) The city may also adopt such regulations at the request of the company upon application to the city.

(c) Any rules or regulations adopted pursuant to this section shall be published at the company's expense and be readily available to subscribers.

(d) The city reserves the right to determine how the access channels will be administered.

Section 2. Application procedure. Except as otherwise specifically provided for herein, following the adoption and acceptance of this franchise, all applications by the company effectuating a change in this ordinance, including but not limited to changes in rates, services, programming of activated and nonactivated channels, construction schedules, transfer of ownership, proposed changes in regulations or ordinances, importation of distant broadcast signals, etc., and as otherwise authorized by or made pursuant to this franchise, shall be made and processed by giving notice to the city in accordance with the following procedure:

(a) Applications shall be in a form prescribed by the city and shall contain sufficient facts and information acceptable to the city.

(b) An application may be rejected for inadequacy by the city if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.

(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit rejection for further and different deficiencies on subsequent applications.

(d) Upon acceptance, city staff shall review the application. The staff may submit the application to council if it deems the application adequate and complete and in need of no further staff study or report. The city shall give notice to the company within thirty (30) days of acceptance if it will study the application prior to submission to the council. The study shall be completed within forty-five (45) days after notice is given to the company by the city unless such period is extended for up to an additional forty-five (45) days by motion of the council or a longer period of time by agreement with the company.

At the conclusion of the study, city staff may submit the application, study and other information, documents and exhibits to the council for consideration.

At the expiration of the study period, if the matter has not been placed upon the council agenda, the company may notify the city clerk in writing to place the application upon the council agenda for the next regular meeting, and the city clerk shall do so.

(e) During the study period, the company shall fully cooperate with the city in providing information and documents which are related to and reasonably necessary in the proper evaluation of the application. Failure of the company to so cooperate or the company's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by the council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, the council may summarily deny the application.

(f) Upon submission to the council, it shall review the application and any studies, information and documents which accompany it. The council shall approve or deny the applications based on the record within thirty (30) days, unless a public hearing is set. If the council desires a public hearing, or if one is required, the council shall set a public hearing within thirty (30) days. Notice of the public hearing shall be given in accordance with Article I, section 23.

(g) At a public hearing pursuant to this application process, the council may hear reports from staff, citizens' advisory committee, consultants and the public. The council shall provide a reasonable but not unlimited opportunity for rebuttal. The council may impose reasonable time limitations on verbal presentations which may be selectively waived to facilitate adequate evaluation of the application.

(h) If, at the hearing, the council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.

(i) At the close of the hearing the council shall, within thirty (30) days, approve, deny or modify the application. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be

attached by the council to an approval or modification and may be acted upon by the company upon acceptance in writing by the company:

- (j) Any time limit may be waived by consent of both the council and the company:
- (k) Nothing contained herein or within this ordinance shall be construed as limiting the right of the city to require that an application be filed by the company whenever the council reasonably determines that the company is undertaking any change in this ordinance which negatively affects subscriber services:

Section 3. Annual review of system performance. (a) On or about June 1, 1984, and each year thereafter throughout the term of the franchise, the city and the company shall meet publicly to review the performance and quality of service of the cable television system pursuant to this ordinance and federal and state cable television regulations. The reports required in Article II, section 9 regarding subscriber complaints, the records of performance tests and the opinion survey report shall also be utilized in the review. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these shall be considered:

(b) Within thirty (30) days after the conclusion of the system performance review meetings, the city shall issue findings with respect to the adequacy of system performance and quality of service. If violations of the ordinance or federal, state or local regulations are found, the city may direct the company to correct the violations within a reasonable period of time:

(c) Failure of the company, after due notice, to correct the violations shall be considered a material breach of the franchise, and the city may, pursuant to the due process provisions set forth in Article III, section 14, levy any reasonable penalty within the scope of Article III, section 13 which is appropriate:

Section 4. System and services review. (a) *Review.* To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced, modern system for the city, the city and the company shall comply with the following system and services review provisions:

- (1) The city may hold a system and services review session on or about September 1, 1985. Subsequent system review sessions shall be scheduled by the city each three (3) years thereafter. All such review sessions shall be open to the public, and notice given in accordance with Article I, section 23.
- (2) Sixty (60) days prior to the scheduled system and service review session, the company shall submit a report to the city indicating the following:
 - a. All cable system services that are being provided by the company on an operational basis, excluding tests and demonstrations, to cities in the United States with populations above two hundred fifty thousand (250,000), that are not provided to the city.
 - b. A plan for provision of such services, or a justification indicating why such services are not feasible for the city.
- (3) Topics for discussion and review at the review sessions shall include but shall not be limited to, services provided, rate structure, free or discounted services, application of new technologies, system performance, need for additional institutional capacity, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.
- (4) Either the city or the company may select additional topics for discussion at any review session.

(b) *Findings.* Not later than sixty (60) days after the conclusion of each system and services review session the city shall issue findings, including specifically a listing of any cable services not then being provided by the company to the city that are considered feasible. The city may direct the company to provide such services within a reasonable time and under reasonable rates and conditions if it is technologically and economically feasible to do so. Failure to provide such directed services may be considered a breach of the franchise, subject to penalties as provided in Article III, section 13, and subject to the due process provisions set forth in Article III, section 14:

Section 4.5. Reserved.

Section 5. Rate and fee setting. (a) Following the adoption of this franchise, the city shall adopt by ordinance a rate for the franchise fee and approve a schedule for maximum rates for services which the company may charge.

(b) The city may regulate all cable system rates when not prohibited by applicable law.

(c) An application for an increase in the schedule of rates shall be filed in accordance with procedures established in Article III, section 2. The application shall be supported by statistical and other proof indicating that the existing rate is inadequate and unreasonable and that the proposed increases therein are required to enable the company to render service to fulfill its obligations under this ordinance and to derive a reasonable profit therefrom.

The company's petition for a rate increase shall include the following financial reports which shall reflect the operations of the Minneapolis system only:

- (1) Balance sheet;
- (2) Income statement;
- (3) Statement of sources and applications of funds;
- (4) Detailed supporting schedules of expenses, income, assets, and other items as may be required; and
- (5) Statement of current and projected subscribers and penetration.

The company's accounting records applicable to the cable system shall be available for inspection by the city at all reasonable times. The city and its agents shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Minneapolis operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of the company:

(d) The city may consider all relevant factors including but not limited to the following in determining whether to approve, modify or disapprove the company's requests for rate increases during the term of this franchise:

- (1) The company's substantial fulfillment of all material requirements of the franchise.
- (2) Quality of service, as indicated by the number and type of service complaints, the company's response to complaints, and the results of periodic system performance tests.
- (3) Prevailing rates for comparable services in other cable systems of similar size and complexity.
- (4) Rate of return as compared to businesses of equivalent risk. The rate of return shall be calculated on a cumulative basis for all system revenues and costs including services such as pay television that may be exempt from local rate regulation. Upon request of the city, the company shall promptly provide, from the company, its parent company and any subsidiary company, all information as shall be reasonably necessary to determine system revenues and costs.
- (5) Performance and capital expenditures by the company in introducing new services and expanding the cable system's capability, as compared to other systems of similar size and complexity.
- (6) The original cost of the system less depreciation determined on a straight line actual life basis.
- (7) Rates currently fixed in other cable television franchises for comparable service areas.

(e) Change in rates. Changes in rates for any service regulated by the city shall be granted to the company no more often than each two (2) years. The city may require the company to apply for a rate review at any time. Upon receipt of a rate increase request, the city shall schedule a public hearing prior to arriving at a decision. The city may request relevant financial and other information necessary to determine the justification for the requested increase. Notwithstanding any provision of this ordinance to the contrary, within one hundred twenty (120) days after receipt of the rate increase request, the city, expressed by city council resolution, shall approve the request in full, approve the request in part, modify, or disapprove the request. In any event, the city shall provide findings as to the basis for its decision. If no city action has occurred within one hundred twenty (120) days after receipt of the rate increase request, the request shall be deemed to have been approved.

(f) Notwithstanding any provision in this ordinance to the contrary, the company may after completion of the rate guarantee period set forth in the rate ordinance, make an application to increase regulated rates by the annual increase in the Consumer Price Index made for the Minneapolis metropolitan area, or an annual five (5) per cent, whichever is less. Such application to increase regulated rates must designate which rates the company wishes increased and must be accompanied by the same supporting documentation as set out for rate increases in Article III, section 5(c). Any rate increases applied for under this provision must be applied for in the year in which it is to be effective and increases based on the Consumer Price Index or five (5) per cent must not be cumulative or retroactive. In the event the Consumer Price Index for the Minneapolis metropolitan area, as compiled by the United States Department of Labor, Bureau of Labor Statistics, is no longer available, then another similar, generally recognized index may be substituted on approval of the city council.

(g) Upon receipt of a request for increases in rates under this section, the city shall have thirty (30) days within which to determine whether it wishes to review more fully the request for increases in accordance with the procedures for rate studies and hearings set out in Article III, section 5, of this ordinance. In the event that the council takes no action within thirty (30) days, said rates shall become effective.

(h) Changes in rates taking place with or without council action shall supersede the rates set out in this ordinance after their effective date. The city clerk shall prominently post a detailed listing of current rates and the company shall inform all subscribers of the new rates in writing.

(i) Nothing herein or within this ordinance shall limit the authority of the city to regulate any rate when such regulation is not specifically prohibited or preempted by federal or state law or regulation.

Section 6. Supervision of the franchise. (a) The city council shall designate a person to serve as cable communications officer.

(b) The cable communications officer shall perform such duties and have such responsibilities as are specified by resolution of the city council or by this ordinance. Such duties and responsibilities may include, but shall not be limited to, the following:

- (1) Serve as liaison between the city, the Minneapolis Citizens' Advisory Committee on Cable Communications and the company;
- (2) Monitor the company's adherence to construction and installation schedule and line extension policy;
- (3) Assure compliance of applicable laws and ordinances;
- (4) Monitor operational standards as contained in this ordinance;
- (5) At the council's direction, arrange tests and analysis of equipment and performance;
- (6) Monitor road and traffic disruptions for construction and repair purposes;
- (7) Assure continuity in service;
- (8) Receive, examine and recommend action on the monthly log of citizen complaints;
- (9) Assist in evaluating uses of access channels;
- (10) Prepare an annual report to the council;
- (11) Receive for examination all data and reports required by this ordinance, and, where appropriate, forward said data to the various interested or affected city departments;
- (12) Make recommendations to the council regarding fines for violations of this ordinance;
- (13) Bring to the attention of the city attorney any situation where potential recourse may be sought from the letter of credit in accordance with Article I, section 17;
- (14) Monitor regulatory and legislative actions at the state and federal level;
- (15) Request information from the company on behalf of the various city departments;
- (16) Monitor, evaluate, report to the council and approve minor changes in equipment or design that deviate from the company's "offering" to ensure that substituted equipment or design is equal to or better than that specified by the company in its "offering."

(c) The cable communications officer shall from time to time set a schedule of penalties which may be assessed against the company pursuant to Article III, sections 13, 14. The company may appeal the setting of such schedule to the city council whose determination shall be final and binding upon the city.

Section 7. Minneapolis Citizens' Advisory Committee on Cable Communications. There may be established a citizens' advisory committee having the duties and responsibilities which the

council may from time to time assign to it.

Section 8. Public usage of the cable system. (a) The city shall utilize a portion of the cable system to provide and develop cable services that will be in the public interest. The city shall establish a public non-profit corporation to be known as the Minneapolis Telecommunications Network, Inc. ("MTN"), to receive and allocate support funds and other considerations provided by the company, and/or others in furtherance of this purpose. The MTN's responsibilities under the ordinance, including sections 8 and 9, shall be in lieu of any obligation on the part of the company to develop and provide cable service in the public interest except as specified elsewhere in the ordinance. Any obligation by the company to provide public interest and/or public service programming shall be created by a contract between the city and the company or the MTN and the company.

It shall be the purpose of MTN to administer the channel capacity provided to it by the city and to provide programming and services which are in the public interest or constitute a public service. The responsibility of MTN to provide public interest programming grows from the responsibility of the company to make channel capacity available for governmental, educational, leased and public access pursuant to prior FCC regulation, and present Minnesota Statutes and MCCB rules and to promote, support, and develop programming and services created by local residents, groups, institutions, businesses and governments. Company has delegated this responsibility to the city. It shall be the primary responsibility of MTN to provide public interest programming. MTN shall not compete against the company in offering services except as otherwise set forth herein since such competition would not only be inconsistent with the purpose of MTN as set forth by its articles of incorporation but would also be inherently unfair since MTN experiences none of the operating costs (such as debt retirement, repair and upkeep of the system, etc.) facing the company.

The company agrees to cooperate with MTN and the city to assist it in providing access and local origination programming of the highest quality. The company also agrees to provide public interest and/or public service programming under the terms of any contract between the city and the company or between the MTN and the company. No contract or agreement entered into between the company and the city or between the company and MTN shall limit the right of MTN to provide access or local origination programming.

(b) For the purpose of this section, the following terms shall be defined as follows:

- (1) "Premium service" shall mean any service for which a charge is imposed above the monthly charge for basic cable service.
- (2) "Program or service generally available to cable operators" shall mean a program or service commercially produced by a third party and nationally or regionally distributed, regardless of the method of distribution, to cable systems, other telecommunications delivery systems or for other methods of public presentation.
- (3) "Nonprogram service of a type generally available to cable operators" shall mean a nonprogram service commercially provided by a third party which is either distributed or provided nationally or regionally or is substantially similar to a nonprogram service which is distributed or provided nationally or regionally and which is available to cable systems, or other telecommunications delivery systems.

(c) The MTN shall have the right to carry: Programs or services generally available to cable operators; nonprogram services of a type generally available to cable operators; and premium services under the following conditions:

- (1) Prior to offering such a program or service, or such a nonprogram service, the MTN shall, in writing, indicate its interest to the company. The company shall have ninety (90) days from the receipt of such notification from MTN to offer or contract to offer the program or service. In the event that the program or service is not operational at the time the company receives such notification from MTN, the company shall have ninety (90) days from the time that the program or service becomes operational to offer or contract to offer the program or service. In the case of a program which is not part of an ongoing service or series and which is to be shown on a one-time basis, the company shall have thirty (30) days from the receipt of such notification from MTN to offer or contract to offer the program.
- (2) If the company fails to offer or contract to offer such program or service within the time frame established in Article III, section 8(c)(1) herein, MTN may offer such service or

program to the affected subscribers via MTN channels subject to any of the following limitations which may apply:

- a. Premium services or premium programs which are generally available to cable operators and nonprogram services of a type which are generally available to cable operators shall not be provided by MTN without prior written consent of the company. Such consent shall not be unreasonably withheld.
 - b. MTN shall offer only programming and services and nonprogram services that are of a public interest or public service nature.
 - c. If the program or service is generally available to cable operators, or the nonprogram service is of a type which is generally available to cable operators, the MTN shall discontinue its carriage of such a program or service within ninety (90) days of notification from the company of its intent to offer the program or service. In the event that MTN has entered into a contract to provide such a program, service or nonprogram service and the contract has not expired within ninety (90) days of the notification, the company shall either wait until the expiration of the contract prior to providing the program, service or nonprogram service assuming the responsibilities of MTN under the terms of its contract. However, in no event shall MTN enter into a contract for such a program, service or nonprogram service for a term in excess of one year without prior approval of the company, which approval shall not be unreasonably withheld.
 - d. If a program or service is not generally available to cable operators (local origination or access), or if the nonprogram service is of a type which is not generally available to cable operators (local origination or access), the company shall have the right to offer the program or service as a joint venture with MTN at any time beginning one year after the introduction of the program or service by MTN. Such a joint venture shall involve an equal sharing of all costs and profits from the date of the agreement, unless otherwise agreed upon by MTN and the company. However, MTN shall not offer professional sports programming involving teams located in the Minneapolis-St. Paul metropolitan area or athletic programming involving extramural teams from the Minneapolis and St. Paul campuses of the University of Minnesota without prior written consent of the company, which consent shall not be unreasonably withheld.
 - e. If more than thirty-three (33) per cent of the programming on the service in question is already provided on a service or services currently provided by the company, or will be provided on a service or services which the company has agreed to provide pursuant to the conditions of Article III, section 8(c)(1) herein, then the proposed service or programming shall be ineligible for carriage by MTN absent written permission from the company. However, such consent shall not be unreasonably withheld.
 - f. Under no circumstances shall MTN enter into an agreement to carry a program or service that is generally available to cable operators or a nonprogram service which is of a type generally available to cable operators or to lease channel capacity under terms which are more favorable to a lessee than those contained in similar agreements with major MSO's operating in markets comparable to the City of Minneapolis. Under no circumstances shall MTN provide such a program or service or nonprogram service to subscribers or lease channel capacity at rates which materially differ from those charged for similar services or programs or channel capacity by the company in the City of Minneapolis.
- (3) If MTN should want to offer a program or service on a pay-per-view basis, MTN shall notify the company of its interest at least thirty (30) days before the scheduled presentation of the service or program. The company shall then be given fifteen (15) days to notify MTN as to whether it will offer the program or service. However, the MTN's right to offer said program or service shall be subject to all other procedures and limitations as set forth in this section. The company may waive the notices required by this subsection upon timely request by MTN in the event that such program or service becomes available less than thirty (30) days before its scheduled presentation.

[(d) Reserved.]

(e) If MTN produces or acquires a program or service which is not generally available to all cable operators (local origination or access) or a nonprogram service which is of a type not generally available to all cable operators (local origination or access), there shall be no prohibition imposed by the company against MTN distributing or otherwise reselling the programming or service or nonprogram service:

(f) *Company support of nonprofit corporation:*

- (1) The company shall make available equipment or other capital assets in the amount of one million and five hundred thousand dollars (\$1,500,000.00) to be used in the furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and company may stipulate that all or some of that equipment and/or capital assets be under the control of the company for the purposes of providing public interest and/or public service programming for a set period of time. Equipment or other capital assets shall be provided by the company pursuant to a capital budget and on a schedule to be approved by MTN and the city. The equipment and capital assets provided to MTN shall be provided pursuant to a service agreement to be approved by MTN. Provision of such equipment and other capital assets shall constitute the total responsibility of the company for capital investment in access facilities, studios, and production equipment. Any equipment or assets made available to the company pursuant to an agreement under this section shall be used for public interest and/or public service programming. Any contract for equipment and/or capital assets between the city and the company may delegate to the city the right to hold capital assets in escrow for either MTN or for company equipment replacement and maintenance.
- (2) The company shall pay an amount equal to five (5) per cent of the company's annual gross revenues to the city to provide an operating appropriation in furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and the company may stipulate that all or some of that amount be retained by the company for the purpose of providing public interest and/or public service programming during any set period of time.
Such payments shall constitute the total responsibility of the company for access and related activities.
- (3) The city shall have the right to reallocate a portion of the capital budget to the operating budget and a portion of the operating budget to the capital budget in the furtherance of public interest and/or public service programming.
- (4) The company shall dedicate the following system capacity for public use at no cost (except where indicated) throughout the life of the franchise:
 - a. Twenty-five (25) per cent of the downstream and upstream channel capacity of the residential network.
 - b. Forty (40) per cent of the downstream and upstream channel capacity of the institutional network.
 - c. Fifty (50) per cent of the downstream and upstream channel capacity of any interconnection links to neighboring cable systems and additional channel(s) when these channels are in use eighty (80) per cent of the time between the hours of 8:00 a.m. and 10:00 p.m. during any consecutive six-week period.
 - d. Access to all satellite down-link programming and services. (Users of programming will be responsible for obtaining any required rights and paying fees for actual use of programming, where applicable.)
 - e. Access to existing satellite up-link capacity if established pursuant to Addendum A, under reasonable conditions and fees, and when the city determines that user demand warrants it.
 - f. Access to residential interactive data transmission capacity, when and if provided on a city-wide basis, under reasonable conditions and fees not to exceed the actual additional cost to the company.

The city may permit the company to lease, at a nominal charge, any of the channel capacity dedicated to MTN and not being utilized by the MTN. For the purposes of public

interest and/or public service programming a contract between the city and the company or between MTN and the company may stipulate that the company program some or all of the channels and capacity described in Article III, section 8(e)(4).

If the cable system capacity is expanded in the future, the above percentages shall continue to apply.

The dedicated capacity shall be provided to MTN free of charge (except where indicated) for channel and system equipment usage. The MTN or company through agreement with the city or MTN shall provide the necessary channel capacity to provide for all access channel requirements pursuant to state and federal law and regulation. The city will have the right to lease unused channel capacity to others to provide services and/or programs which have been determined to be in the public interest and which neither the company nor MTN are providing. Prior to entering into such a lease, the city shall offer the company the option to enter into a lease with the prospective lessee under the same terms and conditions.

The company's personnel shall cooperate with the city, MTN and other local public and nonprofit agencies which produce programming and services suitable to a cable system. MTN shall indemnify, keep and save the city and the company free and harmless for claims arising out of MTN's operation and responsibilities under Article III, sections 8 and 9. In the event that suit shall be brought or that recourse or damages sought against either the city or the company, or both, either independently or jointly with MTN, MTN shall indemnify the city and/or the company and pay such judgment with all costs, including reasonable attorneys' fees, and hold the city and/or the company harmless. MTN shall maintain liability insurance with a company licensed to do business in the State of Minnesota, naming the city and the company as additional insured, with regard to all claims or damages set forth above in a minimum amount of:

- a. Five hundred thousand dollars (\$500,000.00) for damage to any one person;
- b. One million dollars (\$1,000,000.00) for damage in any one accident;
- c. One million dollars (\$1,000,000.00) for personal injury to any one person;
- d. One million dollars (\$1,000,000.00) for personal injury in any one accident; and
- e. Two million dollars (\$2,000,000.00) for damages arising from programming errors or omissions, including copyright infringement, misappropriation of literary property or program format, defamation, or invasion of privacy.

The insurance policy or policies obtained by the MTN in compliance with this section must be approved and maintained by the city attorney and legal counsel for the company pursuant to the provisions of Article I, section 19(d) through (g):

(g) *Company support of nonprofit corporation after effective date of 86-Or-164.**

- (1) After the effective date of 86-Or-164, city agrees that the company's obligations to support public interest/public service programming shall be governed by the terms contained below and that the terms set forth below shall be in lieu of and supersede the company's former obligation to support public interest/public service programming, as contained in section 8(f)(1) and (2), above, which was to provide one million five hundred thousand dollars (\$1,500,000.00) for capital assets and to provide five (5) per cent of company's gross revenues for an operating appropriation in furtherance of public service and/or public interest programming. Such payments and capital assets to the city under this section, together with five (5) hours weekly of regional local origination programming provided by the company, shall constitute the total responsibility of the company for access and related activities.
- (2) The company shall make available equipment or other capital assets in the aggregate total amount of seven hundred and fifty thousand dollars (\$750,000.00) (excluding sales tax and head-end modulators) to be used in the furtherance of public interest and/or public service programming. No additional capital assets beyond capital assets requested and approved by the city as of June 1, 1986, shall be made available until after January 1, 1988. No more than twenty-five thousand dollars (\$25,000.00) shall be made available in any one year from January 1, 1988 through December 31, 1992. The remaining capital assets, up

to the aggregate total set forth above, shall be provided thereafter as replacement assets on a schedule established by the company and the city. Said equipment or other capital assets shall be made available in two (2) equal installments, the first installment to be completed on or before December 31, 1993 and the second installment to be completed on or before December 31, 1994.

The company shall make available space sufficient to accommodate MTN playback equipment (up to one hundred fifty (150) square feet) in the "head-end room," the studio and adjacent office space at 801 Plymouth Avenue North, Minneapolis, Minnesota, for public interest/public service programming, for the term of the franchise, pursuant to a lease with reasonable terms and conditions* which shall include the following:

1. That the cost for usage of the facilities, pursuant to said lease, shall not exceed the out-of-pocket incremental costs to company, such as security, utilities, insurance and structural alterations, arising out of MTN's, or any successors thereto, use of said facilities.
2. That said facilities shall be made available by company to MTN, or any successor thereto, until the expiration of this franchise, unless the city directs otherwise or the MTN defaults on the lease. The lease shall be assigned to the city in the event MTN defaults.
3. Beginning on January 1, 1987, and each year thereafter, the company shall pay:*
 - (i) An annual total pursuant to this chapter of sixty-two thousand, five hundred dollars (\$62,500.00) to the city for public interest and/or public service programming payable semiannually.
 - (ii) When the system obtains fifty thousand (50,000) full cable service tier subscribers citywide for three (3) consecutive months, the company shall pay an annual total pursuant to this chapter of eighty-seven thousand five hundred dollars (\$87,500.00) to the city for public interest and/or public service programming semiannually unless the full cable service tier subscriber count declines below fifty thousand (50,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (i) above shall govern.
 - (iii) In 1991, the company shall pay to the city an annual total pursuant to this section of one hundred six thousand two hundred fifty dollars (\$106,250.00)* for public interest and/or public service programming semiannually. In 1992, the company shall pay to the city an annual total pursuant to this chapter of one hundred and twenty-five thousand dollars (\$125,000.00).* for public interest and/or public service programming semiannually. Said payments shall be made on or before May 15 and November 15 of each calendar year. In each year after 1992 and until the conditions set forth in subsection (iv) below have been met, the company shall increase the amount paid to the city by making an annual cumulative adjustment of one hundred and twenty-five thousand dollars (\$125,000.00) times eighty (80) percent of the consumer price index urban (CPIU) as of December 31 of the previous year or times five (5) percent, whichever is less. In the event the company obtains sufficient subscribers to trigger the provisions of subsection (iv) below, the company shall pay the city the amount specified in subsection (iv) or the cumulative inflation adjusted amount set forth herein, whichever is greater.
 - (iv) When the system obtains ninety thousand (90,000) full cable service tier subscribers citywide for three (3) consecutive months and the company has repaid twenty million dollars (\$20,000,000.00) of its initial principal debt, the company shall pay an annual amount pursuant to this chapter of one hundred seventy-five thousand dollars (\$175,000.00) to the city for public service/public interest programming semiannually unless the full cable service tier subscriber count falls below ninety thousand (90,000) citywide for three (3) consecutive months. In that event, the payment under subsection (iii) above shall govern. The company agrees to pay to the city one percent of gross annual revenues in lieu of any and all funding under this subsection provided that said rate shall apply only

when the company has repaid from its operating funds no less than twelve million five hundred thousand dollars (\$12,500,000.00) of its debt.* In the event that the company has not repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified in subsection (iv) above, by the year 2000, the company agrees to provide additional equipment or other capital assets in the amount of fifty thousand dollars (\$50,000.00) during the year ending December 31, 2000, in addition to the programming payment set forth in either subsection (iii) or (iv), whichever applies, and, an additional twenty-five thousand dollars (\$25,000.00) in capital assets each year thereafter. This obligation for additional equipment or other capital assets shall not continue once company has repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified herein, and its annual payment for public interest and/or public service programming becomes one percent of company's annual gross revenue.

(v) For purposes of this section, the company shall include bulk subscriber equivalents in calculating full cable service tier subscribers. "Bulk subscriber equivalents" shall be calculated for each bulk contract based on the following formula: The full cable service tier monthly rate shall be divided into the per unit monthly bulk contract rate as multiplied by the number of units in the building or buildings subject to the bulk contract. The sum of bulk subscriber equivalents for all such bulk contracts shall be included in the final calculation of "full cable service tier subscribers."

(vi) In accordance with the agreement between the city and the MTN, or any successors thereto, ("MTN-city agreement") dated April 1, 1986, including but not limited to Article I, section 1.01(1); Article II, section 2.01(a); Article IV, section 4.02; Article IX, section 9.01, et seq., and Article XI, section 11.07, thereof, the MTN-city agreement, and any budgets or agreements relating thereto, shall be amended to conform to this amendatory ordinance and shall be superseded by the terms hereof.

(h) *MTN carriage.* Except as provided in section 8(d) herein, MTN programming shall be carried at the same time and same locations citywide. MTN shall be provided by the company with ninety (90) days' notice prior to any proposed change in channel lineups which would affect MTN channels.

(i) Programming carried by MTN shall be included in the same fashion as other nonpremium programming in any directory of programming (electronic or printed) produced by the company. However, the company reserves the right not to include changes in the proposed MTN programming which are not provided within the schedule for submission established by the publisher of the printed directory or less than seven (7) days before the electronic programming directory is to be produced. The company shall pay for listing of public interest/public service programming on Tier I on the distributed information processing (DIP) guide, or any successor thereto, up to one thousand five hundred dollars (\$1,500.00) annually, provided the MTN supplies the programming schedules on terms and conditions required by DIP guide, or any successor thereto. MTN shall be given space for a monthly guest column in any printed program guide and shall be allowed to purchase advertising at reasonable rates. MTN shall have the right to resell any advertising it purchases.

(j) *Services for the hearing impaired.* The MTN shall provide programming services for the hearing impaired on its channels subject to the provisions of Article III, section 8. These services may include:

- (1) The appropriate retransmission of available video services and computer/digital transmissions for the hearing impaired which are transmitted by communications satellite. The company shall make these services available to MTN at the company's cost. The company shall not remove captioning on any programming.
- (2) The signing and/or captioning of locally produced programming created by, or with the assistance of, MTN shall be the responsibility of MTN.

The company may use MTN's captioning capability to produce captioned programming. The MTN may use the company's capability, if any, to produce captioned programming.

(k) *Reservation by city.* Prior to MTN implementation or in the absence of any applicable MTN operating authority or pending city approval of its budget, the city may contract with the company to provide services, equipment, programming, and consultation necessary for the operation of the MTN. Expenditure or commitment by the city of MTN operating and/or capital resources is authorized in furtherance of such operations. The city reserves the right, at its discretion, from time to time, to determine whether the company, pursuant to an agreement, or MTN is performing its purposes in a manner satisfactory to the city, and if it is not, the city, without recourse by the company or MTN, may receive and reallocate all or a portion of the channel capacity, operating appropriation, and capital appropriation, including its facility and equipment purchased previously with such appropriations, to another entity, including the company. However, at no time shall the company's commitment to local programming be less than that described in this section. A new entity shall be required to comply in all respects with the legal responsibilities which MTN has assumed under this section.

Section 9. Use of access channels. (a) The company through the MTN or agreement with the city shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subdivision. No charges shall be made for channel time or playback time of prerecorded programming on at least one of the specially designated noncommercial public access channels provided for herein; provided, however, that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access. Where demand for use of the specially designated access channels set out within this subdivision does not warrant activation of all the specially designated access channels required in this subdivision, public, education, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that said services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. In the event that shared access programming is undertaken, at least one full channel shall be available on the VHF spectrum for shared access programming.

(b) Whenever the specially designated noncommercial public access channels or the specially designated educational access channel or the specially designated local government access channel, or the specially designated leased access channel required in this section is in use during eighty (80) per cent of the weekdays (Monday through Friday), for eighty (80) per cent of the time during any consecutive three-hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the company, through MTN or agreement with the city shall have six (6) months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require the company to install converters. However, nothing contained herein shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to this franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(c) The company through MTN or agreement with the city shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel required by this section. The operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use.

(d) The company through MTN or agreement with the city shall make readily available for public use at least the minimum equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by this section. The company through the nonprofit corporation shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this subdivision shall be determined by subscriber petition. The petition must contain the signatures of at least ten (10) per cent of the subscribers of the system, but in no case more than five hundred (500) nor fewer than one hundred (100) signatures.

(e) MTN shall have reasonable access to technical equipment, such as stereo FM audio signal capability, interactive computer capability, digital special effects generators, computer editing equipment and other technical equipment as it becomes available under the following conditions:

- (1) Capacity must be available.
- (2) Access to such equipment can be made available without interfering with any proprietary interest of the company, or the privacy interests of the company or its subscribers.
- (3) Any MTN personnel utilizing such equipment must be trained and qualified in its use.
- (4) The MTN shall compensate the company for the use of such equipment at cost.
- (5) The MTN requests for usage of the equipment shall be made in a manner consistent with normal business practices of the company and the timing and/or frequency of MTN demands shall not materially interfere with the business operations of the company.

Section 10. Regional Channel 6. VHF Channel 6 shall be designated as the uniform regional channel by the company. Until such time as it becomes operational, it may be utilized by the company as it deems appropriate. Use of time on the regional channel or channels shall be made available without charge.

Section 11. Leased access channels. (a) The company agrees to reserve the following channel capacity initially for lease, on a nondiscriminatory basis, as a minimum:

- (1) Five (5) per cent of the downstream channel capacity of the residential network.
- (2) One upstream channel on the residential network.
- (3) Twenty (20) per cent each of the downstream and upstream channel capacity of the institutional network.

(b) The company shall not utilize its franchise position to prevent leasing of channels by other entities offering nonentertainment services competitive to those offered by the company.

(c) All leased channel service revenues at the subscriber level shall be included in gross revenues subject to the franchise fee. Such revenues shall include monthly or per-use fees charged to users of services by lessees, but shall not include direct revenues generated by the sale of specific products offered by these services.

Section 12. Universal connection. The city may require that all dwelling units within the city shall be connected physically to the cable system by the company by means of drop cables terminating at each dwelling unit, whether or not the dwelling unit occupants desire to subscribe to cable service. The cost and charges shall be determined by the city at the time such connection is required. The company shall be entitled to recover the incremental cost of providing a universal connection.

Section 13. Penalties. (a) If the company fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the city may at its option, and in its sole discretion assess against the company monetary penalties as follows:

- (1) For failure to complete system construction in accordance with the construction plan (see Addendum A), unless the city council specifically approves the delay by motion or resolution due to the occurrence of conditions beyond the company's control, the company shall pay such penalties as are set forth in Article II, section 3(c).
- (2) For failure to provide data, documents, reports, information or to cooperate with the city during an application process or cable communications system review, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.
- (3) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the company shall pay the city fifty dollars (\$50.00) per day for

each day, or part thereof, that such noncompliance continues:

- (4) Forty-five (45) days following adoption of a resolution of the council determining a failure of the company to comply with operational or maintenance standards, the company shall pay to the city two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.
- (5) For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid authorization of the affected subscriber as required by Article I, section 22(c), the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.
- (6) For selling, providing or otherwise making available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business without the specific written authorization of the subscriber as required by Article I, section 23(c), the company shall pay five thousand dollars (\$5,000.00) for each such violation. In addition, the total amount of funds paid the company for this information shall be forfeited to the city by the company.
- (7) For tapping, monitoring or for arranging to tap or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to court order, the company shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurs or continues.
- (8) For all other material violations, the company shall pay up to two thousand dollars (\$2,000.00) per day, which the company hereby agrees to pay, said assessment to be levied against the letter of credit, hereinabove provided, and collected by city immediately upon said assessment pursuant to the due process procedures of Article III, section 14.
- (9) Each violation of each provision shall be considered a separate violation for which a separate penalty can be imposed.
- (10) Exclusive of the contractual penalties set out above in this section, a violation of any provision of this ordinance is by Minneapolis Municipal Code deemed to be a misdemeanor.
- (11) The rights reserved by the city herein are in addition to all other rights and remedies the city may have under this franchise or any other law, including without limitation, its right to recover from the company such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by city by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from city's right to enforce the provisions of the performance bond provided for in Article I, section 18, and is intended to provide compensation to city for actual damages.

(b) For violations considered by the city to have materially degraded the quality of service, the city may order and direct the company to issue rebates or reduce its rates and/or charges to subscribers, in an amount solely determined by the city to provide monetary relief substantially equal to the reduced quality of service resulting from the company's failure to perform.

(c) The city may require the company to cure all defaults and breaches of its obligations hereunder that are reasonably possible to cure before the company is entitled to increase any rate or charge to subscribers regulated by the city hereunder.

(d) No penalty shall be imposed by the city against the company for any violation of this franchise without the company being afforded due process of law as set forth in Article III, section 14. In the event the company's performance of any of the terms, conditions, obligations, or requirements of this franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the company has notified the city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond the company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to acts of God, civil emergencies and labor strikes.

(e) The company shall be liable and/or responsible solely for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.

(f) In no event shall the company be required to violate federal or state law or FCC regulation in furtherance of its obligations pursuant to this franchise.

Section 14. Procedure upon alleged violation. (a) Whenever the cable communications officer shall find that the company has violated one or more of the terms, conditions or provisions of this ordinance, including but not limited to Article III, section 13, a written notice shall be sent to the company by registered mail, return receipt requested, informing them of such violation or violations. Such notice shall be entitled "violation notice." The company may remedy violations of subdivisions (1) through (4) and (8) of Article III, section 13, within ten (10) days of tender of the registered letter bearing the violation notice. If the company fails to remedy the violation within ten (10) days after tender of the registered letter, penalties shall be assessed in accordance with the provisions of Article III, section 13. Violation of Article III, section 13, subdivisions (5) through (7) shall not be subject to remedy and shall be assessed from the first day of occurrence.

(b) Whenever a penalty has been assessed, the company may, within ten (10) days of the tender of written notice as provided for in Article III, section 14(a), notify the cable communications officer by registered mail that there is a dispute as to whether or not a violation has, in fact, occurred. Such notice shall specify with particularity the matters disputed by the company.

The cable communications officer shall, upon receipt of the company's letter, cause the matter to be referred to the city council for public hearing with at least thirty (30) days' notice. The hearing shall be held within forty-five (45) days of receipt of the company's letter by a committee designated by the council to determine if there is reason to believe the company has committed a violation of Article III, section 13. The company and the city shall have the right to seek subpoenas where available and to cross-examine witnesses. After public hearing, the council shall determine if there is reason to believe the company has committed a violation of Article III, section 13, and shall make written findings of fact relative to their determination. If violation is found, the company may petition the council for reconsideration of the matter, appeal to the Minnesota Cable Communications Board, or appeal to the courts.

(c) Upon a determination by the council that there is reason to believe a violation has taken place, and upon expiration of appeal procedures, or in the event the company chooses not to dispute the finding of the cable communications officer, the city finance officer shall immediately make withdrawals against the letter of credit provided for in Article I, section 17, in accordance with the penalties specified for such violations in Article III, section 13, and shall continue to make withdrawals until the company has satisfactorily remedied the term, condition or provision violated.

Section 15. Termination/forfeiture. (a) In addition to all other rights and powers of the city, the city may terminate and cancel the franchise and all rights and privileges of the company thereunder in the event that the company:

- (1) Substantially breaches any provision of the franchise, or any rule, order, or determination of the city made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by the company of written notice of said violation, except where such violation is not the fault of the company or is due to excusable neglect.
- (2) Attempts to dispose of any substantial portion of the facilities or property of its business without prior city approval, as provided for herein.
- (3) Attempts to evade any of the provisions of the franchise or practice any fraud or deceit upon the city.
- (4) Substantially violates any applicable federal, state or local law.
- (5) Substantially breaches or otherwise fails, refuses or neglects to perform its obligations under the terms and conditions of the franchise in accordance herewith.
- (6) Exclusions to the foregoing causes for termination/forfeiture of the franchise shall be when such violation, breach, failure, refusal or neglect is caused by any of the following:
 - a. Acts of God; or
 - b. Riots; or
 - c. Emergencies declared by competent governmental authority; or
 - d. Other causes not attributable directly or indirectly to actions of the company; or
 - e. Other causes which are without fault of the company or which result from circumstances beyond the company's control.

(b) In the event that the city determines that the company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the city may make a written demand on the company that it remedy such violation and that continued violation may be cause for termination. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the city within thirty (30) days following such demand, the city shall determine whether or not such violation, breach, failure, refusal or neglect by the company was excusable or inexcusable as provided in this section 15(a)(6):

- (1) A public hearing shall be held and the company shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the company of the time and the place of the hearing provided the causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need be shown by the city to support a revocation, which shall be pursuant to the express requirements as to revocability of franchises contained in the Constitution of the State of Minnesota, the laws and regulations of the United States and the State of Minnesota, the City Charter, and any agreements between the parties.
- (2) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal, or neglect by the company was excusable as provided in this section 15(a)(6), the city shall direct the company to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the city may direct.
- (3) If after public notice and hearing it is determined that the company's performance of any of the terms, conditions, obligations, or requirements of this franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the company has notified the city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond the company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.
- (4) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal or neglect was inexcusable as provided in this section 15(a)(6), then the city may declare, by resolution, the franchise or any renewal thereof be terminated and of no further force and effect unless there is compliance within such period as the city council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud, misrepresentation, or violation of privacy rights contained in Article I, section 22, subdivisions (b), (c), (d) and (e).
- (5) The issue of forfeiture and termination shall automatically be placed upon the city council agenda at the expiration of the time set by it for compliance. The council then may terminate the franchise forthwith upon finding that the company has failed to achieve compliance or may further extend the period, in its discretion.
- (6) In the event city council terminates the franchise, the company shall have a period of thirty (30) days beginning the day next following the date the council terminates the franchise within which to file an appeal with the Minnesota Cable Communications Board pursuant to Minnesota Statutes, section 238.14. During such thirty-day period and until the board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires.
- (7) If, after notice is given and, at the company's option, a full public proceeding is held and appeal is exhausted, the city declares the franchise or any renewal thereof breached, the parties may pursue their remedies pursuant to the franchise or any other remedy, legal or equitable, including but not limited to any action listed in Article III, section 13 hereof.

(c) If the franchise or any renewal thereof terminates by reason of the default of the company, the city shall have the option to purchase the cable system at book value, less any amount for any damages incurred by the city in connection with such default. Damages incurred by the city shall not be limited to any payment made by the city authorizing or directing the continued operation of the system.

(d) In the event that the company dismantles or terminates the cable system or is required by any provision of the franchise to dismantle or terminate the cable system, the company shall, at the city's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system. Restoration of city property (including, but not limited to, streets) shall be in accordance with the directions and specifications of all affected agencies of the city and all applicable laws. The company at the option and direction of the city shall restore the same at its own expense.

Section 16. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon the termination of any lease covering all or a substantial part of the cable communications system, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this franchise governing the consent of the city council to such change in control of the company shall apply.

Section 17. Receivership. The city council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- (a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and
- (b) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the company.

Section 18. Compliance with state and federal laws. Notwithstanding any other provisions of this franchise to the contrary, the company and the city shall at all times conform to all required state laws and rules regarding cable communications not later than one year after they became effective, unless otherwise stated, and conform to all federal laws and regulations as they become effective. Provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify the city attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.

Notwithstanding anything in this franchise ordinance to the contrary, this ordinance shall be construed to give effect to those provisions which bring this ordinance into compliance with the requirements of federal, state and local law. The company shall undertake to apply for and prosecute in good faith an application for FCC permission to make payments unless ordered not to do so by that agency or other agency having jurisdiction; but in no event shall the company be required to violate any rule, regulation or order of the FCC or any court having jurisdiction or any other federal or state law.

If any material section of this ordinance, as determined by the city council, is held to be invalid or preempted by federal or state regulations or laws, the city shall negotiate with the company appropriate modifications to the franchise to provide reasonable relief from such invalidity or preemption. If the parties are unable to reach agreement on such modifications, then the dispute will be submitted to a mutually agreeable arbitrator, in accordance with Minnesota law, who will determine what modifications and/or alternative relief is appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require any party to be in violation of any federal or state law or regulation.

Section 19. Waiver and release of rights. A. *Waivers associated with the enactment of 86-Or-164.* In consideration for the enactment of 86-Or-164 and in consideration for the agreement contained in Article III, section 8(g) hereof, company forever releases and waives any claims it may have for any overpayments and prepayments made prior to the effective date of 86-Or-164 including the time value of money pursuant to the CCPA, as specified below:

- (1) The company waives and releases, now and forevermore, any and all claims against the city for prior payments to and the city's collection of a five (5) per cent franchise fee without authorization from the Federal Communications Commission ("FCC") which was required pursuant to 47 C.F.R. Section 76.31, for claims of overpayments of franchise fees based on the FCC's decision in in re: The City of Miami, Florida (FCC Docket No. GSR-2326, June 28, 1984).
- (2) The company waives and releases, now and forevermore, any and all claims against the city for advances of franchise fees pursuant to Article I, section 9(b) and outstanding advances for public interest/public services programming in the total amount of one hundred thousand dollars (\$100,000.00) for Chapters 1 and 2.
- (3) The company waives and releases, now and forevermore, any and all claims against the city for overpayments for public interest and/or public service programming pursuant to Article III, section 8(f)(2).
- (4) The company waives and releases, now and forevermore, claims that payments made prior to the effective date of 86-Or-164 pursuant to Article I, section 9, and Article III, section 8(f) were in violation of state or federal statutory, constitutional or regulatory requirements, including CCPA.
- (5) The city waives and releases company, now and forevermore, from payments to the city deferred under Addendum D and Addendum C adopted pursuant to 85-Or-174 in consideration of the adoption of 86-Or-164.

B. *Waivers associated with the enactment of 89-Or-013.* In consideration for the enactment of 89-Or-013, execution of the acceptance of 89-Or-013 and guarantee by KBLCOM, KBL and company, and, in consideration for the settlement agreement and release dated February 2, 1989, between city, company, KBL, KBLCOM, Rogers U.S. Cablesystems, Inc. (RUSCI), Rogers Cablesystems of America, Inc. (RCA), RCA Cablesystems Holding Co. (RCACH), Rogers U.S. Holdings Limited (RUSHL), Rogers Cablesystems, Inc., a Canadian Corporation (RCI), it is understood that company, RCI, RUSHL, RCACH, RCA, RUSCI, KBL and KBLCOM and their successors, heirs and assigns, KBL, Cablesystems of America, Inc., KBL U.S. Cablesystems Inc., KBLCMI and KBLCMLP, forever waive, release and discharge the city and MTN, their officers, agents, employees, successors and assigns, from any and all claims, suits, actions, demands, rights, damages, costs and expenses, whatsoever, including all claims for attorneys fees, of any nature arising from or in connection with any payments made or services provided to the city or MTN by company pursuant to Appendix H, Chapter 1 through the "investment date", as defined in a stock purchase agreement dated August 9, 1988 and thereafter amended on December 16, 1988 between KBL and RUSHL or April 30, 1989, whichever is earlier. Said waiver, release and discharge shall include, but not be limited to any claims, suits, actions, damages, rights, demands, costs and expenses, whatsoever, including all claims for attorneys fees through the investment date, or April 30, 1989, whichever is earlier, based on any claimed violation of state or federal constitution, state or federal statutory or regulatory requirements, including the Federal Cable Communications Policy Act of 1984.

G. Except as set forth herein or as set forth within the acceptance of 89-Or-013 and guarantee, or as set forth in the settlement agreement and release dated February 2, 1989 executed in conjunction therewith, neither company nor city waives or releases any rights they may have.

ARTICLE IV. PURCHASE OF CABLE COMMUNICATIONS SYSTEM BY CITY

Section 1. Revocation or expiration of the franchise. In the event the city exercises its option to purchase the cable system upon franchise revocation, the purchase price to be paid by the city shall be the company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for tangible assets, exclusive of intangible assets such as good will or value of the franchise. If the city purchases the cable system upon expiration of the term of the franchise or any renewal thereof, the purchase price to be paid by the city shall be fair market value.

Section 2. Purchase option. The city has the right to purchase the system at any time eight (8) years after the grant of a certificate of confirmation. The purchase price of the system shall be fair market value and shall be determined by an independent appraiser mutually agreed upon by the city and the company.

Section 3. Rights to system after franchise end. The company concedes that it has no vested right to operate the system nor any claim to system revenues once the franchise has been revoked, terminated, forfeited, or after it has expired except for periods during which the company continues to operate the system pursuant to Article II, section 8 herein.

Section 4. Relocation. In the acceptance of this franchise the company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

Section 5. Date of valuation. The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

Section 6. Transfer to city. Upon exercise of either option above and the payment of the above sums by the city and its service of official notice of such action upon the company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.

Section 7. Arbitration of value and costs. (a) In the event the city and the company cannot agree upon the value of the cable communications system, either may give notice of a demand to the other for arbitration.

(b) Arbitration shall commence and proceed according to law except as follows:

- (1) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.
- (2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.
- (3) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the city attorney.
- (4) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the city and served by mail upon the company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew. If new proceedings are started they shall be based upon the record of the original proceeding. Supplemental evidence may be taken at the request of the new panel of arbitrators in accordance with the procedures outlined in this section.
- (5) The decision of the board of arbitrators shall be final and binding upon the parties.
- (6) Either party may seek judicial relief in the following circumstances:
 - a. A party fails to select an arbitrator;
 - b. The arbitrators fail to select a third arbitrator;
 - c. One or more arbitrator is unqualified;
 - d. Designated time limits have been exceeded;
 - e. The board of arbitrators has not proceeded expeditiously; and
 - f. Based upon the record the board of arbitrators abused its discretion.
- (7) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.
- (8) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of the company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

ARTICLE V. RENEWAL OF FRANCHISE

Section 1. Renewal. This franchise may be renewed for a period not less than five (5) years, subject to the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the city.

- (a) Commencing no later than twenty-four (24) months prior to expiration date of the franchise, the city shall undertake an evaluation of the city's franchise ordinance and the services then being offered in the city.
- (b) Except by mutual agreement of the city and the company, no earlier than two (2) years and not less than eighteen (18) months prior to the expiration date of the franchise, the company may submit an application for renewal to the city by registered or certified mail. At that time, after giving public notice pursuant to Article I, section 23, the city shall review the provisions of the franchise and shall evaluate the performance of the company, including but not limited to the results of system performance and system and services review sessions. In making this evaluation the city shall consider relevant factors including, but not limited to, the following:
 - (1) Technical development and performance of the company's cable system;
 - (2) Programming;
 - (3) Additional services offered by the company;
 - (4) Cost of service;
 - (5) All obligations of company as prescribed by the franchise;
 - (6) Cable industry performance nationwide; and
 - (7) Comments from residents and representatives of community organizations submitted in a manner to be determined by the city.
- (c) After holding a public hearing, the city shall take such actions as it deems appropriate, which may include any of the following:
 - (1) If the city determines the company's performance to be satisfactory, a renewed franchise may be granted pursuant to this ordinance.
 - (2) In the event the company is determined by the city to have performed unsatisfactorily, new applications may be sought and evaluated and a franchise awarded in accordance with franchising procedures then in force.
 - (3) The city may direct the company to remove and dismantle its cable system at the company's cost.
 - (4) The city shall have the option to require the sale by the company and the purchase by the new franchisee of the system at its then fair market value. In the event that the city determines that the existing system is to be used by the new franchisee, the city shall direct in the award of the new franchise the sale by the company and the purchase by the new franchisee of the system at its then fair market value. Upon exercising such option, the city shall proceed to obtain an appraisal of the fair market value of the system to be completed within ninety (90) days of the exercise of its option. No later than sixty (60) days after completion of the appraisal the successor company shall pay the company the fair market value of the system and, upon payment, shall be entitled to title and possession of the system. In the event that the company and the successor company cannot agree upon the fair market value of the system, the successor company shall pay the company seventy-five (75) per cent of the appraised fair market value of the system within sixty (60) days after completion of the appraisal and, upon payment, shall be entitled to title and possession of the system. In that event, the ultimate amount payable to the company shall be determined by action in the district court. As used in this subsection, the term "fair market value" shall not include any allocation of value for expectation of renewal of franchise.
 - (5) Absent a timely request from company to renew the franchise, the franchise shall terminate at the end of its initial or any renewal term.
 - (6) The city may take such other action as allowed by law which, in its sole discretion, it shall deem appropriate.

ADDENDUM A. CABLE COMMUNICATIONS SYSTEM DESIGN, CONSTRUCTION AND SERVICES

Section 1. Commitment by company. *A. Cable communications system design.* The company shall construct a state-of-the-art cable communications system providing the following features:

1. *System configuration.* The cable television system shall be a dual integrated residential/institutional network of approximately four hundred forty-three (443) miles, consisting of at least two (2) interconnected cables. The company shall install the necessary system hardware to accommodate activated bidirectional communications channel capability in its initial configuration.
2. (a) *Channel capacity.* The cable television system shall be installed to deliver signals at frequencies up to four hundred forty (440) megahertz (MHz), with frequency and channel capability as indicated below. Total band width on two (2) cables is a maximum of eight hundred eighty (880) megahertz.

TABLE INSET:

	<i>Signal Direction</i>	<i>Activated Signal Activated Video Frequency Capacity (MHz)</i>	<i>Channel Capacity</i>
<i>Dual Cable Network</i>			
Integrated residential network	Outbound	800	120 plus FM band
Integrated residential network	Inbound	-48	8 video equivalent plus data
Integrated fiber optic institutional network	Outbound	See Alternative Network	
Integrated fiber optic institutional	Inbound	See Alternative Network	
Interconnect	Outbound	156	26 video equivalent
Interconnect	Inbound	102	17 video equivalent

- (b) *Construction and activation of alternative network shall be completed by August 31, 1990.* The alternative network shall meet or exceed the design and construction specifications set forth in the company's project plan dated March 12, 1990, as modified by the alternate network design description dated September 21, 1990. The alternative network shall be owned and maintained by the company for the benefit of the city. The alternative network will be controlled and managed by the city.
 - i. The city or the company may suggest areas of priority for construction and activation of distribution network reverse amplifier modules on or before October 1, 1989, and the company shall use its best efforts to construct and activate reverse amplifier modules on the distribution network (feeder cable) in accordance with the priorities designated by the city. The city or the company may suggest construction and activation of comparable technologies and design alternatives to a midsplit configuration, provided that any change in design or substitution of comparable technology shall be valid only upon written approval to company from the city's cable officer.
 - ii. During the period of construction set forth herein, the construction and activation of the alternative network shall be secured by the bonding requirements provided for in Article I, section 18 of Appendix H, Chapter 1 and Article I, section 17 of Appendix H, Chapter 2, irrespective of the completion by company of any other construction requirements set forth in the franchise ordinances.
 - vii. Company shall secure performance of the construction obligations for the alternative network called for in Addendum A, section 1 in a bond issued in conformance with Article I, section 18, hereof, and in conformance with the acceptance of 89-Or-013 and guarantee, so that the total face value of the bond required hereunder and under the franchise is two million one hundred thousand dollars (\$2,100,000.00). At such time as the city's cable officer certifies that the alternative network design construction required under Addendum A, section 1 is

completed, the bond shall be reduced to the amount required in the franchise ordinances:

- iv. During the period of deferral of construction and activation of the alternative network, the city may, in addition to any other remedies it may have, either impose any of the penalties set forth in Article II, section 3(c) or Article III, section 13, in accordance with the procedures set forth in Article III, section 14, for any delays in construction, installation, and/or activation of the alternative network.
3. *Satellite uplink.* The company shall provide or cooperate with Twin Cities Public Television and/or any other entities designated by the city to provide satellite uplink capability within one year after the city determines such an uplink to be in the public interest. The terms and conditions of any agreement arrived at pursuant to this section must be approved by city.
4. *Satellite earth station.* The company, initially and throughout the term of the franchise, shall reasonably provide a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs available to cable systems.
5. *Capacity for interactive services.* The company shall provide initially the capability to utilize up to fifty (50) channels on each of the two (2) network trunk cables for teletext services, as well as video programming, on a selectable basis. In addition, the system shall have the capacity for interactive residential services, including but not limited to security alarm monitoring, home shopping, energy management, electronic banking, videotext, subscriber polling, video games, meter reading, computer/digital transmissions, and one-way or interactive education. Interactive services not offered initially shall be provided as soon as technically and economically feasible in the future. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by the company in accordance with established and uniform rate schedules. Projected installation costs for the replacement of existing noninteractive converters shall not be considered in determining economic feasibility.
6. *Local origination.* The company may provide local origination facilities and staff. The company is strongly encouraged to work cooperatively with the nonprofit corporation and other public and nonprofit agencies which produce programming. The company shall provide local origination facilities and staff to the extent funded by the city.
7. *Parental control lock.* The company shall provide subscribers, upon request, at no charge, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels.
8. *Status monitoring.* The company shall provide an automatic status monitoring system as an integral part of both the residential and the institutional cable networks.
9. *Home subscriber equipment.* The company proposes the following equipment for home subscriber use:
Tier 1: Universal service tier (12-channel service); no subscriber terminal device proposed.
Tier 2: Full cable service tier; 90-channel capacity with options which will include Zenith Z-TAC set-top addressable converter or equivalent equipment.
10. *Applicable technical standards.* The company shall meet all technical standards pursuant to Article II, section 5 of the franchise ordinance.
11. *Interactive system design.* The initial interactive system design is capable of providing, but not limited to, security services, opinion polling, alarm monitoring and pay-preview capability. The complete system design includes computer hardware and software, data receivers, home terminal units, converter status transmitters and bridger amplifiers. Low-speed polled data used by the security/opinion polling/status monitoring system has been allocated its own band of frequencies (five (5) to twelve (12) MHz) controlled by a

separate code-operated switch in each bridger amplifier. Reverse video transmission has been assigned two (2) television channels at the high end of the sublow band (twenty-one (21) to thirty-three (33) MHz):

The band from twelve (12) or twenty-one (21) MHz has been reserved for future introduction of high-speed data services using a carrier-sense multiple-access transmission protocol. Spare positions have been incorporated in the bridger stations to install new modules which will provide upstream noise and ingress control for the high-speed data channel. The amplifier design includes a failsafe bypass circuit which activates automatically in the event of power failure, amplifier failure or loss of gain. System design also includes a home terminal unit (HTU) for security application as well as the converter status transmitter (CST) for monitoring system performance. Converters with the CST option will enable subscribers to order pay-per-event programming directly through the cable system. Interfaces between the interactive system computer, billing system computer and addressing computer for Zenith Z-TAC converters make the system completely automatic.

12. *Interactive system operation.* The data collection system uses time, frequency and spatial multiplexion. The computer has the capability of scanning through the cable system, receiving data from home terminal units in bridger distribution groups of up to five hundred (500) homes. The following units are employed in the scanning process:
 - a. *Minicomputers.* Two (2) minicomputers operating in a parallel processing mode control the data collection system. Major functions include scanning control, received data verification and analysis, memory management, alarm transmission and system status monitoring.
 - b. *Multichannel receivers.* The multichannel receivers receive and demodulate data from all home transmitter and status monitor carriers in operation on the system. The received data and/or missing carrier code is transferred to the minicomputers under program control.
 - c. *Trunk switch; Cablesystems Engineering model No. TRS-8.* The trunk switch connects the code-operated switch addressor and the multichannel receiver to any of the trunks radiating from the hub. The trunk switch operates under computer control.
 - d. *Code-operated switch addressor; Cablesystems Engineering model No. COSA-8.* The code-operated switch addressor receives address and command data from the computer and modulates an RF carrier with the information using the frequency shift keying technique.
 - e. *Trunk bridger station code-operated switch.* Each bridger station is equipped with two (2) code-operated switches, one controlling the band from five (5) to twelve (12) MHz (data) and the second controlling the band from twenty-one (21) to thirty-three (33) MHz (video). The switches are operated independently by an addressable receiver which demodulates information from the FSK modulated RF signal originated by the COS addressor. A maximum of five hundred (500) subscribers are included in each distribution area fed from a bridger amplifier.
 - f. *Home terminal unit.* The home terminal unit (HTU) interfaces with sensor devices. The unit is standby powered and transmits continuously on one of five hundred (500) discrete frequencies in the band from five (5) to twelve (12) MHz. The data rate is approximately two (2) kilobits per second.
 - g. *Status transmitter.* The status transmitter is located in bridger amplifiers and is interfaced with the power supply, amplifier bypass controls, etc. The transmitter is injected on the distribution side of the COS to permit positive confirmation of switch closure.
13. *Computer processing.* The computer program compares the data received from each HTU, CST or status monitor with the data received on the previous scan. Any changes are detected and passed on for further processing.

Each HTU, CST and status monitor has a unique identity which can be determined by the setting of the trunk switch, COS address and received frequency of the data carrier. Matching the terminal identity with the received data permits the system to look up stored information which can relate the received data to its meaning.

14. *Institutional network.* The routing of the integrated Institutional Network is contained on the maps in section B(2). The capacity and other system design features are described in Addendum A. The company shall build all areas previously passed by the separate institutional network as a part of the integrated residential/institutional network. The integrated network will also pass through downtown Minneapolis and be available to users.

B. System construction:

1. The construction schedule required pursuant to Article II, Section 3, is as follows:

TABLE INSET:

<i>Date*</i>	<i>Zone Completion Dates</i>
<i>Scheduled</i>	<i>Area Number</i>
<i>(months)</i>	
12	I
18	II
24	III
30	IV
36	V

* Number of months from commencement date to completion as defined in Article II, section 3, for zones established herein:

2. Cable communications systems maps. The accompanying maps indicate the proposed routes of the integrated residential/institutional networks of the Minneapolis Cable Communications System which shall initially be served by the system design set forth in Addendum A, Section 1A.

GRAPHIC LINK: [Click here](#)

GRAPHIC LINK: [Click here](#)

C. Cable communications system services:

1. *Residential network services.* The company shall provide the following services on the residential network:

- a. *Initial services and programming.* Unless otherwise specified the company shall provide, as a minimum, the initial services and programming listed in this section. The company shall not reduce the number of program services without prior written notification to and approval by the city and/or the cable communication officer. The city's approval shall not be unreasonably withheld and its written decision shall be given to the city within thirty (30) days from receipt of this notification. The company may add new services at any time. Any new rates or rate increases necessitated by the added services are subject to the city's approval, where applicable. The company may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience. When a distributor of any program or service substantially alters the terms or conditions upon which the program or service is offered, the company reserves the right to substitute similar programming or services or to offer other alternatives on reasonable terms or conditions comparable to the programming or services originally offered, subject to the approval required herein. Such approval shall not be unreasonably withheld.

- b. *Subscriber television services.* The company shall provide subscriber television services as follows:

TABLE INSET:

Channel

		Capacity
I.	Universal service tier	12
II.	Full cable service tier**	90*

* Text option available as additional pay service.

** Four (4) FAA-restricted channels are now not available and shall be provided upon FAA/ FCC approval.

e. *Subscriber television services description.* The company shall provide, at minimum, the following programming for subscriber television services:

(1) *Twelve-channel universal service.*

Seven (7) broadcast channels and five (5) MTN channels (which includes regional Channel 6)*

*To the extent must-carries increase, must-carries will have priority over MTN channels consistent with the Laws of Minnesota and FCC rules.

(2) *Ninety-channel full cable service tier.*

(a) Carriage of seven (7) local area broadcast television stations:

(b) Full carriage of three (3) distant broadcast television stations:

WGN Chicago

WTBS Atlanta

CFMT Toronto*

* Pending availability

(c) Carriage of the following video programming services distributed by communications satellite or equivalent programming of the same general class to the extent it is available:

1. American Education Television Network (AETN)
2. Appalachian Community Service Network (ACSN)
3. Black Entertainment Television (BET)
4. Black Music Television*
5. Lifetime
6. WCCO news channel
7. Cable News Network II (CNNII)
8. Cable-Satellite Public Affairs Network (C-SPAN)
9. Christian Broadcasting Network (CBN)
10. Cinemerica*
11. ESPN II*
12. Eternal Word Television Network
13. Good Stuff*
14. Kid Vid Network*
15. Home Music Store*
16. Modern Satellite Network (MSN)
17. Nashville Network*
18. National Christian Network (NGN)
19. National Entertainment Television*
20. National Jewish Television (NJT)
21. National Spanish Television Network (NSN)
22. Nickelodeon
23. Opryland Music Network*
24. People That Love Network (PTL)
25. The Preview Network
26. Satellite Program Network (SPN)
27. Satellite News Channel I (SNC)
28. SNC II
29. Telefrance
30. Trinity Broadcasting Network
31. US Senate*

32. USA Cable Network (includes Calliope, The English Channel and other programs)

33. UTV Involvision*

34. WCGO weather channel

*Pending availability

(d) Carriage of combined video/text services:

(e) Carriage of the following imported automated programming services or equivalent programming of the same general class to the extent it is available:

1. AP Newscable

2. AP Washington Report

3. BIZNET*

4. Financial News Network

5. Reuters Financial/Sports

*Pending availability

(f) Carriage of five (5) local automated programming services:

1. Community Bulletin Board

2. Cable Guide

3. Airport Arrival and Departure*

4. Community Classifieds

5. Shopping Basket

*Pending availability

(g) Carriage of the following optional pay-television services or equivalent programming of the same general class to the extent it is available:

1. Cinemax

2. Galavision

3. Home Box Office

4. Home Theatre Network

5. The Movie Channel

6. Bravo

7. Showtime

8. The Disney Channel

9. Spotlight

10. Public Subscriber Network*

11. Playcable*

12. Pay Per View

Additionally, the company will provide the following on the full cable service tier:

1. Entertainment and Sports Programming Network

2. MTV: Music Television

3. Arts and Entertainment Network

4. Cable News Network (CNN)

In providing interactive service, the company will offer the following optional interactive services by such time as construction of the cable communications system has been completed and/or pending availability:

(a) Security Services. The company interactive system is proposed for security service. The technology is described in Section I, Part A of this addendum.

(b) Reuters IDR Information Retrieval. The Reuters Company has developed a full-field teletext system to transmit data using satellite and cable television systems. The Reuters IDR signal is handled in the same manner as a conventional video transmission and uses one standard six (6) MHz channel. Each subscriber to the service is supplied with a Reuters terminal which receives the IDR signal and converts it to text format on the attached video monitor.

(c) Dow Jones News Retrieval. Dow Jones is currently using TOCOM equipment for this service although other systems have been discussed. Subscribers are

supplied with a TOCOM terminal which exchanges data with the subscriber's microcomputer or dumb terminal over an RS-232 interface.

(d) The Source. The Source is planned to be a teletext transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be retrieved and decoded using suitably equipped Z-TAG converters.

(e) Pay-per-view programming. Pay-per-view programming will be delivered using the Zenith Z-TAG addressable converter system.

(f) Opinion polling. The company interactive system is proposed for opinion polling. The technology is described in Section A.

(g) Interactive text. Interactive text is planned to be a telecast transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be received and decoded using suitably equipped Z-TAG converters.

(h) Home banking and home shopping. The technical system adopted for these services would be selected in cooperation with the home banking and home shopping participants.

(i) Time-Shared Telidon. Time-Shared Telidon is provided with a microcomputer database system developed by the company. Access is provided through the interactive converter keypad or touch tone telephone. Data is transmitted to Telidon decoders at the head end to convert the data into a conventional video image which is modulated and transmitted to the subscriber's converter. The term "Telidon" refers to the North American Presentation Level Protocol Syntax (ANSI X3L2.1 Videotex/Teletext Character Sets).

(j) Newspaper services. The technology selected for newspaper services will be determined in consultation with the participating newspapers.

d. *Subscriber FM service.* The company shall provide subscriber FM service including the following:

(1) *Local radio stations:*

- (a) KQRS
- (b) KMOJ
- (c) WAYL
- (d) KSTP
- (e) KNOF
- (f) KBEN
- (g) KSJN
- (h) KTCR
- (i) KTIS
- (j) WLOL
- (k) WCTS
- (l) KDWB
- (m) KEEY
- (n) WCCO
- (o) KFMX
- (p) KFAI
- (q) KTVN
- (r) KUOM
- (s) KBEM
- (t) WMMR

(2) *Other audio services:*

- (a) WFMT (Chicago)
- (b) JISAL
- (c) Shortage Composite—Services International*
- (d) Reading Services for the Blind

(e) Seeburg/Lifestyle

(f) NCN Family Radio Network

(g) Stereo simulcast services in conjunction with satellite video programming services such as "MTV: Music Television," "CBS Cable" and others as available.

*Pending approval

e. *Availability of programming services.* In the event that any programming service as described in this commitment by company is or becomes unavailable to the company, the company may substitute equivalent programming of the same general class to the extent it is available.

f. *Leased access services:*

(1) The company shall provide channels for leased access use, in accordance with the rules of the Minnesota Cable Communications Board and the Minneapolis Cable Communications Franchise Ordinance on the residential network of the cable communications system.

(2) The company shall provide channels for leased access use on the institutional network of the cable communications system in accordance with the Minneapolis Cable Communications Franchise Ordinance.

(3) The company shall establish operating rules for leased access channels as provided for in the rules of the Minnesota Cable Communications Board. These rules shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use as required.

g. *Institutional network services.* The company shall offer all economically feasible video, data and/or voice communications services within the technical capacity of the cable system to institutional subscribers by such time as construction of the cable system is complete.

Section 2. Channels dedicated for public usage. The company shall dedicate channels for public use to be administered by a nonprofit corporation designated by the City of Minneapolis as specified in Article III of the Cable Communications Franchise Ordinance.

A. *Availability of access channels.* In accordance with the rules of the Minnesota Cable Communications Board and with the City of Minneapolis Cable Communications Franchise Ordinance, the company, through the city-designated nonprofit corporation, shall provide all access channels as required by law. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels.

B. *Administration of access channels.* The company, through the nonprofit corporation and in accordance with the rules of the Minneapolis Cable Communications Board and City of Minneapolis Cable Communications Franchise Ordinance, shall establish operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel which shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use. All such rules shall comply with applicable federal, state and local regulations.

ADDENDUMB. MINNEAPOLIS CABLE COMMUNICATIONS RATE ORDINANCE

Article I. General Provisions

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Rate Ordinance."

Section 2. Definitions. Words not defined herein shall be defined in accordance with the provisions of Article I, section 2, of the "Minneapolis Cable Communications Franchise" ordinance.

Apartment shall mean any building with two (2) or more residential units.

Residential unit shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.

Standard installation shall mean, unless otherwise specifically provided, an aerial drop of no more than one hundred fifty (150) feet. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.

Section 3. Regulation of rates; effective date. No charge shall be made or imposed by the company for any cable communications service subject to regulation by the city, except in accordance with the provisions of this ordinance and the provisions of the "Minneapolis Cable Communications Franchise Ordinance."

This ordinance shall be in effect, after passage and publication, as of the commencement date of the "Minneapolis Cable Communications Franchise Ordinance;" and, shall remain in effect until amended or superseded in accordance with the provisions set out in the "Minneapolis Cable Communications Franchise Ordinance."

Section 4. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 4.5. Compliance with state and federal law. Notwithstanding any provision of this ordinance to the contrary, the city will exercise its regulatory authority over company's rates in a manner consistent with federal or state statute and regulation. This section shall apply when a federal or state statute or regulation preempts the authority of the city to regulate in accordance with this ordinance.

Section 5. Rights of city reserved. Irrespective of the regulation or lack thereof of any service offered now or in the future by the company and regardless of whether or not a service is designated as basic or premium/pay, the city reserves the right to regulate any service when such regulation is not specifically prohibited or preempted by federal or state law.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article II. Franchise Fee

The company shall pay, as compensation to the city, a franchise fee of five (5) per cent of its gross revenues.

Article III. Basic Installation Services

Section 1. Initial rates and charges. Grantee's initial rates and charges shall not exceed those listed in this section.

Section 2. Residential installation. The initial rates and charges for installation to residential subscribers shall not exceed the following:

	<i>Installation Charge</i>
(a) <i>Universal service tier (12-channel service):</i>	
First TV outlet, standard television receiver	\$14.95
First TV outlet, cable-ready television receiver*	15.95
Additional TV outlets, each	N/A
Relocation	10.00
Reconnection	10.00
Change of status	10.00
*Capable of receiving unscrambled cable television channels without converter	
(b) <i>Full cable service tier (90-channel capacity service):</i>	
First TV outlet	\$29.95
Converter (no deposit charge)	no
	charge (1)
Relocation	10.00
Reconnection	10.00
Change of status	10.00
(c) <i>Premium/pay:</i> The initial rates for installation of premium/pay services shall not exceed the following:	

Home Theater Network Plus	\$10.00
The Movie Channel	10.00
Home Box Office	10.00
Cinemax	10.00
Showtime	10.00
Play Cable	to be determined
Public Subscriber Network	10.00
Galavision	10.00
Bravo	10.00
The Entertainment Channel	10.00
The Disney Channel	10.00
Spotlight	10.00
Text	to be determined
Parental security control lockout (parental control device)	no charge
Reuters Instant Data Retrieval according to level of service chosen	varies
(d) <i>FM service installation:</i>	
As part of initial service	no charge
As separate installation	\$9.95
(e) <i>Home security service:</i> Basic home security service shall include (i) one smoke detector or one alert button and (ii) two (2) door contacts. One visual signaling device will be provided for the hearing impaired upon written request prior to installation.	
(f) <i>Upgrade service:</i> From universal service to higher service (unless home security or premium/pay service is ordered, in which case the charge shall be [as] specified above)	\$10.00
(g) <i>Waiver of installation fees:</i>	
(1) When service first offered: All installations of first outlets except universal service are free within thirty (30) days after service is first available to each home.	
(2) For promotional activities: The company reserves the right to waive or reduce installation fees during initial construction periods and special promotions on a nondiscriminatory basis.	
(h) <i>Multiple services installed at same time:</i>	
(1) All pay installation charges other than Play Cable, Reuters, Text options, and other similar services will be waived if one or all pay services are installed at the time of the initial service installation.	
(2) The company reserves the right to charge a ten-dollar (\$10.00) reconnection, relocation, or change of status charge after first installation.	
(i) <i>Reconnection of service:</i> The company shall restore service to customers wishing restoration of service, provided customers shall first satisfy any previous obligations owed. A maximum reconnection fee of ten dollars (\$10.00) may be charged the customer. If the customer's service has been disconnected during the preceding six (6) months for failure to satisfy obligations owed, the company may require the maintenance of two (2) months' advanced payment as a condition precedent to restoration of service.	
(j) <i>Drops:</i> Aerial drops, or underground drops when required pursuant to section 2, in excess of one hundred fifty (150) feet shall cost the same as standard installation, plus the company's cost for that portion of the drop in excess of one hundred fifty (150) feet. The company may request advance payment for such installation.	

- (k) *Underground drops:* Underground residential drops shall be charged at the company's cost minus cost of standard installation. The company may request advance payment for such installation. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.
- (l) *Equipment security deposit option and recovery costs:*
 - (1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.
 - (2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen, or damaged through neglect or misuse by the customer.
- (m) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.

Section 3. Installation to governmental, educational or nonprofit institutions. (a) A single standard installation of residential service cable shall be made upon request without charge at each governmental, nonprofit, and educational institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation, except as provided for in (f) below. Additional outlets at each institution will be installed at an amount equal to company's internal cost.

(b) A single standard installation of institutional network shall be made upon request without charge to each governmental, educational and nonprofit institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation except as provided in (f) below. Additional outlets at each institution will be installed at an amount equal to the company's internal cost.

(c) Interior cabling, outlets and exterior distribution within a complex of buildings in a geographical area shall be provided upon request at the company's cost.

(d) Should the school district or the city desire to provide its own exterior/interior distribution, the company shall render technical assistance without charge. Such installations are subject to inspection and approval by the company.

(e) Underground installations shall be at the company's cost, less the company's rate for a standard installation, except as provided for in (f) below.

(f) The company shall extend feeder cable to a property line and a drop (not limited by the definition of "standard installation") to the closest point of the building for each of the following public buildings with technically compatible internal distribution networks approved by the city's cable officer on a schedule established by the company and the city, but said construction shall be completed no later than August 31, 1988:

- Minneapolis City Hall
- Hennepin County Government Center
- Central Library
- Auditorium and Convention Center
- Civil Service/Public Health Building
- MGDA building
- Summit Bank building (park board)
- Three (3) Downtown Fire Stations
- Minneapolis Community College
- Minneapolis Technical Institute
- Hennepin County Medical Center.

Section 4. Prewiring projects. The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for cable service.

A "project" for the purpose of this section shall be any new construction which at the time of rewiring is not past the normal stage of electrical wiring.

- (a) *Owner or builder rewiring.* The company shall provide a standard installation to a rewired project at the standard installation rate if the owner or builder complies with the following procedure:
 - (1) Owner or builder uses methods and materials approved in advance or supplied by the company. The company shall supply specifications and materials at its cost upon request.
 - (2) Owner or builder requests inspection and approval according to a schedule supplied by the company. The company shall inspect and provide technical assistance at its cost upon request.
- (b) *Company rewiring.* The company shall provide a standard installation to a rewired project at the standard installation rate if the company has rewired the project. All charges for rewiring and rewiring of multiple-unit facilities will be accomplished on an actual cost of installation basis by the company. Request for rewiring shall be sufficiently in advance for the company to arrange for rewiring except in no event shall such advance notice be required to exceed forty-five (45) days prior to commencement.
- (c) *Aerial and underground drops.* Any aerial installation in excess of one hundred fifty (150) feet to a rewired project shall be charged according to Article III, section 2(1) and any underground installation shall be charged according to Article III, section 2(m).
- (d) *Individual subscribers within project.* Nothing herein shall prevent the company from charging a connection fee in a rewired building of up to fifteen dollars (\$15.00) to individual subscribers within the project at the time they request service.

Article IV. Monthly Subscriber Service Rates

Section 1. Standard monthly service rates. Except as otherwise specifically provided for, the initial monthly rates and charges for service to commercial establishments or institutions, single-family dwellings, single apartment units, single condominium units, apartment building recreation areas or condominium common areas shall not exceed the following:

	<i>Monthly Rate</i>
(a) <i>Universal service tier (12-channel capacity service):</i>	
Standard television receiver, first TV outlet	\$1.95
Additional TV outlets, each	N/A
Converter (no deposit charge)	(not available) (f)
(b) <i>Full cable service tier (90-channel capacity service):</i>	
First TV outlet	\$11.95
Additional TV outlets, each	11.95
Converter (no deposit charge)	no charge
(c) <i>Premium/pay monthly service:</i> The initial monthly rates and channels for premium/pay services shall not exceed the following except in accordance with Article I, Section 14:	
Home Theater Network	
The Movie Channel	
Home Box Office	
Cinemax	
Showtime	
Play Cable	
Public Subscriber Network	
Galavision	
Bravo	
The Entertainment Channel	
The Disney Channel	

Spotlight	
Text	
Reuters Instant Data Retrieval	
The company reserves the right to set or change monthly rates for premium/pay services herein at its discretion.	
(d) FM service monthly rate (per outlet)	1.50
(e) Home security service, monthly rates:	
Monitoring	9.95
Terminal/maintenance	6.00
Total	\$15.95

(f) On universal service tier, a converter may be necessary to ensure interference-free reception of over-the-air broadcast channels on some television sets.

(g) There is no monthly charge for duplicate pay service provided to additional outlets, excluding interactive pay services. The company reserves the right to initiate such charges if the company is required to reimburse pay programming suppliers for service to additional outlets.

(h) The company reserves the right to offer monthly rate discounts upon the purchase of two (2) or more premium/pay services.

(i) *Equipment security deposit option and recovery costs:*

(1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.

(2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen or damaged through neglect or misuse by the customer.

(j) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.

(k) *Pay-per-view:* In charging for pay-per-view program or service offerings, the company may initiate and vary its charge according to the particular program or service offered.

Section 2. Standard monthly service rates for governmental, educational or nonprofit institutions. Where installation of residential cable is made without charge to governmental and educational institutions, there shall be no monthly charge for one outlet of full cable service tier on the residential cable, including set-top converter if necessary. The company may charge for all services to individual units within a building, including but not limited to, individual student housing units (i.e., dormitory rooms), hospital rooms, etc.

Section 3. Apartment and commercial facilities. The initial rates and charges to apartments and commercial organizations for basic cable service up to the "basic service tier" shall not exceed the following:

TABLE INSET:

<i>Apartments— Individual Rate</i>	<i>Standard Installation Charge</i>	<i>Monthly Rate</i>
First outlet	Same as residential rates	Same as residential rates
Reconnection and change of status	Same as residential rates	Same as residential rates
<i>Commercial</i>		
First outlet	Initial outlet—Same as residential rates	Initial outlet—Same as residential rates

Section 4. Bulk monthly rates. A reduction of the monthly basic cable service charge will be offered by the company for condominiums, apartments, nursing homes, hospitals, hotels, motels, and other commercial units of ten (10) units or more. It will be negotiated based on the number of units available and participating. At no time will a multiple-unit monthly service charge exceed the maximum monthly charge for a single-family residence.

Section 5. Standard monthly service rates for profit and commercial enterprises. The company may charge maximum monthly service rates pursuant to Article IV, section 1, for residential cable service to profit and commercial enterprises. The company charges for use of the institutional and commercial communications network by profit and commercial enterprises will be dependent on the extent and requirements of use. Nonstandard installation shall be available upon request at an amount equal to the company's internal cost plus reasonable overhead.

Section 6. Service calls. Service requests for maintenance or repair of cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber. The company may charge a maximum of ten dollars (\$10.00) for service calls to subscribers' homes where the problem is obviously not the result of a cable failure.

Article V. Studio and Equipment Usage

Section 1. Studio and equipment usage. The company shall not exceed the following initial rates for access studio and video equipment use:

	Rates
(a) <i>Noncommercial users</i>	
Studio production time	no charge
Remote production time	no charge
Supervision and instruction	no charge
System playback costs	no charge
Editing costs	no charge
(b) <i>Commercial users</i>	
Studio production time	negotiated
Remote production time	negotiated
Supervision and instruction	negotiated
System playback costs	negotiated
Editing costs	negotiated

Article VI. Maintenance of Initial Rates

Section 1. [No increase permitted initially for other than optional pay services.] The company shall not increase the initial rates for Tier I programming, other than the optional pay services or full cable service tier programming before December 31, 1988. Upon the expiration of said period, those rates and charges for those services for which rate regulation is not preempted by federal or state agencies shall be subject to regulation by the city.

ADDENDUM C. CABLE COMMUNICATION ORDINANCE

Article I. Cable Communication Service

Section 1. Statement of legislative findings, intent and purpose. The council finds that the orderly regulation of cable communications within the City of Minneapolis will help ensure the most effective distribution of quality cable communication service at acceptable rates to the subscribers and reasonable return to the system operators. The council further finds that it is in the substantial interest of public health, safety and general welfare to provide reliable television programs to every person within the city.

It is the purpose and intent of this article to ensure, insofar as possible, the broadest selection of cable communication programming, including the vital community services of news, weather, emergency, government and multilingual broadcasts. Further, it is the purpose and intent of this article to improve the quality of home education, service and entertainment by providing business, religion, sports and other public service programming, as well as pay television.

Section 2. Franchise requirement. No person shall operate or participate in the operation of a cable communication system within the City of Minneapolis without first obtaining a franchise issued by the City of Minneapolis. A cable communication system for the purposes of this section shall not

include a system that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management which does not use city rights-of-way.

Section 3. Interference with cable service prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable communication franchise issued by the City of Minneapolis.

Section 4. Gratuities and payments to permit service prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

Section 5. Penalties and charges to tenants for service prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a franchisee operating under a valid and existing cable communication franchise issued by the City of Minneapolis.

Section 6. Reselling service prohibited. No person shall resell, without the expressed, written consent of both the company and the city, any cable service, program or signal transmitted by a cable communication company operating under a franchise issued by the City of Minneapolis.

Section 7. Protection of property permitted. Nothing in this article shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.

Section 8. Risks assumed by franchisee. Nothing in this article shall prohibit a person from requiring a cable communication company to agree to indemnify the owner, or his agents or representatives, for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

Section 9. [Severability.] If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 10. [Effective date.] This ordinance shall take effect and be in force after its passage and publication.

ADDENDUM D. RESERVED*

CHAPTER 2. KBL CABLE SYSTEMS OF MINNEAPOLIS LIMITED PARTNERSHIP, A MINNESOTA LIMITED PARTNERSHIP, WITH KBL CABLE SYSTEMS OF MINNEAPOLIS, INC., A MINNESOTA CORPORATION, AS ITS CONTROLLING GENERAL PARTNER D/B/A PARAGON CABLE*

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Franchise for KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota Limited Partnership, with KBL Cablesystems of Minneapolis, Inc., a Minnesota Corporation, as its Controlling General Partner D/B/A Paragon Cable," and it shall become a part of the ordinances of the city.

Section 2. Definitions. For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning, unless it can be reasonably inferred that a meaning particular to the cable communications industry should be utilized, in which case meanings or definitions used by the FCC shall apply.

- (a) *Alternative network* shall mean the fiber optic institutional network set forth in the company's project plan dated March 12, 1990, as modified by the alternative network design description dated September 21, 1990 (Petition No. 253445).
- (b) *Apartment* shall mean any building with two (2) or more residential units.
- (c) *Basic service* shall mean all subscriber services subject to the regulation by the city.
- (d) *Cable communications system or CATV system* shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals located in the city.
- (e) *City* is the City of Minneapolis, a municipal corporation, in the State of Minnesota.
- (f) *Class IV channel* means a signaling path provided by the cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- (g) *Commencement date* shall mean December 1, 1982.
- (h) *Company* is KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota limited partnership ("KBLCLP") with Time Warner Cable Inc. as its controlling general partner, the grantee of rights under this ordinance awarding a franchise, or company's legal successor, transferee, or assignee. Company is doing business as Time Warner Cable ("TWC").
Company, as defined herein, is a successor in interest to the rights held by those legal entities designated as "Company" in the previous enactments of this definition.
- (i) *Connection* shall mean the attachment of the drop to the first radio or television set or to an electronic terminal device or converter of the subscriber.
- (j) *Converter* means an electronic device which converts signals to a frequency not susceptible to interference with the television receiver of a subscriber, and, by an appropriate channel selector, also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations.
- (k) *Council* shall mean the governing body of the City of Minneapolis.
- (l) *Dedication* shall mean those rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.
- (m) *Drop* shall mean the coaxial cable that connects the facility to the nearest feeder cable of the cable network.
- (n) *Easement* shall mean those rights-of-way owned by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.
- (o) *FCG* shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (p) *Gross annual revenues* shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest, from or in connection with the operation of the cable communications system governed by this ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service, monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, income earned from deposits (but not deposits themselves), studio rental, production equipment, personnel fees, and advertising revenues; however, this shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. A reasonable amount may be deducted by company from gross annual revenues to reflect uncollectible accounts. Uncollectible accounts shall be determined by the company's independent auditors, applying generally accepted accounting principles. The city shall have the right to conduct an independent audit of all transactions resulting in deductions from company's gross revenues, to determine whether or not said deductions are consistent with the terms and conditions of this provision. Said audit will be conducted in accordance with the provisions of Article II, section 13.

Company shall fully cooperate with city and shall provide city with all information, books, data and other records required by city to perform an audit.

- (g) *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.
- (f) *Offering of the company or offerings* shall mean that document defining the state-of-the-art cable system provided by company to the City of Minneapolis and incorporated herein, including Addendum A.
- (s) *Parental control device* is an optional mechanical or electrical capability or accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the cable communications system.
- (t) *Premium/pay service* shall mean those services which are not subject to a regulation by the city.
- (u) *Public property* is any real property owned by the city other than a highway, sidewalk, easement or dedication.
- (v) *Residential subscriber service* shall mean any cable communications service provided on that part of the cable communications system's electronic frequency spectrum allocated for residential use as defined in Addendum A, section 1A(2) to the Minneapolis cable communications franchise ordinance.
- (w) *Residential subscribers* shall mean any person or entity who subscribes to all or part of the residential subscriber services provided by company, whether or not a fee is paid for such service.
- (x) *Residential unit* shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.
- (y) *Scrambler/descrambler* refers respectively to the equipment installed to the cable communications system's headend equipment and subscriber terminal used to isolate pay cable and other ancillary service channels from basic service which is accomplished by electronically distorting the signal prior to its transmission through the cable communications system and reconstituting the signal at each authorized location for subsequent display.
- (z) *Sidewalk* is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, and which is not on private lands.
- (aa) *Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city and the company to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

Section 3. Grant. The city hereby grants to company a nonexclusive cable communications system franchise subject to all the terms and conditions as herein provided.

Section 4. Rights and privileges of company. The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, rights-of-way, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable communications system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical and/or data signals and the right to transmit the same to the inhabitants of the city on the terms and conditions hereinafter set forth, subject to all applicable laws and regulations.

Section 5. Agreement, location of agreement. Upon adoption of this franchise and execution hereof by the company, the company agrees to be bound by all the terms and conditions contained herein.

The company also agrees to provide all services or offerings specifically set forth in the "offering of the company" to provide cable communications service within the boundaries of the City of Minneapolis specified in Article I, section 8 hereof; and, by its acceptance of this franchise, the company specifically acknowledges and agrees that the "offering of the company," including all promises, offers, representations and inducements contained therein is specifically incorporated by reference and made an integral part of this franchise and this ordinance. The company further agrees and acknowledges that all promises, offers, representations and inducements contained in the "offering of the company" were freely and voluntarily made to the city by the company.

The original documents listed above shall be permanently kept and filed in the office of the city clerk, and the originals or reproductions thereof shall be available for inspection by the public during normal business hours. The "offering of the company" shall be reproduced at the expense of the company and shall be available at the following locations:

- (a) Office of the city clerk, three (3) copies.
- (b) Cable communications officer, ten (10) copies.
- (c) Municipal information library, three (3) copies.
- (d) Office of the city attorney, three (3) copies.
- (e) Local office of the company, two (2) copies.
- (f) Main branch of the Minneapolis Public Library, one copy.

Whenever the City of Minneapolis enacts any amendment to this franchise which is accepted by the company, the company shall, to the extent such amendment changes any term, condition, promise, offer, representation or inducement contained in the "offering of the company," incorporate such amendment into the "offering of the company" no later than ninety (90) days after the effective date of said amendatory ordinance. The company shall, at its own expense, produce sufficient copies of those portions of the "offering" which have been affected by the enactment of the amendatory ordinance to enable distribution of amended portions of the "offering" to the locations delineated in the preceding paragraph of this section. The "offering" shall accurately incorporate any amendments or modifications made thereto. The integration and incorporation of amendatory language into the company's "offering" shall be subject to the approval of the cable officer. Furthermore, to the extent that Addendum A of the Minneapolis Cable Communications Franchise Ordinance is inconsistent with any ordinance amending this ordinance, said Addendum A shall be conformed within a reasonable time to reflect changes made in said amendatory ordinance, without further formal council action.

In the event of conflicts or discrepancies between any part of the "offering of the company" and the provisions of this ordinance, those provisions which provide the greatest benefit to the city, in the opinion of the council, shall prevail.

Section 6. Term. The term of the franchise to be granted by the city pursuant to this ordinance shall be for a period up to and including November 30, 2004, provided, that in the event that the extension of the franchise term provided for herein is deemed to deprive the city of rights otherwise preserved to it by the Cable Communications Policy Act of 1984 (CCPA), which are presently "grandfathered" by virtue of the fact that this franchise was enacted prior to the effective date of the CCPA, the franchise shall be only for a period of fifteen (15) years from and after December 1, 1982, and renewal shall take place through negotiation or in accordance with the renewal requirements herein or in accordance with the requirements of Section 626 of the CCPA, prior to December 1, 1997.

Any successor in interest to this franchise shall also assume and perform all obligations to the city entered into by any former successor in interest, transferee or assignee of those rights initially granted to Minneapolis Cablesystems, Inc. Said obligations are to be performed as required by this ordinance, the amendments thereto and acceptances thereof.

Section 7. Minnesota Cable Communications Board. Pursuant to Minnesota Statutes, Sections 238.05, subdivision 10, and 238.09, this franchise ordinance shall be subject to the rules of the Minnesota Cable Communications Board.

Section 8. Area. This franchise is granted for the below-described area of the City of Minneapolis as it exists and as the city's borders may from time to time be changed:

All that part of the City of Minneapolis lying southerly and westerly of the following center line: Beginning at the intersection of 45th Street West and France Avenue South; thence easterly along the

center line of 45th Street West to the point of intersection with Upton Avenue South; thence southerly along the center line of Upton Avenue South to the point of intersection with 47th Street West.

All that part of the City of Minneapolis lying southerly and easterly of the following center line: Beginning at the intersection of Upton Avenue South and 47th Street West; thence easterly along the center line of 47th Street West to the point of intersection with Lake Harriet Parkway; thence southerly, easterly, and northerly along the center line of Lake Harriet Parkway to the point of intersection with 46th Street West; thence easterly along the center line of 46th Street West to the point of intersection with Colfax Avenue South; thence northerly along the center line of Colfax Avenue South to the point of intersection with 45th Street West; thence easterly along the center line of 45th Street West to the point of intersection with Pleasant Avenue South; thence northerly along the center line of Pleasant Avenue South to the point of intersection with 42nd Street West; thence easterly along the center line of 42nd Street West to the point of intersection with Nicollet Avenue South; thence northerly along the center line of Nicollet Avenue South to the point of intersection with West Lake Street West; thence easterly along the center line of West Lake Street to the point of intersection with 1st Avenue South; thence northerly along the center line of 1st Avenue South to the point of intersection with 25th Street East; thence easterly along the center line of 25th Street East and the extension thereof to the point of intersection with 3rd Avenue South; thence continuing easterly along the center line of 25th Street East and the extension thereof to the point of intersection with the center line of Interstate 35W; thence northerly along the center line of Interstate 35W to the point of intersection with 24th Street East; thence easterly along the center line of 24th Street East to the point of intersection with 10th Avenue South; thence northerly along the center line of 10th Avenue South to the point of intersection with 21st Street East; thence easterly along the center line of 21st Street East to the point of intersection with Bloomington Avenue South; thence northerly along the center line of Bloomington Avenue South to the point of intersection with Franklin Avenue East; thence easterly along the center line of Franklin Avenue East to the point of intersection with Cedar Avenue South; thence northerly along the center line of Cedar Avenue South to the point of intersection with Washington Avenue South; thence easterly along the center line of Washington Avenue South to the intersection of 19th Avenue South; thence northerly along the center line of 19th Avenue South to and across the bridge known as the 10th Avenue Southeast Bridge; and to the point of intersection with Second Street Southeast; thence southerly and easterly along the center line of Second Street Southeast to the point of intersection with 11th Avenue Southeast; thence northerly and easterly along the center line of 11th Avenue Southeast and the extension thereof to the point of intersection with the center line of Como Avenue; thence easterly along the center line of Como Avenue to the easterly boundary line of the City of Minneapolis and there terminating.

Section 9. Franchise fees and costs. (a) *Franchise fee.* The city shall, by ordinance, set a franchise fee of five (5) per cent of the company's gross annual revenues, which fee may be subject to renegotiation at such time as laws and regulations permit. The company and the city shall cooperate in obtaining any necessary approvals from the FCC.

(b) *Advance on franchise fees.* Within sixty (60) days of commencement date, company shall initiate franchise fee payment to city at the rate of twenty-five thousand dollars (\$25,000.00) for the first year, and at a minimum rate of seventy-five thousand dollars (\$75,000.00) each year thereafter, until the year in which the computed franchise payment of five (5) per cent of gross revenues first exceeds the amount of seventy-five thousand dollars (\$75,000.00). These payments are to be considered in advance of franchise payments and shall be credited in future years to those franchise fees that exceed two hundred and fifty thousand dollars (\$250,000.00). Such advance fees shall not be recoverable from the city in the event that the aggregate of future franchise fees does not exceed the total amounts of the advances. Interest earned by city on such advance payments shall not be considered a part of the franchise fee.

Section 10. Police powers. In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to safety and welfare of the public; and, it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

Any conflict between the provisions of this franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the city, except that any such exercise that is

not of general application in the jurisdiction or applies exclusively to the company or cable communications system which contains provisions inconsistent with this franchise shall prevail only if upon such exercise, the city finds an emergency exists constituting a danger to health, safety, property or general welfare or the city finds such exercise is mandated by law.

Section 11. Cable communications franchise required. No cable communications system shall be allowed to occupy or use the streets of the city or be allowed to operate without a cable communications franchise.

Section 12. Reserved.

Section 13. Use of company facilities. The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the company any wires and pole fixtures that do not unreasonably interfere with the cable communications operations of the company; provided, however, that the city will hold company harmless for any damages resulting from the city's negligent installation or use of said wires and/or poles or pole fixtures.

Section 14. Rates. (a) The city shall initially set, by ordinance, rates in accordance with the company's "offering" for a cable communications franchise. Company shall not increase the initial rate for Tier I programming before December 31, 1988. The procedure to change subscriber rates for Tier I programming other than the optional pay services or programming or equivalent services of any unregulated service tiers, as available, or programming of the same type as outlined in Addendum A, section 1C1c(3)(g), shall be in accordance with Article III, sections 2 and 5, and increases in rates shall be based upon the concept of fair and reasonable rates to both the company and subscribers which, in the aggregate, meet all applicable costs of service provided by the company including fair return on invested capital, assuming efficient and economical management. Individual residential subscriber contracts, if any, may not exceed twelve (12) months unless after twelve (12) months the contract may be terminated without penalty at the option of the subscriber.

(b) Rates for all residential subscriber services and residential subscriber installations to be nondiscriminatory. Rates for all residential subscriber services and residential subscriber installations shall be nondiscriminatory. Rates for residential subscriber services and residential subscriber installation shall not be considered discriminatory when said rates are uniform throughout the city for all residential subscribers, are imposed in accordance with specific exemptions stated in this section or are imposed in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, such as bulk monthly rates, nonstandard installations, waiver of installation fees for thirty (30) days after service is first available to each home, etc.

For purposes of this section, nonuniform rates or charges, established for the purpose of experimentation, test marketing, research and development or promotion, shall not be considered discriminatory, providing that the procedures set out herein are complied with.

Sixty (60) days prior to the implementation of nonuniform rates or charges for the purpose of experimentation, test marketing, research and development or promotion, the company shall provide written notice to the city's cable officer, clearly identifying each proposed nonuniform rate or charge and the purpose for its implementation. An expiration date shall be included for each rate or charge established for experimentation, test marketing, research and development or promotion, not to exceed twelve (12) months from the date each such charge or rate is implemented.

If the company desires to extend any nonuniform rate or charge implemented for the purpose of experimentation, test marketing, research and development or promotion beyond the expiration date, the company shall, thirty (30) days prior to the expiration of the rate or charge, provide written notice to the city's cable officer, specifying each and every reason for requesting an extension. If the company proposes to extend a rate or charge beyond twelve (12) months from the date of implementation, the city, through its cable officer, reserves the right to require the company to make an application for exemption pursuant to the conditions set out below in this section. If the company proposes to impose nonuniform rates or charges for experimentation, test marketing, research and development or promotion similar to nonuniform rates previously implemented by the company pursuant to this section, the city reserves the right to require company to make an application for exemption pursuant to the conditions set out below in this section.

An application to create an exemption not contained herein or within the cable franchise or rate ordinances shall be made in accordance with Article III, section 2, of this ordinance. After the city has accepted the company's application to create a new exemption in accordance with the application procedures set out in Article III, section 2, of this ordinance, the city shall make a determination to accept, reject, limit or modify the proposed exemption within one hundred twenty (120) days from the date the company's application is accepted by the city. If the city fails to act on the company's application for exemption within one hundred twenty (120) days after acceptance of company's application, the exemption shall be deemed approved and shall not be considered discriminatory. Any time limit can be waived with the consent of both the city's governing body and the company.

If the company establishes and implements rates or charges for residential subscriber services or residential subscriber installations that are not uniform throughout the city for all residential subscribers, are not established or implemented in accordance with specific exemptions stated in this section or are not established or implemented in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, said rates shall be considered discriminatory and shall also be considered a material violation of this franchise agreement and the city may impose penalties or take other action in accordance with Article III, sections 13, 14 and/or 15 of this franchise ordinance and agreement.

The city shall not arbitrarily or capriciously refuse to create an exemption requested by company in accordance with the procedures set out in this section. If the city does not approve an exemption requested by company pursuant to this section, the city shall make written findings, within thirty (30) days after such decision, stating its reasons for not approving the exemption requested by company.

Nothing contained herein shall be construed to be rate regulation in contravention of applicable state or federal law, regulation or rule or authorization for such regulation.

Nothing in Article I, section 14(b) shall be deemed to create a remedy in favor of private parties or to create a third party cause of action arising from alleged violations or noncompliance with this section, and the city shall be the exclusive authority to compel enforcement of Article I, section 14(b).

Section 15. Notices. All notices from the company to the city pursuant to this franchise, unless otherwise designated, shall be to the city clerk and to the cable communications officer. The company shall maintain within the city, throughout the term of this franchise, an address for service of notices by mail. The company shall also maintain within the city, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

Section 16. Letter of credit. (a) Within ten (10) days of the commencement date, the company shall deposit with the city a letter of credit from a local financial institution in the amount of one hundred thousand dollars (\$100,000.00). The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to ensure the faithful performance by the company of all provisions of this franchise. The letter of credit shall be used also to ensure compliance by the company with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under this franchise, and to secure the payment by the company of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(b) If the company fails to pay the city any compensation to which it is entitled under this ordinance, the city finance officer shall, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof in such sums as are sufficient to recover for the city any compensation to which it is entitled under this ordinance, together with any interest that may be due as a result of the company's failure to make timely payment.

If the company fails, within ten (10) days after notice by the city, to pay the city any taxes due and unpaid or any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with this franchise, the city finance officer, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, shall, after the expiration of the ten-day period, withdraw from the financial institution holding the letter of credit an amount sufficient to recover the unpaid taxes or the damages,

costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with the franchise, together with interest thereon:

If the company fails, within ten (10) days after notice by the city, to comply with any provision of this franchise which the cable communications officer and the city attorney reasonably determine can be remedied by demand on the letter of credit, and such determination is made after the company has been provided due process as set forth in Article III, section 14, the city finance officer shall immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof, together with interest accrued from the date of notice:

If the cable communications officer shall find that the company has violated one or more of the terms, conditions or provisions of Article III, section 13 and the company does not dispute the finding, or the finding of violation is sustained by the city council after due process as outlined in Article III, section 14, the city finance officer shall request and receive from the financial institution holding the letter of credit all penalties assessed until the company has satisfactorily remedied the term, condition or provision violated:

No penalty shall be imposed by city against company for any violation of this franchise without the company being afforded due process of law:

All monies drawn against the letter of credit shall be placed in the city's general fund. Interest, when accrued pursuant to Article I, section 16, shall be at the current prime rate:

(c) Whenever the city shall receive payment of any amount against the letter of credit pursuant to Article I, section 16, the company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to restore the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within ten (10) days after the company has been tendered delivery by registered mail, return receipt requested, of the notice from the city finance officer of the reason for the withdrawal, the date of withdrawal and the amount thereof. The city finance officer and the cable communications officer shall be sent a verified statement from the local financial institution holding the letter of credit showing restoration of the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within twenty-four (24) hours after receipt by said financial institution of sufficient funds from the company to restore said letter of credit to one hundred thousand dollars (\$100,000.00):

(d) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have:

(e) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the city clerk, city attorney and cable communications officer, by registered mail, of a written notice of such intention to cancel or not to renew. This letter of credit shall not be subject to cancellation while the company is in default."

(f) Neither withdrawal of money by the city pursuant to this provision nor wording contained herein shall be construed as a limitation of the company's right to contest penalties under Article III, section 14:

(g) The letter of credit shall be filed with the city finance officer:

Section 17. Bonds. (a) Upon the commencement date, the company shall file with the city clerk and shall maintain, until construction is completed or until company has complied with the terms of 85-Or-153, whichever occurs last, the following bond which shall be purchased from a company licensed to do business in Minnesota: A faithful performance and labor and material bond running to the city in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this agreement and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of property of the company, plus costs and reasonable attorney's fees up to the full amount of the bond:

(b) Following the completion of the bonding requirement of section 17(a) above and prior to the commencement of any new construction, the city finance officer may require the company to file with the city clerk and to maintain throughout the term of this agreement, a labor and material payment bond up to a sum of two hundred fifty thousand dollars (\$250,000.00), said bond to be placed with a company licensed to do business in the State of Minnesota. The company shall notify the city by registered mail, return receipt requested, of all new construction. The company may incorporate this bond coverage into the bond in and for the amount required under subsection (c) below which shall thereby satisfy this requirement.

(c) Following the completion of the bonding requirement of section 17(a) above and until such time as the company has liquidated all of its obligations with the city, the city shall require the company to file with the city finance officer and to maintain throughout the term of this agreement a faithful performance bond running to the city up to the penal sum of two hundred fifty thousand dollars (\$250,000.00) conditioned upon the faithful performance of the company of all terms and conditions of this agreement and upon the further condition that in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property to the company plus costs and reasonable attorney's fees up to the full amount of the bond. Said bond shall be purchased from a company licensed to do business in Minnesota.

(d) The bonds shall be subject to the approval of the city attorney and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city clerk, city finance officer, city attorney and the cable communications officer, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by surety while the company is in default."

(e) The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under this franchise or any other law.

Section 18. Liability and insurance. (a) The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair and/or operation of the company's cable communications system or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of this franchise. In the event that suit shall be brought or that recourse or damages shall be sought against the city, either independently or jointly with the company on account thereof, the company, upon notice by the city, shall defend the city in any such suit or action at the cost of the company, and, in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom. The company and the city shall not be liable for the acts or omissions of the Minneapolis Telecommunications Network, Inc. ("MTN") nor shall the company or the city be liable or responsible for any costs or expenses for representation, indemnification, or insurance relating to the MTN. Pursuant to this section, the company shall indemnify and insure the city or the MTN for any public interest and/or public service programming which the company may undertake pursuant to an agreement with the city or with the MTN pursuant to Article III, sections 8 and 9:

(b) The company shall pay, and by its acceptance of the franchise specifically agrees that it will pay, all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents:

(c) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance with a company licensed to do business in the State of Minnesota insuring the city and the company with regard to all damages mentioned in subsection (a) in the minimum amount of:

- (1) Two million dollars (\$2,000,000.00) for property damage to any one person;
- (2) Two million dollars (\$2,000,000.00) for property damage in any one accident;
- (3) Two million dollars (\$2,000,000.00) for personal injury to any one person;
- (4) Two million dollars (\$2,000,000.00) for personal injury in any one accident; and
- (5) Twenty-five million dollars (\$25,000,000.00) excess liability insurance for personal injury and property damage combined.

(6) Insurance policies obtained by company pursuant to this provision shall satisfy the insurance requirements set forth in Appendix H, Chapter 1, Article I, Section 19, Article 1.

(d) The initial insurance policy or policies obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy or policies, along with written evidence of payment of required premiums, shall be filed and maintained with the city finance officer during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The company shall immediately advise the city attorney and cable communications officer of any litigation that may develop that would affect this insurance.

(e) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to or shall limit the liability of the company under this franchise issued hereunder for damages.

(f) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the city finance officer, city attorney and cable communications officer, by registered mail, of written notice of such intention to cancel or not to renew."

(g) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(h) The company shall be liable and/or responsible only for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.

Section 19. Indemnification. The company shall, at its sole cost and expense, 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 for the acts or omissions of the company, its officers, employees, or agents (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith):

- (a) Arising out of any claim based on operation of this franchise by company or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of the franchise;
- (b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to MTN programming), unless otherwise provided in an agreement between the company and the city or the company and the MTN;
- (c) Arising out of the company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to company in its business hereunder; and
- (d) Arising out of any claim wherein damages or any other relief is sought as a result of the city's cable communication franchising or amendment procedure or as a result of the granting of this franchise or any amendment thereto.

The foregoing indemnity is conditioned upon the following: The city shall give the company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with company and participating in the defense of any litigation by its own counsel at the company's cost and expense. Costs and expenses shall include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents. The city's failure to give such notice or cooperate in the representation regarding such claims, actions or

proceedings shall void any and all company responsibilities and liabilities relating to the representation, indemnification or other obligations therefrom.

No recovery by the city of any sum by reason of the letter of credit required in Article I, section 16, hereof shall be any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section.

Section 20. Affirmative action and women/minority business programs. (a) [*Generally.*] The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The company shall comply at all times with all other requirements of federal, state and local laws and regulations, and the requirements of all orders authorized by city action relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

(b) *Company's EEO commitment.* Throughout the term of the franchise, the company shall comply with and be subject to the Code of Ordinances, Chapter 25 [sic], section 139.50, as amended, and except as otherwise provided herein, the requirements of which are incorporated herein by reference. The company shall strictly adhere to the equal employment opportunity requirements of the federal government as well as to the requirements of state and local laws and regulations.

(c) *Affirmative action employment plan.* The company, its assigns, subcompanies, subsequent purchaser, or successors shall prepare and provide to the city for its approval a written affirmative action plan within sixty (60) days after the commencement date, or in the case of an assignment, grant, or sale of the franchise, prior to the date of such assignment, grant or sale. The company shall not commence construction prior to the approval of such plan by the city. The company reserves the right to amend the affirmative action plan for the operations work force during the term of the franchise subject to city approval. The affirmative action plan shall include but not be limited to the following:

- (1) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's operations work force during the post-construction term of the franchise. The company shall make those efforts consistent with statutory and city regulations, policies and programs, and shall further attempt to achieve a goal of twenty-five (25) per cent of its operations work force consisting of minorities and fifty (50) per cent of its operations work force consisting of women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.
- (2) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's construction work force throughout the construction of the system. The company, and its subcontractors, shall make those efforts consistent with statutory and city regulations, policies and programs, as amended from time to time, to achieve the city's established construction work force goals for minorities and women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.
- (3) Minimum goals for the utilization of minority business enterprises (MBE's), which the company will use its best efforts to achieve, shall be established at twenty (20) per cent and for women's business enterprise (WBE's) at ten (10) per cent. The goals for women's and minority business participation shall be reported separately, shall apply throughout the post-construction term of the franchise, and shall be applicable to all capital expenditures by the company including, without limitation, contracts and purchase orders for the acquisition of goods, services (including professional services), materials, supplies and equipment used in the construction, maintenance, and operation of its cable television system. Maximum use shall be made of the city's listing of MBE/WBE businesses. "Services," for purposes of this section, shall not include purchases of programming or premium services.

- (4) A plan to employ and retain in employment to the maximum extent feasible persons who are handicapped.
- (5) A training program or scholarship or funding equivalent, for available positions, which utilizes local resources and which ensures the hiring, promotion, and retention of women, minorities and handicapped persons.
- (6) Assignment of an affirmative action coordinator by the company to develop, implement, and monitor the affirmative action plan and act as liaison with the city in all matters regarding affirmative action and women/minority business enterprise participation.
- (7) Other provisions normally part of an affirmative action plan including but not limited to an affirmative action/EEO policy statement, methods for dissemination of the policy and plan, recruitment of employees, complaint procedure, subcontractor responsibility, and audit and reporting systems. The company shall provide to the city's affirmative action officer written reports in a form acceptable to the city of the company's compliance with the affirmative action plan. Such reports shall be submitted to the city each quarter and no later than ten (10) working days following the end of the quarter in which the reported activity occurred.
- (8) As used herein, (1) "minority" or "minorities" means Blacks, Hispanics, Asian/Pacific Islanders, American Indians, and Eskimos; and (2) "minority" or "women's business enterprise" means a business at least fifty-one (51) per cent of which is owned and controlled by minorities or women or, in the case of a publicly owned corporation, at least fifty-one (51) per cent of the stock of which is owned by minorities or women and whose management and daily business operations are controlled by one or more such individuals.

(d) *GETA eligible.* The company shall develop a plan to employ and retain in employment to the maximum extent feasible Minneapolis residents who are GETA eligible or who are eligible for other federal or state job training programs. The company shall submit such a plan as an addendum to the affirmative action plan and shall submit reports as an addendum to the affirmative action reports.

(e) *Local purchasing and hiring policy.* Company shall establish a policy of utilizing locally based firms for purchases and construction subcontracts, and employing local residents within its own operations, to the maximum extent feasible. Company shall provide city with a written report of local purchasing and hiring achievement each three (3) months for the duration of the franchise.

(f) *Penalties.* The city, in its sole judgment, upon recommendation of the affirmative action officer, shall determine whether the company has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section. If the city, after due process in accordance with Article III, section 14, finds that the company has not made such best efforts, the city shall apply the following:

- (1) A fine of one thousand dollars (\$1,000.00) per day for each day in which the company fails to comply with the reporting requirements set forth in this section. Imposition of said penalty shall be stayed for five (5) working days after each report is due in the event that company should file the report during that period.
- (2) A fine of not less than two thousand dollars (\$2,000.00) per month or more than twenty thousand dollars (\$20,000.00) per month for each month in which the company is otherwise determined not to be in compliance with this section, that is, whether it has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section.

Section 21. Rights of individuals. (a) *Invasions of privacy and of personal rights prohibited.* In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting therefrom, company shall take any and all necessary action to prevent an invasion of a subscriber's or general citizen's right to privacy or other personal rights as such rights are delineated and defined by applicable law. Company shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(b) No signals, including signals of a Class IV cable communication channel, shall be transmitted from a subscriber's terminal, dwelling or place of business except as required to provide a service

authorized by the subscriber. The company, the city and any other person shall neither initiate nor use any procedure or device for procuring information or data from a subscriber's terminals or terminal by any means, without the prior valid authorization of the affected subscriber. Valid authorization shall mean written approval from the subscriber which shall not have been obtained from the subscriber as a condition of service, except in those situations in which the nature of the service provided requires authorization or authorization is needed to allow for billing. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provisions. After the first year of authorization and during the month of the year of the authorization's initial signing, the company shall, for each year said authorization is in effect without revocation, mail a notice to each authorizing subscriber informing him or her of their right to revoke said authorization for transmission from their terminal. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. It shall not be considered a penalty to terminate service in those situations where the subscriber revokes or fails to renew authorization when the nature of the service provided requires authorization or authorization is needed for billing. Such authorization shall be required for each type or classification of signals transmitted from a subscriber's terminal, dwelling or place of business.

(c) Neither the company, the city, their agents, their employees nor anyone else shall sell, provide or otherwise make available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business, including but not limited to lists of names and addresses of subscribers or any list which identifies, by name, subscriber viewing habits or personalized data pertaining to a subscriber's use of any of company's services without the specific, written authorization of the subscriber to which the personalized data pertains. Data or information gathered by the company as a result of the subscriber's written authorization shall be made available to the authorizing subscriber in an understandable fashion, upon request, and, where applicable, shall specify the purpose for which the information is being gathered and to whom and for what fee the information is being sold.

(d) For purposes of this section, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specified services provided by or through the company. Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the same or availability of "nonpersonalized" or "aggregated data" which is not personalized data as defined herein.

(e) Neither the company, the city, nor any of their agents shall tap or monitor, arrange for the tapping of monitoring, or permit any other person to tap or monitor, any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever, without the prior valid authorization of the affected subscriber as defined above, except routine maintenance of the system, polling with audience participation or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.

(f) Written permission need not be obtained by the company from the subscriber for electronic verification of systemwide integrity or monitoring for the purpose of billing, provided that such electronic verification shall not monitor individual viewing patterns or practices without the valid authorization of the subscriber in accordance with the provisions of Article I, section 22(c).

Additional permission of property owners may be required. In addition to the company's right to construct its system in the city's public streets and right-of-ways under this ordinance, the company shall have the right to negotiate with utility companies and other owners (or tenants in possession) for the use of easements or servitudes. Where a property owner or tenant in possession has granted such an easement or servitude to another and when a company has acquired the right to use such easement or servitude, the company shall not be required to obtain written permission of the property owner or tenant in possession unless the company elects to do so.

Landlord-tenant. The company shall be required to provide service to individual units of multiple housing facilities, including but not limited to apartment buildings, condominiums, and cooperative housing, with all services offered to other dwelling units within the city, so long as the owner or management of the facility consents in writing, if requested by the company, to the following:

(a) To the company's providing of the service to units of the facility;

- (b) To reasonable conditions and times for the installation, maintenance and inspection of the system on the facility premises;
- (c) To reasonable conditions promulgated by the company to protect the company's equipment and to encourage widespread use of the system; and
- (d) To not demand or accept payment from the company for permitting the company to provide service to the facility and to not discriminate on rental charges, or otherwise, between tenants who receive cable service and those who do not.

Section 22. Public notice. A public hearing before the appropriate city council committee shall be held prior to passage of any amendment to this ordinance. Notice of such hearing shall be by publication at least once in a local newspaper of general circulation at least seven (7) days prior to the hearing, and, commencing on the fifth day prior to the hearing, the company shall notify its subscribers of the hearing by announcement on at least one channel of its cable communications system, between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days. Such announcement shall be made on the most appropriate nonpremium/nonpay channel on which such announcement is feasible subject to approval of the cable communications officer. The city clerk shall be responsible for delivering the text of all announcements to the company in time for proper scheduling.

Section 23. Service of process and consent to jurisdiction. The company, KBL and KBLCOM, shall designate an agent within the city upon whom process against them may be served on behalf of the city or any other party in enforcing this franchise or in asserting any other right or claim. The company, and KBL and KBLCOM, for such purposes, and any other purposes, hereby consent to, and submit to, the laws, jurisdiction and courts of the State of Minnesota; provided, however, that KBLCOM and KBL shall not be construed to be doing business within the State of Minnesota solely as a result of this provision.

Section 24. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 25. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 26. Certificate of confirmation. The franchise shall cease to be of any force and effect if the company fails to obtain either a certificate of confirmation or renewal of a certificate of confirmation from the Minnesota Cable Communications Board; provided, however, that the company may operate its cable communications system while the application for renewal is under consideration by the board.

Section 27. Time of the essence. Whenever this ordinance shall set forth any specific time for an act to be performed by or on behalf of the company or the city, such time shall be deemed of the essence. Any failure of the company to perform within time allotted shall always be sufficient grounds for the city to invoke an appropriate penalty including possible revocation of the franchise, pursuant to the due process procedures of Article III, section 14.

ARTICLE II. CABLE COMMUNICATIONS SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

Section 1. Commitment by company. The commitment of the company is contained in the "offering of the company." The company agrees to perform all services or offerings relating to its area specified in Article I, section 8, set forth in its "offering," including all promises, offers, representations and inducements contained therein. The company further agrees that certain portions of its "offering" or a summary thereof may be set forth as Addendum A to this franchise ordinance and that said Addendum A shall contain those portions of the "offering of the company" or a summary thereof deemed by the city and the company to be of most use to the subscriber. The fact that certain portions of the company's "offering" or a summary thereof are reproduced as Addendum A shall not be construed so as to make it appear that those portions of the "offering" reproduced in Addendum A have more significance or importance than portions not reproduced. The company specifically reaffirms that the entire "offering of the company" is incorporated into this ordinance by reference. In the event of conflict or discrepancies between any parts of the "offering of the company" and Addendum A, those provisions which provide the greatest benefit to the city in the opinion of the city council, shall prevail.

Section 2. Service availability and record request. The company shall provide cable communications service throughout the entire franchise area pursuant to Article I, section 8, and the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the company in areas where service is being provided. This record shall be available for public inspection at the local office of the company during regular office hours.

Section 3. Cable communications system construction. (a) Construction map and schedule.

- (1) *Map and plan.* The company has submitted a construction plan which is incorporated herein by reference and made a part hereof in Addendum A. The plan consists of a map of the entire franchise area and clearly delineates division of the city into five (5) construction zones per franchise area, indicating the date upon which construction shall be completed in each zone as defined in Addendum A and Article II, section 3 herein. The construction plan shall be made available for public inspection during normal business hours at the main office of the company at the company's expense.
- (2) *Construction permits.* Notwithstanding any other provision of this ordinance, the company shall make good faith and diligent effort to obtain all necessary permits and clearances within a reasonable time. Within sixty (60) days after the commencement date, the company shall apply for all permits and clearances needed to begin construction or maintain, upgrade or otherwise change the cable system. Company shall pay for all permits acquired from city through July 1, 1988, after which payment for future permits shall be considered to be part of the franchise fee. Nothing contained herein shall relieve company of their obligation to furnish insurance, bonds or such other securities or assurances as may be required in the Minneapolis Code of Ordinances for obtaining permits, clearances, etc.
- (3) *Start of construction.* Substantial construction in accordance with the plan submitted by the company shall start within seven (7) months after the commencement date. Within three (3) months and five (5) months after the commencement date, the company shall report to the city and may request a change in its construction start date.
- (4) *Completion of individual construction zones.* The company shall complete construction of individual zones set forth below pursuant to the construction plan in Addendum A:

TABLE INSET:

<i>Map Construction Zone</i>	<i>Completion Date (months from commencement date)</i>
A	No later than 12
B	No later than 18
C	No later than 24
D	No later than 30
E	No later than 36

Within each zone, the company shall install and deliver residential service to all residents requiring a standard installation within sixty (60) days after all residential distribution cable within the zone has been energized and the resident has ordered such service.

- (5) *Completion of system construction.* The company shall complete system construction so as to offer residential service to all residents in its area requiring a standard installation within thirty-six (36) months after the commencement date. Consistent with sound engineering practice, construction shall be essentially concurrent in all areas of the city, so that no geographic portion of the city is discriminated against in receiving prompt service.

(b) *Early construction and extension.* Nothing in this section shall prevent the company from constructing the system in its area earlier than planned. However, any delay in the zone or system construction beyond the times specified in this section for commencement of construction, for

completion of construction for any zone, or for completion of construction, shall require application to and consent by the city council. The city may not arbitrarily withhold consent for delay when the company has shown good cause for such delay provided that the city may attach reasonable conditions to ensure performance. Good cause for delay shall be presumed when the company shows, to the satisfaction of the council, that such delay was beyond its control or was not foreseeable. The company shall notify the city as soon as possible of any anticipated or actual delay.

(c) *Penalties for delay in construction.* The city may at its sole option apply any of the following penalties in connection with delays in completion of construction in accordance with the schedules due to causes which are within the company's reasonable control or which are reasonably foreseeable:

(1) *Failure to commence construction.* If, after the construction starting date indicated in subparagraph (a)(3) above, company has not substantially commenced construction and thereafter the company does not substantially commence construction within thirty (30) days of written notice of such failure from city, subject to the procedural provisions of Article III, section 14, city may impose a financial penalty of up to ten thousand dollars (\$10,000.00) per day for each day the company fails to substantially commence construction, or may commence termination proceedings, or both.

For any schedule delay that may occur, the burden of proof shall be on the company to demonstrate that such delay was beyond its reasonable control or was not reasonably foreseeable.

(2) *Failure to complete construction zones.* Upon a failure to meet construction completion schedules for the first four (4) construction zones as specified herein and in Addendum A, the city may impose a penalty of up to five hundred dollars (\$500.00) per day for each construction zone violation up to six (6) months and up to one thousand dollars (\$1,000.00) per day penalty, or reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or termination of the franchise, or both, for violations greater than six (6) months, subject to the due process provisions of Article III, section 14. Construction shall be deemed to be completed when the system is energized so as to offer residential service to all residents within the zone requiring a standard installation.

(3) *Failure to complete construction of system.* Upon a failure to complete construction of the system as set forth in Addendum A and offer services to all residents of the city in its area as set forth in Article II, section 3 and Addendum A, and after thirty (30) days' notice by the city, the city may reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or the city may impose a fine up to a maximum of ten thousand dollars (\$10,000.00) per day for each day of violation, or both, subject to the due process provisions of Article III, section 14. In addition, where the company has failed to complete construction of the system in its area as set forth in Addendum A and Article II, section 3 herein, and after sixty (60) days' notice by the city, the city may terminate this franchise, subject to the provisions of Article III, section 15.

(4) *Noncumulative penalties.* The company shall pay all penalties imposed in accordance with the procedures required in Article III, section 14, for the phase of construction for which said penalty is imposed. When construction of said phase is completed, and if the company has paid all construction penalties properly imposed, the commencement and completion dates for any and all subsequent construction phases shall be adjusted to follow immediately thereafter. No fines shall be levied which result from delays in completion of an earlier phase if subsequent phases are completed within their initially proposed schedules, commencing from the new and adjusted date.

(d) *Service to residences mandatory.* The company shall offer residential service to all residences within the City of Minneapolis. However, should the company determine that provision of service to a residence or an area would be uneconomic, the company may apply to the cable communications officer for a temporary waiver from the requirement that such service be provided. Such application shall be in writing and shall set forth the factors upon which the company determined that provision of the service in question would be uneconomic.

In determining whether to grant such a temporary waiver, the cable communications officer shall consider, among other factors:

- (1) The amount of the additional cost involved in providing the service;
- (2) The likelihood of substantial short-term population growth in the area surrounding the residence; and
- (3) Any other circumstances which would assist the company in recovering its additional investment required to provide the service without unduly burdening other subscribers.

Such a waiver shall not be unreasonably withheld. The city may reconsider its decision to issue the temporary waiver at any time upon thirty (30) days notice to the company.

If the cable communications officer should deny the company's request for a temporary waiver, such denial shall be in writing and state the reason(s) therefor. The company shall have the right to appeal the decision to the city council within ten (10) days of receipt of the cable communications officer's written order. Such appeal and any subsequent proceedings shall be governed by the due process provisions contained in Article III, section 14 herein.

(e) *New development undergrounding.* In cases of new construction or property development where utilities are to be placed underground, the developer, utility or property owner shall give the company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the company's expense, provided that such reasonable notice shall be given in writing to the company prior to the obtaining of a permit by the developer, utility or property owner from the city for the work to be performed. The company shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer, utility or property owner, unless the work to be performed by the company shall necessitate expenditures by the developer, utility or property owner solely to accommodate the facilities of the company in which case the company shall bear that part of the cost; except that if the company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer, utility or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by the company. Except for the notice of the particular date on which trenching will be available to the company, any notice provided to the company by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the company prior to approval of the preliminary plat request.

(f) *Special agreements.* Nothing herein shall be construed to prevent the company from serving areas not covered under this section upon agreement with developers, property owners or residents.

(g) *Areawide interconnection of CATV systems.*

- (1) The company shall comply with the rules and regulations established by the Minnesota Cable Communications Board (Chapter 15, 4 M.C.A.R. Sections 4.220 through 4.229) and cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.
- (2) Upon city request, the company shall negotiate in good faith to interconnect the cable television system with contiguous cable systems. Within three (3) months of a city request, the company shall report to the city the results of the negotiations. Notwithstanding the above, the company is committed to, and shall, interconnect the cable system with all cable systems operated in the Minneapolis/St. Paul metropolitan area no later than six (6) months after a finding by the city that such interconnection is in the public interest and consistent with applicable Minnesota Statutes.

(h) *Construction cost.* The company has estimated that the cost of the cable television system during the initial build period years will be thirty million dollars (\$30,000,000.00).

(i) *Completion of MCDA residential multiple-dwelling units.* The city shall use its good faith efforts to negotiate and execute bulk monthly service contracts with the company for multiple dwelling units owned by the Minneapolis Community Development Agency ("MCDA"). The MCDA shall provide reasonable access to its residential facilities and their occupants for maintenance, marketing, installation, and door-to-door sales by the company. The company shall construct and offer service

pursuant to Article II, [section] 3(d) to MCDA residential multiple dwelling units which have executed wiring agreements with the company.

Section 4. Company services. The company shall provide at least the following services:

- (a) *Standard installation.* Standard installation consisting of an aerial drop, not exceeding one hundred fifty (150) feet, from a single pole attachment to the customer's residence. Drops in excess of one hundred fifty (150) feet, concealed wiring, and all underground drops shall be charged according to the rate ordinance. An underground drop of not more than one hundred and fifty (150) feet shall be a standard installation only in the event that all utilities are underground.
- (b) *Project rewiring.*
 - (1) The company shall provide service to prewired projects according to the terms and conditions and at such rates provided in the rate ordinance.
 - (2) The company shall review and approve methods and materials, supply specifications, technical assistance, and material according to the rate ordinance.
 - (3) The company shall prewire a project upon request according to rate ordinance.
- (c) *Deposits.* The company may require a deposit for equipment, materials and services according to the rate ordinance.
- (d) *Additional outlets.* The company shall provide additional outlets as customers may request according to the rate ordinance.
- (e) *Buildings of public, private and parochial schools and colleges and local governmental units.* The company shall provide installation and service to buildings of public, private and parochial schools and colleges; and local governmental units according to the rate ordinance.
- (f) *Transfers.* When a current customer moves from one address within the franchised area to a second address within the franchised area and there is no lapse in service, the company shall transfer service at a rate according to the rate ordinance.
- (g) *Reconnection.* The company shall restore service to customers wishing restoration of service provided the customer shall first satisfy any previous obligations owed and after the customer makes payment of the reconnection charge and the customer pays a deposit, if one is required, in accordance with the rate ordinance.
- (h) *Relocation or extension of cable.* When a current customer requests that an extension or relocation of said customer's cable service be made, the company shall do so according to the rate ordinance.
- (i) *Service calls.* The company shall provide cable communication test and repair services to customer's premises pursuant to the rate ordinance.

Section 5. Construction and technical standards. (a) *Compliance with construction and technical standards.* The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC board regulations, and detailed standards submitted by company. In addition, the company shall provide the city, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(b) *Additional specifications.* Construction, installation and maintenance of the city's cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

Company shall at all times comply with:

- (1) National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;
- (2) National Electrical Code of the National Fire Protection Association;
- (3) Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and
- (4) Other applicable federal, state and local zoning regulations.

In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure, required by the United States Department of Transportation.

All working facilities and conditions used during construction, installation and maintenance of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration.

Leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.

The company shall provide standby power generating capacity at the cable communications system control center and at all hubs in its area. Company shall maintain standby power system supplies, rated at least at four (4) hours' duration, throughout the distribution networks.

Company shall provide the system capability which will permit the city or civil defense authorities to transmit an emergency alert signal to all participating subscribers. Company shall also provide an emergency audio override capability to permit city to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. This capability shall be fully operational at the initial activation date of the cable system. Company shall designate a channel which will be used for emergency broadcasts of both audio and video. Company shall also provide emergency text captioning, on at least five (5) channels on each cable, or to the extent technically feasible. The company shall cooperate with the city in the use, operation of and testing of the emergency alert override system.

(c) *State-of-the-art system.* Pursuant to Addendum A, section 1, which requires the company to provide a state-of-the-art cable system in its area and franchise ordinance, the city shall have the right, prior to commencement of construction of the system, to determine whether the state-of-the-art has changed and, at its discretion, to require such changes be incorporated into the offering and the franchise ordinance where technologically and economically feasible. Failure by the company to begin or complete a state-of-the-art cable system as may be determined by the city shall be grounds for termination and forfeiture pursuant to the due process provisions of Article III, section 14.

(d) *Applicable technical standards.* The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart R (Technical Standards), shall apply. However, because of the recent development of interactive and other innovative services, modifications of FCC standards, as presented in the specifications below, are considered necessary to meet system service objectives:

- (1) *Forward signals; Class I channels.* The cable system shall have a technical capacity of four hundred forty (440) MHz. The combined forward trunk and distribution system shall deliver signals to each subscriber's TV receiver that will meet or exceed the following specifications at the mean system temperature plus or minus seventy (70) degrees Fahrenheit. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set-top converters:
 - a. Carrier-to-noise ratio: 44 dB
 - b. Carrier-to-synchronous-cross-modulation ratio: 56 dB
 - c. Carrier-to-second-order-beat ratio: 66 dB
 - d. Carrier-to-composite triple beat: 53 dB
 - e. Envelope delay: 150 ns maximum
 - f. Hum modulation: 45 dB
 - g. Ghosts and echoes: 40 dB
 - h. Subscriber visual signal level at subscriber terminal: 0 dB MV
 - i. Channel frequency response: ± 1.5 dB
 - j. Adjacent channel level variation: 2 dB
- (2) *Reverse signals.* The reverse channels shall have the capability of providing return signals from any subscriber tap to the extreme end of any geographic area without noticeable signal degradation or interference:
 - a. The system capability shall include transmission of color video, black and white video, and both low and high speed data, whether analog or digital.

- b. If necessary to prevent the build-up of noise and distortion products, the area shall be divided into sections, and subtrunks run to central hub within the area. Equivalent alternatives such as addressable taps or switches may be utilized.
- (3) No more than +54 dBmV output level shall be required out of any customer interface device to meet the system specifications.
 - (4) Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.
 - (5) For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel, shall meet the specifications of subsection (a) above.

(e) *Performance testing.* Company shall perform all tests necessary to determine compliance with the technical standards of FCC 76.601.

- (1) Tests shall include the following, as a minimum:

Preconstruction,
Initial proof of performance,
Annual compliance tests,
Tests in response to subscriber complaints,
Monthly monitor.

Written records of test results shall be maintained, and shall be available for city inspection upon request.

- (2) The tests for the cable system shall be performed periodically, at intervals of no greater than every six (6) months, a minimum of twenty (20) subscriber television receivers, located throughout the service area. At least eight (8) of these locations shall be at the far end of the distribution trunk cables. The tests shall be witnessed by representatives of the city, and written test reports shall be submitted to the city. If more than ten (10) per cent of the locations tested fail to meet the performance standards, the company shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated for at least twenty (20) different locations. If a second test results in failure of more than ten (10) per cent, the city may at its sole option reduce affected subscriber rates by an amount reasonably related to the degraded service, unless the circumstances of the failure are caused by conditions which are beyond the company's reasonable control or which are not reasonably foreseeable.

Section 6. System construction standards. (a) *Authorization to commence construction.* Within ninety (90) days of the granting of the franchise, the company shall apply for all necessary governmental permits, licenses, certificates and authorizations.

Permission by the company for commencement of construction of the cable communications system authorized herein is granted herewith, after the company has given the department of inspections, the cable communications officer and the city engineer reasonable written notice of the proposed construction thereof, so as to coordinate all work between city and company. Construction may commence subject to the approval of the department of inspections and the city engineer.

Neither the review of plans by the city nor the granting of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warranty by the city of company's communications system. The company shall not assert the fact that the city has performed any prior review of its plans or exercised any ministerial function in granting permits, licenses, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the city harmless pursuant to Article I, section 19.

The city engineer and the department of inspections shall have the right to request that the company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each city department to fulfill its obligations under this franchise and other applicable laws and regulations.

(b) *Power to contract.* Upon grant of this franchise to construct and maintain a cable communications system in the city, the company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or out of the city to whatever extent such contract or contracts may be expedient and of advantage to company for use of poles and posts necessary for

proper installation of the system, obtained right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers, and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, company will use steel, cable, materials and electronic devices, all of specialized and advanced design and type. In the construction and operation of its system, the company will employ personnel and subcontractors with training, skill and experience in electronics and communications. It shall not be deemed a breach of this provision or of this franchise if the company shows that material or personnel are not available to the company due to war or similar official national emergency, or if the company receives the consent of the city council.

(c) *Interference with persons and improvements.* The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(d) *Minimum interference with public ways.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.

(e) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway, foundation or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the city engineer. If the company fails to promptly restore any street or public place in accordance with this provision, the city shall have the right to put such street or public place back into good condition at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city, together with an additional sum as liquidated damages to be determined by the city.

(f) *Relocation of the facilities.* Whenever the city shall, during the period of this franchise, undertake any public improvement or authorize any project or action for a public purpose, which affects cable communications equipment, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles, and improvement, project or action for a public purpose at the company's expense, upon reasonable notice to the company of the undertaking of such public improvement, project or action for a public purpose by the city.

In addition, the company is put on notice of and accepts the provisions of section 99.850 of the Minneapolis Code of Ordinances governing the placement of overhead distribution lines underground and agrees that for the purposes of placing overhead distribution lines underground, section 99.850 will apply to the company.

(g) *Interference with utilities.* The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such poles or other fixtures placed in any street shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

(h) *Easements.* All necessary easements over and under private property shall be arranged for by the subscribers or the company.

(i) *Maps and records.* The city shall have the right to inspect and examine at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the company. The company shall keep accurate maps and records of all of its facilities and make available such maps and records as requested by the city pursuant to the provisions of Article II, section 13. In addition, the company shall keep current records and plats on all underground facilities they own or operate. Such plats and records are to be available to all utilities and the city immediately upon request.

Section 7. System maintenance standards. (a) Cooperation with building movers. The company shall, on the request of any person holding a building mover permit, issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, rising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(b) *Tree trimming.* The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company at the cost of the company. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

(c) *Maintenance of system.* The company shall erect and maintain all parts of its system in good condition throughout the entire franchise period.

(d) *Efficient service and repairs.* The company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. All costs incurred in making such repairs and adjustments shall be borne by the company except as otherwise provided for in this ordinance.

(e) *Interference with reception.* The company shall not allow its cable or other operations to interfere with broadcast reception of persons not served by the company.

Section 8. Continuity of service mandatory. (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify, or sell the system, the company shall undertake all reasonable efforts to ensure that all subscribers receive continuous, high quality, uninterrupted service regardless of the circumstances.

In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the city, new franchisees or operator in maintaining continuity of service to all subscribers. During such period, company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) Six (6) months' motion shall be given by either party of an intent to discontinue all or any part of the operation of the system upon expiration of this franchise, and if such notice is not given at least six (6) months prior to such expiration date, the franchise shall be deemed to be extended for six (6) months and thereafter for another six (6) months' period (but not to exceed a total of twelve (12) months). The company agrees that upon final termination of this franchise or any extension thereof, the city shall have the right to continue operation of the system for a period not to exceed twenty-four (24) months. If prior to the end of such period in which the city is exercising the right to continue operation of the system, the city has initiated proceedings to acquire the system, then such period shall be extended for such further time as may be required to complete acquisition. The city may designate an operator or assure operation itself for such purpose and shall collect the revenues from such operation, shall pay the costs of such operation, and shall pay to the company fair compensation for the temporary use of the system after the franchise has expired.

Section 9. Complaint procedure. (a) During the term of this franchise, and any renewal thereof, the company shall maintain within the city a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing disputes, and similar matters in this area. The office must be reachable by a local, toll-free telephone call, and provide the city with the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, billings, and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Company shall provide the means to accept telephone complaint calls in person twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved

within three (3) calendar days. Upon notification by a subscriber, the company shall credit a subscriber's account on a pro rata basis for loss of service exceeding forty-eight (48) continuous hours within a thirty-day period. An accurate and comprehensive file shall be kept by the company of any and all complaints regarding the cable system. A procedure shall be established by the company by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the city. Complete records of the company's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.

(b) A summary of complaints, identifying the number and nature of complaints and their disposition, in a form approved by the city, shall be completed for each month and submitted to the city by the tenth day of the succeeding month.

(c) An annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the company shall be submitted to the city on or before March 31 of each year. The surveys required to make said report shall be conducted in conformity with such requirements, including supervision, as the city may prescribe.

(d) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.

(e) "Complaints" for purposes of this section do not include individual requests for service arising from partial systemwide malfunction; requests for service where no in-home visit is required; connection, disconnection, or reconnection requests; changes in services or programming received; or similar requests which do not relate to the quality of present service, equipment malfunction, or billing disputes between customer(s) and the company.

Section 10. Company rules and regulations. The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at the company's expense and be readily available to subscriber.

Section 11. Payment of fees and penalties. (a) The franchise fee and any other cost or penalties assessed shall be payable except as otherwise specified in this franchise agreement, quarterly, to the city finance officer's office and the company shall file a complete and accurate verified statement of all gross receipts within the city during the period for which said quarterly payment is made, and said payment shall be made to the city not later than forty-five (45) days after the expiration of the quarter when due.

(b) The city shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the company by the city which notice shall include a copy of the audit report.

(c) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of twelve (12) per cent.

Section 12. Transfer of ownership or control. (a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, nor shall ownership or control of the controlling general partner be transferred or assigned in any manner without the prior written consent of the city council and in compliance with applicable rules of the Minnesota Cable Communications Board. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise.

(b) The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein includes not only major stockholders, general partners and limited partners, but also includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the company shall assist the city in any such inquiry.

(c) The consent or approval of the council to any transfer of the company shall not constitute a waiver of release of the rights of the city in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.

(d) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.

(e) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.

(f) The hypothecation, pledge or mortgage of both the franchise and its assets by the company as security for debt shall not require city approval. In the event of hypothecation, pledge or mortgage of both the franchise and its assets by company, the company shall provide notice to the city of its action and fully disclose the terms and amounts of any hypothecation, pledge or mortgage to the city's cable officer within fifteen (15) days of any such hypothecation, pledge or mortgage.

Section 13. Reports and availability of books and records. (a) *Annual report.* Within one hundred twenty (120) days following the close of each company fiscal year, during the term of the franchise, the company shall submit a written annual report, in a form approved by the city, including, but not limited to, the following information:

- (1) A summary of the previous year's (or, in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;
- (2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds, covering all years since the beginning of the franchise;
- (3) A current statement of costs of construction by component categories;
- (4) A projected income statement, balance sheet, statement of sources and applications of funds, and statement of projected construction for the next two (2) years;
- (5) A reconciliation between previously projected construction and/or financial estimates, as the case may be, and actual results;
- (6) A list of the company's officers, members of its board of directors, and other principals of the company;
- (7) A list of stockholders or other equity investors holding five (5) per cent or more of the voting interest in the company and its parent, subsidiary and affiliated corporations and other entities, if any;
- (8) To the extent that money, other than profits, is paid to a parent, subsidiary, or other person affiliated with the company, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of "home office" overhead);
- (9) The company shall maintain its books and records solely for the information of the city in such detail such that revenues and costs, associated with institutional capacity and services shall be easily identifiable. The company shall provide a clearly stated analysis of the current and periodic to date investment in and results of operations of the institutional network. The company also agrees to make its financial records available to inspection by the city, upon request.

(b) *Annual plant survey report.* Simultaneously with the annual report required by subsection (a), company shall submit to the city an annual plant survey report which shall be a complete survey of the

company's plant and a full report thereon. Said report shall include, but not be limited to, an appropriate engineering evaluation including suitable electronic measurements and shall be conducted in conformity with such requirements, including supervision, as the city may prescribe. Said report shall be in sufficient detail to enable the city to ascertain that the technical standards of the FCC and/or the franchise are achieved and maintained. At the city's request, but no more often than once per three (3) years, the company and the city shall agree upon the appointment of a qualified independent engineer to evaluate the technical performance of the cable system. The cost of such evaluation shall be borne by the company.

(e) *Other petitions and applications.* The company shall submit to the city copies of all pleadings, applications, reports, communications and documents of any kinds, submitted by the company to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. Company shall submit such documents to the city simultaneously with their submission to such courts, agencies and bodies; and within five (5) days after their receipt from such courts, agencies and bodies. The results of any tests required by the FCC shall be filed within ten (10) days of the conducting of such tests with the Minnesota Cable Communications Board. The company hereby waives any right to claim confidential, privileged or proprietary rights to such documents. However, information otherwise confidential by law and so designated by the company, which is submitted to the city shall be retained in confidence by the city and its authorized agents and shall not be made available for public inspection.

(d) A copy of each of company's annual and other periodic public reports, if issued, and those of its parent, subsidiary and affiliated corporations and other entities, if issued, as the city requests and is reasonably appropriate, shall be submitted to the city within five (5) days of grantor's request or upon availability of the report after request.

(e) The company shall submit to the city copies of all income tax returns and reports which are filed with the local, state or federal governments pertaining to its cable system in the franchise area within five (5) days of the date on which such reports are filed.

(f) Within one hundred twenty (120) days after the end of each fiscal year of KBLCOM, the company shall submit a written annual report for its guarantor which shall include a consolidated financial statement which includes a statement of income, revenues and expenses, a statement of cash flow and balance sheet and footnotes, thereto, as of and for the period ended with its most recent fiscal year end, in sufficient detail to facilitate reasonable financial analysis of the consolidated financial statements. The consolidated financial statements shall have been certified as to their fair statement in conformity with generally accepted accounting principles, consistently applied, by the guarantor's chief financial officer. This certification shall be accompanied by a letter from the certified public accountants ("CPA") who are currently auditing the books and records of the guarantor's parent company. The letter shall state that, based upon the CPA's reading of the consolidated financial statements presented to the city by the guarantor and the results of the procedures utilized in their audit of the guarantor's parents' consolidated financial statement, that nothing came to their attention that would lead them to believe that the guarantor's certified consolidated financial statements were not prepared in accordance with general accounting principles, consistently applied. The guarantor shall provide such additional detail of the consolidated financial statements and other financial and operating data as may be reasonably required and necessary to facilitate financial analysis.

(g) Company shall submit to the city such other information or reports in such forms and at such times as the city may request or require.

(h) The company shall allow the city to make inspections of any of the company's facilities and equipment at any time upon one day's prior notice, or, in case of emergency, upon demand without prior notice.

(i) The company shall maintain an office within the franchise area and shall produce upon reasonable notice complete and accurate books and records. The city shall have the right to inspect at any time upon reasonable notice during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the company which relate to the operation of the cable system, provided where volume and convenience necessitate, company may require inspection to take place on company premises.

Access to the aforementioned records shall not be denied by the company on the basis that said records contain confidential, privileged, or proprietary information except that grantee shall not be required to disclose any information regarding projects undertaken strictly for research and development.

All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours. Company, KBL and KBLCOM recognize that certain information submitted is open to public inspection and subject to the Minnesota Government Data Practices Act, M.S. Sec. 13.01, et seq. Company, KBL and KBLCOM are responsible for familiarizing themselves with this law. Certain data is protected from disclosure under this law, such as security information, trade secret information and labor relations information. Company, KBL and KBLCOM understand and agree that in the event that the city receives a request from another party to disclose any information which the company, KBL and KBLCOM deem to be protected under the Minnesota Government Data Practices Act, the city will tender to company, KBL and KBLCOM the defense of any request to compel disclosure. By submitting information that company, KBL and KBLCOM deem exempt from disclosure, company, KBL and KBLCOM agree to defend and hold harmless the city from any claim for disclosure, including but not limited to the city's expenses, including out-of-pocket costs and attorney's fees incurred by the city, as well as any judgment entered against the city for any damages or for the attorney fees or costs and disbursements of the party requesting disclosure from the city.

(j) All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours.

(k) The refusal, failure, or neglect of the company to file any of the reports required under this section, or as the city may direct, shall be deemed a material breach of the franchise, and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.

(l) Any materially false or misleading statement or representation made knowingly by the company in any report required under the franchise shall be deemed a material breach of the franchise and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.

(m) All reports and records required under this or any other section shall be furnished at the sole expense of the company.

(n) The company shall retain the services of a marketing consultant at its own expense to review and comment upon the marketing plan dated April 18, 1986, as submitted to the city. A copy of the consultant's report shall be submitted to the city no later than October 1, 1986. Commencing on January 1, 1987, the company shall submit marketing status reports to the city on a quarterly basis in the form prescribed by the cable office. Such quarterly reports shall include, but not be limited to new initiatives of the company.

Section 14. Removal of cable communications system. At the expiration of the term for which this franchise is granted unless such franchise is renewed, or upon its termination as provided herein, company shall forthwith, upon notice by the city, remove, at its own expense, all designated portions of the cable communications system from all highways, streets, sidewalks, easements, dedications and public property within the city. If the company fails to do so, the city may perform the work at the company's expense. A bond or bonds placed with a company licensed to do business in the State of Minnesota in the total amount of five hundred thousand dollars (\$500,000.00) shall be furnished to cover this expense; said bond to be approved by the city attorney. Said bond may be incorporated, at the company's option, as part of the bonds required of the company in Article I, section 17. However, nothing contained in Article I, section 17, shall be construed as reducing or waiving the requirement of the company to maintain coverage of five hundred thousand dollars (\$500,000.00) under this provision:

The bond required under this provision shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by the surety while the company is in default."

Section 15. Abandonment of service. Notwithstanding the provisions of this franchise, the company shall not abandon any cable communications service or any portion thereof without having given three (3) months' prior written notice to the city and the Minnesota Cable Communications Board. The company shall not abandon any cable communications service or any portions thereof without compensating the city for damages resulting to it from such abandonment. For purposes of this section, "service" shall mean the aggregate cable communications system.

ARTICLE III. ADMINISTRATION AND REGULATION

Section 1. Rules and regulations. (a) In addition to the inherent powers of the city to regulate and control this franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional reasonable regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise.

(b) The city may also adopt such regulations at the request of company upon application to the city.

(c) Any rules or regulations adopted pursuant to this section shall be published at company's expense and be readily available to subscribers.

(d) The city reserves the right to determine how the access channels will be administered.

Section 2. Application procedure. Except as otherwise specifically provided for herein, following the adoption and acceptance of this franchise, all applications by the company effectuating a change in this ordinance, including but not limited to changes in rates, services, programming of activated and nonactivated channels, construction schedules, transfer of ownership, proposed changes in regulations or ordinances, importation of distant broadcast signals, etc., and as otherwise authorized by or made pursuant to this franchise, shall be made and processed by giving notice to the city in accordance with the following procedure:

(a) Applications shall be in a form prescribed by the city and shall contain sufficient facts and information acceptable to the city.

(b) An application may be rejected for inadequacy by the city if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.

(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit rejection for further and different deficiencies on subsequent applications.

(d) Upon acceptance, city staff shall review the application. The staff may submit the application to council if it deems the application adequate and complete and in need of no further staff study or report. The city shall give notice to company within thirty (30) days of acceptance if it will study the application prior to submission to council. The study shall be completed within forty-five (45) days after notice is given to the company by the city unless such period is extended for up to an additional forty-five (45) days by motion of council or a longer period of time by agreement with company.

At the conclusion of the study, city staff may submit the application, study and other information, documents and exhibits to the council for consideration.

At the expiration of the study period, if the matter has not been placed upon the council agenda, company may notify the city clerk in writing to place the application upon the council agenda for the next regular meeting, and the city clerk shall do so.

(e) During the study period, company shall fully cooperate with the city in providing information and documents which are related to and reasonably necessary in the proper evaluation of the application. Failure of company to so cooperate or company's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, council may summarily deny the application.

(f) Upon submission to council, it shall review the application and any studies, information and documents which accompany it. Council shall approve or deny the applications based on the record within thirty (30) days, unless a public hearing is set. If council desires a public hearing, or if one is required, council shall set a public hearing within thirty (30) days. Notice of the public hearing shall be given in accordance with Article I, section 22.

- (g) At a public hearing pursuant to this application process, council may hear reports from staff, citizens' advisory committee, consultants and the public. Council shall provide a reasonable but not unlimited opportunity for rebuttal. Council may impose reasonable time limitations on verbal presentations which may be selectively waived to facilitate adequate evaluation of the application.
- (h) If, at the hearing, council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.
- (i) At the close of the hearing council shall, within thirty (30) days, approve, deny or modify the application. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be attached by council to an approval or modification and may be acted upon by company upon acceptance in writing by company.
- (j) Any time limit may be waived by consent of both council and company.
- (k) Nothing contained herein or within this ordinance shall be construed as limiting the right of the city to require that an application be filed by the company whenever the council reasonably determines that the company is undertaking any change in this ordinance which negatively affects subscriber services.

Section 3. Annual review of system performance. (a) On or about June 1, 1984, and each year thereafter throughout the term of the franchise, the city and company shall meet publicly to review the performance and quality of service of the company's cable television system pursuant to this ordinance and federal and state cable television regulations. The reports required in Article II, section 9 regarding subscriber complaints, the records of performance tests and the opinion survey report shall also be utilized in the review. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these shall be considered.

(b) Within thirty (30) days after the conclusion of the system performance review meetings, city shall issue findings with respect to the adequacy of system performance and quality of service. If violations of the ordinance or federal, state or local regulations are found, city may direct company to correct the violations within a reasonable period of time.

(c) Failure of company, after due notice, to correct the violations shall be considered a material breach of the franchise, and city may, pursuant to the due process provisions set forth in Article III, section 14, levy any reasonable penalty within the scope of Article III, section 13 which is appropriate.

Section 4. System and services review. (a) Review. To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced, modern system for the city, the city and the company shall comply with the following system and services review provisions:

- (1) The city may hold a system and services review session on or about September 1, 1985. Subsequent system review [shall be] by the city each three (3) years thereafter. All such review sessions shall be open to the public, and notice given in accordance with Article I, section 22.
- (2) Sixty (60) days prior to the scheduled system and service review session the company shall submit a report to city indicating the following:
 - a. All cable system services that are being provided by the company on an operational basis, excluding tests and demonstrations, to cities in the United States with populations above two hundred fifty thousand (250,000), that are not provided to the city.
 - b. A plan for provision of such services, or a justification indicating why such services are not feasible for the city.
- (3) Topics for discussion and review at the review sessions shall include but shall not be limited to, services provided, rate structure, free or discounted services, application of new technologies, system performance, need for additional institutional capacity, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.

- (4) Either the city or the company may select additional topics for discussion at any review session.

(b) *Findings.* Not later than sixty (60) days after the conclusion of each system and services review session the city shall issue findings, including specifically a listing of any cable services not then being provided by the company to the city that are considered feasible. The city may direct the company to provide such services within a reasonable time and under reasonable rates and conditions if it is technologically and economically feasible to do so. Failure to provide such directed services may be considered a breach of the franchise, subject to penalties as provided in Article III, section 13, and subject to the due process provisions set forth in Article III, section 14.

Section 4.5. Reserved.

Section 5. Rate- and fee-setting. (a) Following the adoption of this franchise, city shall adopt by ordinance a rate for the franchise fee and approve a schedule for maximum rates for services which company may charge.

(b) City may regulate all cable system rates when not prohibited by applicable law.

(c) An application for an increase in the schedule of rates shall be filed in accordance with procedures established in Article III, section 2. The application shall be supported by statistical and other proof indicating that the existing rate is inadequate and unreasonable and that the proposed increases therein are required to enable the company to render service to fulfill its obligations under this ordinance and to derive a reasonable profit therefrom.

The company's petition for a rate increase shall include the following financial reports which shall reflect the operations of this franchise area system only:

- (1) Balance sheet;
- (2) Income statement;
- (3) Statement of sources and applications of funds;
- (4) Detailed supporting schedules of expenses, income, assets, and other items as may be required; and
- (5) Statement of current and projected subscribers and penetration.

The company's accounting records applicable to the company's cable system shall be available for inspection by the city at all reasonable times. The city and its agents shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Minneapolis operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of the company.

(d) The city may consider all relevant factors including but not limited to the following in determining whether to approve, modify or disapprove company's requests for rate increases during the terms of this franchise:

- (1) Company's substantial fulfillment of all material requirements of the franchise.
- (2) Quality of service, as indicated by the number and type of service complaints, company's response to complaints, and the results of periodic system performance tests.
- (3) Prevailing rates for comparable services in other cable systems of similar size and complexity.
- (4) Rate of return as compared to businesses of equivalent risk. The rate of return shall be calculated on a cumulative basis for all system revenues and costs including services such as pay-television that may be exempt from local rate regulation. Upon request of city, company shall promptly provide, from the company, its parent company and any subsidiary company, all information as shall be reasonably necessary to determine system revenues and costs.
- (5) Performance and capital expenditures by company in introducing new services and expanding the cable system's capability, as compared to other systems of similar size and complexity.
- (6) The original cost of the system less depreciation determined on a straight line actual life basis.
- (7) Rates currently fixed in other cable television franchises for comparable service areas.

(e) Change in rates. Changes in rates for any service regulated by the city shall be granted to the company no more often than each two (2) years. The city may require the company to apply for a rate review at any time. Upon receipt of a rate increase request, city shall schedule a public hearing prior to arriving at a decision. City may request relevant financial and other information necessary to determine the justification for the requested increase. Notwithstanding any provision of this ordinance to the contrary, within one hundred twenty (120) days after receipt of the rate increase request, city, as expressed by city council resolution, shall approve the request in full, approve the request in part, modify, or disapprove the request. In any event, city shall provide findings as to the basis for its decision. If no city action has occurred within one hundred twenty (120) days after receipt of the rate increase request, the request shall be deemed to have been approved.

(f) Notwithstanding any provision in this ordinance to the contrary, the company may after completion of the rate guarantee period set forth in the rate ordinance, make an application to increase regulated rates by the annual increase in the Consumer Price Index made for the Minneapolis metropolitan area, or an annual five (5) per cent, whichever is less. Such application to increase regulated rates must designate which rates the company wishes increased and must be accompanied by the same supporting documentation as set out for rate increases in Article III, section 5(c). Any rate increases applied for under this provision must be applied for in the year in which it is to be effective and increases based on the Consumer Price Index or five (5) per cent must not be cumulative or retroactive. In the event the Consumer Price Index for the Minneapolis metropolitan area, as compiled by the United States Department of Labor, Bureau of Labor Statistics, is no longer available, then another similar, generally recognized index may be substituted on approval of the city council.

(g) Upon receipt of a request for increases in rates under this section, the city shall have thirty (30) days within which to determine whether it wishes to review more fully the request for increases in accordance with the procedures for rate studies and hearings set out in Article III, section 5, of this ordinance. In the event that the council takes no action within thirty (30) days, said rates shall become effective.

(h) Changes in rates taking place with or without council action shall supersede the rates set out in this ordinance after their effective date. The city clerk shall prominently post a detailed listing of current rates and the company shall inform all subscribers of the new rates in writing.

(i) Nothing herein or within this ordinance shall limit the authority of the city to regulate any rate when such regulation is not specifically prohibited or preempted by federal or state law or regulation.

Section 6. Supervision of the franchise. (a) The city council shall designate a person to serve as cable communications officer.

(b) The cable communications officer shall perform such duties and have such responsibilities as are specified by resolution of the city council or by this ordinance. Such duties and responsibilities may include, but shall not be limited to, the following:

- (1) Serve as liaison between the city, the Minneapolis Citizens' Advisory Committee on Cable Communications and the company;
- (2) Monitor company's adherence to construction and installation schedule and line extension policy;
- (3) Assure compliance of applicable laws and ordinances;
- (4) Monitor operational standards as contained in this ordinance;
- (5) At the council's direction, arrange tests and analysis of equipment and performance;
- (6) Monitor road and traffic disruptions for construction and repair purposes;
- (7) Assure continuity in service;
- (8) Receive, examine and recommend action on the monthly log of citizen complaints;
- (9) Assist in evaluating uses of access channels;
- (10) Prepare an annual report to council;
- (11) Receive for examination all data and reports required by this ordinance, and, where appropriate, forward said data to the various interested or affected city departments;
- (12) Make recommendations to council regarding fines for violations of this ordinance;
- (13) Bring to the attention of the city attorney any situation where potential recourse may be sought from the letter of credit in accordance with Article I, section 16;
- (14) Monitor regulatory and legislative actions at the state and federal level;

- (15) Request information from the company on behalf of the various city departments;
- (16) Monitor, evaluate, report to council and approve minor changes in equipment or design that deviate from company's "offering" to ensure that substituted equipment or design is equal to or better than that specified by company in its "offering."

(e) The cable communications officer shall from time to time set a schedule of penalties which may be assessed against the company pursuant to Article III, sections 13, 14. The company may appeal the setting of such schedule to the city council whose determination shall be final and binding upon the city.

Section 7. Minneapolis Citizens' Advisory Committee on Cable Communications. There may be established a citizens' advisory committee having the duties and responsibilities which the council may from time to time assign to it.

Section 8. Public usage of the cable system. (a) The city shall utilize a portion of the cable system to provide and develop cable services that will be in the public interest. The city shall establish a public nonprofit corporation to be known as the Minneapolis Telecommunications Network, Inc. ("MTN"), to receive and allocate support funds and other considerations provided by the company, and/or others in furtherance of this purpose. The MTN's responsibilities under the ordinance, including sections 8 and 9, shall be in lieu of any obligation on the part of the company to develop and provide cable service in the public interest except as specified elsewhere in the ordinance. Any obligation by the company to provide public interest and/or public service programming shall be created by a contract between the city and the company or the MTN and the company.

It shall be the purpose of MTN to administer the channel capacity provided to it by the city and to provide programming and services which are in the public interest or constitute a public service. The responsibility of MTN to provide public interest programming grows from the responsibility of the company to make channel capacity available to governmental, educational, leased and public access pursuant to prior FCC regulation, and present Minnesota Statutes and MCCB rules and to promote, support, and develop programming and services created by local residents, groups, institutions, businesses and governments. Company has delegated this responsibility to the city. It shall be the primary responsibility of MTN to provide public interest programming. MTN shall not compete against the company in offering services except as otherwise set forth herein since such competition would not only be inconsistent with the purpose of MTN as set forth by its articles of incorporation, but would also be inherently unfair since MTN experiences none of the operating costs (such as debt retirement, repair and upkeep of the system, etc.) facing the company.

The company agrees to cooperate with MTN and the city to assist it in providing access and local origination programming of the highest quality. The company also agrees to provide public interest and/or public service programming under the terms of any contract between the city and the company or between the MTN and the company. No contract or agreement entered into between the company and the city or between the company and MTN shall limit the right of MTN to provide access or local origination programming.

(b) For the purpose of this section, the following terms shall be defined as follows:

- (1) "Premium service" shall mean any service for which a charge is imposed above the monthly charge for basic cable service.
- (2) "Program or service generally available to cable operators" shall mean a program or service commercially produced by a third party and nationally or regionally distributed, regardless of the method of distribution, to cable systems, other telecommunications delivery systems or for other methods of public presentation.
- (3) "Nonprogram service of a type generally available to cable operators" shall mean a nonprogram service commercially provided by a third party which is either distributed or provided nationally or regionally or is substantially similar to a nonprogram service which is distributed or provided nationally or regionally and which is available to cable systems, or other telecommunications delivery system.

(e) The MTN shall have the right to carry: Programs or services generally available to cable operators; nonprogram services of a type generally available to cable operators; and premium services under the following conditions:

- (1) Prior to offering such a program or service, or such a nonprogram service, the MTN shall, in writing, indicate its interest to the company. The company shall have ninety (90) days from the receipt of such notification from MTN to offer or contract to offer the program or service. In the event that the program or service is not operational at the time the company receives such notification from MTN, the company shall have ninety (90) days from the time that the program or service becomes operational to offer or contract to offer the program or service. In the case of a program which is not part of an ongoing service or series and which is to be shown on a one-time basis, the company shall have thirty (30) days from the receipt of such notification from MTN to offer or contract to offer the program.
- (2) If the company fails to offer or contract to offer such program or service within the time frame established in Article III, section 8(c)(1), MTN may offer such service or program to the affected subscribers via MTN channels subject to any of the following limitations which may apply:
 - a. Premium services or premium programs which are generally available to cable operators and nonprogram services of a type which are generally available to cable operators shall not be provided by MTN without prior written consent of the company. Such consent shall not be unreasonably withheld.
 - b. MTN shall offer only programming and services and nonprogram services that are of a public interest or public service nature.
 - c. If the program or service is generally available to cable operators, or the nonprogram service is of a type which is generally available to cable operators, the MTN shall discontinue its carriage of such a program or service within ninety (90) days of notification from the company of its intent to offer the program or service. In the event that MTN has entered into a contract to provide such a program, service or nonprogram service and the contract has not expired within ninety (90) days of the notification, the company shall either wait until the expiration of the contract prior to providing the program, service or nonprogram service assuming the responsibilities of MTN under the terms of its contract. However, in no event shall MTN enter into a contract for such a program, service or nonprogram service for a term in excess of one year without prior approval of the company, which approval shall not be unreasonably withheld.
 - d. If a program or service is not generally available to cable operators (local origination or access), or if the nonprogram service is of a type which is not generally available to cable operators (local origination or access), the company shall have the right to offer the program or service as a joint venture with MTN at any time beginning one year after the introduction of the program or service by MTN. Such a joint venture shall involve an equal sharing of all costs and profits from the date of the agreement, unless otherwise agreed upon by MTN and the company. However, MTN shall not offer professional sports programming involving teams located in the Minneapolis-St. Paul metropolitan area or athletic programming involving extramural teams from the Minneapolis and St. Paul campuses of the University of Minnesota without prior written consent of the company, which consent shall not be unreasonably withheld.
 - e. If more than thirty-three (33) per cent of the programming on the service in question is already provided on a service or services currently provided by the company, or will be provided on a service or services which the company has agreed to provide pursuant to the conditions of Article III, section 8(c)(1) herein, then the proposed service or programming shall be ineligible for carriage by MTN absent written permission from the company. However, such consent shall not be unreasonably withheld.
 - f. Under no circumstances shall MTN enter into an agreement to carry a program or service that is generally available to cable operators or a nonprogram service which is of a type generally available to cable operators or to lease channel capacity under terms which are more favorable to a lessee than those contained in similar agreements with major MSO's operating in markets comparable to the City of Minneapolis. Under no circumstances shall MTN provide such a program or service or nonprogram service

to subscribers or lease channel capacity at rates which materially differ from those charged for similar services or programs or channel capacity by the company in the City of Minneapolis:

- (3) If MTN should want to offer a program or service on a pay-per-view basis, MTN shall notify the company of its interest at least thirty (30) days before the scheduled presentation of the service or program. The company shall then be given fifteen (15) days to notify MTN as to whether it will offer the program or service. However, the MTN's right to offer said program or service shall be subject to all other procedures and limitations as set forth in section 8(c) above. The company may waive the notices required by this subsection upon timely request by MTN in the event that such program or service becomes available less than thirty (30) days before its scheduled presentation:

[(d) Reserved.]

(e) If MTN produces or acquires a program or service which is not generally available to all cable operators (local origination or access) or a nonprogram service which is of a type not generally available to all cable operators (local origination or access), there shall be no prohibition imposed by the company against MTN distributing or otherwise reselling the programming or service or nonprogram service:

(f) *Company support of nonprofit corporation:*

(1) The company shall make available equipment or other capital assets in the amount of one million and five hundred thousand dollars (\$1,500,000.00) to be used in the furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and company may stipulate that all or some of that equipment and/or capital assets be under the control of the company for the purposes of providing public interest and/or public service programming for a set period of time. Equipment or other capital assets made available shall be provided by the company pursuant to a capital budget and on a schedule to be approved by MTN and the city. The equipment and capital assets provided to MTN shall be provided pursuant to a service agreement to be approved by MTN. Provision of such equipment and other capital assets shall constitute the total responsibility of the company for capital investment in access facilities, studios, and production equipment. Any equipment or assets made available to the company pursuant to an agreement under this section shall be used for public interest and/or public service programming. Any contract for equipment and/or capital assets between the city and the company may delegate to the city the right to hold capital assets in escrow for either MTN or for company equipment replacement and maintenance.

(2) The company shall pay an amount equal to five (5) per cent of the company's annual gross revenues to the city to provide an operating appropriation in furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and the company may stipulate that all or some of that amount be retained by the company for the purpose of providing public interest and/or public service programming during any set period of time. Such payments shall constitute the total responsibility of the company for access and related activities:

(3) The city shall have the right to reallocate a portion of the capital budget to the operating budget and a portion of the operating budget to the capital budget in the furtherance of public interest and/or public service programming.

(4) Company shall dedicate the following system capacity for public use at no cost (except where indicated) throughout the life of the franchise:

a. Twenty-five (25) per cent of the downstream and upstream channel capacity of the residential network.

b. Forty (40) per cent of the downstream and upstream channel capacity of the institutional network.

c. Fifty (50) per cent of the downstream and upstream channel capacity of any interconnection links to neighboring cable systems and additional channel(s)

when these channels are in use eighty (80) per cent of the time between the hours of 8:00 a.m. and 10:00 p.m. during any consecutive six-week period.

d. Access to all satellite down-link programming and services. (Users of programming will be responsible for obtaining any required rights and paying fees for actual use of programming, where applicable.)

e. Access to existing satellite up-link capacity if established pursuant to Addendum A, under reasonable conditions and fees, and when the city determines that user demand warrants it.

f. Access to residential interactive data transmission capacity, when and if provided on a city-wide basis, under reasonable conditions and fees not to exceed the actual additional cost to the company.

The city may permit the company to lease, at a nominal charge, any of the channel capacity dedicated to MTN and not being utilized by the MTN. For the purposes of public interest and/or public service programming a contract between the city and the company or between MTN and the company may stipulate that the company program some or all of the channels and capacity described in Article III, section 8(e)(4).

If the cable system capacity is expanded in the future, the above percentages shall continue to apply.

The dedicated capacity shall be provided to MTN free of charge (except where indicated) for channel and system equipment usage. The MTN or company through agreement with the city or MTN shall provide the necessary channel capacity to provide for all access channel requirements pursuant to state and federal law and regulation. The city will have the right to lease unused channel capacity to others to provide services and/or programs which have been determined to be in the public interest and which neither the company nor MTN are providing. Prior to entering into such a lease, city shall comply with the requirements of subsections (b), (c), (d), and (e) above and offer the company the option to enter into a lease with the prospective lessee under the same terms and conditions.

The company's personnel shall cooperate with the city, MTN and other local public and nonprofit agencies which produce programming and services suitable to a cable system.

MTN shall indemnify, keep and save the city and the company free and harmless for claims arising out of MTN's operation and responsibilities under Article III, sections 8 and 9. In the event that suit shall be brought or that recourse or damages sought against either the city or the company, or both, either independently or jointly with MTN, MTN shall indemnify the city and/or the company and pay such judgment with all costs, including reasonable attorneys' fees, and hold the city and/or the company harmless. MTN shall maintain liability insurance with a company licensed to do business in the State of Minnesota, naming the city and the company as additional insured, with regard to all claims or damages set forth above in a minimum amount of:

- a. Five hundred thousand dollars (\$500,000.00) for damage to any one person;
- b. One million dollars (\$1,000,000.00) for damage in any one accident;
- c. One million dollars (\$1,000,000.00) for personal injury to any one person;
- d. One million dollars (\$1,000,000.00) for personal injury in any one accident; and
- e. Two million dollars (\$2,000,000.00) for damages arising from programming errors or omissions, including copyright infringement, misappropriation of literary property or program format, defamation, or invasion of privacy.

The insurance policy or policies obtained by the MTN in compliance with this section must be approved and maintained by the city attorney and legal counsel for the company pursuant to the provisions of Article I, section 18(d) through (g).

(g) *Company support of nonprofit corporation after effective date of 86-Or-164.**

- (1) After the effective date of 86-Or-164, city agrees that the company's obligations to support public interest/public service programming shall be governed by the terms contained below

and that the terms set forth below shall be in lieu of and supersede the company's former obligation to support public interest/public service programming, as contained in section 8(f)(1) and (2), above, which was to provide one million five hundred thousand dollars (\$1,500,000.00) for capital assets and to provide five (5) per cent of company's gross revenues for an operating appropriation in furtherance of public service and/or public interest programming. Such payments and capital assets to the city under this section, together with five (5) hours weekly of regional local origination programming provided by the company, shall constitute the total responsibility of the company for access and related activities:

- (2) The company shall make available equipment or other capital assets in the aggregate total amount of seven hundred and fifty thousand dollars (\$750,000.00) (excluding sales tax and head-end modulators) to be used in the furtherance of public interest and/or public service programming. No additional capital assets beyond capital assets requested and approved by the city as of June 1, 1986, shall be made available until after January 1, 1988. No more than twenty-five thousand dollars (\$25,000.00) shall be made available in any one year from January 1, 1988 through December 31, 1992. The remaining capital assets up to the aggregate total set forth above shall be provided thereafter as replacement assets on a schedule established by the company and the city. Said equipment or other capital assets shall be made available in two (2) equal installments, the first installment to be completed on or before December 31, 1993 and the second installment to be completed on or before December 31, 1994.

The company shall make available space sufficient to accommodate MTN playback equipment (up to one hundred fifty (150) square feet) in the "Head-End Room," the studio and adjacent office space at 801 Plymouth Avenue North, Minneapolis, Minnesota, for public interest/public service programming, for the term of the franchise, pursuant to a lease with reasonable terms and conditions* which shall include the following:

1. That the cost for usage of the facilities, pursuant to said lease, shall not exceed the out-of-pocket incremental costs to company, such as security, utilities, insurance and structural alterations, arising out of MTN's, or any successors thereto, use of said facilities.
2. That said facilities shall be made available by company to MTN, or any successor thereto, until the expiration of this franchise, unless the city directs otherwise or the MTN defaults on the lease. The lease shall be assigned to the city in the event MTN defaults.
3. Beginning on January 1, 1987, and each year thereafter, the company shall pay:*
 - (i) An annual total pursuant to this chapter of sixty-two thousand, five hundred dollars (\$62,500.00) to the city for public interest and/or public service programming payable semiannually.
 - (ii) When the system obtains fifty thousand (50,000) full cable service tier subscribers citywide for three (3) consecutive months, the company shall pay an annual total pursuant to this chapter of eighty-seven thousand five hundred dollars (\$87,500.00) to the city for public interest and/or public service programming semiannually unless the full cable service tier subscriber count declines below fifty thousand (50,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (i) above shall govern.
 - (iii) In 1991, the company shall pay to the city an annual total pursuant to this section of one hundred six thousand two hundred fifty dollars (\$106,250.00)* for public interest and/or public service programming semiannually. In 1992, the company shall pay to the city an annual total pursuant to this chapter of one hundred and twenty-five thousand dollars (\$125,000.00)* for public interest and/or public service programming semiannually. Said payments shall be made on or before May 15 and November 15 of each calendar year. In each year after 1992 and until the conditions set forth in subsection (iv) below have been met, the company shall increase the amount paid to the city by making an annual cumulative adjustment

of one hundred and twenty-five thousand dollars (\$125,000.00) times eighty (80) percent of the consumer price index urban (CPIU) as of December 31 of the previous year or times five (5) percent, whichever is less. In the event the company obtains sufficient subscribers to trigger the provisions of subsection (iv) below, the company shall pay the city the amount specified in subsection (iv) or the cumulative inflation adjusted amount set forth herein, whichever is greater.

- (iv) When the system obtains ninety thousand (90,000) full cable service tier subscribers citywide for three (3) consecutive months and the company has repaid twenty million dollars (\$20,000,000.00) of its initial principal debt, the company shall pay an annual amount pursuant to this chapter of one hundred seventy-five thousand dollars (\$175,000.00) to the city for public service/public interest programming semiannually unless the full cable service tier subscriber count falls below ninety thousand (90,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (iii) above shall govern. The company agrees to pay to the city one (1) per cent of gross annual revenues in lieu of any and all funding under this subsection, provided that said rate shall apply only when the company has repaid from its operating funds no less than twelve million five hundred thousand dollars (\$12,500,000.00) of its debt.* In the event that the company has not repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified in subsection (iv) above, by the year 2000, the company agrees to provide additional equipment or other capital assets in the amount of fifty thousand dollars (\$50,000.00) during the year ending December 31, 2000, in addition to the programming payment set forth in either subsection (iii) or (iv), whichever applies, and, an additional twenty-five thousand dollars (\$25,000.00) in capital assets each year thereafter. This obligation for additional equipment or other capital assets shall not continue once company has repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified herein, and its annual payment for public interest and/or public service programming becomes one percent of company's annual gross revenues.
- (v) For purposes of this section, the company shall include bulk subscriber equivalents in calculating full cable service tier subscribers. "Bulk subscriber equivalents" shall be calculated for each bulk contract based on the following formula: The full cable service tier monthly rate shall be divided into the per unit monthly bulk contract rate as multiplied by the number of units in the building or buildings subject to the bulk contract. The sum of bulk subscriber equivalents for all such bulk contracts shall be included in the final calculation of "full cable service tier subscribers."
- (vi) In accordance with the agreement between the city and the MTN, or any successors thereto, ("MTN-city agreement") dated April 1, 1986, including but not limited to Article I, section 1.01(1); Article II, section 2.01(a); Article IV, section 4.02; Article IX, section 9.01, et seq., and Article XI, section 11.07, thereof, the MTN-city agreement, and any budgets or agreements relating thereto, shall be amended to conform to this amendatory ordinance and shall be superseded by the terms hereof.

(h) Programming carried by MTN shall be included in the same fashion as other nonpremium programming in any directory of programming (electronic or printed) produced by the company. However, the company reserves the right not to include changes in the proposed MTN programming which are not provided within the schedule for submission established by the publisher of the printed directory or less than seven (7) days before the electronic programming directory is to be produced. The company shall pay for listing of public interest/public service programming on Tier I on the distributed information processing (DIP) guide, or any successor thereto, up to one thousand five hundred dollars (\$1,500.00) annually, provided the MTN supplies the programming schedules on terms and conditions required by DIP guide, or any successor thereto. MTN shall be given space for a monthly

guest column in any printed program guide and shall be allowed to purchase advertising at reasonable rates. MTN shall have the right to resell any advertising it purchases.

(i) *Services for the hearing impaired.* The MTN shall provide programming services for the hearing impaired on its channels subject to the provisions of Article III, section 8. These services may include:

- (1) The appropriate retransmission of available video services and computer/digital transmissions for the hearing impaired which are transmitted by communications satellite. The company shall make these services available to MTN at company's cost. The company shall not remove captioning on any programming.
- (2) The signing and/or captioning of locally produced programming created by, or with the assistance of, MTN shall be the responsibility of MTN.

The company may use the MTN's captioning capability to produce captioned programming. The MTN may use the company's capability, if any, to produce captioned nonprogramming.

(j) *Reservation by city.* Prior to MTN implementation or in the absence of any applicable MTN operating authority or pending city approval of its budget, the city may contract with the company to provide services, equipment, programming, and consultation necessary for the operation of the MTN. Expenditure or commitment by the city of MTN operating and/or capital resources is authorized in furtherance of such operations. The city reserves the right, at its discretion, from time to time, to determine whether the company, pursuant to an agreement, or MTN is performing its purposes in a manner satisfactory to the city, and if it is not, the city, without recourse by the company or MTN, may receive and reallocate all or a portion of the channel capacity, operating appropriation, and capital appropriation, including its facility and equipment purchased previously with such appropriations, to another entity, including the company. However, at no time shall company's commitment to local programming be less than that described in this section. A new entity shall be required to comply in all respects with the legal responsibilities which MTN has assumed under this section.

Section 9. Minimum standard for use of access channels. (a) The company through the MTN or agreement with the city shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subdivision. No charges shall be made for channel time or playback time of prerecorded programming on at least one of the specially designated noncommercial public access channels provided for herein; provided, however, that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a lowcost means of television access. Where demand for use of the specially designated access channels set out within this subdivision does not warrant activation of all the specially designated access channels required in this subdivision, public, education, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that said services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. In the event that shared access programming is undertaken, at least one full channel shall be available on the VHF spectrum for shared access programming.

(b) Whenever the specially designated noncommercial public access channels or the specially designated educational access channel or the specially designated local government access channel, or the specially designated leased access channel required in this section is in use during eighty (80) per cent of the weekdays (Monday through Friday), for eighty (80) per cent of the time during any consecutive three-hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the company, through MTN or agreement with the city shall have six (6) months in which to provide a new specially designated access channel for the same purpose,

provided that provision of such additional channel or channels shall not require the company to install converters. However, nothing contained herein shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to this franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(c) The company through MTN or agreement with the city shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel required by this section. The operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use.

(d) The company through MTN or agreement with the city shall make readily available for public use at least the minimum equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by this section. The company through the nonprofit corporation shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this subdivision shall be determined by subscriber petition. The petition must contain the signatures of at least ten (10) per cent of the subscribers of the system, but in no case more than five hundred (500) nor fewer than one hundred (100) signatures.

(e) MTN shall have reasonable access to technical equipment, such as stereo FM audio signal capability, interactive computer capability, digital special effects generators, computer editing equipment and other technical equipment as it becomes available under the following conditions:

- (1) Capacity must be available.
- (2) Access to such equipment can be made available without interfering with any proprietary interest of the company, or the privacy interests of the company or its subscribers.
- (3) Any MTN personnel utilizing such equipment must be trained and qualified in its use.
- (4) The MTN shall compensate the company for the use of such equipment at cost.
- (5) The MTN requests for usage of the equipment shall be made in a manner consistent with normal business practices of the company and the timing and/or frequency of MTN demands shall not materially interfere with the business operations of the company.

Section 10. Regional Channel 6. VHF Channel 6 shall be designated as the uniform regional channel by the company. Until such time as it becomes operational, it may be utilized by the company as it deems appropriate. Use of time on the regional channel or channels shall be made available without charge.

Section 11. Leased access channels. (a) Company agrees to reserve the following channel capacity initially for lease, on a nondiscriminatory basis, as a minimum:

- (1) Five (5) per cent of the downstream channel capacity of the residential network.
- (2) One upstream channel on the residential network.
- (3) Twenty (20) per cent each of the downstream and upstream channel capacity of the institutional network.

(b) Company shall not utilize its franchise position to prevent leasing of channels by other entities offering nonentertainment services competitive to those offered by the company.

(c) All leased channel service revenues at the subscriber level shall be included in gross revenues subject to the franchise fee. Such revenues shall include monthly or per-use fees charged to users of services by lessees, but shall not include direct revenues generated by the sale of specific products offered by these services.

Section 12. Universal connection. The city may require that all dwelling units within the city shall be connected physically to the cable system by the company by means of drop cables terminating at each dwelling unit, whether or not the dwelling unit occupants desire to subscribe to cable service. The cost and charges shall be determined by the city at the time such connection is required. Company shall be entitled to recover the incremental cost of providing a universal connection.

Section 13. Penalties. (a) If the company fails to perform any material obligation under this franchise, or fails to do so in a timely manner, the city may at its option, and in its sole discretion assess against the company monetary penalties as follows:

- (1) For failure to complete system construction in accordance with the construction plan (see Addendum A), unless the city council specifically approves the delay by motion or resolution due to the occurrence of conditions beyond company's control, company shall pay such penalties as are set forth in Article II, section 3(c).
- (2) For failure to provide data, documents, reports, information or to cooperate with the city during an application process or cable communications system review, company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.
- (3) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the company shall pay the city fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.
- (4) Forty-five (45) days following adoption of a resolution of council determining a failure of the company to comply with operational or maintenance standards, company shall pay to the city two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.
- (5) For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid authorization of the affected subscriber as required by Article I, section 21(c), the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.
- (6) For selling, providing or otherwise making available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business without the specific written authorization of the subscriber as required by Article I, section 21(c), the company shall pay five thousand dollars (\$5,000.00) for each such violation. In addition, the total amount of funds paid the company for this information shall be forfeited to the city by company.
- (7) For tapping, monitoring or for arranging to tap or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to court order, the company shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurs or continues.
- (8) For all other material violations, the company shall pay up to two thousand dollars (\$2,000.00) per day, which the company hereby agrees to pay, said assessment to be levied against the letter of credit, hereinabove provided, and collected by city immediately upon said assessment pursuant to the due process procedures of Article III, section 14.
- (9) Each violation of each provision shall be considered a separate violation for which a separate penalty can be imposed.
- (10) Exclusive of the contractual penalties set out above in this section, a violation of any provision of this ordinance is by Minneapolis Municipal Code deemed to be a misdemeanor.
- (11) The rights reserved by the city herein are in addition to all other rights and remedies the city may have under this franchise or any other law, including without limitation, its right to recover from company such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by city by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from city's right to enforce the provisions of the performance bond provided for in Article I, section 17, and is intended to provide compensation to city for actual damages.

(b) For violations considered by city to have materially degraded the quality of service, city may order and direct company to issue rebates or reduce its rates and/or charges to subscribers, in an amount solely determined by city to provide monetary relief substantially equal to the reduced quality of service resulting from company's failure to perform.

(c) The city may require the company to cure all defaults and breaches of its obligations hereunder that are reasonably possible to cure before company is entitled to increase any rate or charge to subscribers regulated by city hereunder.

(d) No penalty shall be imposed by city against company for any violation of this franchise without company being afforded due process of law as set forth in Article III, section 14. In the event company's performance of any of the terms, conditions, obligations, or requirements of this franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided company has notified city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to acts of God, civil emergencies and labor strikes.

(e) The company shall be liable and/or responsible solely for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.

(f) In no event shall the company be required to violate federal or state law or FCC regulation in furtherance of its obligations pursuant to this franchise.

Section 14. Procedure upon alleged violation. (a) Whenever the cable communications officer shall find that the company has violated one (1) or more of the terms, conditions or provisions of this ordinance including, but not limited to Article III, Section 13, a written notice shall be sent to the company by registered mail, return receipt requested, informing them of such violation or violations. Such notice shall be entitled "violation notice." The company may remedy violations of subdivisions (1) through (4) and (8) of Article III, section 13, within ten (10) days of tender of the registered letter bearing the violation notice. If the company fails to remedy the violation within ten (10) days after tender of the registered letter, penalties shall be assessed in accordance with the provisions of Article III, section 13. Violation of Article III, section 13, subdivisions (5) through (7) shall not be subject to remedy and shall be assessed from the first day of occurrence.

(b) Whenever a penalty has been assessed, the company may, within ten (10) days of the tender of written notice as provided for in Article III, section 14(a), notify the cable communications officer by registered mail that there is a dispute as to whether or not a violation has, in fact, occurred. Such notice shall specify with particularity the matters disputed by the company.

The cable communications officer shall, upon receipt of the company's letter, cause the matter to be referred to the city council for public hearing with at least thirty (30) days' notice. The hearing shall be held within forty-five (45) days of receipt of the company's letter by a committee designated by the council to determine if there is reason to believe the company has committed a violation of Article III, section 13. The company and the city shall have the right to seek subpoenas where available and to cross-examine witnesses. After public hearing, the council shall determine if there is reason to believe the company has committed a violation of Article III, section 13, and shall make written findings of fact relative to their determination. If violation is found, company may petition the council for reconsideration of the matter, appeal to the Minnesota Cable Communications Board, or appeal to the courts.

(c) Upon a determination by the council that there is reason to believe a violation has taken place, and upon expiration of appeal procedures, or in the event the company chooses not to dispute the finding of the cable communications officer, the city finance officer shall immediately make withdrawals against the letter of credit provided for in Article I, section 16, in accordance with the penalties specified for such violations in Article III, section 13, and shall continue to make withdrawals until the company has satisfactorily remedied the term, condition or provision violated.

Section 15. Termination/forfeiture. (a) In addition to all other rights and powers of the city, the city may terminate and cancel this franchise and all rights and privileges of the company thereunder in the event that the company:

- (1) Substantially breaches any provision of the franchise, or any rule, order, or determination of the city made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by company of written notice of said violation, except where such violation is not the fault of the company or is due to excusable neglect.
- (2) Attempts to dispose of any substantial portion of the facilities or property of its business without prior city approval, as provided for herein.

- (3) Attempts to evade any of the provisions of the franchise or practice any fraud or deceit upon the city.
- (4) Substantially violates any applicable federal, state or local law.
- (5) Substantially breaches or otherwise fails, refuses or neglects to perform its obligations under the terms and conditions of the franchise in accordance herewith.
- (6) Exclusions to the foregoing causes for termination/forfeiture of the franchise shall be when such violation, breach, failure, refusal or neglect is caused by any of the following:
 - a. Acts of God; or
 - b. Riots; or
 - c. Emergencies declared by competent governmental authority; or
 - d. Other causes not attributable directly or indirectly to actions of the company; or
 - e. Other causes which are without fault of the company or which result from circumstances beyond the company's control.

(b) In the event that the city determines that the company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the city may make a written demand on the company that it remedy such violation and that continued violation may be cause for termination. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the city within thirty (30) days following such demand, the city shall determine whether or not such violation, breach, failure, refusal or neglect by the company was excusable or inexcusable as provided in section 15(a)(6):

- (1) A public hearing shall be held and the company shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the company of the time and the place of the hearing provided the causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need be shown by the city to support a revocation, which shall be pursuant to the express requirements as to revocability of franchises contained in the Constitution of the State of Minnesota, the laws and regulations of the United States and the State of Minnesota, the City Charter, and any agreements between the parties.
- (2) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal, or neglect by the company was excusable as provided in section 15(a)(6), the city shall direct the company to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the city may direct.
- (3) If after public notice and hearing it is determined that the company's performance of any of the terms, conditions, obligations, or requirements of this franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof; provided company has notified city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.
- (4) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal or neglect was inexcusable as provided in section 15(a)(6), then the city may declare, by resolution, this franchise or any renewal thereof be terminated and of no further force and effect unless there is compliance within such period as the city council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud, misrepresentation, or violation of privacy rights contained in Article I, section 21, subdivisions (b), (c), (d) and (e).
- (5) The issue of forfeiture and termination shall automatically be placed upon the city council agenda at the expiration of the time set by it for compliance. The council then may terminate this franchise forthwith upon finding that company has failed to achieve compliance or may further extend the period, in its discretion.

(6) In the event city council terminates this franchise, the company shall have a period of thirty (30) days beginning the day next following the date the council terminates the franchise within which to file an appeal with the Minnesota Cable Communications Board pursuant to Minnesota Statutes, Section 238.14. During such thirty-day period and until the board determines the appeal, if an appeal is taken, this franchise shall remain in full force and effect, unless the term thereof sooner expires.

(7) If, after notice is given and, at the company's option, a full public proceeding is held and appeal is exhausted, the city declares this franchise or any renewal thereof breached, the parties may pursue their remedies pursuant to the franchise or any other remedy, legal or equitable, including but not limited to any action listed in Article III, section 13 hereof.

(c) If this franchise or any renewal thereof terminates by reason of the default of the company, the city shall have the option to purchase the cable system at book value, less any amount for any damages incurred by the city in connection with such default. Damages incurred by the city shall not be limited to, any payment made by the city authorizing or directing the continued operation of the system.

(d) In the event that the company dismantles or terminates the cable system or is required by any provision of the franchise to dismantle or terminate the cable system, the company shall, at the city's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system. Restoration of city property (including, but not limited to, streets) shall be in accordance with the directions and specifications of all affected agencies of the city and all applicable laws. The company at the option and direction of the city shall restore the same at its own expense.

Section 16. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon the termination of any lease covering all or a substantial part of the cable communications system, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this franchise governing the consent of the city council to such change in control of the company shall apply.

Section 17. Receivership. The city council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

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

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

Section 18. Compliance with state and federal laws. Notwithstanding any other provisions of this franchise to the contrary, the company and the city shall at all times conform to all required state laws and rules regarding cable communications not later than one year after they became effective, unless otherwise stated, and conform to all federal laws and regulations as they become effective. Provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify the city attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.

Notwithstanding anything in this franchise ordinance to the contrary, this ordinance shall be construed to give effect to those provisions which bring this ordinance into compliance with the requirements of federal, state and local law. The company shall undertake to apply for and prosecute in good faith an application for FCC permission to make payments unless ordered not to do so by that

agency or other agency having jurisdiction; but in no event shall the company be required to violate any rule, regulation or order of the FCC or any court having jurisdiction or any other federal or state law.

If any material section of this ordinance, as determined by the city council, is held to be invalid or preempted by federal or state regulations or laws, the city shall negotiate with the company appropriate modifications to the franchise to provide reasonable relief from such invalidity or preemption. If the parties are unable to reach agreement on such modifications, then the dispute will be submitted to a mutually agreeable arbitrator, in accordance with Minnesota law, who will determine what modifications and/or alternative relief is appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require any party to be in violation of any federal or state law or regulation.

Section 19. Waiver and release of rights. A. *Waivers associated with the enactment of 86-Or-164.* In consideration for the enactment of 86-Or-164 and in consideration for the agreement contained in Article III, section 8(g) hereof, company forever releases and waives any claims it may have for any overpayments and prepayments made prior to the effective date of 86-Or-164 including the time value of money pursuant to the CGPA, as specified below:

- (1) The company waives and releases, now and forevermore, any and all claims against the city for prior payments to and the city's collection of a five (5) per cent franchise fee without authorization from the Federal Communications Commission ("FCC") which was required pursuant to 47 C.F.R. Section 76.31, for claims of overpayments of franchise fees based on the FCC's decision in *in re: the City of Miami, Florida* (FCC Docket No. CSR-2326, June 28, 1984).
- (2) The company waives and releases, now and forevermore, any and all claims against the city for advances of franchise fees pursuant to Article I, section 9(b) and outstanding advances for public interest/public services programming in the total amount of one hundred thousand dollars (\$100,000.00) for Chapters 1 and 2.
- (3) The company waives and releases, now and forevermore, any and all claims against the city for overpayments for public interest and/or public service programming pursuant to Article III, section 8(f)(2).
- (4) The company waives and releases, now and forevermore, claims that payments made prior to the effective date of 86-Or-164 pursuant to Article I, section 9, and Article III, section 8(f) were in violation of state or federal statutory, constitutional or regulatory requirements, including CGPA.
- (5) The city waives and releases company, now and forevermore, from payments to the city deferred under Addendum D and Addendum C adopted pursuant to 85-Or-174 in consideration of the adoption of 86-Or-164.

B. *Waivers associated with the enactment of 89-Or-013.* In consideration for the enactment of 89-Or-013, execution of the acceptance of 89-Or-013 and guarantee by KBLCOM, KBL and company, and, in consideration for the settlement agreement and release dated February 2, 1989, between city, company, KBL, KBLCOM, Rogers U.S. Cablesystems, Inc. (RUSCI), Rogers Cablesystems of America, Inc. (RCA), RCA Cablesystems Holding Co. (RCACH), Rogers U.S. Holdings Limited (RUSHL), Rogers Cablesystems, Inc., a Canadian corporation (RCI), it is understood that company, RCI, RUSHL, RCACH, RCA, RUSCI, KBL, KBLCOM and their successors, heirs and assigns, KBL Cablesystems of America, Inc., KBL U.S. Cablesystems Inc., and KBLCMI and KBLCMLP, forever waive, release and discharge the city and MTN, their officers, agents, employees, successors and assigns, from any and all claims, suits, actions, demands, rights, damages, costs and expenses, whatsoever, including all claims for attorneys fees, of any nature arising from or in connection with any payments made or services provided to the city or MTN by company pursuant to Appendix H, Chapter 1 through the "investment date," as defined in a stock purchase agreement dated August 9, 1988 and thereafter amended on December 16, 1988 between KBL and RUSHL or April 30, 1989, whichever is earlier. Said waiver, release and discharge shall include, but not be limited to any claims, suits, actions, damages, rights, demands, costs and expenses, whatsoever, including all claims for attorneys fees through the investment date, or April 30, 1989, whichever is earlier, based on any claimed violation of state or federal constitution, state or federal statutory or regulatory requirements, including the Federal Cable Communications Policy Act of 1984.

G. Except as set forth herein or as set forth within the acceptance of 89-Or-013 and guarantee, or as set forth in the settlement agreement and release dated February 2, 1989 executed in conjunction therewith, neither company nor city waives or releases any rights they may have.

ARTICLE IV. PURCHASE OF CABLE COMMUNICATIONS SYSTEM BY CITY

Section 1. Revocation or expiration of the franchise. In the event the city exercises its option to purchase the cable system upon franchise revocation, the purchase price to be paid by the city shall be the company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for tangible assets, exclusive of intangible assets such as goodwill or value of the franchise. If the city purchases the cable system upon expiration of the term of the franchise or any renewal thereof, the purchase price to be paid by the city shall be fair market value.

Section 2. Purchase option. The city has the right to purchase the system at any time eight (8) years after the grant of a certificate of confirmation. The purchase price of the system shall be fair market value and shall be determined by an independent appraiser mutually agreed upon by city and company.

Section 3. Rights to system after franchise end. Company concedes that it has no vested right to operate the system nor any claim to system revenues once the franchise has been revoked, terminated, forfeited, or after it has expired except for periods during which company continues to operate the system pursuant to Article II, section 8 herein.

Section 4. Relocation. In the acceptance of this franchise company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

Section 5. Date of valuation. The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

Section 6. Transfer to city. Upon exercise of either option above and the payment of the above sums by the city and its service of official notice of such action upon company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.

Section 7. Arbitration of value and costs. (a) In the event the city and the company cannot agree upon the value of the cable communications system, either may give notice of a demand to the other for arbitration.

(b) Arbitration shall commence and proceed according to law except as follows:

- (1) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of third arbitrator, similarly qualified, within fifteen (15) days.
- (2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.
- (3) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the city attorney.
- (4) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the city and served by mail upon the company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew. If new proceedings are started they shall be based upon the record of the original proceeding. Supplemental evidence may be taken at the request of the new panel of arbitrators in accordance with the procedures outlined in this section.
- (5) The decision of the board of arbitrators shall be final and binding upon the parties.
- (6) Either party may seek judicial relief in the following circumstances:

- a. A party fails to select an arbitrator;
 - b. The arbitrators fail to select a third arbitrator;
 - c. One or more arbitrator is unqualified;
 - d. Designated time limits have been exceeded;
 - e. The board of arbitrators has not proceeded expeditiously; and
 - f. Based upon the record the board of arbitrators abused its discretion.
- (7) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.
- (8) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of the company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

ARTICLE V. RENEWAL OF FRANCHISE

Section 1. Renewal. This franchise may be renewed for a period not less than five (5) years, subject to the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the city.

- (a) Commencing no later than twenty-four (24) months prior to expiration date of the franchise, the city shall undertake an evaluation of the city's franchise ordinance and the services then being offered in the city.
- (b) Except by mutual agreement of city and company, no earlier than two (2) years and not less than eighteen (18) months prior to the expiration date of the franchise, the company may submit an application for renewal to the city by registered or certified mail. At that time, after giving public notice pursuant to Article I, section 23, the city shall review the provisions of the franchise and shall evaluate the performance of the company, including but not limited to the results of system performance and system and services review sessions. In making this evaluation the city shall consider relevant factors including, but not limited to, the following:
- (1) Technical development and performance of the company's cable system;
 - (2) Programming;
 - (3) Additional services offered by the company;
 - (4) Cost of service;
 - (5) All obligations of company as prescribed by the franchise;
 - (6) Cable industry performance nationwide; and
 - (7) Comments from residents and representatives of community organizations submitted in a manner to be determined by the city.
- (c) After holding a public hearing, the city shall take such actions as it deems appropriate, which may include any of the following:
- (1) If the city determines the company's performance to be satisfactory, a renewed franchise may be granted pursuant to this ordinance.
 - (2) In the event the company is determined by the city to have performed unsatisfactorily, new applications may be sought and evaluated and a franchise awarded in accordance with franchising procedures then in force.
 - (3) The city may direct the company to remove and dismantle its cable system at the company's cost.
 - (4) The city shall have the option to require the sale by the company and the purchase by the new franchisee of the system at its then fair market value. In the event that the city determines that the existing system is to be used by the new franchisee, the city shall direct in the award of the new franchise the sale by the company and the purchase by the new franchisee of the system at its then fair market value. Upon exercising such option, the city shall proceed to obtain an appraisal of the fair market value of the system to be completed within ninety (90) days of the exercise of its option. No later than sixty (60) days after completion of the appraisal the successor company shall pay the company the fair market value of the system and, upon payment, shall be entitled to title and possession

of the system. In the event that the company and the successor company cannot agree upon the fair market value of the system, the successor company shall pay the company seventy-five (75) per cent of the appraised fair market value of the system within sixty (60) days after completion of the appraisal and, upon payment, shall be entitled to title and possession of the system. In that event, the ultimate amount payable to the company shall be determined by action in the district court. As used in this subsection, the term "fair market value" shall not include any allocation of value for expectation of renewal of franchise.

- (5) Absent a timely request from company to renew the franchise, the franchise shall terminate at the end of its initial or any renewal term.
- (6) The city may take such other action as allowed by law which, in its sole discretion, it shall deem appropriate.

ADDENDUM A. CABLE COMMUNICATIONS SYSTEM DESIGN, CONSTRUCTION AND SERVICES

Section 1. Commitment by company. A. *Cable communications system design.* The company shall construct a state-of-the-art cable communications system providing the following features:

- 1. *System configuration.* The cable television system shall be a dual integrated residential/institutional network of approximately four hundred seventeen (417) miles, consisting of at least two (2) interconnected cables. The company shall install the necessary system hardware to accommodate activated bidirectional communications channel capability in its initial configuration.
- 2. (a) *Channel capacity.* The cable television system shall be installed to deliver signals at frequencies up to four hundred forty (440) megahertz (MHz), with frequency and activated channel capacity as indicated below. Total band width on two (2) cables is a maximum of eight hundred eighty (880) megahertz.

TABLE INSET:

<i>Dual Cable Network</i>	<i>Signal Direction</i>	<i>Activated Signal Frequency Capacity (MHz)</i>	<i>Activated Video Channel Capacity</i>
Integrated residential network	Outbound	800	120 plus FM band
Integrated residential network	Inbound	48	8 video equivalent plus data
Integrated fiber optic institutional network	Outbound	See Alternative Network	
Integrated fiber optic institutional	Inbound	See Alternative Network	
Interconnect	Outbound	156	26 video equivalent
Interconnect	Inbound	102	17 video equivalent

(b) Construction and activation of alternative network shall be completed by August 31, 1990. The alternative network shall meet or exceed the design and construction specifications set forth in the company's project plan dated March 12, 1990, as modified by the alternative network design description dated September 21, 1990. The alternative network shall be owned and maintained by the company for the benefit of the city. The alternative network will be controlled and managed by the city.

- i. The city or the company may suggest areas of priority for construction and activation of distribution network reverse amplifier modules on or before October 1, 1989, and the company shall use its best efforts to construct and activate reverse amplifier modules on the distribution network (feeder cable) in accordance with the priorities designated by the city. The city or the company may suggest construction and activation of comparable technologies and design alternatives to a midsplit configuration, provided that any change in design or substitution of comparable

technology shall be valid only upon written approval to company from the city's cable officer:

- ii. During the period of construction set forth herein, the construction and activation of the alternative network shall be secured by the bonding requirements provided for in Article I, section 18 of Appendix H, Chapter 1 and Article I, section 17 of Appendix H, Chapter 2, irrespective of the completion by company of any other construction requirements set forth in the franchise ordinances.
 - iii. Company shall secure performance of the construction obligations for the alternative network called for in Addendum A, section 1 in a bond issued in conformance with Article I, section 17, hereof, and in conformance with the acceptance of 89-Or-013 and guarantee, so that the total face value of the bond required hereunder and under the franchise is two million, one hundred thousand dollars (\$2,100,000.00). At such time as the city's cable officer certifies that the alternative network design construction required under Addendum A, section 1 is completed, the bond shall be reduced to the amount required in the franchise ordinances.
 - iv. During the period of construction and activation of the alternative network, the city may, in addition to any other remedies it may have, either impose any of the penalties set forth in Article II, section 3(c) or Article III, section 13, in accordance with the procedures set forth in Article III, section 14, for any delays in construction, installation, and/or activation of the alternative network.
3. *Satellite uplink.* The company shall provide or cooperate with Twin Cities Public Television and/or any other entities designated by the city to provide satellite uplink capability within one year after the city determines such an uplink to be in the public interest. The terms and conditions of any agreement arrived at pursuant to this section must be approved by city.
 4. *Satellite earth stations.* The company, initially and throughout the term of the franchise, shall reasonably provide or have access to a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs available to cable systems.
 5. *Capacity for interactive services.* The company shall provide initially the capability to utilize up to fifty (50) channels on each of the two (2) network trunk cables for teletext services, as well as video programming, on a selectable basis. In addition, the system shall have the capacity for interactive residential services, including but not limited to security alarm monitoring, home shopping, energy management, electronic banking, videotext, subscriber polling, video games, meter reading, computer/digital transmissions, and one-way or interactive education. Interactive services not offered initially shall be provided as soon as technically and economically feasible in the future. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by the company in accordance with established and uniform rate schedules. Projected installation costs for the replacement of existing noninteractive converters shall not be considered in determining economic feasibility.
 6. *Local origination.* The company may provide local origination facilities and staff. The company is strongly encouraged to work cooperatively with the nonprofit corporation and other public and nonprofit agencies which produce programming. The company shall provide local origination facilities and staff to the extent funded by the city.
 7. *Parental control lock.* The company shall provide subscribers, upon request, at no charge, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels.
 8. *Status monitoring.* The company shall provide an automatic status monitoring system as an integral part of both the residential and the institutional cable networks.
 9. *Home subscriber equipment.* The company proposes the following equipment for home subscriber use:

Tier 1: Universal service tier (12-channel service); no subscriber terminal device proposed.

Tier 2: Full cable service tier; 90-channel capacity with options which will include Zenith Z-TAG, set-top addressable converter or equivalent equipment.

10. *Applicable technical standards.* The company shall meet all technical standards pursuant to Article II, section 5 of the franchise ordinance.
11. *Interactive system design.* The initial interactive system design is capable of providing, but not limited to, security services, opinion polling, alarm monitoring and pay-preview capability. The complete system design includes computer hardware and software, data receivers, home terminal units, converter status transmitters and bridger amplifiers. Low speed polled data used by the security/opinion polling/status monitoring system has been allocated its own band of frequencies (five (5) to twelve (12) MHz) controlled by a separate code-operated switch in each bridger amplifier. Reverse video transmission has been assigned two (2) television channels at the high end of the sublow band (twenty-one (21) to thirty-three (33) MHz).
The band from twelve (12) to twenty-one (21) MHz has been reserved for future introduction of high speed data services using a carrier-sense multiple-access transmission protocol. Spare positions have been incorporated in the bridger stations to install new modules which will provide upstream noise and ingress control for the high speed data channel. The amplifier design includes a failsafe bypass circuit which activates automatically in the event of power failure, amplifier failure or loss of gain. System design also includes a home terminal unit (HTU) for security application as well as the converter status transmitter (CST) for monitoring system performance. Converters with the CST option will enable subscribers to order pay-per-event programming directly through the cable system. Interfaces between the interactive system computer, billing system computer and addressing computer for Zenith Z-TAG converters make the system completely automatic.
12. *Interactive system operation.* The data collection system uses time, frequency and spatial multiplexion. The computer has the capability of scanning through the cable system, receiving data from home terminal units in bridger distribution groups of up to five hundred (500) homes. The following units are employed in the scanning process:
 - a. *Minicomputers.* Two (2) minicomputers operating in a parallel processing mode control the data collection system. Major functions include scanning control, received data verification and analysis, memory management, alarm transmission and system status monitoring.
 - b. *Multichannel receivers.* The multichannel receivers receive and demodulate data from all home transmitter and status monitor carriers in operation on the system. The received data and/or missing carrier code is transferred to the minicomputers under program control.
 - c. *Trunk switch; Cablesystems Engineering model No. TRS-8.* The trunk switch connects the code-operated switch addressor and the multichannel receiver to any of the trunks radiating from the hub. The trunk switch operates under the computer control.
 - d. *Code-operated switch addressor; Cablesystems Engineering model No. GOSA-8.* The code-operated switch addressor receives address and command data from the computer and modulates an RF carrier with the information using the frequency shift keying technique.
 - e. *Trunk bridger station code-operated switch.* Each bridger station is equipped with two (2) code-operated switches, one controlling the band from five (5) to twelve (12) MHz (data) and the second controlling the band from twenty-one (21) to thirty-three (33) MHz (video). The switches are operated independently by an addressable receiver which demodulates information from the FSK modulated RF signal originated by the COS addressor. A maximum of five hundred (500) subscribers are included in each distribution area fed from a bridger amplifier.
 - f. *Home terminal unit.* The home terminal unit (HTU) interfaces with sensor devices. The unit is standby-powered and transmits continuously on one of five hundred (500)

discrete frequencies in the band from five (5) to twelve (12) MHz. The data rate is approximately two (2) kilobits per second.

- g. *Status transmitter.* The status transmitter is located in bridger amplifiers and is interfaced with the power supply, amplifier bypass controls, etc. The transmitter is injected on the distribution side of the COS to permit positive confirmation of switch closure.
- 13. *Computer processing.* The computer program compares the data received from each HTU, GST or status monitor with the data received on the previous scan. Any changes are detected and passed on for further processing. Each HTU, GST and status monitor has a unique identity which can be determined by the setting of the trunk switch, COS address and received frequency of the data carrier. Matching the terminal identity with the received data permits the system to look up stored information which can relate the received data to its meaning.
- 14. *Institutional network.* The routing of the integrated institutional network is contained on the maps in section B(2). The capacity and other system design features are described in Addendum A. The company shall build all areas previously passed by the separate institutional network as a part of the integrated residential/institutional network. The integrated network will also pass through downtown Minneapolis and be available to users.

B. System construction:

- 1. The construction schedule required pursuant to Article II, section 3, is as follows:

TABLE INSET:

<i>Date*</i>	<i>Zone Completion Dates</i>	<i>Area Number</i>
<i>Scheduled</i>		
<i>(months)</i>		
12		I
18		II
24		III
30		IV
36		V

* Number of months from commencement date to completion as defined in Article II, section 3, for zones established herein:

- 2. Cable communications system maps. The accompanying maps indicate the proposed routes of the integrated residential/institutional networks of the Minneapolis Cable Communications System which shall initially be served by the system design set forth in Addendum A, section 1A.

GRAPHIC LINK: Trunk Network - Interconnect & Residential Map

GRAPHIC LINK: Institutional Network Map

G. Cable communications system services:

- 1. *Residential network services.* The company shall provide the following services on the residential network:
 - a. *Initial services and programming.* Unless otherwise specified the company shall provide, as a minimum, the initial services and programming listed in this section. The company shall not reduce the number of program services without prior written notification to and approval by the city and/or the cable communication officer. The city's approval shall not be unreasonably withheld and its written decision shall be given to the company within thirty (30) days from receipt of this notification. The company may add new services at any time. Any new rates or rate increases necessitated by the added services are subject to the city's approval, where applicable. The company may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience. When a distributor of any program or service substantially alters the terms or conditions upon which the program or service is offered, the company reserves the right to substitute similar programming or services or to offer other alternatives on reasonable

terms or conditions comparable to the programming or services originally offered, subject to the approval required herein. Such approval shall not be unreasonably withheld.

- b. *Subscriber television services.* The company shall provide subscriber television services as follows:

TABLE INSET:

		Channel Capacity
I.	Universal service tier	12
II.	Full cable service tier**	90*

* Text option available as additional pay service.

** Four (4) FAA-restricted channels are now not available and shall be provided upon FAA/FCC approval.

- c. *Subscriber television services description.* The company shall provide, at minimum, the following programming for subscriber television services:

(1) *Twelve-channel universal service.*

Seven (7) broadcast channels and five (5) MTN channels (which includes regional Channel 6)*

*To the extent must-carries increase, must-carries will have priority over MTN channels consistent with the Laws of Minnesota and FCC rules.

(2) *Ninety-channel full cable service tier.*

(a) Carriage of seven (7) local area broadcast television stations:

(b) Full carriage of three (3) distant broadcast television stations:

WGN Chicago

WTBS Atlanta

CFMT Toronto*

*Pending availability

(c) Carriage of the following video programming services distributed by communications satellite or equivalent programming of the same general class to the extent it is available:

1. American Education Television Network (AETN)
2. Appalachian Community Service Network (ACSN)
3. Black Entertainment Television (BET)
4. Black Music Television*
5. Lifetime
6. WCCO news channel
7. Cable New Network II (CNNII)
8. Cable-Satellite Public Affairs Network (C-SPAN)
9. Christian Broadcasting Network (CBN)
10. Cinemerica*
11. ESPN II*
12. Eternal Word Television Network
13. Good Stuff*
14. Kid Vid Network*
15. Home Music Store*
16. Modern Satellite Network (MSN)
17. Nashville Network*
18. National Christian Network (NCN)
19. National Entertainment Television*
20. National Jewish Television (NJT)
21. National Spanish Television Network (NSN)
22. Nickelodeon
23. Opryland Music Network*
24. People That Love Network (PTL)
25. The Preview Network
26. Satellite Program Network (SPN)

- 27. Satellite News Channel I (SNC)
 - 28. SNC II
 - 29. Telefrance
 - 30. Trinity Broadcasting Network
 - 31. US Senate*
 - 32. USA Cable Network (includes Calliope, The English Channel and other programs)
 - 33. UTV Involvision*
 - 34. WCGO weather channel
- *Pending availability

(d) Carriage of combined video/text services:

(e) Carriage of the following imported automated programming services or equivalent programming of the same general class to the extent it is available:

- 1. AP Newscable
 - 2. AP Washington Report
 - 3. BIZNET*
 - 4. Financial News Network
 - 5. Reuters Financial/Sports
- *Pending availability

(f) Carriage of five (5) local automated programming services:

- 1. Community Bulletin Board
 - 2. Cable Guide
 - 3. Airport Arrival and Departure*
 - 4. Community Classifieds
 - 5. Shopping Basket
- *Pending availability

(g) Carriage of the following optional pay-television services or equivalent programming of the same general class to the extent it is available:

- 1. Cinemax
- 2. Galavision
- 3. Home Box Office
- 4. Home Theatre Network
- 5. The Movie Channel
- 6. Bravo
- 7. Showtime
- 8. The Disney Channel
- 9. Spotlight
- 10. Public Subscriber Network*
- 11. Playcable*
- 12. Pay Per View

Additionally, the company will provide the following on the full cable service tier:

- 1. Entertainment and Sports Programming Network
- 2. MTV: Music Television
- 3. Arts and Entertainment Network
- 4. Cable News Network (CNN)

In providing interactive service, the company will offer the following optional interactive services by such time as construction of the cable communications system has been completed and/or pending availability:

(a) Security Services. The company interactive system is proposed for security service. The technology is described in Section I, Part A of this addendum.

(b) Reuters IDR Information Retrieval. The Reuters Company has developed a full-field teletext system to transmit data using satellite and cable television systems. The Reuter IDR signal is handled in the same manner as a conventional video transmission and uses one standard six (6) MHz channel. Each subscriber to the service is supplied

with a Reuters terminal which receives the IDR signal and converts it to text format on the attached video monitor:

(c) Dow Jones News Retrieval. Dow Jones is currently using TOCOM equipment for this service although other systems have been discussed. Subscribers are supplied with a TOCOM terminal which exchanges data with the subscriber's microcomputer or dumb terminal over an RS-232 interface.

(d) The Source. The Source is planned to be a teletext transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be retrieved and decoded using suitably equipped Z-TAG converters.

(e) Pay-per-view programming. Pay-per-view programming will be delivered using the Zenith Z-TAG addressable converter system.

(f) Opinion polling. The company interactive system is proposed for opinion polling. The technology is described in Section A.

(g) Interactive text. Interactive text is planned to be a telecast transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be received and decoded using suitably equipped Z-TAG converters.

(h) Home banking and home shopping. The technical system adopted for these services would be selected in cooperation with the home banking and home shopping participants.

(i) Time-Shared Telidon. Time-Shared Telidon is provided with a microcomputer database system developed by company. Access is provided through the interactive converter keypad or touch tone telephone. Data is transmitted to Telidon decoders at the head end to convert the data into a conventional video image which is modulated and transmitted to the subscriber's converter. The term "Telidon" refers to the North American Presentation Level Protocol Syntax (ANSI X3L2.1 Videotex/Teletext Character Sets).

(j) Newspaper services. The technology selected for newspaper services will be determined in consultation with the participating newspapers.

d. *Subscriber FM service.* The company shall provide subscriber FM service including the following:

(1) *Local radio stations:*

- (a) KQRS
- (b) KMOJ
- (c) WAYL
- (d) KSTP
- (e) KNOF
- (f) KBEN
- (g) KSJN
- (h) KTCR
- (i) KTIS
- (j) WLOL
- (k) WCTS
- (l) KDWB
- (m) KEEY
- (n) WCCO
- (o) KFMX
- (p) KFAI
- (q) KTVN
- (r) KUOM
- (s) KBEM
- (t) WMMR

(2) *Other audio services:*

- (a) WFMT (Chicago)
 - (b) JISAL
 - (c) Shortage Composite—Services International*
 - (d) Reading Services for the Blind
 - (e) Seeburg/Lifestyle
 - (f) NCN Family Radio Network
 - (g) Stereo simulcast services in conjunction with satellite video programming services such as “MTV: Music Television,” “CBS Cable” and others as available.
- *Pending approval

- e. *Availability of programming services.* In the event that any programming service as described in this commitment by company is or becomes unavailable to the company, the company may substitute equivalent programming of the same general class to the extent it is available.
- f. *Leased access services:*
 - (1) The company shall provide channels for leased access use, in accordance with the rules of the Minnesota Cable Communications Board and the MCS Franchise Ordinance on the residential network of the cable communications system.
 - (2) The company shall provide channels for leased access use on the institutional network of the cable communications system in accordance with the MCS Franchise Ordinance.
 - (3) The company shall establish operating rules for leased access channels as provided for in the rules of the Minnesota Cable Communications Board. These rules shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use as required.
- g. *Institutional network services.* The company shall offer all economically feasible video, data and/or voice communications services within the technical capacity of the cable system to institutional subscribers by such time as construction of the cable system is complete.

Section 2. Channels dedicated for public usage. The company shall dedicate channels for public use to be administered by a nonprofit corporation designated by the City of Minneapolis as specified in Article III of the Franchise Ordinance:

- A. *Availability of access channels.* In accordance with the rules of the Minnesota Cable Communications Board and with the franchise ordinance, the company, through the city-designated nonprofit corporation, shall provide all access channels as required by law. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels.
- B. *Administration of access channels.* The company, through the nonprofit corporation and in accordance with the rules of the Minnesota Cable Communications Board and city of the [sic] franchise ordinance, shall establish operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel which shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use. All such rules shall comply with applicable federal, state and local regulations.

ADDENDUM B. MINNEAPOLIS CABLE COMMUNICATIONS RATE ORDINANCE

Article I. General Provisions

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the “Minneapolis Cable Communications Rate Ordinance.”

Section 2. Definitions. Words not defined herein shall be defined in accordance with the provisions of Article I, section 2, of the “Minneapolis Cable Communications Franchise” ordinance.

Apartment shall mean any building with two (2) or more residential units.

Residential unit shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.

Standard installation shall mean, unless otherwise specifically provided, an aerial drop of no more than one hundred fifty (150) feet. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.

Section 3. Regulation of rates; effective date. No charge shall be made or imposed by the company for any cable communications service subject to regulation by the city, except in accordance

with the provisions of this ordinance and the provisions of the "Minneapolis Cable Communications Franchise Ordinance".

This ordinance shall be in effect, after passage and publication, as of the commencement date of the "Minneapolis Cable Communications Franchise Ordinance;" and, shall remain in effect until amended or superseded in accordance with the provisions set out in the "Minneapolis Cable Communications Franchise Ordinance."

Section 4. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 4.5. Compliance with state and federal law. Notwithstanding any provision of this ordinance to the contrary, the city will exercise its regulatory authority over company's rates in a manner consistent with federal or state statute and regulation. This section shall apply when a federal or state statute or regulation preempts the authority of the city to regulate in accordance with this ordinance.

Section 5. Rights of city reserved. Irrespective of the regulation or lack thereof of any service offered now or in the future by the company and regardless of whether or not a service is designated as basic or premium/pay, the city reserves the right to regulate any service when such regulation is not specifically prohibited or preempted by federal or state law.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article II. Franchise Fee

The company shall pay, as compensation to the city, a franchise fee of five (5) per cent of its gross revenues.

Article III. Basic Installation Services

Section 1. Initial rates and charges. The Company's initial rates and charges shall not exceed those listed in this section:

Section 2. Residential installation. The initial rates and charges for installation to residential subscribers in its area shall not exceed the following:

	Installation Charge
(a) <i>Universal service tier (12-channel service):</i>	
First TV outlet, standard television receiver	\$14.95
First TV outlet, cable-ready television receiver*	15.95
Additional TV outlets, each	N/A
Relocation	10.00
Reconnection	10.00
Change of status	10.00
*Capable of receiving unscrambled cable television channels without converter	
(b) <i>Full cable service tier (90-channel capacity service):</i>	
First TV outlet	\$29.95
Converter (no deposit charge)	no charge (1)
Relocation	10.00
Reconnection	10.00
Change of status	10.00
(c) <i>Premium/pay:</i> The initial rates for installation of premium/pay services shall not exceed the following:	
Home Theater Network Plus	\$10.00

The Movie Channel	10.00
Home Box Office	10.00
Cinemax	10.00
Showtime	10.00
Play Cable	to be determined
Public Subscriber Network	10.00
Galavision	10.00
Bravo	10.00
The Entertainment Channel	10.00
The Disney Channel	10.00
Spotlight	10.00
Text	to be determined
Parental security control lockout (parental control device)	no charge
Reuters Instant Data Retrieval	varies according to level of service chosen

- (d) *FM service installation:*
 As part of initial service no charge
 As separate installation \$9.95
- (e) *Home security service:* Basic home security service shall include (i) one smoke detector or one alert button and (ii) two (2) door contacts. One visual signaling device will be provided for the hearing impaired upon written request prior to installation.
- (f) *Upgrade service:* From universal service to higher service (unless home security or premium/pay service is ordered, in which case the charge shall be [as] specified above) \$10.00
- (g) *Waiver of installation fees:*
 (1) When service first offered: All installations of first outlets except universal service are free within thirty (30) days after service is first available to each home.
 (2) For promotional activities: The company reserves the right to waive or reduce installation fees during initial construction periods and special promotions on a nondiscriminatory basis.
- (h) *Multiple services installed at same time:*
 (1) All pay installation charges other than Play Cable, Reuters, Text options, and other similar services will be waived if one or all pay services are installed at the time of the initial service installation.
 (2) The company reserves the right to charge a ten-dollar (\$10.00) reconnection, relocation, or change of status charge after first installation.
- (i) *Reconnection of service:* The company shall restore service to customers wishing restoration of service, provided customers shall first satisfy any previous obligations owed. A maximum reconnection fee of ten dollars (\$10.00) may be charged the customer. If the customer's service has been disconnected during the preceding six (6) months for failure to satisfy obligations owed, the company may require the maintenance of two (2) months' advanced payment as a condition precedent to restoration of service.

- (j) *Drops:* Aerial drops, or underground drops when required pursuant to section 2, in excess of one hundred fifty (150) feet shall cost the same as standard installation, plus the company's cost for that portion of the drop in excess of one hundred fifty (150) feet. The company may request advance payment for such installation.
- (k) *Underground drops:* Underground residential drops shall be charged at the company's cost minus cost of standard installation. The company may request advance payment for such installation. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.
- (l) *Equipment security deposit option and recovery costs:*
 - (1) The company reserves the right to charge a deposit subject to Minnesota Statutes Section 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.
 - (2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen, or damaged through neglect or misuse by the customer.
- (m) ~~Standard converter and options:~~ The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.

Section 3. Installation to governmental, educational or nonprofit institutions. (a) A single standard installation of residential service cable shall be made upon request without charge at each governmental, nonprofit, and educational institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation, except as provided for in (f) below. Additional outlets at each institution will be installed at an amount equal to company's internal cost.

(b) A single standard installation of institutional network shall be made upon request without charge to each governmental, educational and nonprofit institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation except as provided in (f) below. Additional outlets at each institution will be installed at an amount equal to the company's internal cost.

(c) Interior cabling, outlets and exterior distribution within a complex of buildings in a geographical area shall be provided upon request at the company's cost.

(d) Should the school district or the city desire to provide its own exterior/interior distribution, the company shall render technical assistance without charge. Such installations are subject to inspection and approval by the company.

(e) Underground installations shall be at the company's cost, less the company's rate for a standard installation, except as provided for in (f) below.

(f) The company shall extend feeder cable to a property line and a drop (not limited by the definition of "standard installation") to the closest point of the building for each of the following public buildings with technically compatible internal distribution networks approved by the city's cable officer on a schedule established by the company and the city, but said construction shall be completed no later than August 31, 1983:

- Minneapolis City Hall
- Hennepin County Government Center
- Central Library
- Auditorium and Convention Center
- Civil Service/Public Health Building
- MGDA building
- Summit Bank building (park board)
- Three (3) Downtown Fire Stations
- Minneapolis Community College

Minneapolis Technical Institute
Hennepin County Medical Center.

Section 4. Prewiring projects. The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for cable service.

A "project" for the purpose of this section shall be any new construction which at the time of prewiring is not past the normal stage of electrical wiring.

- (a) *Owner or builder prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the owner or builder complies with the following procedure:
 - (1) Owner or builder uses methods and materials approved in advance or supplied by the company. The company shall supply specifications and materials at its cost upon request.
 - (2) Owner or builder requests inspection and approval according to a schedule supplied by the company. The company shall inspect and provide technical assistance at its cost upon request.
- (b) *Company prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the company has prewired the project. All charges for prewiring and rewiring of multiple-unit facilities will be accomplished on an actual cost of installation basis by the company. Request for prewiring shall be sufficiently in advance for the company to arrange for prewiring except in no event shall such advance notice be required to exceed forty-five (45) days prior to commencement.
- (c) *Aerial and underground drops.* Any aerial installation in excess of one hundred fifty (150) feet to a prewired project shall be charged according to Article III, section 2(1) and any underground installation shall be charged according to Article III, section 2(m).
- (d) *Individual subscribers within project.* Nothing herein shall prevent the company from charging a connection fee in a prewired building of up to fifteen dollars (\$15.00) to individual subscribers within the project at the time they request service.

Article IV. Monthly Subscriber Service Rates

Section 1. Standard monthly service rates. Except as otherwise specifically provided for, the initial monthly rates and charges for service to commercial establishments or institutions, single-family dwellings, single apartment units, single condominium units, apartment building recreation areas or condominium common areas shall not exceed the following:

	Monthly Rate
(a) <i>Universal service tier (12-channel capacity service):</i>	
Standard television receiver, first TV outlet	\$1.95
Additional TV outlets, each	N/A
Converter (no deposit charge)	(not available) (f)
(b) <i>Full cable service tier (90-channel capacity service):</i>	
First TV outlet	\$11.95
Additional TV outlets, each	11.95
Converter (no deposit charge)	no charge
(c) <i>Premium/pay monthly service:</i> The initial monthly rates and channels for premium/pay services shall not exceed the following except in accordance with Article I, Section 14:	
Home Theater Network	
The Movie Channel	
Home Box Office	
Cinemax	
Showtime	

Play Cable
 Public Subscriber Network
 Galavision
 Bravo
 The Entertainment Channel
 The Disney Channel
 Spotlight
 Text
 Reuters Instant Data Retrieval

The company reserves the right to set or charge monthly rates for premium/pay services herein at its discretion:

- | | <i>Monthly Rate</i> |
|--|---------------------|
| (d) <i>FM service monthly rate (per outlet)</i> | 1.50 |
| (e) <i>Home security service, monthly rates:</i> | |
| Monitoring | 9.95 |
| Terminal/maintenance | 6.00 |
| Total | \$15.95 |
- (f) On universal service tier, a converter may be necessary to ensure interference-free reception of over-the-air broadcast channels on some television sets.
- (g) There is no monthly charge for duplicate pay service provided to additional outlets, excluding interactive pay services. The company reserves the right to initiate such charges if the company is required to reimburse pay programming suppliers for service to additional outlets.
- (h) The company reserves the right to offer monthly rate discounts upon the purchase of two (2) or more premium/pay services.
- (i) *Equipment security deposit option and recovery costs:*
- (1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.
 - (2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen or damaged through neglect or misuse by the customer.
- (j) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.
- (k) *Pay-per-view:* In charging for pay-per-view program or service offerings, the company may initiate and vary its charge according to the particular program or service offered.

Section 2. Standard monthly service rates for governmental, educational or nonprofit institutions. Where installation of residential cable is made without charge to governmental and educational institutions, there shall be no monthly charge for one outlet of full cable service tier on the residential cable, including set-top converter if necessary. The company may charge for all services to individual units within a building, including but not limited to, individual student housing units (i.e., dormitory rooms), hospital rooms, etc.

Section 3. Apartment and commercial facilities. The initial rates and charges to apartments and commercial organizations for basic cable service up to the "basic service tier" shall not exceed the following:

TABLE INSET:

<i>Apartments—Individual Rate</i>	<i>Standard Installation Charge</i>	<i>Monthly Rate</i>
First outlet	Same as residential rates	Same as residential rates

Reconnection and change of status	Same as residential rates	Same as residential rates
<i>Commercial</i>		
First outlet	Initial outlet—Same as residential rates	Initial outlet—Same as residential rates

Section 4. Bulk monthly rates. A reduction of the monthly basic cable service charge will be offered by the company for condominiums, apartments, nursing homes, hospitals, hotels, motels, and other commercial units of ten (10) units or more. It will be negotiated based on the number of units available and participating. At no time will a multiple-unit monthly service charge exceed the maximum monthly charge for a single-family residence.

Section 5. Standard monthly service rates for profit and commercial enterprises. The company may charge maximum monthly service rates pursuant to Article IV, section 1, for residential cable service to profit and commercial enterprises. The company charges for use of the institutional and commercial communications network by profit and commercial enterprises will be dependent on the extent and requirements of use. Nonstandard installation shall be available upon request at an amount equal to the company's internal cost plus reasonable overhead.

Section 6. Service calls. Service requests for maintenance or repair of cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber. The company may charge a maximum of ten dollars (\$10.00) for service calls to subscribers' homes where the problem is obviously not the result of a cable failure.

Article V. Studio and Equipment Usage

Section 1. Studio and equipment usage. The company shall not exceed the following initial rates for access studio and video equipment use:

	<i>Rates</i>
(a) <i>Noncommercial users</i>	
Studio production time	no charge
Remote production time	no charge
Supervision and instruction	no charge
System playback costs	no charge
Editing costs	no charge
(b) <i>Commercial users</i>	
Studio production time	negotiated
Remote production time	negotiated
Supervision and instruction	negotiated
System playback costs	negotiated
Editing costs	negotiated

Article VI. Maintenance of Initial Rates

Section 1. [No increase permitted initially for other than optional pay services.] The company shall not increase the initial rates for Tier I programming, other than the optional pay services or full cable service tier programming before December 31, 1988. Upon the expiration of said period, those rates and charges for those services for which rate regulation is not preempted by federal or state agencies shall be subject to regulation by the city.

ADDENDUM C. RESERVED*

Adopted 12/18/2009.

Ordinance 2009-Or-192 amending Appendix H of the Minneapolis Code of Ordinances relating to *Minneapolis Cable Communication Franchises*, by adding a new Appendix H relating to *Minneapolis Cable Communication Franchises*, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

DECEMBER 18, 2009

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-192
By Ostrow
Intro & 1st Reading: 7/31/2009
Ref to: W&M
2nd Reading: 12/18/2009

An ordinance granting a Cable Franchise between the City of Minneapolis and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That the Minneapolis Code of Ordinances be amended by adding thereto a new Appendix H to read as follows:

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN CITY OF
MINNEAPOLIS, MINNESOTA AND
COMCAST OF ARKANSAS/FLORIDA/LOUISIANA/MINNESOTA/
MISSISSIPPI/TENNESSEE, INC.**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Minneapolis, Minnesota ("City"), a municipal corporation, and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. a wholly owned subsidiary of Comcast Corporation (hereinafter, "Grantee").

Whereas, Grantee operates a cable communications system in Minneapolis under a franchise with the City of Minneapolis ("City"), the terms of which are set forth in Appendix H, Chapters 1 and 2 of the City Code (the "Franchise Agreement"), as amended; and

Whereas, Grantee's Franchise Agreement expired on November 30, 2004; and

Whereas, the Franchise Agreement was extended until November 30, 2005; and

Whereas, as part of a Settlement Agreement dated July 24, 2006 (the "Settlement Agreement"), the parties agreed to extend the Franchise Agreement through December 31, 2006 and then again through December 31, 2007; and

Whereas, Section 626 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 546, establishes formal and informal procedures applicable to the renewal of a cable television franchise; and

Whereas, the City has been engaged in the informal franchise renewal process with Grantee, as authorized by 47 U.S.C. § 546(h); and

Whereas, on July 24, 2006, the City and Grantee resolved all past cable franchise compliance issues in a Settlement Agreement. See City Pet. 271337; and

Whereas, the Settlement Agreement contains certain cable franchise deal points the parties agreed to include in a renewed cable franchise and certain considerations outside of a renewed cable franchise; and

Whereas, the Grantee's technical ability, financial condition, and legal qualifications were considered and approved by the City in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard. See City Resolution 2006R-371; and

Whereas, the City and Grantee have negotiated in good faith to incorporate the renewal franchise deal points set forth in the Settlement Agreement into a renewal franchise and to meet the remaining identified needs and interests of the community while taking into account the cost of meeting such needs and interests; and

Whereas, the parties desire to renew the Franchise Agreement on the terms and conditions contained herein.

Now, Therefore, in consideration of the City's grant of a new franchise to Grantee; Grantee's promise to provide Cable Service to residents of the City pursuant to and consistent with the City Code; the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged.

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

Section 1. Scope of Franchise

1.1 Grant of Franchise. The City hereby grants to Grantee, having its principal place of business in Ramsey County, Minnesota, a non-exclusive Franchise to install, construct, operate and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Franchise. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable. This franchise does not grant Grantee any right of eminent domain.

1.2 Franchise Area. This Franchise is granted for the entire corporate boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise. Grantee shall provide Cable Service to the entire franchise area.

1.3 Service Discrimination Prohibited. Grantee is prohibited from denying access to Cable Service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. Grantee shall not discriminate among subscribers and potential subscribers to Cable Service.

1.4 Reservation of City Right-of-Way Rights. Nothing in this Franchise shall deprive the City of any rights or privilege to exercise its police powers in the regulation and control of the use of the Rights-of-Way. Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City right-of-way, or public work or improvement in the City's Rights-of-Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's system will interfere with the construction, maintenance, or repair of any City right-of-way or public work or improvement in the City's Rights-of-Way, at its own expense the Grantee shall remove or relocate its system as the City directs except that the City may not discriminate among telecommunication rights-of-way users. Grantee shall be entitled to reimbursement of its relocation costs if made available to other users of the right-of-way for that project or projects. Should the Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. Throughout this Franchise Agreement, the term "public rights-of-way" or "rights-of-way" shall have the meaning set forth in Minn. Stat. 237.163. If there is a conflict in language between this Franchise Agreement and a local ordinance regulating the use of public rights-of-way, the terms of this Franchise Agreement shall prevail.

1.5 Competitive Equity. Notwithstanding anything else in this Franchise, if, during this Franchise Agreement's term any laws, rules, regulations, or governmental authorization would allow a provider of multi-channel video programming or equivalent in the City's Rights-of-Way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Grantee is operating under, the franchise agreement shall be amended to reflect such changes, upon Grantee's written request.

1.6 Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

Section 2. State Mandated Franchise Terms

2.1 General Provisions. (a) **Compliance with Minnesota Statutes.** This Franchise shall comply with all provisions contained in Minnesota Statutes Chapter 238, as amended.

(b) **Conformance with State and Federal Laws and Rules.** The City and Grantee shall conform to state laws and rules regarding cable communications no later than one (1) year after they become

effective, unless otherwise stated. The City and Grantee shall conform to federal laws and regulations regarding cable as they become effective.

(c) **Franchise Term.** This Franchise shall commence on the Effective Date and Terminate December 31, 2021. Any subsequent renewal term of the Franchise shall be limited to not more than fifteen (15) years each. The City shall approve this Franchise through the passage of an ordinance by the City Council and approval of the Mayor, which shall be published in accordance with applicable local and Minnesota law. Within thirty (30) days after enactment of the ordinance granting approval of the Franchise, Grantee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. The Effective Date shall be the date of acceptance by Grantee.

(d) **Nonexclusive Franchise.** This Franchise shall be nonexclusive. The City may grant additional franchises consistent with Minnesota Statutes Section 238.08, subdivision 1(b) and 47 U.S.C. § 541.

(e) **Franchise Transfer.** No sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest under Minnesota Statutes § 238.083 shall occur without the approval of the City, which will not be unreasonably withheld, conditioned that the sale or transfer is completed consistent with Minnesota Statutes § 238.083. If allowed under state and federal law, Grantee shall pay all of City's reasonable costs in reviewing and acting upon a transfer application. If the cable communications system is offered for sale, the parties shall comply with any lawful requirements of applicable law regarding the City's right to purchase the Cable System.

(f) **Audit.** The City shall have the right to audit the Grantee's accounting and financial records required to calculate the City's franchise fees upon reasonable notice; provided, however, that any such inspection shall take place within three (3) years from the date the City receives the payment, after which period any such payment shall be considered final. The Grantee shall file annual reports with the City detailing gross subscriber revenues and other information the City deems appropriate.

(g) **Public Inspection.** The Grantee shall make available for public inspection:

- (1) the length and terms of residential subscriber contracts;
- (2) the current subscriber charges; and
- (3) the procedure by which subscriber charges are established, unless such a provision is contrary to state or federal law.

(h) **Franchise Administration.** The City shall notify Grantee of the office or officer of the City responsible for the continuing administration of the Franchise.

(i) **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, boards, commissions, councils, elected officials, agents and employees (collectively the "Indemnitees") from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within thirty (30) calendar days of receipt of a claim or action pursuant to this section, or within fifteen (15) calendar days upon receipt of a lawsuit. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

(1) The Grantee's obligation to indemnify Indemnitees under this Franchise Agreement shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one (1) or more Indemnitees. However, in such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. An example of such reduction is as follows:

- a. Assume an incident occurs for which the Grantee is eighty-five (85) percent at fault and Indemnitees are fifteen (15) percent at fault. The total amount due and owing a third party from the resulting claim is one hundred thousand dollars (\$100,000). The Grantee's obligation to indemnify is eighty-five (85) percent of one hundred thousand dollars (\$100,000), or eighty-five thousand dollars (\$85,000).

(j) **Insurance.** The Grantee shall carry insurance, and provide to the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this section, to protect the Grantee and the City from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of the loss, injury, claim, or damage, in the following amounts:

- (1) Commercial General Liability insurance with limits of at least one million dollars (\$1,000,000) general aggregate, one million dollars (\$1,000,000) products - completed operations one million dollars (\$1,000,000) personal and advertising injury, fifty thousand (50,000) each occurrence fire damage and five thousand dollars (\$5,000) medical expense any one (1) person. The policy shall be on an "occurrence" basis, shall include Contractual liability coverage and the City shall be named an additional insured.
- (2) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least five hundred thousand dollars (\$500,000) per accident.

The Grantee shall also carry insurance to protect it from all claims under workers' compensation laws in effect that may be applicable to it in the following amounts:

Workers Compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least one hundred thousand dollars (\$100,000) each accident, five hundred thousand dollars (\$500,000) disease - policy limit and one hundred thousand dollars (\$100,000) disease each employee. Insurance required must remain in effect for the entire term of the agreement. Insurance secured by the Grantee shall be issued by insurance companies rated A or better by A.M. Best Company and admitted in Minnesota. If Grantee self-insures, Grantee shall certify annually that it has met all of the State of Minnesota requirements for self-insuring.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Grantee. Any policy deductibles or retention shall be the responsibility of the Grantee. The Grantee shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Grantee's interest or provide adequate coverage. Evidence of coverage is to be provided on an industry standard Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Grantee shall require any of its subcontractors to comply with these provisions.

(k) **Security.** The Grantee shall furnish a performance bond, letter of credit or security fund in the amount of five hundred thousand dollars (\$500,000) for compensation for damages resulting from the Grantee's nonperformance as specified in this Franchise.

(l) **No Relief from Liability.** Nothing in the Franchise shall be construed so as to relieve 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 street or public place or with the construction or reconstruction of a sewer or water system.

(m) **Qualifications Reviewed.** The City considered and approved the Grantee's technical ability, financial condition and legal qualifications in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard.

(n) **Reserved.**

(o) **Permits.** Pursuant to applicable local law, the Grantee shall obtain a permit from the proper municipal authority before commencing construction on its cable communications system, including the opening or disturbance of a street, sidewalk, driveway, or public place. In the event that Grantee fails to meet the conditions of such a permit, the City may seek remedies under this Franchise Agreement.

(p) **Compliance with Code.** Wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable local laws. The Grantee must keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the life or property of any person.

(q) **Removal and Relocation.** Unless otherwise provided for by local law, the City and the Grantee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in the street, right-of-way, or public place whenever the City undertakes public improvements that affect the cable equipment except that the City may not discriminate among telecommunication rights-of-way users. Grantee shall be entitled to reimbursement of its relocation costs if made available to other users of the right-of-way for that project or projects.

(r) **Compliance with FCC Technical Standards.** The Grantee shall comply at a minimum with the technical standards promulgated by the Federal Communications Commission relating to cable

communications systems contained in subpart K of part 76 of the Federal Communications Commission's rule and regulations relating to cable communications systems and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, as amended from time to time. The results of tests required by the Federal Communications Commission will be available for onsite review by the City within ten (10) days of filing such tests with the FCC.

(s) **Cost of Special Testing.** The City may require special testing of a location or locations within the System if there is a particular matter of unresolved complaints regarding System construction, operations, signal quality, or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.

Before ordering such test, 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 Grantee and City shall determine who is to bear the costs of required special testing.

(t) **Subscriber Privacy.** No signals of a cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one (1) year, which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. Grantee shall further comply with 47 U.S.C. § 551, which is incorporated herein by reference.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers, may be sold or otherwise made available to any person other than to the company and its employees for internal business use, or to the subscriber who is the subject of that information, unless the company has received specific written authorization from the subscriber to make the data available or unless said information is ordered by a court or subpoenaed;

(2) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause (t)(1); and

(3) For purposes of this provision, a "cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

(u) **Complaint Resolution Procedure.** See Section 3.

(v) **Receipt of Complaints.** See Section 3. Also, Grantee shall immediately provide a consumer complaint telephone number at the City to subscribers that asks for a consumer complaint number.

(w) **Franchise Termination.** The City has the right to terminate and cancel the franchise and the rights and privileges of the franchise if the Grantee substantially violates a provision of the franchise ordinance or agreement, attempts to evade the provisions of the franchise ordinance or agreement, or practices fraud or deceit upon the City. The City shall provide the Grantee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Grantee a minimum of thirty (30) days after service of the notice in which to correct the violation. The Grantee must be provided with an opportunity to be heard at a public hearing before the governing body of the City before the termination of the franchise.

(x) **Abandonment.** No person operating a cable communications system, notwithstanding any provision in a franchise, may abandon a cable communications system or a portion of it without having given three (3) months prior written notice to the franchising authority. No person operating a cable communications system may abandon a cable communications system or a portion of it without compensating the City for damages resulting to it from the abandonment.

(y) **Removal of Facilities.** Upon termination or forfeiture of the Franchise, unless otherwise required by applicable law, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the City so requests. In the event the Grantee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area, the Grantee will be subject to the procedures of applicable local law.

(z) **Access Channels.** The Grantee shall provide nine (9) channels to be used for Public, Educational or Government programming.

- (1) In its sole discretion, Grantee may elect to provide video-on-demand ("VOD") government access with up to twenty (20) hours of government access programming stored on the Grantee's server at no cost to the City continuing through the term of the Franchise, reducing the number of PEG channels by one (1) channel; video-on-demand educational access with up to twenty (20) hours of educational access programming, as selected by the City, stored on the Grantee's server at no cost to the City continuing through the term of the Franchise, reducing the number of PEG channels by another channel; and, government training video-on-demand programming, with up to twenty (20) hours of government training programming, as selected by the City, stored on the Grantee's server at no cost to the City starting in 2008-2009 and continuing through the term of the Franchise, reducing the number of PEG channels by another channel. The City may identify VOD programming described herein that shall be viewable only by the City and not Grantee's subscribers generally. To the extent feasible, Grantee, at no cost to the City, shall block access to such identified VOD programming to its subscribers generally and provide access to the City discretely. The City may change the video programming stored on the Grantee's server on a regular basis;
- (2) In its sole discretion, the City may elect at any time during the franchise term in 2009 or after to convert one (1) of the PEG channels to high-definition, reducing the number of PEG channels by another channel, not counting the channel converted;
- (3) Notwithstanding Sections 3.1(z)(1) and 3.1(z)(2) above, the number of PEG channels shall not be reduced below six (6); and
- (4) For purposes of this Franchise, the term channel shall be as commonly understood and is not any specific bandwidth amount.
- (5) Neither the Grantee nor the officers, directors, or employees of the Grantee is liable for any penalties or damages arising from programming content not originating from or produced by the Grantee and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.
- (6) The franchisee shall provide to each of its subscribers who receive Cable Service offered on the system, reception on at least one (1) specially designated access channel.

(aa) **PEG Support.**

- (1) The PEG fee, payable quarterly, shall be:
 - a. \$.50/subscriber/month from January 2008 to the year end 2011, provided however that if Grantee's cable TV penetration meets or exceeds forty-five (45) percent of the serviceable dwelling units passed by the cable communications system during this time period the PEG fee shall immediately increase to \$1.00/subscriber/month;
 - b. \$1.00/subscriber/month from January 2012 to year end 2015; and
 - c. \$1.10/subscriber/month from January 2016 until the Franchise renews, provided however that if Grantee's cable service penetration meets or exceeds fifty (50) percent of serviceable dwelling units passed by the cable communications system during this time period the PEG fee shall immediately increase to \$1.25/subscriber/month.
- (2) These fees shall be further adjusted annually to reflect changes in the Consumer Price Index commencing on January 1, 2009, with the intent to initially adjust the fees to reflect prices benchmarked at 2007 dollars.

(3) If any laws, rules, regulations or government authorizations would allow a provider of multi-channel video programming or equivalent in the City's Rights-of-Way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Grantee is operating under, the obligations of this section shall be modified to reflect such changes. Provided, however, that Grantee agrees not to exercise its rights under this section prior to January 2012.

(bb) **Regional Channel 6.** The VHF Channel 6 is designated for uniform regional channel usage as required in Minnesota Statutes § 238.02, subdivision 31(c), and Minnesota Statutes § 238.43.

2.2 Definitions. The definitions contained in Minnesota Statutes Chapter 238 and Title VI of the Communications Act of 1934, as amended, and rules promulgated thereunder, are hereby incorporated herein by reference.

Section 3. Customer Service Standards

3.1 Cable System Office Hours and Availability. (a) The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week.

(1) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(2) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

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

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

(d) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(e) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

3.2 Installations, outages and service calls. Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(a) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

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

(c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

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

3.3 Communications between Grantee and Cable Subscribers. (a) Refund checks will be issued promptly, but no later than either the customer's next billing cycle following resolution of the

request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Grantee if service is terminated.

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

3.4 Definitions. (a) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(b) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(c) Service interruption. The term "service interruption" means the loss of picture or sound on one (1) or more cable channels.

3.5 Information to Subscribers. (a) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable services;
- (5) Channel positions of programming carried on the system;
- (6) Billing and complaint procedures, including the address and telephone number of the City's cable office; and
- (7) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Grantee, including the address of the responsible officer of the City.

3.6 Rate and Service Changes. (a) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Section 3.5 above.

(b) In addition to the requirement of paragraph (a) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give thirty (30) days written notice to both subscribers and City before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

- (1) Grantee shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least thirty (30) days before any proposed increase is effective. The notice should include the name and address of City Administrator.
- (2) To the extent the Grantee is required to provide notice of service and rate changes to subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.

- (3) Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the Grantee and the subscriber.

3.7 Rate Review. The City reserves the right to regulate all rates and charges for Cable Service except to the extent it is prohibited from doing so by law.

Section 4. Compensation and Auditing

4.1 Amount of Compensation. Grantee shall pay annually as a Franchise Fee in accordance with Section 622 of the Cable Act to the City, throughout the duration of this Franchise, of five (5) percent of Grantee's Gross Revenues. If during the term of this Franchise, the FCC, federal or state government, or the courts effectively permit the City to impose a Franchise Fee greater than five (5) percent, the City shall have the right to increase the Franchise Fee to take full advantage thereof.

(a) "Gross Revenue" means all Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes, but is not limited to, monthly basic, premium, pay-per-view and other video fees, advertising and home shopping revenue, installation fees and equipment rental fees, leased access, sales of programming guides and franchise fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

4.2 Payment of Franchise Fees on Bundled Services. (a) Grantee agrees that if it bundles, packages, or combines services subject to the franchise fee with services that are not subject to the franchise fee:

- (1) It will not do so for the purpose of avoiding franchise fees; and
- (2) Except as otherwise provided in this section, it will allocate revenues derived from the bundled, combined, or packaged services in a manner that attributes a fair and reasonable amount of the revenues to the Cable Services component. This section shall be subject to the City's rights to audit pursuant to Sections 2.1(f) and 4.6.

(b) This section is not intended to apply to reduction in Franchise Fees that result from other causes such as changes in the law, Subscriber losses, Subscriber service downgrades, Force Majeure, or short-term promotional activities (i.e., premium channel discounts or sales).

4.3 Payments and Quarterly Reports. (a) Payments. Grantee's Franchise Fee payments to the City shall be computed quarterly following the Effective Date of this Franchise. Payments shall be due and payable within thirty (30) days following the end of each quarter.

(b) Quarterly Reports. Each payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in form and substance satisfactory to the City and shall include revenue by product category.

4.4 Interest on Late Payments. All sums not paid when due, and after reasonable notice and opportunity to cure, shall bear interest at the rate of one (1) percent per annum computed monthly, and if so paid with interest within thirty (30) days of due date, shall not constitute an event of default.

4.5 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within three (3) years of the date payment was due.

4.6 Audits. (a) Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final.

(b) Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

(c) Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

Section 5. Enforcement and Penalties

5.1. Notice and Opportunity to Cure. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with reasonably specific details regarding the nature of the alleged noncompliance or default. Prior to issuing the written notice of noncompliance or default, the City shall make a good faith effort to contact Grantee in an attempt to resolve the issue through good faith consultation in the ordinary course of business. The City delegates to the Cable Communications Officer the authority to make initial determinations regarding noncompliance with the Franchise and to issue written notice of any alleged violations. Unless otherwise agreed upon by the parties in writing, Grantee shall have thirty (30) days from the date of the notice to cure the alleged noncompliance (the "Cure Period"). If Grantee intends to cure the alleged noncompliance, but is unable to within the Cure Period, Grantee may request an extension of the Cure Period (the "Extended Cure Period"), which shall not be unreasonably denied. The Extended Cure Period shall not exceed forty-five (45) days beyond the Cure Period. Provided the Grantee cures the alleged noncompliance within the Cure Period or any Extended Cure Period, the City agrees not to assess any liquidated damages for the alleged noncompliance.

5.2. Informal Resolution. Following written notice of any alleged violation, the parties shall expeditiously schedule a meeting to discuss the dispute informally. In the event that the dispute is not resolved by the City's Cable Communications Officer and Grantee's primary staff contact to the City within ten (10) days of Grantee's receipt of the City's written notice, either party may upon written notice to the other party request that the matter be referred to senior management officials within each respective organization for internal resolution. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within twenty (20) days of the receipt of the request for internal resolution. For the purposes of this paragraph, the designated senior management official for City shall be the City Coordinator; and for the Grantee shall be the Regional Vice President of the Grantee (or similar), unless otherwise changed through the mutual agreement of the parties. The senior management officials are required to meet once but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the dispute. The period for informal discussions shall not exceed thirty (30) days from receipt of the written notice, unless it is extended by written agreement of the parties.

5.3. Formal Resolution. If the matter is not resolved informally under Section 5.2 (Informal Resolution), the matter shall be referred to the Ways & Means/Budget Committee of the Minneapolis City Council. In a meeting before the Ways & Means/Budget Committee, the Cable Communications Officer of the City shall present information and make a brief oral presentation to the Ways & Means/Budget Committee demonstrating reasonable cause of a Franchise violation. Grantee may present information and make a brief oral presentation to the Ways & Means/Budget Committee. The Ways & Means/Budget Committee shall forward its recommendation on whether reasonable cause of a Franchise violation exists to the City Council. If the City Council determines there is reasonable cause that a Franchise violation has occurred, the matter shall be submitted to a mutually selected mediator.

If the Parties cannot agree upon a mutually-selected mediator within thirty (30) days of the end of the informal resolution period contained in Section 5.2, each Party shall within twenty (20) days provide a list of the names of three (3) mediators acceptable to that Party to the Chief Judge of the Hennepin County District Court who shall select a mediator for the Parties from the submitted names. If the Parties, with the assistance of the mediator, do not resolve the dispute within seventy-five (75) days of selection of the mediator, they may enforce their rights solely and exclusively in Hennepin County District Court. The court shall have jurisdiction to demand and compel compliance with this Agreement and to impose the remedies contained in Section 5.4 (Remedies for Non-Compliance).

5.4 Remedies for Non-Compliance. The Hennepin County District Court shall, without limitation, have all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise, and the assessment of liquidated damages.

(a) Liquidated Damages.

- (1) Amounts of Liquidated Damages. Because Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and Grantee agree to the following Liquidated Damages for the following violations. These damages represent the Parties' best estimate of the damages resulting from the specified injury and Grantee acknowledges that the liquidated damages amounts herein are reasonable in light of the anticipated or actual harm caused by any breach or noncompliance of the Franchise. Recognizing the length of this Franchise, the Liquidated Damage amounts are in 2008 dollars and shall be increased January 1 of each year by the increase in the U.S. Consumer Price Index for the Minneapolis/St. Paul area. To the extent that the City elects to assess liquidated damages as provided in this Agreement, and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for the specific violation for which the liquidated damages were imposed. Nothing in this section, however, shall preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach. Such damages shall not be a substitute for actual performance by Grantee of a financial obligation, but shall be in addition to any such actual performance.
 - (2) In the event the City assesses liquidated damages, Grantee shall have thirty (30) days to pay the damages assessed. If Grantee does not pay the damages assessed within thirty (30) days, the City in its sole discretion may collect the damages from the Performance Bond or the Second Performance Bond.
 - (3) Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of judicial proceedings, but shall continue to accrue until and unless the violation has been cured.
 - (4) Nothing in this section is intended to invalidate the Force Majeure provisions of Section 6.3.
- (b) Liquidated damages shall be assessed commencing on the date Grantee received notice as provided for in Paragraph 5.1 as follows:

- (1) For violation of applicable Subscriber service standards:
 - a. For failure to maintain a local, toll free or collect call line consistent with Section 3.1: two hundred fifty dollars (\$250) per day for each day or part thereof that such violation continues;
 - b. For failure to operate available customer service centers and bill payment locations during normal business hours under Section 3.1(a): two hundred fifty dollars (\$250) per day for each day or part thereof that such violation continues;
 - c. For failure to answer Subscriber calls as required by Section 3.1(b) of the Franchise, in any calendar quarter where Grantee fails to meet the applicable standard and meets the standard at eighty (80) percent of the time under normal operating conditions or above, the Grantee shall pay the City two thousand five hundred dollar (\$2,500) each quarter; in any calendar quarter where the Grantee fails to meet the applicable standard and performs at less than eighty (80) percent of the time under normal operating conditions, Grantee shall pay the City five thousand dollars (\$5,000) each quarter.

Nothing in this section is intended to increase or modify Grantee's reporting requirements under the Franchise;

- d. For violations of subscriber privacy pursuant to Section 2.1(t): an amount to be determined by the City, but not to exceed five thousand dollars (\$5,000) per event or occurrence, irrespective of the number of subscribers affected;
 - e. For failure to issue credits or refunds in a manner consistent with Section 3.3: fifty dollars (\$50) per day for each day or part thereof that such violation continues;
 - f. For failure to provide written information consistent with Section 3.5: fifty dollars (\$50) per day for each day or part thereof that such violation continues;
 - g. For failure to provide written notice of changes in prices, channel locations or other items required by Section 3.6: fifty dollars (\$50) per day for each day or part thereof that such violation continues;
 - h. For failure to make certain information available for public inspection as required by Section 2.1(g): fifty dollars (\$50) per day for each day or part thereof that such violation occurs; and
 - i. For any other failure of subscriber service standards: one hundred dollars (\$100) per day for each day or part thereof that such violation occurs.
- (2) For violation of applicable operational standards:
- a. For transfer of the Cable System without first seeking the City's approval under Section 2.1(e) in a manner consistent with federal regulations: five hundred dollars (\$500) per day for each day or part thereof that such violation continues;
 - b. For failure to supply PEG Access Channels required by Section 2.1(z): five hundred dollars (\$500) per day for each day or part thereof that such violation continues; and
 - c. For failure to maintain insurance under Section 2.1(i) or security under Section 2.1(k): two hundred fifty dollars (\$250) per day for each day or part thereof that such violation occurs.
- (3) For violation of applicable technical standards:
- a. For failure to bring the system into compliance with FCC Technical Standards within forty-five (45) days of identification of non compliance in reports filed with the FCC pursuant to 47 CFR 76.601 – 76.617: five hundred dollars (\$500) per day for each day or part thereof that such violation continues.
- (4) For all other material violations of the Franchise: two hundred fifty dollars (\$250) per day for each day or part thereof that such failure occurs or continues.

The City reserves the right to pursue any non-monetary remedy, including but not limited to injunctive relief, in addition to or in lieu of any remedy available under this section. For purposes of this section, "material breach" means any substantial failure of Grantee to comply with the terms of this Franchise and any other rules, regulations and standards incorporated herein. A material breach for the purpose of assessing liquidated damages shall be deemed to have occurred for each day following the expiration of the period specified in Section 5.4(a)(2), that any material breach has not been cured by Grantee, irrespective of the number of subscribers affected.

(c) Effect on Duty to Comply. The collection of Liquidated Damages by the City shall in no respect affect:

- (1) Compensation owed to Subscribers; or
 - (2) The Grantee's obligation to comply with the provisions of this Franchise or applicable law.
- (d) Accrual. Except as otherwise provided in Section 5.4(a)(2), Liquidated damages accrue from the date the City notifies the Grantee that there has been a violation.
- (e) Relationship of Remedies.
- (1) Non-Exclusivity of Remedies. Subject to applicable law and Section 5.4(a)(1) of this Franchise, the remedies provided for in this Franchise, are cumulative and not exclusive; the exercise of one (1) remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity.

(2) No Election of Remedies. Without limitation, the recovery of amounts under the insurance, indemnity, bonding or Liquidated Damages provisions of this Franchise shall not be construed as a limit on the liability of the Grantee under the Franchise or an excuse of faithful performance of any obligation of the Grantee.

(f) Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(g) Cost Treatment of Liquidated Damages. No cost to Grantee arising from a breach or violation of the Franchise shall be recovered from Subscribers, shall form the basis for any adjustment to Subscriber rates or other Subscriber charges or shall be offset against any sums due the City as a tax, Franchise Fee or otherwise regardless of whether the combination of Franchise Fees and said costs exceeds five (5) percent of Grantee's Gross Revenues in any twelve (12) month period.

Section 6. Miscellaneous Provisions

6.1 Severability. If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

6.2 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in Hennepin County District Court, and if in the federal courts, in the United States District Court for the District of Minnesota.

6.3 Force Majeure. Grantee shall have no liability to City for penalties or damages, nor shall City have the right to terminate this Franchise as a result of any failure or delay of Grantee to perform its obligations hereunder if such failure or delay is caused by factors beyond the control of Grantee, including without limitation, war, civil disturbance, flood or other Act of God, laws, regulations, rules or orders of any governmental agency, sabotage, or strikes. In the event that delay in performance or failure to perform affects only part of Grantee's capacity to perform, then Grantee shall perform to the extent it is reasonably able to do so. In correcting any causes of non-performance or delay, and in effecting any partial performance, Grantee shall take all necessary corrective actions as expeditiously as possible without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the rights-of-way, public property or private property.

6.4 Notice. Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

(a) Notices to Grantee shall be mailed to:

Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.
10 River Park Plaza
St. Paul, MN 55107
Attn: Regional Vice President

with a copy to:

Comcast Cable Communications, LLC
1500 Market Street
Philadelphia, PA 19102
Attn.: Government Affairs Department

(b) Notices to the City shall be mailed to:

Director of the Department of Communications
City of Minneapolis
350 South Fifth Street
Room 300M
Minneapolis, MN 55415

with a copy to:
Office of the City Attorney
350 South Fifth Street
Room 210
Minneapolis, MN 55415

(c) Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of Grantee and whose acts will be considered to bind Grantee.

6.5 Binding Acceptance. This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

6.6 Governing Law. This Franchise Agreement shall be governed in all respects by the law of the State of Minnesota.

6.7 Captions and References. The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

**Comcast of Arkansas/Florida/Louisiana/
Minnesota/Mississippi/Tennessee, Inc.**

Dated: _____

By _____
Its _____

CITY OF MINNEAPOLIS
Department Responsible for Administering and
Monitoring Agreement

Dated: _____

By _____
Sara L. Dietrich
Its Director of Department of Communications

Finance Officer or Designee

Approved as to form:

Peter W. Ginder, Deputy City Attorney

Adopted 12/18/2009.

The WAYS & MEANS/BUDGET and ZONING & PLANNING Committees submitted the following report:

W&M/Budget & Z&P – Your Committee having under consideration the gift of 60 photographs from Lake Street USA by the Harrington Company to the City of Minneapolis, now recommends passage of the accompanying resolution authorizing acceptance of said donation.

Adopted 12/18/2009.

DECEMBER 18, 2009

RESOLUTION 2009R-623

By Ostrow

Authorizing the acceptance of 60 photographs from Lake Street USA by the Harrington Company.

Resolved by The City Council of The City of Minneapolis:

That the proper City officers be authorized to accept the gift of 60 photographs from Lake Street USA by the Harrington Company to the City of Minneapolis.

Adopted 12/18/2009.

The ZONING & PLANNING Committee submitted the following reports:

Z&P – Your Committee recommends confirmation of the Mayoral appointment to the Minneapolis Planning Commission of Erika Carter, to fill the unexpired term of Lara Norkus Crampton as the Mayor's representative, to expire January 31, 2010.

Adopted 12/18/2009.

Z&P - Your Committee, to whom was referred an ordinance amending Title 20, Chapter 520 of the Minneapolis Code of Ordinances relating to *Zoning Code: Introductory Provisions*, (clearly distinguishing senior housing from supportive housing) now concurs in the recommendation of the Planning Commission that the related findings be adopted and that said ordinance be given its second reading for amendment and passage.

Your committee further recommends that Chapter 536 be returned to author.

Adopted 12/18/2009.

Ordinance 2009-Or-193 amending Title 20, Chapter 520 of the Minneapolis Code of Ordinances relating to *Zoning Code: Introductory Provisions*, amending Section 520.160 to add the definition of Senior housing under supportive housing, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-193

By Schiff

Intro & 1st Reading: 7/17/2009

Ref to: Z&P

2nd Reading: 12/18/2009

Amending Title 20, Chapter 520 of the Minneapolis Code of Ordinances Relating to Zoning Code: Introductory Provisions.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That the following definitions in Section 520.160 of the above-entitled ordinance be amended to read as follows:

520.160. Definitions. Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purposes of this zoning ordinance, have the meanings indicated. All words and phrases not defined shall have their common meaning.

Supportive housing. A facility that provides housing for twenty-four (24) hours per day and programs or services designed to assist residents with improving daily living skills, securing employment or obtaining permanent housing. It does not include:

- (1) Elderly Senior housing with congregate dining services designed specifically to serve the needs associated with the aging of the residents.

- (2) Inebriate housing.
 - (3) Any facility licensed by the Minnesota Department of Human Services (DHS), Department of Health (DOH) or Minnesota Department of Corrections (DOC).
 - (4) Any other county, state or federal community correctional facility.
 - (5) Fraternities, sororities or other student housing.
 - (6) Any facility owned, leased or operated by the Minneapolis Public Housing Authority (MPHA).
 - (7) The use of one (1) dwelling unit on one (1) zoning lot which meets the occupancy requirements of the zoning district in which it is located.
- Adopted 12/18/2009.

Z&P – Your Committee concurs in the recommendation of the Planning Commission in granting the petition of Twin Cities Regional Cable Channel Real Estate Holding Limited, LLC (BZZ-4593) to rezone the property at 1229 2nd Street NE from R3 to the C1 Neighborhood Commercial District to permit an office with limited post production and adopting the related findings prepared by the Department of Community Planning & Economic Development.

Your Committee further recommends passage of the accompanying ordinance amending the Zoning Code.
Adopted 12/18/2009.

Ordinance 2009-Or-194 amending Title 20, Chapter 521 of the Minneapolis Code of Ordinances relating to *Zoning Code: Zoning Districts and Maps Generally*, rezoning the property at 1229 2nd Street NE to the C1 District, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-194
By Schiff
1st & 2nd Readings: 12/18/2009

Amending Title 20, Chapter 521 of the Minneapolis Code of Ordinances relating to Zoning Code: Zoning Districts and Maps Generally.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 521.30 of the above-entitled ordinance be amended by changing the zoning district for the following parcel of land, pursuant to MS 462.357:

That part of Lot 6, except the South 96 feet thereof, Block 11, Marshalls Addition to the Town of St. Anthony, Hennepin County, Minnesota (1229 2nd Street NE - Plate 9) to the C1 District.
Adopted 12/18/2009.

Z&P - Your Committee concurs in the recommendation of the Planning Commission in granting the petition of Leif Ogren-Amdahl (BZZ-4598) to rezone the property at 3231 23rd Avenue S from R1A to the R2B District to permit a duplex and adopting the related findings of the City Planning Commission that rezoning to allow a two-family dwelling is consistent with the Hiawatha/Lake Station Area Master Plan, which indicates that single-and two-family dwellings and carriage houses are appropriate in this area. Further, the rezoning is consistent with the urban neighborhood land use category in the Minneapolis Plan for Sustainable Growth

Your Committee further recommends passage of the accompanying ordinance amending the Zoning Code.
Adopted 12/18/2009.

DECEMBER 18, 2009

Ordinance 2009-Or-195 amending Title 20, Chapter 521 of the Minneapolis Code of Ordinances relating to *Zoning Code: Zoning Districts and Maps Generally*, rezoning the property at 3231 23rd Avenue S to the R2B District, was adopted 12/18/2009 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2009-Or-195
By Schiff
1st & 2nd Readings: 12/18/2009

Amending Title 20, Chapter 521 of the Minneapolis Code of Ordinances relating to Zoning Code: Zoning Districts and Maps Generally.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 521.30 of the above-entitled ordinance be amended by changing the zoning district for the following parcel of land, pursuant to MS 462.357:

That part of Lot 9, Block 1, Parkers Addition to Minneapolis, Hennepin County, Minnesota (3231 23rd Avenue South - Plate 27) to the R2B District.

Adopted 12/18/2009.

MOTIONS

Colvin Roy moved approval of the accompanying resolutions:

a) Approving the execution of a stipulation agreement of partial settlement for easements from the BNSF Railway Company for the Cedar Lake Trail Project (Phase III); and

b) Approving the execution of a stipulation agreement from the State of Minnesota and the Metropolitan Council for the Cedar Lake Trail Project (Phase III).

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

(Published 12/22/2009)

Resolution 2009R-624, approving Stipulation of Partial Settlement with BNSF Railway Company for Cedar Lake Trail - Phase III, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-624
By Colvin Roy

Approving Stipulation of Partial Settlement with BNSF Railway Company for Cedar Lake Trail - Phase III.

Whereas, the City of Minneapolis (the "City") completed Phase I and Phase II of the Cedar Lake Trail between the West City limits and Royalston Avenue in 1995; and

Whereas, extension of the Cedar Lake Trail from Royalston Avenue to the Mississippi River ("Cedar Lake Trail Phase III a/k/a Cedar Lake Bike Trail Phase III") is a high priority for the City of Minneapolis ("City") and its residents; and

Whereas, BNSF Railway Company ("BNSF") is the fee owner of real property lying between Azine Alley and Royalston Avenue which the City desires to cross with the Cedar Lake Trail - Phase III, and which is legally described in Exhibit A attached hereto ("Easement Parcels"); and

Whereas, the City staff and counsel retained by the City have negotiated a proposed Stipulation of Partial Settlement in pending eminent domain proceedings which, if approved, will result in issuance of orders in the eminent domain proceedings which will authorize the City to construct, operate, maintain and repair the Cedar Lake Trail across the Easement Parcels in accordance with plans and specifications prepared on behalf of the City and approved by BNSF; and

Whereas, construction of the trail is scheduled to be commenced and completed in 2010; and

Whereas, under the proposed Stipulation of Partial Settlement and pursuant to an independent appraisal of the damages caused by the City's acquisition of the easement, the City will pay BNSF \$422,108.68 (which is the appraised value of the damages caused by the City's acquisition of the easements) in partial payment of the total amount of compensation which ultimately will be determined to be due in the pending eminent domain proceeding as a result of the City's acquisition of easements over the Easement Parcels; and

Whereas, the proposed Stipulation of Partial Settlement will satisfy the provisions of the deed restriction in favor of BNSF which encumbers a portion of the proposed Cedar Lake Trail route through Minnesota Ballpark Authority property ("Parcels 2 through 5") which deed restriction prohibits use of Parcels 2 through 5 for trail purposes unless the City enters into a liability and operations agreement with BNSF;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That upon approval of the proposed Stipulation of Partial Settlement by the City Attorney, the City Finance Officer is authorized to execute the Stipulation of Partial Settlement on behalf of the City and to pay BNSF Railway Company the amount described in the Stipulation of Partial Settlement between the City and BNSF Railway Company.

[Exhibit A follows on next page]

EXHIBIT A

Legal Descriptions of the Easements To Be Acquired

Parcel No. 16 **(Affects Tax Parcel No. 22-029-24-13-0107):**
Property Address: 405 Washington Avenue North
 Minneapolis, Minnesota

Description of Easement Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer, communication facilities, and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that part of Lots 2, 15 and 16, Block 22, **BRADFORD AND LEWIS ADDITION TO MINNEAPOLIS**, Hennepin County, Minnesota and that part of the abandoned alley within said Block 22 lying northerly of the following described "Line A":

"Line A" is described as beginning at a point on the Southwesterly line of Block 10, HOAG'S ADDITION TO MINNEAPOLIS, said Hennepin County, distant 29.27 feet Northwesterly from the most Southerly corner of said Block 10; thence Northeasterly along a straight line to a point in the Southwesterly line of said Block 22, distant 107.48 feet Northwesterly from the most Southerly corner of said Block 22; thence Northeasterly along the prolongation of the last described line 105.27 feet; thence Northeasterly along a non-tangential curve concave to the South having a radius of 1875.86 feet, the chord of said curve is measured 13 degrees 24 minutes 52 seconds to the right from said prolongation of the last described line to the Northeasterly line of said Block 22 and said "Line A" there terminating.

The permanent easement to be acquired is that part of the above-described property that lies 9.00 feet northwesterly and 14.00 feet southeasterly of the following described line: Commencing at the most southerly corner of said Block 10; thence North 45 degrees 01 minutes 39 seconds West, assumed bearing along the southwesterly line of said Block 10, a distance of 17.87 feet to the point of beginning; thence North 45 degrees 03 minutes 49 seconds East a distance of 88.06 feet; thence northeasterly

along a tangential curve concave to the southeast having a radius of 1000.00 feet and a central angle of 01 degrees 08 minutes 45 seconds for a distance of 20.00 feet; thence North 46 degrees 12 minutes 34 seconds East, tangent to said curve a distance of 29.86 feet; thence northeasterly along a tangential curve concave to the northwest having a radius of 1015.00 feet and a central angle of 01 degrees 08 minutes 45 seconds for a distance of 20.30 feet; thence North 45 degrees 03 minutes 49 seconds East, tangent to last described curve, a distance of 400.40 feet; thence northeasterly along a tangential curve concave to the southeast having a radius of 550.00 feet and central angle of 18 degrees 33 minutes 00 seconds for a distance of 178.07 feet; thence North 63 degrees 36 minutes 51 seconds East a distance of 30.17 feet to the northeasterly line of said Block 22 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect said "Line A" and said Northeasterly line of said Block 22.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 3,072 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

NATURE OF INTEREST

BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)

Fee Owner

Metropolitan Council, an agency of the State of Minnesota

Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation.

State of Minnesota Commissioner of Transportation

Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County, dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151.

"Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Parcel No. 17: (Permanent easement affects Tax Parcel No. 22-029-24-14-0163)
(Temporary easement affects Tax Parcels Nos. 22-029-24-14-0157 and 22-029-24-14-0163)
Property Address: 332 1/2 Washington Avenue North
Minneapolis, Minnesota

Description of Easements Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer, communication facilities, and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that portion of Block 33, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota, together with the 16.0 foot wide alley within said Block, described as follows:

Commencing at the most Westerly corner of said Block 33; thence Northeasterly along the Northwesternly line thereof a distance of 120.00 feet to the True Point of Beginning of the parcel to be described; thence Northeasterly along a straight line to a point on the Northeasterly line of said Block 33 distant 75.0 feet Southeasterly of the most Northerly corner of said Block 33, as measured along the Northeasterly line thereof; thence Southeasterly along said Northeasterly line a distance of 13.55 feet; thence Southwesterly along a straight line to the point of intersection with said Northwesternly line of Block 33 distant 80.66 feet Northeasterly from the most Westerly corner of Block 33; thence Northeasterly along said Northwesternly line to the True Point of Beginning.

and

That part of Block 33, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota described as lying Northwesternly of a line running from a point on the Northwesternly line of said Block 33 distant 120 feet Northeasterly from the most Westerly corner of said Block 33 to a point on the Northeasterly line of said Block 33 distant 75.00 feet Southeasterly from the most Northerly corner of said Block 33.

The permanent easement to be acquired is that part of the above-described property that lies within 10.00 feet northerly of the following described centerline:

Commencing at the most Westerly Corner of said Block 33; thence on an assumed bearing North 44 degrees 38 minutes 50 seconds East, along the Northwesternly line of said Block 33, a distance of 65.36 feet to the point of beginning; thence North 63 degrees 36 minutes 51 seconds East a distance of 195.96 feet; thence Northeasterly along a tangential curve concave to the southeast having a radius of 15,000.00 feet and a central angle of 00 degrees 12 minutes 27 seconds for a distance of 54.30 feet; thence North 63 degrees 49 minutes 17 seconds East, tangent to said curve, for a distance of 41.61 feet to the Northeasterly line of said Block 33 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect the Northwesterly and Northeasterly lines of said Block 33.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of and adjacent to said permanent easement. The sidelines of said temporary easement shall be prolonged or shortened to intersect the Northwesterly and Northeasterly lines of said Block 33.

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 1,202 square feet.

The area of the temporary easement is 2,431 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME	NATURE OF INTEREST
BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)	Fee Owner
Metropolitan Council, an agency of the State of Minnesota	Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation
State of Minnesota Commissioner of Transportation	Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County, dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151. "Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Parcel No. 19

(Affects Tax Parcel No. 22-029-24-14-0528)

Property Address:

322 Second Street North
Minneapolis, Minnesota

Description of Easements Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that part of Lots 1, 2, 3, 7, 8, 9, 10, and 11, and the vacated alley, all in Block 26, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota lying southeasterly of REGISTERED LAND SURVEY NO. 1741, said Hennepin County and also lying northerly of a line running parallel with and 25 feet southerly of the hereinafter described Line 1:

and

That part of Lot 2, Block 26, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota lying southerly of a line running parallel with and 25 feet southerly of the following described Line 1:

Line 1: From the point of intersection of the centerline of 3rd Avenue North and the centerline of Washington Avenue North, in the City of Minneapolis, run northwesterly on an azimuth of 314 degrees 20 minutes 02 seconds (azimuth oriented to Minnesota State Plane Coordinate System, South Zone) for 448.40 feet to the point of beginning of Line 1; thence on an azimuth of 63 degrees 16 minutes 41 seconds for 771.37 feet; thence deflect to the right on a 01 degree 00 minute 00 second curve (delta angle of 06 degrees 31 minutes 15 seconds) for 652.08 feet and there terminating.

The permanent easement to be acquired is that part of the above-described property that lies 10.00 feet on both sides of the following described centerline:

Commencing at the most westerly corner of said Lot 3; thence on an assumed bearing of North 45 degrees 18 minutes 14 seconds West, along the southwesterly line of said Block 26, a distance of 9.76 feet to the point of beginning of the centerline to be described; thence North 63 degrees 49 minutes 17 seconds East a distance of 246.93 feet; thence Northeasterly along a tangential curve concave to the southeast, said curve having a radius of 3000.00 feet and a central angle of 01 degrees 33 minutes 49 seconds for a distance of 81.87 feet; thence North 65 degrees 23 minutes 06 seconds East, tangent to said curve, for a distance of 32.18 feet to the intersection with the northeasterly line of said Block 26 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect said southwesterly line of said Block 26 and the northeasterly line of said Block 26.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of a line lying 10.00 feet northwesterly of the above-described centerline and its extensions and also lying southeasterly of a line lying 20.00 feet northwesterly of the above-described centerline and its extensions. The sidelines of said temporary easement shall be prolonged or shortened to intersect said southwesterly line of said Block 26 and the northeasterly line of said Block 26.

DECEMBER 18, 2009

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 1,754 square feet.

The area of the temporary easement is 3,610 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME	NATURE OF INTEREST
BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)	Fee Owner
Metropolitan Council, an agency of the State of Minnesota	Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation
State of Minnesota Commissioner of Transportation	Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151. "Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.
Northstar Corridor Development Authority	Possible holder of an interest
U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan	Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and

Guaranty Trust Company of New York), as Trustee; supplemented
and Laura Roberson of St. Louis Missouri
(successor to Bartlett Ford, Jacob M. Ford, II and
W. A. Johnson), as Trustee

City of Minneapolis

Special Assessments

Parcel No. 24 (Affects Tax Parcel No. 22-029-24-14-0008)
Property Address: 300 First Street North
Minneapolis, Minnesota

Description of Easements Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across the BNSF Railway Company right-of-way crossing Lots 4, 5, 6, 7 and 8, Block 9, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota and the vacated alley in said Block 9.

The permanent easement to be acquired is that part of the above-described property that lies 10.00 feet on both sides of the following described centerline:

Commencing at the most southerly corner of said Block 9; thence on an assumed bearing of North 45 degrees 13 minutes 59 seconds West, along the southwesterly line of said Block 9, a distance of 60.96 feet to the point of beginning of the centerline to be described; thence North 65 degrees 23 minutes 06 seconds East a distance of 71.69 feet; thence Northeasterly along a tangential curve concave to the southeast, said curve having a radius of 1000.00 feet and a central angle of 04 degrees 45 minutes 42 seconds for a distance of 83.11 feet; thence North 70 degrees 08 minutes 48 seconds East, tangent to said curve, to the intersection with the southeasterly line of said Block 9 and said centerline there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect said southwesterly and southeasterly lines of said Block 9.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of a line lying 10.00 feet northwesterly of the above-described centerline and its extensions and also lying southeasterly of a line lying 20.00 feet northwesterly of the above-described centerline and its extensions. The sidelines of said temporary easement shall be prolonged or shortened to intersect said southwesterly line and the southeasterly line of said Block 9.

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

The area of the permanent easement is 1134 square feet.

The area of the temporary easement is 2006 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

BNSF Railway Company, a Delaware corporation
(fka Burlington Northern, Inc.; fka Burlington Northern
Railroad Company; fka Great Northern Pacific &
Burlington Lines, Inc.; fka Burlington Northern
Transportation Company; and fka The Burlington
Northern and Santa Fe Railway Company);

NATURE OF INTEREST

Fee Owner

DECEMBER 18, 2009

Metropolitan Council, an agency of the State of Minnesota

Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation

State of Minnesota Commissioner of Transportation

Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County, dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151.
"Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Parcels No. 2 through 5:

[Affects Tax Parcel Nos.
22-029-24-34-0008 (Parcel 2),
22-029-24-31-0058 (Parcel 3),
22-029-24-31-0051 (Parcel 4),
22-029-24-31-0058 (Parcel 5)]

Property Address: Property adjoins southeasterly side of BNSF Railway Company right of way between Royalston Avenue and the northwesterly prolongation of Third Street North in the City of Minneapolis, MN.

Description of Parent Parcel ("Authority Property"):

Those parts of the following 6 Parcels:

Parcel 1.

Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, Block 3; and
Lots 1, 2, 3, 4, 9, 10 and 11, Block 6;

Wilson Bell and Wagner's Addition to Minneapolis;
Vacated or to be vacated 11th Street North (dedicated in the plat of Wilson Bell and Wagner's Addition to Minneapolis as GROVE ST.) and vacated or to be vacated Holden Street (dedicated in the plat of Wilson Bell and Wagner's Addition to Minneapolis as 6th St.);

Parcel 2.

Lot 13, Block 3, CAMP and WALKER'S ADDITION TO MINNEAPOLIS, Except that part of said lot lying within "Rearrangement of Blocks two (2) and three (3) of Camp and Walkers Addition to Minneapolis";

Parcel 3.

Lots 1, 2, 3, 4, 5, 10, 11, 12 and 13, Block 3; and

Lots 1 through 7, inclusive, Block 2;

"Rearrangement of Blocks two (2) and three (3) of Camp and Walkers Addition to Minneapolis";

Vacated or to be vacated THIRD AVENUE NORTH and vacated or to be vacated SEVENTH STREET NORTH, dedicated in the plat of "Rearrangement of Blocks two (2) and three (3) of Camp and Walkers Addition to Minneapolis";

Vacated or to be vacated THIRD AVENUE NORTH and vacated or to be vacated SEVENTH STREET NORTH, dedicated in the plat of CAMP and WALKER'S ADDITION TO MINNEAPOLIS;

Parcel 4.

Lots 3 and 8, Block 85; and

Lots 1 through 10, inclusive, Block 4; and

Lots 1, 2 and 10, Block 5;

HOAG'S ADDITION TO MINNEAPOLIS;

Vacated or to be vacated THIRD AVENUE NORTH (dedicated in the plat of HOAG'S ADDITION TO MINNEAPOLIS as ITASKA STREET), vacated or abandoned FOURTH AVENUE NORTH (dedicated in the plat of HOAG'S ADDITION TO MINNEAPOLIS as DACOTA STREET), and vacated or abandoned SIXTH STREET and FIFTH STREET, dedicated in the plat of HOAG'S ADDITION TO MINNEAPOLIS;

Parcel 5.

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY PROPERTY MAP NO. 11, Except that part of said land lying within Block 3, Wilson Bell and Wagner's Addition to Minneapolis;

Parcel 6.

The unplatted parts of the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 22, Township 29, Range 24;

described as follows:

Commencing at the southwest corner of Section 22, Township 29, Range 24; thence, along the west line of said Section 22, on an assumed bearing of North 0 degrees 01 minute 47 seconds East, a distance of 886.34 feet; thence South 85 degrees 09 minutes 04 seconds East a distance of 1722.10 feet; thence easterly on a non-tangential curve, concave to the north, having a radius of 170.00 feet, a central angle of 22 degrees 46 minutes 53 seconds and a chord which bears North 78 degrees 44 minutes 17 seconds East, a distance of 67.59 feet to a point on the westerly line of Lot 9, Block 6, Wilson Bell and Wagner's Addition to Minneapolis and the actual point of beginning of the land to be described; thence continue northeasterly on the last described curve, concave to the northwest, having a radius of 170.00 feet and a central angle of 26 degrees 04 minutes 18 seconds and a chord which bears North 54 degrees 18 minutes 42 seconds East, a distance of 77.37 feet; thence North 41 degrees 16 minutes 32 seconds East tangent to said curve a distance of 523.93 feet; thence northeasterly on a non-tangential curve, concave to the southeast, having a radius 1694.42 feet, a central angle of 8 degrees 57 minutes 40 seconds and a chord which bears North 50 degrees 37 minutes 16 seconds East, a distance of 265.01 feet to the center line of SEVENTH STREET NORTH, as dedicated in "Rearrangement of Blocks two (2) and three (3) of Camp and Walkers Addition to Minneapolis"; thence South 44 degrees 56 minutes 07 seconds East, along said center line, a distance of 123.46 feet; thence North 54 degrees 02 minutes 33 seconds East a distance of 55.06 feet; thence South 43 degrees 16 minutes 02 seconds East a distance of 4.03 feet; thence North 49 degrees 44 minutes 44 seconds East a distance of 9.51 feet; thence South 43 degrees 16 minutes 02 seconds East a distance of 18.65 feet; thence northeasterly on a non-tangential curve, concave to the northwest, having a radius of 14086.50 feet, a central angle of 00 degrees 20 minutes 13 seconds and a chord which bears North 57 degrees 07 minutes 01 second East, a distance of 82.84 feet; thence North 56 degrees 56 minutes 54 seconds

East not tangent to said curve a distance of 28.13 feet; thence deflect to the left on a tangential curve, having a radius of 959.02 feet and a central angle of 12 degrees 18 minutes 40 seconds, a distance of 206.06 feet to a point of compound curvature; thence deflect to the left on a tangential curve, having a radius of 1039.99 feet and a central angle of 06 degrees 12 minutes 46 seconds, a distance of 112.77 feet; thence North 39 degrees 40 minutes 10 seconds East a distance of 46.91 feet; thence North 35 degrees 19 minutes 24 seconds East a distance of 38.40 feet; thence deflect to the right on a tangential curve, having a radius of 801.98 feet and a central angle of 09 degrees 46 minutes 26 seconds, a distance of 136.81 feet; thence North 45 degrees 05 minutes 50 seconds East a distance of 54.36 feet; thence North 44 degrees 54 minutes 10 seconds West a distance of 3.89 feet; thence North 45 degrees 05 minutes 08 seconds East a distance of 12.55 feet; thence North 00 degrees 02 minutes 39 seconds East a distance of 22.42 feet to the northwesterly line of THIRD AVENUE NORTH (dedicated in the plat of HOAG'S ADDITION TO MINNEAPOLIS as ITASKA STREET); thence North 44 degrees 30 minutes 52 seconds East, along said northwesterly line, a distance of 39.03 feet to the centerline of vacated or abandoned FIFTH STREET NORTH, as dedicated in the plat of HOAG'S ADDITION TO MINNEAPOLIS; thence North 44 degrees 59 minutes 51 seconds West, along said centerline, a distance of 30.65 feet to an intersection with a line drawn at right angles from the northeasterly line of Block 4, HOAG'S ADDITION TO MINNEAPOLIS from a point on said northeasterly line distant 31 feet northwesterly from the most easterly corner of said Block 4; thence South 45 degrees 00 minutes 09 seconds West, along said line drawn at right angles from the northeasterly line of said Block 4 a distance of 41.23 feet to the northeasterly line of said Block 4; thence North 44 degrees 59 minutes 51 seconds West, along said northeasterly line, a distance of 105.82 feet to an intersection with the southwesterly extension of the northwesterly line of the southeasterly 2.64 feet of Lot 3, Block 85, HOAG'S ADDITION TO MINNEAPOLIS; thence North 44 degrees 43 minutes 45 seconds East, along said southwesterly extension, a distance of 82.45 feet to the southwesterly line of said Block 85; thence North 44 degrees 59 minutes 51 seconds West, along the southwesterly line of said Block 85, a distance of 35.36 feet to the most southerly corner of the northwesterly 26.00 feet of the southeasterly 64.00 feet of Lot 3, said BLOCK 85; thence North 44 degrees 43 minutes 45 seconds East, along the southeasterly line of the northwesterly 26.00 feet of the southeasterly 64.00 feet of Lots 3 and 8, said Block 85, a distance of 340.00 feet to the northeasterly line of said Block 85; thence North 44 degrees 59 minutes 51 seconds West, along said northeasterly line, a distance of 26.00 feet to the most northerly corner of the southeasterly 64.00 feet of Lot 8, said Block 85; thence South 44 degrees 43 minutes 45 seconds West, along the northwesterly line of the southeasterly 64.00 feet of Lots 3 and 8, said Block 85, a distance of 340.00 feet to the southwesterly line of said Block 85; thence North 44 degrees 59 minutes 51 seconds West, along said southwesterly line and along a line drawn from the most westerly corner of said Block 85 to the most southerly corner of Block 9, HOAG'S ADDITION TO MINNEAPOLIS, and along the southwesterly line of said Block 9, a distance of 293.66 feet to an intersection with a line drawn parallel with and distant 25 feet southeasterly from the centerline of the East bound track of the Burlington Northern Santa Fe Railroad, as said centerline was located and established on November 16, 2000; thence South 45 degrees 06 minutes 27 seconds West, along said parallel line, a distance of 214.11 feet to a point hereinafter referred to as Point A; thence continuing South 45 degrees 06 minutes 27 seconds West, along said parallel line, a distance of 89.74 feet to a point hereinafter referred to as Point B; thence South 63 degrees 38 minutes 00 seconds West a distance of 17.84 feet; thence South 57 degrees 04 minutes 22 seconds West a distance of 82.18 feet; thence South 49 degrees 21 minutes 28 seconds West a distance of 125.35 feet; thence South 45 degrees 52 minutes 40 seconds West a distance of 138.40 feet; thence South 40 degrees 30 minutes 48 seconds West a distance of 95.19 feet; thence South 30 degrees 52 minutes 01 second West a distance of 42.41 feet; thence South 35 degrees 37 minutes 59 seconds West a distance of 95.92 feet to a point hereinafter referred to as Point C; thence South 35 degrees 34 minutes 55 seconds West a distance of 26.88 feet; thence southwesterly on a non-tangential curve concave to the northwest, having a radius of 623.80 feet, a central angle of 09 degrees 32 minutes 24 seconds and a chord which bears South 40 degrees 19 minutes 54 seconds West, a distance of 103.87 feet; thence South 45 degrees 06 minutes 06 seconds West a distance of 112.72 feet; thence southwesterly on a non-tangential curve concave to the southeast, having a radius of 2826.93 feet, a central angle of 02 degrees 48 minutes 55 seconds and a chord which bears South 43 degrees 35 minutes 07 seconds West, a distance of 138.91 feet; thence

South 42 degrees 10 minutes 39 seconds West a distance of 155.83 feet; thence southwesterly and southerly on a tangential curve concave to the east, having a radius of 100.12 feet and a central angle of 48 degrees 41 minutes 58 seconds, a distance of 85.10 feet to a southeasterly boundary line of HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY PROPERTY MAP NO. 11; thence South 52 degrees 13 minutes 40 seconds West, along said southeasterly boundary line, a distance of 58.79 feet to the southerly line of Block 3, Wilson Bell and Wagner's Addition to Minneapolis; thence South 89 degrees 55 minutes 59 seconds East, along said southerly line, a distance of 81.40 feet; thence southeasterly on a non-tangential curve concave to the northeast, having a radius of 80.12 feet, a central angle of 05 degrees 16 minutes 44 seconds and a chord which bears South 38 degrees 58 minutes 37 seconds East, a distance of 7.38 feet; thence southeasterly on a reverse curve concave to the southwest, having a radius of 142.83 feet and a central angle of 25 degrees 07 minutes 15 seconds, a distance of 62.62 feet to the northerly line of Block 6, Wilson Bell and Wagner's Addition to Minneapolis; thence North 89 degrees 55 minutes 59 seconds West, along said northerly line, a distance of 35.07 feet, to the northwest corner of Lot 4, Block 6, Wilson Bell and Wagner's Addition to Minneapolis; thence South 00 degrees 04 minutes 30 seconds West, along the westerly line of said Lot 4 and the westerly line of Lot 9, said Block 6, a distance of 261.66 feet to the point of beginning.

Description of Easement Being Acquired

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer, communications facilities, and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under and across the Authority Property as described below:

All that part of the above described Authority Property which lies westerly and northwesterly of the hereinafter described "Line 1", except that part thereof which lies northwesterly and northerly of the hereinafter described "Line 2"; and except that part thereof which lies southerly of the hereinafter described "Line 3"; also except that part of said Authority Property which lies northwesterly and westerly of a line drawn parallel with and distant 18.00 feet northwesterly and westerly of said "Line 1", said line drawn parallel with and distant 18.00 feet northwesterly and westerly of "Line 1" shall begin on the westerly line of said Authority Property and terminate on the southerly line of Holden Street, as dedicated by the recorded plat of Wilson Bell and Wagner's Addition to Minneapolis; also except that part of said Authority Property lying westerly and northwesterly of said "Line 1" which lies northeasterly of a tangential line drawn through and extending northwesterly from the point of reverse curvature as described in said "Line 1" and which lies southeasterly of a tangential line drawn through and extending southwesterly from the most northerly point of tangency of the reverse curve as described in said "Line 1"; also except those parts thereof on which Ballpark structural members or other Ballpark improvements now or hereafter exist.

"Line 1":

"Line 1" is described as beginning at the most southerly corner of said Authority Property; thence northeasterly for 32.60 feet along a non-tangential curve, concave to the northwest, having a radius of 170.00 feet, a central angle of 10 degrees 59 minutes 17 seconds, and a chord which bears North 61 degrees 51 minutes 12 seconds East; thence northerly for 40.67 feet along a non-tangential curve, concave to the west, having a radius of 65.00 feet, a central angle of 35 degrees 50 minutes 59 seconds, and a chord which bears North 18 degrees 00 minutes 05 seconds East; thence North 00 degrees 04 minutes 36 seconds East for 167.47 feet; thence northwesterly for 103.93 feet along a tangential curve, concave to the southwest, having a radius of 142.83 feet, and a central angle of 41 degrees 41 minutes 35 seconds, to a point of reverse curvature; thence northerly for 117.17 feet along a tangential curve, concave to the east, having a radius of 80.12 feet and a central angle of 83 degrees 47 minutes 38 seconds; thence North 42 degrees 10 minutes 39 seconds East for 155.83 feet; thence northeasterly for 137.90 feet along a tangential curve, concave to the southeast, having a radius of 2806.93 feet and a central angle of 02 degrees 48 minutes 54 seconds; thence North 45 degrees 06 minutes 06 seconds East, not tangent to last described curve, for 112.70 feet; thence northeasterly for 107.18 feet along a tangential curve, concave to the northwest, having a radius of 643.80 feet and a central angle of 09 degrees 32 minutes 20 seconds; thence North 35 degrees 38 minutes 05 seconds East, not tangent to last described curve, for 119.33 feet to the southwesterly exterior wall of the Ballpark at Service Level;

thence northwesterly and northeasterly along and immediately outside of said southwesterly exterior wall and the northwesterly exterior wall of the Ballpark at Service Level to a point on a line drawn parallel with and distant 25 feet southeasterly from the centerline of the East bound track of the Burlington Northern Santa Fe Railroad, as said centerline was located and established on November 16, 2000, distant 105.84 feet northeasterly from POINT C, as defined in Exhibit A, as measured along said parallel line, which has a bearing of North 45 degrees 06 minutes 27 seconds East; thence continue northeasterly along said northwesterly exterior wall of the Ballpark at Service Level to a point on said line drawn parallel with and distant 25 feet southeasterly from the centerline of the East bound track of the Burlington Northern Santa Fe Railroad, as said centerline was located and established on November 16, 2000, distant 87.53 feet southwesterly from POINT B, as defined in Exhibit A, as measured along said parallel line; thence continue northeasterly, easterly, and southeasterly along said northwesterly exterior wall, along the northerly exterior wall, and along the northeasterly exterior wall of the Ballpark at Service Level to the intersection with a line which has a bearing of South 44 degrees 49 minutes 25 seconds West and is drawn from a point on the northeasterly boundary of the Authority Property distant 36.16 feet southeasterly of the termination of the hereinafter described "Line 2", as measured along said northeasterly line; thence North 44 degrees 49 minutes 25 seconds East for 114.87 feet, more or less, to said northeasterly line and said "Line 1" there terminating.

"Line 2":

"Line 2" is described as commencing at POINT B, as defined in Exhibit A; thence South 45 degrees 06 minutes 27 seconds West along said line drawn parallel with and distant 25 feet southeasterly from the centerline of the East bound track of the Burlington Northern Santa Fe Railroad, as said centerline was located and established on November 16, 2000, for 13.14 feet to the point of beginning of "Line 2" to be described; thence North 63 degrees 37 minutes 54 seconds East for 46.59 feet; thence northeasterly for 64.99 feet along a tangential curve, concave to the northwest, having a radius of 390.58 feet and a central angle of 09 degrees 32 minutes 02 seconds; thence North 54 degrees 05 minutes 51 seconds East for 50.76 feet; thence northeasterly for 5.91 feet along a tangential curve, concave to the northwest, having a radius of 190.58 feet and a central angle of 01 degree 46 minutes 32 seconds; thence North 45 degrees 03 minutes 49 seconds East, not tangent to last described curve, for 153.85 feet, more or less, to the northeasterly line of the hereinbefore described property and said "Line 2" there terminating.

"Line 3":

"Line 3" is described as commencing at the point of termination of the above-described "Line 1"; thence South 44 degrees 49 minutes 25 seconds West for 52.57 feet to the point of beginning of "Line 3" to be described; thence North 44 degrees 55 minutes 14 seconds West for 5.98 feet; thence South 45 degrees 06 minutes 14 seconds West for 62.26 feet, more or less, to said northeasterly exterior wall of the Ballpark at Service Level and said "Line 3" there terminating.

According to the map or plat thereof on file and of record in the Office of the county Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 22,069 square feet, more or less.

Interests Being Encumbered

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

Minnesota Ballpark Authority, a public body and political subdivision of the State of Minnesota ("Authority")

NATURE OF INTEREST

Fee Owner

Financing Statement by and between Minnesota Twins, LLC and Twins Ballpark, LLC, as debtor, and Minnesota Ballpark Authority as secured party, filed in the

	<p>Office of the County Recorder on June 25, 2008, as Document No. 9151627, and filed in the Office of the Registrar of Titles on June 25, 2008, as Document No. 4508553. Terms and conditions of Memorandum of Grant Agreement, dated February 20, 2009, by and between County of Hennepin and Minnesota Ballpark Authority filed in the Office of the County Recorder on March 4, 2009 as Document No. 9324573, and filed in the Office of the Registrar of Titles on March 4, 2009 as Document No. 4618425.</p>
<p>Twins Ballpark, LLC, a Delaware limited liability company</p>	<p>Terms and conditions of a Memorandum of Lease, dated May 7, 2007, filed December 6, 2007 in the Office of the County Recorder, as Document No. 9071879, referring to that certain unrecorded lease by and between Minnesota Ballpark Authority, a Minnesota public body and political subdivision, as lessor, and Twins Ballpark, LLC, a Delaware limited liability company, as lessee, dated April 26, 2007, and filed in the Office of the Registrar of Titles on December 6, 2007 as Document No. 4452157.</p>
<p>Twins Ballpark, LLC, a Delaware limited liability company</p>	<p>Terms and conditions of a Memorandum of Lease, dated June 12, 2008, filed June 17, 2008 in the Office of the County Recorder as Document No. 9148093, referring to that certain unrecorded lease by and between Minnesota Ballpark Authority, a Minnesota public body and political subdivision, as lessor, and Twins Ballpark, LLC, a Delaware limited liability company, as lessee, dated September 30, 2007, and filed in the Office of the Registrar of Titles on June 17, 2008, as Document 4506275.</p>
<p>U.S. Bank National Association, a national banking association, as Indenture Trustee</p>	<p>Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement executed by Twins Ballpark, LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, a national banking association, as Indenture Trustee, dated as of July 1, 2008, filed July 3, 2008 in the Office of the County Recorder as Document No. 9154802 in the original amount of \$235,000,000.00, and filed in the Office of the Registrar of Titles on July 3, 2008, as Document No. 4510658. (Parking Lease)</p>

U.S. Bank National Association, a national banking association, as Indenture Trustee

Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture financing Statement executed by Twins Ballpark, LLC, a Delaware limited liability company, in favor of U. S. Bank National Association, a national banking association, as Indenture Trustee, dated as of July 1, 2008, filed July 3, 2008 in the Office of the County Recorder as Document No. 9154799, in the original amount of \$235,000,000.00, and filed in the Office of the Registrar of Titles on July 3, 2008, as Document No. 4510651. (Ballpark Lease).

Minnesota Twins, LLC, a Delaware limited liability company

Terms and conditions of a Memorandum of Lease dated July 1, 2008, filed July 3, 2008, in the Office of the County Recorder, as Document No. 9154801, referring to that certain unrecorded lease by and between Twins Ballpark, LLC, a Delaware limited liability company, as lessor, and Minnesota Twins, LLC, a Delaware limited liability company, as lessee, dated July 1, 2008, and filed in the Office of the Registrar of Titles on July 3, 2008, as Document No. 4510657. (Parking Lot Lease).

Terms and conditions of a Memorandum of Lease dated July 1, 2008, filed July 3, 2008 in the Office of the County Recorder, as Document No. 9154798, referring to that certain unrecorded lease by and between Twins Ballpark, LLC, a Delaware limited liability company, as lessor, and Minnesota Twins, LLC, a Delaware limited liability company, as lessee, dated July 1, 2008, and filed in the Office of the Registrar of Titles on July 3, 2008, as Document No. 4510651 (Ballpark Lease).

BNSF Railway Company, a Delaware corporation

Rights arising under that certain Quitclaim Deed dated July 27, 2007, recorded in the Office of the County Recorder on September 24, 2007, as Document No. 9041979.

County of Hennepin

Memorandum of Grant Agreement, dated February 20, 2009, by and between County of Hennepin and Minnesota Ballpark Authority, filed March 4, 2009, in the Office of the County Recorder as Document No. 9324573, and in the Office of the Registrar of Titles on March 4, 2009, as Document No. 4618425.

Right of Reverter as contained in
Assignment of Temporary Construction
Easements dated November 30, 2007, filed
December 6, 2007, as Document No.
4452158.

Adopted 12/18/2009.
Approved by Mayor Rybak 12/21/2009.

Resolution 2009R-625, approving Stipulation of Settlement with State of Minnesota and Metropolitan Council for Cedar Lake Trail - Phase III, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-625
By Colvin Roy

Approving Stipulation of Settlement with State of Minnesota and Metropolitan Council for Cedar Lake Trail - Phase III.

Whereas, the City of Minneapolis (the "City") completed Phase I and Phase II of the Cedar Lake Trail between the West City limits and Royalston Avenue in 1995; and

Whereas, extension of the Cedar Lake Trail from Royalston Avenue to the Mississippi River ("Cedar Lake Trail Phase III a/k/a Cedar Lake Bike Trail Phase III") is a high priority for the City of Minneapolis ("City") and its residents; and

Whereas, the State of Minnesota ("State") and Metropolitan Council ("Met Council") have entered into various agreements with BNSF Railway Company ("BNSF") under which Met Council is operating the Northstar Commuter Train on real estate owned by BNSF lying between Azine Alley and Royalston Avenue which the City desires to cross with the Cedar Lake Trail – Phase III, and which is legally described in Exhibit A attached hereto ("Easement Parcels"); and

Whereas, the City staff and counsel retained by the City have negotiated a proposed Stipulation of Settlement in pending eminent domain proceedings which, if approved, will authorize the City to construct, operate, maintain and repair the Cedar Lake Trail across the Easement Parcels in accordance with plans and specifications prepared on behalf of the City and approved by the State and Met Council; and

Whereas, construction of the trail is scheduled to be commenced and completed in 2010; and

Whereas, under the proposed Stipulation of Settlement, the City will not be required to pay compensation to the State or Met Council, the State will issue a permit to the City to authorize construction and operation of the Cedar Lake Trail within the Easement Parcels, and the City will agree to remove the trail improvements from the Easement Parcels within one year following written notice from the State or Met Council that they require use of the Easement Parcels for rail (or ancillary) purposes;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That upon approval of the proposed Stipulation of Settlement by the City Attorney, the City Finance Officer is authorized to execute the certificate of approval confirming approval of the Stipulation on behalf of the City.

EXHIBIT A

Legal Descriptions of the Easements To Be Acquired

<u>Parcel No. 16</u>	(Affects Tax Parcel No. 22-029-24-13-0107):
Property Address:	405 Washington Avenue North Minneapolis, Minnesota

Description of Easement Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer, communication facilities, and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that part of Lots 2, 15 and 16, Block 22, **BRADFORD AND LEWIS ADDITION TO MINNEAPOLIS**, Hennepin County, Minnesota and that part of the abandoned alley within said Block 22 lying northerly of the following described "Line A":

"Line A" is described as beginning at a point on the Southwesterly line of Block 10, HOAG'S ADDITION TO MINNEAPOLIS, said Hennepin County, distant 29.27 feet Northwesterly from the most Southerly corner of said Block 10; thence Northeasterly along a straight line to a point in the Southwesterly line of said Block 22, distant 107.48 feet Northwesterly from the most Southerly corner of said Block 22; thence Northeasterly along the prolongation of the last described line 105.27 feet; thence Northeasterly along a non-tangential curve concave to the South having a radius of 1875.86 feet, the chord of said curve is measured 13 degrees 24 minutes 52 seconds to the right from said prolongation of the last described line to the Northeasterly line of said Block 22 and said "Line A" there terminating.

The permanent easement to be acquired is that part of the above-described property that lies 9.00 feet northwesterly and 14.00 feet southeasterly of the following described line: Commencing at the most southerly corner of said Block 10; thence North 45 degrees 01 minutes 39 seconds West, assumed bearing along the southwesterly line of said Block 10, a distance of 17.87 feet to the point of beginning; thence North 45 degrees 03 minutes 49 seconds East a distance of 88.06 feet; thence northeasterly along a tangential curve concave to the southeast having a radius of 1000.00 feet and a central angle of 01 degrees 08 minutes 45 seconds for a distance of 20.00 feet; thence North 46 degrees 12 minutes 34 seconds East, tangent to said curve a distance of 29.86 feet; thence northeasterly along a tangential curve concave to the northwest having a radius of 1015.00 feet and a central angle of 01 degrees 08 minutes 45 seconds for a distance of 20.30 feet; thence North 45 degrees 03 minutes 49 seconds East, tangent to last described curve, a distance of 400.40 feet; thence northeasterly along a tangential curve concave to the southeast having a radius of 550.00 feet and central angle of 18 degrees 33 minutes 00 seconds for a distance of 178.07 feet; thence North 63 degrees 36 minutes 51 seconds East a distance of 30.17 feet to the northeasterly line of said Block 22 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect said "Line A" and said Northeasterly line of said Block 22.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 3,072 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)

Metropolitan Council, an agency of the State of Minnesota

NATURE OF INTEREST

Fee Owner

Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded

August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation.

State of Minnesota Commissioner of Transportation

Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County, dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151.
"Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Parcel No. 17: (Permanent easement affects Tax Parcel No. 22-029-24-14-0163)
(Temporary easement affects Tax Parcels Nos. 22-029-24-14-0157 and 22-029-24-14-0163)

Property Address: 332 ½ Washington Avenue North
Minneapolis, Minnesota

Description of Easements Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer, communication facilities, and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that portion of Block 33, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota, together with the 16.0 foot wide alley within said Block, described as follows:

Commencing at the most Westerly corner of said Block 33; thence Northeasterly along the Northwestern line thereof a distance of 120.00 feet to the True Point of Beginning of the parcel to be described; thence Northeasterly along a straight line to a point on the Northeasterly line of said Block

33 distant 75.0 feet Southeasterly of the most Northerly corner of said Block 33, as measured along the Northeasterly line thereof; thence Southeasterly along said Northeasterly line a distance of 13.55 feet; thence Southwesterly along a straight line to the point of intersection with said Northwesterly line of Block 33 distant 80.66 feet Northeasterly from the most Westerly corner of Block 33; thence Northeasterly along said Northwesterly line to the True Point of Beginning.

and

That part of Block 33, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota described as lying Northwesterly of a line running from a point on the Northwesterly line of said Block 33 distant 120 feet Northeasterly from the most Westerly corner of said Block 33 to a point on the Northeasterly line of said Block 33 distant 75.00 feet Southeasterly from the most Northerly corner of said Block 33.

The permanent easement to be acquired is that part of the above-described property that lies within 10.00 feet northerly of the following described centerline:

Commencing at the most Westerly Corner of said Block 33; thence on an assumed bearing North 44 degrees 38 minutes 50 seconds East, along the Northwesterly line of said Block 33, a distance of 65.36 feet to the point of beginning; thence North 63 degrees 36 minutes 51 seconds East a distance of 195.96 feet; thence Northeasterly along a tangential curve concave to the southeast having a radius of 15,000.00 feet and a central angle of 00 degrees 12 minutes 27 seconds for a distance of 54.30 feet; thence North 63 degrees 49 minutes 17 seconds East, tangent to said curve, for a distance of 41.61 feet to the Northeasterly line of said Block 33 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect the Northwesterly and Northeasterly lines of said Block 33.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of and adjacent to said permanent easement. The sidelines of said temporary easement shall be prolonged or shortened to intersect the Northwesterly and Northeasterly lines of said Block 33.

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 1,202 square feet.

The area of the temporary easement is 2,431 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME	NATURE OF INTEREST
BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)	Fee Owner
Metropolitan Council, an agency of the State of Minnesota	Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21,

2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation

State of Minnesota Commissioner of Transportation

Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County, dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151.
"Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Parcel No. 19 (Affects Tax Parcel No. 22-029-24-14-0528)
Property Address: 322 Second Street North
Minneapolis, Minnesota

Description of Easements Being Acquired:

A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across that part of Lots 1, 2, 3, 7, 8, 9, 10, and 11, and the vacated alley, all in Block 26, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota lying southeasterly of REGISTERED LAND SURVEY NO. 1741, said Hennepin County and also lying northerly of a line running parallel with and 25 feet southerly of the hereinafter described Line 1:

AND

That part of Lot 2, Block 26, TOWN OF MINNEAPOLIS, Hennepin County, Minnesota lying southerly of a line running parallel with and 25 feet southerly of the following described Line 1:

Line 1: From the point of intersection of the centerline of 3rd Avenue North and the centerline of Washington Avenue North, in the City of Minneapolis, run northwesterly on an azimuth of 314 degrees

20 minutes 02 seconds (azimuth oriented to Minnesota State Plane Coordinate System, South Zone) for 448.40 feet to the point of beginning of Line 1; thence on an azimuth of 63 degrees 16 minutes 41 seconds for 771.37 feet; thence deflect to the right on a 01 degree 00 minute 00 second curve (delta angle of 06 degrees 31 minutes 15 seconds) for 652.08 feet and there terminating.

The permanent easement to be acquired is that part of the above-described property that lies 10.00 feet on both sides of the following described centerline:

Commencing at the most westerly corner of said Lot 3; thence on an assumed bearing of North 45 degrees 18 minutes 14 seconds West, along the southwesterly line of said Block 26, a distance of 9.76 feet to the point of beginning of the centerline to be described; thence North 63 degrees 49 minutes 17 seconds East a distance of 246.93 feet; thence Northeasterly along a tangential curve concave to the southeast, said curve having a radius of 3000.00 feet and a central angle of 01 degrees 33 minutes 49 seconds for a distance of 81.87 feet; thence North 65 degrees 23 minutes 06 seconds East, tangent to said curve, for a distance of 32.18 feet to the intersection with the northeasterly line of said Block 26 and said line there terminating.

The sidelines of said permanent easement shall be prolonged or shortened to intersect said southwesterly line of said Block 26 and the northeasterly line of said Block 26.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of a line lying 10.00 feet northwesterly of the above-described centerline and its extensions and also lying southeasterly of a line lying 20.00 feet northwesterly of the above-described centerline and its extensions. The sidelines of said temporary easement shall be prolonged or shortened to intersect said southwesterly line of said Block 26 and the northeasterly line of said Block 26.

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

According to the map or plat thereof on file and of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

The area of the permanent easement is 1,754 square feet.

The area of the temporary easement is 3,610 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company)

Metropolitan Council, an agency of the State of Minnesota

NATURE OF INTEREST

Fee Owner

Lessee pursuant to Memorandum of Lease for the Minneapolis Track Lease Agreement, dated May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation

State of Minnesota Commissioner of Transportation Easement pursuant to Memorandum of Easement recorded in Hennepin County, dated May 31, 2007, recorded June 4, 2007, as Document No. 8987896; Memorandum of Easement recorded in Hennepin County, dated December 11, 2007, recorded January 17, 2008, as Document No. 9087080; Memorandum of Easement recorded in Hennepin County, dated May 30, 2008, recorded June 24, 2008, as Document 9151008; Memorandum of Easement recorded in Hennepin County dated March 21, 2009, recorded April 2, 2009, as Document No. A9229151.
"Purchase and Sale Agreement" dated as of March 7, 2007, by and between BNSF, as Seller, and the State of Minnesota, as Buyer.

Northstar Corridor Development Authority Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis Special Assessments

Parcel No. 24 (Affects Tax Parcel No. 22-029-24-14-0008)
Property Address: 300 First Street North
 Minneapolis, Minnesota

Description of Easements Being Acquired:
A permanent easement for the construction, operation, repair, maintenance, and reconstruction of a recreational trail and its appurtenances (including, but not limited to, storm sewer and other utility facilities ancillary to said recreational trail, use of said trail for bicycle and foot travel, and use of said trail by maintenance vehicles, law enforcement vehicles, and emergency vehicles) on, upon, over, under, and across the BNSF Railway Company right-of-way crossing Lots 4, 5, 6, 7 and 8, Block 9, **TOWN OF MINNEAPOLIS**, Hennepin County, Minnesota and the vacated alley in said Block 9. The permanent easement to be acquired is that part of the above-described property that lies 10.00 feet on both sides of the following described centerline:
Commencing at the most southerly corner of said Block 9; thence on an assumed bearing of North 45 degrees 13 minutes 59 seconds West, along the southwesterly line of said Block 9, a distance of 60.96 feet to the point of beginning of the centerline to be described; thence North 65 degrees 23 minutes 06 seconds East a distance of 71.69 feet; thence Northeasterly along a tangential curve concave to the southeast, said curve having a radius of 1000.00 feet and a central angle of 04 degrees 45 minutes 42 seconds for a distance of 83.11 feet; thence North 70 degrees 08 minutes 48 seconds East, tangent to said curve, to the intersection with the southeasterly line of said Block 9 and said centerline there terminating.
The sidelines of said permanent easement shall be prolonged or shortened to intersect said southwesterly and southeasterly lines of said Block 9.

Together with a temporary 10-foot-wide easement for construction and access purposes that lies northwesterly of a line lying 10.00 feet northwesterly of the above-described centerline and its extensions and also lying southeasterly of a line lying 20.00 feet northwesterly of the above-described centerline and its extensions. The sidelines of said temporary easement shall be prolonged or shortened to intersect said southwesterly line and the southeasterly line of said Block 9.

The temporary easement shall commence on April 1, 2010 and shall expire on the earlier of (i) completion of the construction work, as determined by the City of Minneapolis project manager, or (ii) 11:59:59 p.m. central standard time, December 31, 2010.

The area of the permanent easement is 1134 square feet.

The area of the temporary easement is 2006 square feet.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the office of the County Recorder and Registrar of Titles in and for Hennepin County, Minnesota are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to acquire all rights and possession thereof including, but not limited to, all of the interests of those parties named below.

NAME

NATURE OF INTEREST

BNSF Railway Company, a Delaware corporation (fka Burlington Northern, Inc.; fka Burlington Northern Railroad Company; fka Great Northern Pacific & Burlington Lines, Inc.; fka Burlington Northern Transportation Company; and fka The Burlington Northern and Santa Fe Railway Company);

Fee Owner

Metropolitan Council, an agency of the State for of Minnesota

Lessee pursuant to Memorandum of Lease the Minneapolis Track Lease Agreement, dated of Minnesot May 31, 2007, recorded August 21, 2009, as document No. A9408283 between BNSF, as Lessor, and Metropolitan Council, as Lessee, relating to the Northstar Commuter Rail Operation

State of Minnesota Commissioner of Transportation

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Northstar Corridor Development Authority

Possible holder of an interest

U. S. Bank Trust National Association, a National Banking Association, (successor to First Trust of New York, National Association and Morgan Guaranty Trust Company of New York), as Trustee; and Laura Roberson of St. Louis, Missouri (successor to Bartlett Ford, Jacob M. Ford, II and W. A. Johnson), as Trustee

Mortgagees under Consolidated Mortgage dated March 2, 1970, given by Burlington Northern, Inc., as amended, and supplemented

City of Minneapolis

Special Assessments

Adopted 12/18/2009.

Approved by Mayor Rybak 12/21/2009.

Johnson moved that City Council Rule 1(B) be suspended to change the time for the January 4, 2010 City Council Organization Meeting. Seconded.

Adopted 12/18/2009.

Johnson moved that the time for the January 4, 2010 City Council Organization Meeting be 10:30 a.m. Seconded.

Adopted 12/18/2009.

RESOLUTIONS

Resolution 2009R-626, honoring those who have served a critical role in administering the first Ranked Choice election conducted in the City of Minneapolis November 3, 2009, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-626

**By Glidden, Samuels, Remington, Ostrow, Gordon, Hofstede, Johnson,
Lilligen, Goodman, Schiff, Benson, Colvin Roy, Hodges**

Honoring those who have served a critical role in administering the first Ranked Choice election conducted in the City of Minneapolis November 3, 2009.

Whereas, the voters of the City of Minneapolis approved a change in municipal elections from traditional balloting to Ranked Choice Voting in the year 2006; and

Whereas, the core staff in the City Clerk-Elections Division have been working for the past three years to plan for and implement an election in 2009 that has introduced Ranked Choice Voting to the voters of Minneapolis for the first time; and

Whereas, this historic election on November 3, 2009, was conducted in a manner that protects and promotes public trust and confidence in this new process; and

Whereas, this work was truly multi-departmental in nature and involved many others from outside the City of Minneapolis as well; and

Whereas, those who contributed to this successful election are listed as a part of this resolution;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That we publicly express sincere appreciation to these people committed to public service, civic engagement, and to serving the voters of Minneapolis.

RCV Steering Committee

Barbara A. Johnson, City Council President
Elizabeth Glidden, Council Elections Chair
Susan Segal, City Attorney
Sara Dietrich, Public Affairs Director
Steve Bosacker, City Coordinator
Steve Ristuben, City Clerk

Core Elections Department Staff

Cindy Reichert/Patrick O'Connor
Dani Connors-Smith
Judy Schwartau
Carol Strong
Ginny Gelms

Seasonal Lead Workers

Jane Schallert
Bob Filipek
Miriam Anderson
Mary Davis
Marlys Nauman
Martin Strong

Lucy Kraml
Steve Peterson
Emily Brown
Mary Gorzycki
Willy Lee

Key Staff, Other Departments

Tina Sanz, City Clerk
Jodi Molenaar-Hanson, City Coordinator
Lisa Needham/Carol Bachun, City Attorney
Frank Parisi, Coordinator
Paul Cameron, BIS
Ruth Carey, BIS
Eero Kilkson, BIS
Jeff Kendall, BIS
Lisa Brown, Finance/Accounting
Julie Meintsma, City Clerk
Matt Laible, Public Affairs
Narin Sihavong, Multicultural Services
Anissa Hollingshead, City Clerk
Pat Grant, PW Transportation
Linda Erlandson, City Coordinator
LaRae Olsson, City Coordinator

Matt Lindstrom, Public Affairs
Don Stickney & 311 Team
Jennifer Lastoka, Public Affairs
Grant E Johnson, BIS
Al Hoof, BIS
Chris Hoiland, BIS
Justin Dunning, Unisys
Sandy Chen, BIS
Marlena Bromschwig, Graphics
Roger Williams & Copy Center Team
LaTonia Green, Finance
Diane Weigelt, Finance
Anne Roth, City Clerk
C. John Harrison & Video Team
Paul Smith, CPED Planning

Key Contractors

Mike Dean and Ona Keller, Tipping Point Strategies
Cheryl Mayberry, Integrated Performance Management, LLC
Dr. Steven Wagner, St Cloud State University
Doug Sunde, Synergy Graphics

Minneapolis 2006 IRV Task Force

Cam Gordon, Mpls City Council
Annie Young, Mpls Park and Recreation Board
Laura Waterman Wittstock, Mpls Public Library
Peter Wagenius, Mpls Mayor's Office
Lucy Wieland, Chief Judge, District Court
Tyrone Bujold, Charter Commission
Cindy Reichert, Mpls Elections Director
Michelle DesJardin, Hennepin Elections Director

Funding/Other Resources

Sandra Vargas, The Minneapolis Foundation
Jeanne Massey, Fairvote Minnesota
Rachel Smith, University of Minnesota
Janet Midtbo, League of Women Voters
David Schultz and Kristi Rendahl, Hamline University
Bruce Howard and Brian Lamb, Metro Transit
Tom McCarver, Clear Channel
Lawrence Martin, Minneapolis Highrise Council
Doug Fleteau, Minneapolis Central Labor Union Council
Pamela Hoopes, MN Disability Law Center
Michael Kimble, Minneapolis Park & Recreation

Health Care Election Judges/

Absentee Ballot Board

Nadene Balkus
Sharon Bennett
Judy Dungan
Mary Gorzycki
Robin Knaeble
Sandi Knigge
Lucy Kraml
Mary A. McGee
Joyce Mrozek
Stephen Peterson
Marilyn Selby
Eleanor Swanson
Ginnie Thurler
Margaret Van Heel
Susan Wetherall
Carole Youngquist

Precinct Support Judges

Eric Berns
Toni Coleman
Mike Ketter
Vivian Klauber
Andrew Lewis
Ray Lewis
Scott Lohman
Pamela J. Morgan
John Murphy
Lonnie Nichols
Steve Poor
David Rusinko
Larry Sanderson
William Smale
Charles Spolyar

Hand Count Election Judges

Karin Abel
J. Elizabeth Anders
Joan Anderson
Tracy Armstrong
Gwenn Balzer
James Bennett
Eric Berns
Maryjane Bradley
Judy Brosdahl
Kathleen Cahill
Mary Cann
Jerdis Cerney
Charlotte Cohn
Dani Connors-Smith
Mary Davis
Jacqueline Dekker-Travis
Dorothy Dolezal

Janet Adams
Lynn C. Anderson
Shirley Arendt
Gary Arntsen
Mark Barry
Sharon Bennett
Nancy L. Birth
Oann Bremer
Emily Brown
Barbara Callender
Ruth Carey
Sandra Christenson
Mary Coleman
Patrica A. Crumley
Merlin Davis
Pamela Desnick
Gary Dombouy

Justin C. Adams
Ronald K. Anderson
Hans Arlton
Patricia Arscott
Kenneth Bearman
Todd Bennington
Amy Susan Bohler
Scott J. Brooks
Coleen Cahill
Joshua Callington
Robert Carlson
Kimberly A. Churchill
Toni D. Coleman
Jack Davis
Sharon Day
Margaret Dolan
Catherin Dorr

DECEMBER 18, 2009

Sally Downing	Daniel Duda	Judith A. Dungan
Mary Earl	Debra Kay Edstrom	Margaret Eischens
Mary Pat Eliason	Carole Ellison	Robert Englund
Lilly Erager	William Erager	Larry Etkin
Phyllis Fahey	Renee Farrow	Kristina Felbeck
MaryAnn Fellman	Barbara Fici	Bob Filipek
Alene Finley-Shuran	Robert A. Frame	Nan Fraser
Kirk Frauenheim	Mary Freeman	Candice Frick
Paul A. Garmers	Matthew Gehring	Ginny Gelms
Mary Gorzycki	Carol Jean Graham	Donald Harold Grant
Jacqueline Ann Grant	Catherine Gustafson	Peter Hall
Charles Halverson	Evelyn Hansen	Elizabeth Hawley
Nick Heille	Rosemary Jo Heille	Richard Hollenzer
Mary N. Hooper	Kimberley Hosmer	Pamela Howell
James William Howitt	Linda A. Jacobs	Margaret Jacobson
Jennifer Jenkins	Carol K. Johnson	Clarice Johnson
Jeffrey Johnson	Rachael O. Johnson	Stephanie Johnson
Mary Johnston	Margaret G. Keller	Patricia Kelly
Mary Kennedy	Roberta Kenney	Michael Ketter
Iris Kiedrowski	Diana Kittelson	Vivian Klauber
Carole Klecker	Roberta (Robin) Knaeble	Sandra Knigge
Lucy Kraml	Paul Landskroener	Julien Lasecke
Willy Lee	Ray Lewis	Sarah Lundberg
Sharon Lynn	Jeffrey Alan Maas	Denice Martineau
Deborah Mattila	Connie Jina Mayes	Gary Mazzotta
Shirley McBride	Starlene McCoy	Gwenetta McMahon
Matthew Mihalbauer	David Miller	David Moe
Marilyn G. Montgomery	Elizabeth Morgan	Sandra Morgan
Scott Morris	JoAnn Morse	John Murphy
Marlys Nauman	Robert Nepple	David Newell
Lonnie Nichols	Janice Noerenberg	Carol Norgaard
Anne Norris	Patrick O'Connor	Dianne O'Keefe
Laurie Ondich	Judy Ostrowski	Jonathan Passki
Daniel Pederson	Joyce Peterson	Polly Peterson
Stephen Peterson	Charles Piehl	John P. Pikala
Dorothy Pitheon	Joel Quinnell	Michael Quist
John Reno	Erik Riese	Judith Rivkin
Robin Russell	Patricia Ryan	Margarita San Roman
Jan Sandberg	Larry Sanderson	Tina Sanz
Ann Sarna	Mary Ann Sattervall	Jane Schallert
Robert Schermerhorn	Gary Schmaltz	Judy Schwartz
Timothy Schwarz	Lyall Schwarzkopf	Margaret Schwob
Robert Schwob	Clyde Scroggins	Marilyn Selby
Geraldine Sell	Hannah Semba	Margaret Shulman
Ronald Shulstad	Jason Smith	Mary Smith
Charles Spolyar	Kathleen Steiger	James Stengel
Robert Sticha	Marion Gordon Stinnett	Niels Strandskov
Aaron Street	Lora Strey	Kate Stromberg
Carol Strong	Martin Strong	Robert Sullentrop
Eleanor Swanson	Charlene Tate	Judith Thompson
John Q. Tierney	Barbara Toepel	Gammada Urgessa
Todd Vandecar	Linda Vilmo	Laurel Volkmuth
Ann Lee Walter	Thomas Weiland	Mary Sue Weir
Susan E. Wetherall	John Whalen	Paulette Will
Nancy Williams	Judy A. Winiecki	Carole Youngquist

Election Day Election Judges

Fowzia Abdullahi	Karin Abel	Abiola O. Abu-Bakr
Janet Adams	Justin C. Adams	Pamela K. Adelman
Dennis K. Albrecht	Ione Jean Allen	Tatiana Alvarez
Julie C. Andberg	J. Elizabeth Anders	Charles Elton Anderson
Gary R. Anderson	Joan Anderson	Julia Jane Anderson
Karen Lea Anderson	Lynn C. Anderson	Nancy L. Anderson
Ronald K. Anderson	Sharon Lossing Anderson	Denise D. Andrews
Kathrine M. Andrews	Joan E. Angellar	Philip N. Archambault, Jr.
Christian Leo Arel	Shirley Arendt	Hans Arlton
Anthony A. Armstrong	Tracey Armstrong	Steven Arnold
Gary Arntsen	Patricia Arscott	Autumn A. Arvidson
Ruth Austerman	Anna Stasha Axell	Adam Jerome Axvig
Ann F. Ayrault	Kari Elizabeth Bacher	Georgia Lucille Bailey
Ann M. Bailly	Barbara E. Baker	Kristina Marie Balck
Maria Bales	Brenna C. Balkus	Richard F. Balkus
Gwenn Balzer	Shannon T. Bamberg	Christina Lea Banks
Thomas Arthur Barbeau	John Leo Barlet	Mary M. Barlet
Jeannine Ann Barnell	Aimee Gabrielle Barnes	Robert Eric Barnett
Stanford Leon Barney	Wayne Barnhart	Ardese J. Barrett
James Michael Barrett	Natalie Ann Rose Barry	HenryEdward Bartholomay
Ingebord Hilde Bash	Richard Andrew Bauer	Aroti G. Bayman
Kenneth Bearman	Lewis F. Beccone	Elika Jean Bratvold Beck
Joyce E. Beeksma	Carolyn Light Bell	Jerry Belle-Isle
Caine C. Benford	Barbara Jane Benner	James Bennett
Sharon Bennett	Todd Bennington	Beverly Benson
Samuel James Benson-Devine	Bonnie Hope Bentson	Patricia A. Berg
Judyth A. Bergan	John F. Bergford	Janet Marion Bergman
Dorothy M. Bernas	Mary A. Bernhardt	Otto Berzins
Theresa Marie Bicanovsky	Heather Rebecca Birch	Nancy L. Birth
Lucinda Sharon Bjornoy	Patricia A. Blanc-Rogacki	JoAlice Boatright
Nancy Boedigheimer	Maxine E. Bogan	Priscilla Bogen
Amy Susan Bohler	Rebecca A. Boney	Claudio G. Bonite
Kathryn Marie Bonnifield	Stuart James Bonniwell	Stephani M. Booker
Siah Carolyn Borbor	Patrick P. Born	Sharon Born
Tad W. Bornhoft	Kent Bortell	John E. Bose
Deanne Lynne Boss	Marta C. Bowman	Audrey Boyle
Maryjane Bradley	Isaac William Bradlich	Mary M. Brady
Susan J. Bratt	Arvid William Braun	Frank R. Braun
Marion Ruth Braun	Oann Bremer	Roger L. Brennan
John P. Breyfogle	Katherine Eileen Brick	Judith Gilmartin Bridell
Christopher F. Briggs	Cynthia Brinker	Charlene L. Briscoe
Joanne Marie Broady	Bernard Otto Brockhaus	Anna M. Brombach
LaKisha Mae Brooks	Scott J. Brooks	Judy Brosdahl
Angela F. Brown	Brenda R. Brown	Winnie M. Brown
Frederick C. Brownson	Corrine Bruno	Rebecca Gant Bryden
Mary Therese Buley	Robert D. Burdick	Jan M. Silver Burke
Marcia Burks-Belfrey	Jeanne Burns	Kelly Kathleen Burns
Ann M. Burt	Trilby Busch	Coleen Cahill
Kathleen Cahill	Ruth R. Cain	Stephen Douglas Cain
Frank E. Caldwell	Cynthia Maria Callanan	Barbara Callender
Shirlee L. Callender	Joshua Callington	Sandra J. Calvelage
Wendy C. Cammins	Phyllis Jensen Campbell	Marion Canales

Mary Cann
Scott L. Carlquist
Priscilla Ceceil Carlson
Sylvia L. Carlson
Vernice T. Carter
Rita Margaret Cech
Richard Charboneau
Lester Thomas Cherryhomes
Floyd M. Child, II
Larry W. Christenson
Sandra L. Chute
Louise Ann Clarke
Charlotte Cohn
Malcolm Barnett Collins
Isaac Oliver Conlon-Kvale
Wendy Kay Cook
Criste E. Cossi
Alicia K. Cozine
Joel Crandall
Pearline Crawford
Tarran Levelle Crump
Karen Linda Custer
Roberta Joy Daigle
Sharon Ann D'Amico
Kevin Jay Dau
Jack Davis
Merlin Davis
Linda Ann Davison
Dean R. DeHarpporte
Ann M. Delano
Stephen L. Desnick
Faith M. DeVito
Laura Marie Dickinson
Mary Lou Dixon
Dorothy Dolezal
Gary Dombouy
Catherine Dorr
Nicholas Dregni
Leah R. Drury
Marion J. Duepner
Benjamin Dupay
Tara Carlisle Durney
Guen Easley
Todd Patrick Eddy
Janice E. Ehmke
Jonathan Lee Ekblad
Carole Ellison
Louise Engler-Nyquist
Howard B. Engnell
Richard M. Erdall
Larry Etkin
Alice Evenson
Phyllis Fahey
Tamra Marie Falk

Ronna L. Caple
Gregory C. Carlson
Robert Carlson
Victoria L. Carlson
Joanne C. Caspersen
Jerdis Cerney
Michael C. Chatt
Larry J. Chiat
Kristin Ann Chirhart
Sandra Christenson
Kristen Marie Cici
Robert D. Clarksen
Mary Coleman
Sharon Lea Collins
Timothy N. Connolly
Doris Ruth Cooney
Janet Marie Court
Mary Kay Craig
Carleton K. Crawford
Mary Ann Crolley
Rachel G. Crushshon
Charles N. Dahl
Joyce E. Daley
Audrey M. Damon
Richard Byron Davenport
Jo Ellen Davis
Ruth M. Davis
John Davitt
Robert J. M. DeHaven
Catharine Elizabeth Denison
Aureliano Maria DeSota
Zoe Louise DiCicco
Judith Ann Diffley
Shirley M. Doble
Mary Lou Doll
Geraldine K. Donnelly
Barbara Dow
Joshua W. Drew
Suzanne F.W. D'Souza
Michaela Marie Dunbar
Irene M. Duranczyk
Lucy Ann Duroche
James B. Eckard
Elizabeth A. Edlund
Lois Joanne Eid
Mary Pat Eliasson
Anne Mary Elmory
Robert Englund
Lilly Erager
Kevin E. Erickson
Shelly Teresa Evans
Roberta Lee Everling
Lyn Anyea Fair
John F. Farrell

Don Caplinger
Mary L. Carlson
Sandra R. Carlson
Heather Anne Carpenter
Barbara J. Cassius
Mavis E. Chacon
Elizabeth Louise Cherne
Alex Joseph Chicilo
Arlett P. Christensen
Kimberly A. Churchill
Venious Virginia Clark
Jason R. Clausen
Karen M. Collier
Kathleen M. Compton
Nancy A. Conway
Karen Coons
Sage Meehan Coy
Matthew Joseph Craig
Joan K. Crawford
Patricia A. Crumley
Chad Ryan Cummings
Rose Ann Dahl
James Anthony Daly
Alisha Chantelle Dantzier
Cheryl Olivene Davidson
Mary Davis
Sandra D. Davis
Sharon Day
Jacqueline Dekker Travis
Pamela Desnick
Raymond Deveaux
Corrine Ruth Dickey
Amie Jo Digatono
Margaret Dolan
Dennis L. Dolney
Mary Kay Dooley
Sally Downing
Carol Russell Drinkard
Daniel Duda
Mary Dunning
Suzanne Durkacs
Mary Earl
Judith Marie Eckley
Debra Kay Edstrom
Margaret Eischens
Peggy Ann Ell
Steven Hale Emory
Grace Engnell
William Erager
Russell E. Erickson
Susan C. Evans
Colleen Fahey
Johnnie Lee Fair, Jr.
Renee Farrow

Terrence Faust
Dennis Fazio
Heather Carole Ferguson
Barbara Fici
Mary Ann Fisher
Richard L. Flynn
Debbra A. Ford
Nancy Walkup Fowler
Janet Lynn Fransen
Nan Fraser
Carol Fredlund
Jon Freise
Candice Frick
Candace B. Frink
Rosemary Furtak
Leah L. Gabrielson
Phyllis Letourneau Galarneault
George Gammans
Andres O. Garcia-Monoz
Vincent F. Garry
Matthew Gehring
Nanette Borutzki Geroux
Bonnie C. Gidzak
Joan C. Gilbertson
Michael Scott Gilliland
Marcella Gorecki
Carol Jean Graham
Jacqueline Ann Grant
Victoria Cuentia Green
Rolinda R. Grigsby
Robert K. Groger
Catherine Gustafson
Max Rodriguez Hager
Gregory T. Halbert
Linda Haller
Gladyce E. Hamernes
Jonathan Hanft
Erik O'Brien Hansen
Morris F. Hanson, Jr.
Brent R. Harring
Rio Indigo Hart
Ruth L. Hass
Jana Hayden-Sofio
Jean Heidenreich
Cheryl W. Heilman
Richard A. Hendrickson
William J. Herrmann
John D. Hiebert
Gilbert James Hill
Barbara J. Hodapp
Jesse Holden
Janice S. Holmberg
Mary Hooper
Cathy Sue Hosek

Ilana C. Favero
Kristina Felbeck
Jeanne Rachel Ferguson
Bob Filipek
Sandra F. Fjelstul
Linda J. Fodstad
Amy Settles Forrester
Sheila Marie Franey
Kenneth P. Fraser
Kirk Frauenheim
Hillary J. Freeman
Reed Donald Frentz
Gail Maureen Fridlund
Ramona R. Fruen
Jack Eugene Gabel
John T. Gaertner
Jane B. Galbraith
Edna C. Garaffa
John Calvin Garley
Elaine C. Gaston
Carolyn Grace Gergen
Judy A. Gibas
Ann M. Gilbert
Ariane Lydia Giles
Teresa L. Glasgow
Christine R. Gotz
Rose M. Gram
Arthur G. Green
Eliot C. Grev
Karen E. Grimm
Darcy Marie Grote
Janice M. Gustafson
Lucille Evans Hahn
Joanne Hall
Margareta Hall-Mims
Bettie L. Hampton
Diana Hang
Evelyn Hansen
Cecilia Nicole Hardacker
Jennifer J. Harshner
Victor David Harvath
Elizabeth Hawley
Douglas R. Heckenliable
Nick Heille
Karen Louise Helfand
Merry Her
Michele Heutmaker
Alisha Elizabeth Hilde
Ronald L. Hill
Carrie A. Hokanson
Richard R. Hollenzer
Lois J. Holmes
Bennett David Horn
Christopher James J. Hoskyn

Andrew Vincent Favorite
MaryAnn Fellman
Todd Ferrara
Arlene Finley-Shuran
Kimberly Flisrand
Therese Folsom
Christopher A. Foster
Lyle W. Franke
Mary Elizabeth Fraser
Ethel Frederickson
Mary Freeman
John Mark Fretham
Lara Friedman-Shedlov
Claudia Elisa Fuentes
Arlene A. Gable
Rebecca Wardell Gaertner
Sylvia Gamec
Kevin Eugene Garaghty
Paul A. Garmers
Jonathan Lee Gaw
Alice Geronsin
Chris Ivan Gibson
Rosemarie Ursula Gilbert
Patricia J. Gille
Dajah Lieaun Godbolt
Sara K. Graffunder
Donald Harold Grant
Cynthia R. Green
Barbara B. Grewe
Marcille M. Groenke
Ginna L. Grussing
Micah B. Haber
Marilyn Ruth Haight
Peter Hall
Charles Halverson
Lorraine Haney
Brennan A. Hannon
John E. Hanson
Betty M. Harmon
Karyne K. Harstad
David C. Harvey
Kimberly Ann Hayden
Kenneth E. Heidelberg
Rosemary Jo Heille
Victoria D. Helgeson
Sylvia M. Herkenhoff
Donna May Heyer
Florence F. Hill
Paul Kevin Hinderager
Ora Hokes
Marilyn A. Holm
Cullen Holt
Ellice Horshaw
Kimberley Hosmer

Connie L. Howard
 James William Howitt
 Jean Marie Hummel
 Arabelle T. Hunt
 Carol Hurley
 Fatimah A. Hussein-Asayr
 Warren E. Ibele
 Marcella J. Ivers
 Edna Jackson
 Thandisizwe Jackson-Nisan
 Margaret Jacobson
 Philip Jarosz
 Beverly Ann Jensen
 Marque M. Jensen
 Robert E. Jibben
 Carol K. Johnson
 Edith L. Johnson
 Judith M. Johnson
 Rachael O. Johnson
 Stephanie Johnson
 Nancy Jane Johnston
 Christine R. Jones
 Kristin L. Jorenby
 Betty J. Julin
 E. Gilbert Kahle
 Kaustubh Kamat
 Kathleen Anne Kappenman
 Margaret G. Keller
 Kevin J. Kelly
 James C. Kemp
 Mary Kennedy
 Shawn Renee Kennon
 Hassan Khalaf
 Laurie Ann Kiely
 Scott E. King-Ellison
 Marilyn B. Kleist
 Albert Erik Kolman-Stich
 George L. Kosa
 Lucy Kraml
 Ruth Kroening
 Linda L. Kuczumarski
 Thomas K. Kupka
 Joan Kvidera
 Jean Marie LaChance
 James Pearse LaFayette
 Paul Landskroener
 R. Lynne Larsen
 Randy R. Larson
 Mark A. Laska
 Joseph Michael Lazur
 Wayne Thomas Lee
 Thomas J. Leier
 Anne Margaret Lies
 Andrew Lindberg

Pamela Howell
 Margaret Huben
 John Q. Hunsicker
 Douglas William Hunter
 Faiza Mohamed Hussein
 Sigrid M. Hutcheson
 Shawn R. Isenhardt
 Brianna Lynn Ives
 Jeweleen Jackson
 Gabe Justin Jacobs
 Julie Renee James
 Girts Usins Jatnieks
 Elizabeth V. Jensen
 Kim Wm. Jeppesen
 Ardes M. Johnson
 Christine A. Johnson
 Edward Alan Johnson
 Kevin H. Johnson
 Richard W. Johnson
 Wayne D. T. Johnson
 Ann Marie Jones
 Lena Jones
 Diane F. Jorgensen
 Michelle M. Juneau
 Richard Yerkes Kain
 Karen A. Kandik
 Mary H. Kaszynski
 Rebecca A. Keller
 Patricia Kelly
 Usha Elizabeth Kempainen
 Sean Fortner Kennedy
 Kimberly Ann Kensinger
 Danda Khalif
 Eileen Kilpatrick
 Diana Kittelson
 Collin A. Knopp-Schwyn
 Stefanie Michelle Konobeck
 John W. Kowles
 Lee D. Krautkremer
 Patrick F. Kruegel
 Mary P. Kuhfeld
 Jody Kurpierz
 Patrick Ludvik Kvidera
 William Lachner
 Gayle H. Lamb
 Jean C. Lansing
 James D. Larson
 Ruth Lynn Larson
 Linda B. LaVine
 Charles Luc LeBon
 Willy Lee
 E. Janette Lever
 Marlene F. Light
 Nicole A. Zens Lindberg

Patricia Anne Howell
 Louise L. Huebner
 Cheryl Holland Hunstock
 Sandra S. Hunter
 Salma Abdullahi Hussein
 Julian Hugh Hynnek
 Deloris Ann Isenhower
 Larry Illustrator JaBell
 Marilyn Y. K. Jackson
 Linda A. Jacobs
 Shirley M. Janssen
 Jennifer Jenkins
 Joyce Jensen
 Wendy Kay Jerome
 Barbara J. Johnson
 Clarice Johnson
 Jeffrey Johnson
 Natonia E. Johnson
 Shirrell Antoinette Johnson
 Mary Johnston
 Bobbie Jean Jones
 Molly A. Jordan Kral
 Theodore A. Jostedt
 Carolyn M. Juntunen
 Mohamed I. Kalil
 Patricia Joan Kane
 Dorsey B. Keeseey
 Kevin F. Kelley
 Paul E. Kelly
 Leo Ford Kendrick
 Roberta Kenney
 Salima Oines Khakoo
 Iris Kiedrowski
 James King
 Carole Klecker
 Carlshaw Knox-Hodges
 Corrie L. Korbelt
 Mary L. Kowles
 Wayne L. Krefting
 Stephen Leo Krug
 Thomas L. Kuhlman
 Jennifer Lynn Kutscheid
 Mark David Labovitz
 Mary Jane LaCombe
 Constance M. Lancrete
 Diana Lynn Larsen
 Mary K. Larson
 Julien Lasecke
 Charlotte S. Lawson
 Gao Sheng Lee
 Paul Lefebvre
 Sara Rose Levinger
 Milea Grace Lind
 Kristine Ann Lindholm

Joan Lisi-McCoy
Thomas Martin Lockman
Margaret C. Lonergan
Margo L. Lopez-Ulrich
Janice A. Lovick
Jennifer Ann Lynch
Curtis Edward Maaninga
John L. Macosek
Vernon A. Maetzold
Siddique Hassan Mahmoud
Martha Jo Malinski
Emily F. Manhart
Marcea J. Mariani
Doris G. Marquit
Rosetta H. Marshall
Donald W. Martin
Deborah Mattila
Renee Rochelle Maul
Connie Jina Mayes
Aimee Elizabeth McAdams
Virginia L. McCann
Rebecca Joy McConico
Mary McDevitt
Mary A. McGee
Michael John McHugh
Catherine Pierce McKegney
Meagan McLaughlin
Richard Harry McNamer
Barbara Ann Meade
Barbara J. Melom
Elaine G. Merkl
Aimee Meyer
Matthew Mihlbauer
David J. Miller
Robert M. Miller
James A. Minehart
M. Susan H. Mitchell
Fatima A. Mohamud
Andrew Mohring
Mary Patricia Mooney
Sandra Morgan
Charlotte L. Moses
Beatrice L. Mount
Veronica J. Murphy
Jamie Stuart Nabozny
James E. Neeb
Geraldine E. Nelson
Karen E. Nelson
Robert Nepple
David Newell
Nancy Nies
Nasra Noor
Thomas Michael Normile
Luanne Larsen Nyberg

Julia Spencer Lizama
Donald G. Loizeaux
Thomas N. Lonergan
Marilyn Joan Loss
Sarah Lundberg
Sharon Lynn
Lisa C. Mabley
Julie Ann Madden
Brian G. Mahaffy
Susan D. Mainzer
Amy Jo Malone
Gregory L. Mann
Roberta L. Mark
Michele Marie Marrinan
Patricia J. Marsicano
Jane Martin
Barbara Mattson
Catherine M. Max
Donna Rae Mayotte
Shirley McBride
Marjorie McCanney
Donald Rawson McCotter
Michael Anthony McDowell
Diane Darby McGowan
Linda Back McKay
Mary Kate McKelvey
Elizabeth Marie McLemore
Judy Ann McQuade
Marian L. Meed
Angela J. Mengelkoch
Linda M. Merriam
Marian Susan Michael
Julie Dobratz Mikeworth
Johnna Josephine Miller
Sherri L. K. Millner
Dawn Misencik
David R. Moe
Barbara Ann Mohler
Marilyn G. Montgomery
Elizabeth Morgan
Scott Morris
Joseph David Mosher
Nathan Barrash Mousein
Mune Jama Muse
Bianca Marie Neal
Deborah J. Nelson
Helen G. Nelson
Marilyn Susan Nelson
Jeanna Marie Nesbitt
Clark D. Nguyen
Janice Noerenberg
Marianne L. Nora
Anne Norris
Ann H. Nygaard

Linda J. Lockman
Mary R. Londborg
Maria Loomis
Nancy Lee Lovestrand
LaVonne Lundquist
Lucy Lyon
Stephen A. Mack
Mike L. Madsen
Susan Mahler
Alejandro Maldonado
Arlene A. Mandler
Kelly Marion Marchwick
Chris Ann Marquis
Cynthia Jane Marsh
Barbara Marti
Rita Marie Martinez
Karmi A. Mattson
Sasha Kay Mayer
Gary Mazzotta
Wanda Jane McCaa
ThomasRobert McComeskey
Starlene McCoy
Caya Mariet McFalls
James McHie
Michael D. McKee
William Andrew McKenzie
Gwenetta McMahan
Diane M. McQuarry
Leisa Meeuwen
Adela Danielle Meraz
Roxann E. Metz
Roger E. Michael
Ada Jeanette Miller
Patricia Hellen Miller
William W. Mills
Kristofer Tyler Mitchell
AbukarMayehaji Mohamed
Barbara J. Mohr
David Evan Bryce Moon
Jane Morgan
JoAnn Morse
Rebecca J. Moskow
Coley D. Murphy
Steffanie D. Musich
Hillary Elisabeth Neary
Dominique Monee Nelson
Julia Nelson
Rayanne Kohler Nelson
Emily Rose Nevius
Carrie J. Nielsen
Wayland E. Noland
Carol Norgaard
Jeanne L. Novak
JoAnn E. Oberg

DECEMBER 18, 2009

Anna Oberlander
Brad Oftelie
Kathryn-Rita B. Olk
Glenn E. Olson
Laurie Ondich
Sandra L. Onsrud
Sara Marie O'Rourke
Elizabeth Rose Osterbauer
Naveen Pai
Gina M. Palandri
Georgette L. Paquette
Janet L. Parkin
Laura J. Passey
Richard L. Patten
Stacey J. Peacock
William Peebles-Hampton
Nick J. Perlick
Karen Frances Personius
Joyce Peterson
Polly Peterson
Deanna Phillips
Lindsay Simphon Phongsim
Jessie Brooke Pintor
Lorraine W. Pittman
April Posner
Trey Jeremiah Powell
June Marguerite Prange
Anibal Prestan
Janet L. Purdie
Michael Quist
Donna L. Rainey
Eric P. Ramstad
Jasmine Latrice Randle
Ann L. Rath
Stephen J. Rawlins
Gjake'a A. Reed
Carol Lynn Reeg
Mary Rice
Alan E. Richter
Brigid E. Riley
David Ristuben
Mark E. Robbins
Rena J. Rogers
Judith A. Roseen
Annette Helene Roth
Patricia Ryan
Caroline Nicole Salmen
Mohamed Samatar
Sandra D. Sandell
Virginia M. Sarat
Mary Ann Sattervall
Mark Scannell
Robert Schermerhorn
Susan Irene Schirber

John E. Oberreuter
Dianne O'Keefe
Adam John Olson
Mary Ellen Olson
Darce A. O'Neal
Carol Oosterhuis
Katrina Rose Ortloff
Judy Ostrowski
Vaman Pai
Abigail Elaine Pansch
Danisha Parker
Rose M. Parsley
Jonathan Passki
Evelyn Pavel
Nancy Lynn Pearson
Paul E. Pegors
Caryn Pernu
Charlotte T. Petersel
Karen Peterson
Stephen Peterson
Jakkee-Patricia O. Phillips
Charles Piehl
Zinda Lue Piskolich
Nora Sue Plesofsky
Deanna Elizabeth Powell
Joel Delano Powell, III
David F. Preis
Kella M. Prill
Jean M. Quinn-Davis
Jenna R. Raderstrong
William Daniel Ramach
Constance L. Rance
Anthony Ahmad E. Rashad
Adrienne Ethel Ratliff
Marjorie M. Reamer
Kenneth Reed
Kristi Rae Rendahl
Debra L. Richardson
Christopher James Riddle
Mark E. Riley
Paul E. Rivers
Michael Harry Robins
Rory Rooney
Sara Jean Ross
Kelly Jean Russell
Christine Emily Sack
John D. Salminen
Kristin Victoria Sancken
James Edwin Sander
Ann Sarna
Nardi C. Saxon
Millie Sue Schafer
Elizabeth J. Scheuer
Roberta K. Schlee

Timothy J. O'Brien
Adam Oliansky
Emma Olson
Robert Michael Olson
Misha Oneby
Allison Ann Orjala
Mary L. Orvis
JuTone Mae'Sheana Owens
Vinay Pai
Christopher James Pappas
Stephen Lee Parker
Elaine A. Parsons
Cortnei L. Patrick
Jim W. Peach
Daniel Pederson
Jay B. Pendleton
Drew B. Perrier
David L. Petersen
Lee D. Peterson
Susanne M. Peterson
Saul Jackson Phillips
John P. Pikala
Dorothy Pitheon
Meredith B. Poppele
Kay T.S. Powell
Kelly Howard Pramann
Ashley Marie Prentice
Nancy Przymus
Joel Quinnell
Ian Richard Radtke
Monica Ramola
Theodore M. A. Randall
Jensina J. Rasmussen
Doris E. Rauenhorst
Diane Redditt
Michael Bernard Reed
John Reno
Tyesha Danya Richmond
Erik Riese
Georgia Lois Ringquist
Judith Rivkin
Gina M. Rodriguez
Theresa Ann Rooney
Leon V. Rotering
Robin Russell
Elizabeth A. Sadler
Cheryl A. Salo
Jan Sandberg
Margarita SanRoman
Darbiene Patricia Sater
Eileen Anne Scallen
Jane Schallert
Benet A. Schirber
Thomas Allen Schluender

DECEMBER 18, 2009

Gary Schmaltz	Donald W. Schmidt	Jack H. Schneider
Geraldine C. Schuetz	Cynthia Lynelle Schulte	Christine Elaine Schultz
Joann L. Schultz	Debra Denise Schumacher	Timothy Schwarz
Lyall Schwarzkopf	Margaret Schwob	Robert Schwob
Lois Ellen Scott	Patricia E. Scott	Paul Scott
Clyde Scroggins	Sharon Mae Sebring	Melanie Lynn Sedqi
John See	Elsa Elena Segura	Geraldine Sell
Shelley W. Selstad	Nancy A. Selz	Hannah Semba
Eric David Seppanen	Michael G. Shannon	Sheri L. Shannon
Janet Sheldon	Adrienne Renee Sherman	Alan Peter Shilepsky
Nathan C. Short	Margaret Shulman	Mariana Shulstad
Ronald Shulstad	Robert J. Silverman	Thomas B. Silverman
Deborah Ann Sippl	Nancy Skalkos	Lois Mae Skinner
Daniel Skroch	George R. Slade	Anne Marie Smisson
Cecelia Smith	Donna Jean Smith	Jason Smith
Mary Smith	Stephanie Ann Smith	Karen Smudski
Judith Sonstegard	Cynthia L. Sorenson	Gregg Edward Sougstad
Betty L. Spano	Dolores K. Speidel	C. Rae Spencer
Doris Spencer	Helen J. Spry	Donald N. Sroka
Deborah Anne St. Anthony	Antoinette M. St. Pierre	Patricia L. Stahl
Dianne D. Star	Jon Steadland	Melfrieda M. Steckler
John D. Stefany	Kathleen Steiger	Richard Nels Steine
Kathleen A. Steinhauer	James Stengel	Carol Margaret Stephens
Ronald David Stevens	Ilia M. Stevenson	Peggy P. Stevenson
Paul D. Stewart	Robert Sticha	Marion Gordon Stinnett
Anita G. Stokes	Cynthia Crain Stokes	J. Celeste Stokes
Kathleen Ann Stokes	Kathy Ann Stolpman	William Stone
Carol Elizabeth Stoops	Annalee Strandskov	Niels Strandskov
Susan Katherine Strate	Sarma J. Straumanis	Jane Strauss
Aaron Street	Bonnie C. Streitz	Lora Strey
Lynnette P. Strickland	Kristine Strobl-Reichel	Paulette Strom
Kate Stromberg	Lorraine Stromme	Martin Strong
Barbara D. Struyk	Barbara Millicent Sukut	Robert Sullentrop
Marcia Jean Sullivan	Tim Sullivan	Virginia M. Sutton
Donna J. Svec	Laura Jean Svedberg	Joycelyn E. Swanson
Ruthann Swanson	Elizabeth Swanzy-Parker	Susan Linda Sweezo
Dale Edward Szach	Dianne M. Szach	Marlene Tacheny
Lorri Wagner Talberg	Harold J. Tasto	Charlene Tate
Sylvia Taulbee	Harriet Joy Taus	Carol Taylor
Linda Taylor	Marie E. Taylor	Lorraine D. Teel
John Evan Teisberg	Barbara Jo Telle	Marjorie B. Tendle
Lydia Marie TerSteege	Karen B. Teske	Sidney L. Teske
Mai Nou Thao	Forrest J. Theisen	Elaine Thielen
Rebecca J. Thoman	Bessie M. Thomas	Shelly Delores Thomas
Daniel J. Thompson	David Thomas Thompson	Judith Thompson
Nikki Denise Thompson	Nora Griffin Thompson	Doris Thorsgaard
Gilbert A. Thrall	Bonita Thurner	John Q. Tierney
Carol White Tillemans	Michael Paul Tillemans	Mary Timmons
Dorothy J. Titus	Barbara Toepel	Sidney Jane Tolo
Emile Zane Tombers-Kelly	Lisa Ann Totushek	Carlyn Trahms
Kathleen Irene Traxler	Donette Triantaphyllithou	Albert O. Trostel

DECEMBER 18, 2009

Parker Trostel
David Stuart Tufford
Kee-Andrea Shandel Turner
Myra C. Urness
Todd Vandecar
Drockong Vang
Mai Moua Vang
Lloyd VanHale
Susan M. Verrett
Jessica Vogt
Kevin Christopher Vrla
Teresa Z. Wagener
Treden Wagoner
Bonny Lynn Wald
Shawnice Lashae Ann Walls
Andrew Brent Walters
Charles Richard Warner
Lauren P. Weck
Mary Sue Weir
Lynne Grunow Welter
Patricia Ann Westfall
John Whalen
Eva M. White-Stokes
Paulette Will
Emily Erin Williams
Kimberly Rashard Williams
Roger J. Williams
Peter M. Wilson
Thomas Jepson Winchell
Leanne Marie Wirkkula
John James Wolf
Joyce G. Woodruff
Sandra Lee Woolard
Lyle John Wright
Sivai Xiong
Shoua Yang
Rosemary P. York
Elizabeth Jane Zerby
Nothando Zulu

Adopted 12/18/2009.

Gabriella M. Tsurutani
Inna M. Turchman
David Tykwinski
Jennifer P. Van Horne
Juanita Louise Vanderpoel
Ia Vang
Pa Vang
Kathleen A. Varner
Linda Vilmo
Norman C. Voldness
Mai Houa Vue
Cynthia C. Wagner
Darrell W. Waidelich
Paul O. Walker
Ann Lee Walter
Ruth Wanglie
Wade W. Warner
Charles C. Wefel
Jeffrey Carlos Wells
James T. Wentink
Laura Jean Westlund
Patricia A. Whetstone
Robert A. Wied
Lois Willand
Jacquelyn Lauren Williams
Nancy Williams
Jean E. Wilson
Roberta L. Wilson
Judy A. Winiecki
Joanne Elizabeth With
Kimberly Joyce Wolking
Brian Patrick Woods
Barbara L. Wright
Tyesha Nacole Wright
Thia Xiong
Rose Yarns
Remedan Nuro Yuya
David G. Zimmerman
Dorothy Zurbey

Larry Tucker
Juan Lee Turner
Gammada Urgessa
Julia L. Vanatta
Chue Qa Vang
Jody Youa Vang
Carol VanHale
Ellen S. Velasco-Thompson
Daniel Vogel
Laurel Volkmuth
Joyce Waddick
Donna E. Wagner
Jill Margaret Waite
Donna Wallander
Evan Ryan Walter
Brenda Jo Warner
Thomas Glessner Weaver
Thomas Weiland
Daphne Kuha Welter
Elise Duval Werger
Susan E. Wetherall
Javanese Verona White
Elladean Wikstrom
Darrell M. Williams
John Joseph Williams
Phyllis Larene Williams
Pamela J. Wilson
Suzanne Mae Wilson
Harvey Martin Winje
Paul Robert Wojack
Dorothy Jane Woodard
Susan Adele Woodstrom
Frank G. Wright
Nathan Josiah Wunrow
Mary Ellen Yamashita
Laura Jayne Yerhot
Nicole Harris Zajkowski
Michael T. S. Zondlo-Elliott

Resolution 2009R-627, honoring Paul Ostrow for his Service to the City of Minneapolis, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-627

**By Gordon, Hofstede, Johnson, Samuels, Lilligren, Goodman, Glidden,
Schiff, Remington, Benson, Colvin Roy, and Hodges**

Honoring Paul Ostrow for his Service to the City of Minneapolis.

Whereas, Paul Ostrow was elected in 1997 to serve as First Ward Council Member, and was re-elected to the City Council in 2001 and 2005; and

Whereas, Paul Ostrow earned the respect and admiration of his colleagues for his fair and balanced leadership as City Council President from 2001 to 2005; and

Whereas, Paul Ostrow has served on the Executive, Elections, Health Energy & Environment, Intergovernmental Relations, Public Safety & Regulatory Services, Rules, Taxes, Ways & Means\Budget, and Zoning & Planning Committees; and

Whereas, Paul Ostrow has served as Chair of the Ways & Means/Budget Committee since 2006 and has successfully guided the City Council through one of the most difficult eras of budget cuts in the city's history; and

Whereas, Paul Ostrow's professionalism and work ethic as Chair of Ways & Means garnered the respect and admiration of the Finance Department staff who work with him on a daily basis; and

Whereas, Paul Ostrow worked with McKnight and other funders almost a decade ago for funding to study and create the Northeast Arts District; he authored the Council resolution that officially designated the Northeast Arts District, which is now home to the largest number of working artists of any community in the Midwest; and

Whereas, Paul Ostrow has worked on a number of historic preservation projects, including the Grain Belt Brewery, the Ritz Theater, the Milwaukee Depot, the Hollywood Theater, and Shoreham Yards; and

Whereas, under Paul Ostrow's watch: the Stinson Technology campus burgeoned, bringing more than 1,000 high-tech jobs to Northeast; the City's first LEED-certified house was built in the First Ward; four major Superfund sites were cleaned up in the First Ward; the City's first-ever Urban Forest Policy was developed in recognition of the value of the city's green infrastructure; the Central Avenue Small Area Plan was completed and Central Avenue was reconstructed, lighted, and landscaped; a pilot program to recycle difficult plastics was established in the First Ward; the Xcel Energy's Riverside coal-burning power plant converted to natural gas; the Minneapolis Riverfront Development Corporation was formed and approved by the legislature in 2008, and has begun its work; Northstar Commuter Rail began service from Big Lake to downtown Minneapolis; and

Whereas, Paul Ostrow represented Minneapolis on the Board of Estimate and Taxation, Criminal Justice Coordinating Committee, League of Minnesota Cities, Minneapolis Employees Retirement Fund (MERF), Mississippi Watershed Management Organization (MWMO) as its Chair, Northstar Corridor Development Authority, and the Ballpark Implementation Committee; and

Whereas, Paul Ostrow used his experience as a prosecutor to strengthen the City's efforts in community policing and combating domestic violence and livability crimes; and

Whereas, Paul Ostrow developed the City's nationally recognized five-year financial-planning process; led the Project Excellence initiative for process improvement in the City; has participated extensively in "Results Minneapolis," which monitors the performance of every department using extensive data; led the effort to open up our solid waste contract to competitive bidding; led attempts to form greater regional partnerships on fire services, crime labs, and 911/311 services; worked with key staff in regulatory services towards a cost recovery model that has been extremely successful and has resulted in these services being cost neutral; and

Whereas, Paul Ostrow was a champion for a new outdoor ballpark, and his love of baseball, the City of Minneapolis, and the Minnesota Twins will be fully realized on opening day, April 12, 2010, when the Minnesota Twins take the home field at the new Target Field bringing outdoor baseball back to Minnesota; and

Whereas, Paul Ostrow is a role model staying healthy and fit as borne out by racing up the stairs to the top of the IDS Tower in 12 minutes, 18.6 seconds (that's an average of 15 seconds per flight) during the 2009 Cystic Fibrosis Climb for the Cure; and

Whereas, Paul Ostrow's parents, Hilvie and Aaron, inspired his strong sense of public service, including a commitment to working for strong public schools in Minneapolis, a passion shared by his wife, Julie; and Paul's devotion to his children, Matt and Emily, is apparent in all that he does;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the City of Minneapolis thanks Paul Ostrow for his integrity, intelligence, passion for good government, budget acuity, always-gentlemanly demeanor, and leadership on the Council.

Adopted 12/18/2009.

Absent - Hofstede.

Resolution 2009R-628, honoring Scott Benson for his contributions to the residents of the 11th Ward and the City of Minneapolis, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-628

**By Ostrow, Gordon, Hofstede, Johnson, Samuels, Lilligren, Goodman,
Glidden, Schiff, Remington, Colvin Roy and Hodges**

Honoring Scott Benson for his contributions to the residents of the 11th Ward and the City of Minneapolis.

Whereas, Scott Benson and was elected in 2001 to the City Council to represent the Eleventh Ward and reelected in 2005; and

Whereas, Scott Benson served on the Community Development, Transportation and Public Works, and Claims Committees of the City Council, the Meet Minneapolis Executive Board, and represented the City in our Sister Cities Program traveling to Ibaraki, Japan, twice and Tours, France, as well as authored a complete rewrite of the City's Ethic's Code; and

Whereas, Scott Benson served with distinction as chair of the Intergovernmental Relations Committee during his first term and chair of the Health, Energy and Environment Committee for the past four years; and

Whereas, during his tenure he led the City to numerous environmental accomplishments, among them, granting over fifty climate change micro grants to support grassroots activities, LEED requirements for municipal buildings, green roofs on the Target Center and City Hall/Courthouse, integration of the City's sustainability efforts into the Minneapolis Plan for Sustainable Growth, new regulations on mercury, the City's first green cleaning and green purchasing policies, among many others; and

Whereas, his passion for sustainable buildings made him the first elected official to become a LEED Accredited Professional; and

Whereas, he spearheaded the charge to make Minneapolis one of the first cities in the world to sign on to the International Solar Cities Daegu Declaration, acknowledging that the best way to address climate change is through actions of cities worldwide; and

Whereas, he worked tirelessly to reach an agreement with the Metropolitan Airports Commission, creating the largest program in the country addressing airport noise impacts, decreasing noise levels for 9,500 homes - 80 percent in Minneapolis; and

Whereas, his often "Khrushchev-like shoe pounding" sessions with the Minnesota Department of Transportation made the I-35W/Crosstown reconstruction project more palatable to nearby residents; and

Whereas, no constituent or neighborhood matter was too small for his attention; attending hundreds of neighborhood meetings and personally answering constituent inquiries; and

Whereas, he sometimes single-handedly endeavored to forge stronger relations with the City of Las Vegas and their hospitality industry; and

Whereas, his rich tenor voice led us in song to celebrate colleagues' birthdays and other special occasions; and his joyful laughter, sense of humor, sometimes "colorful" language and sense of the theatrical made the City Council office a fun and exciting place to work:

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That we honor and thank Scott Benson for his leadership, humor, and outstanding service to the citizens of Minneapolis, and that we wish him continued success in all his future endeavors.

Adopted 12/18/2009.

Absent - Hofstede.

Resolution 2009R-629, honoring Ralph Remington for his contributions to the residents of the 10th Ward and the City of Minneapolis, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-629

**By Ostrow, Gordon, Hofstede, Johnson, Samuels, Lilligren, Goodman, Glidden,
Schiff, Benson, Colvin Roy and Hodges**

**Honoring Ralph Remington for his contributions to the residents
of the 10th Ward and the City of Minneapolis.**

Whereas, Ralph Remington was elected to the Minneapolis City Council in 2005 to represent the residents of the 10th Ward; and

Whereas, during his tenure he has served on the Community Development, Intergovernmental Relations, and Zoning and Planning Committees and served as chair of the Rules Committee; and

Whereas, Ralph Remington has also served capably on the Southwest Transitway Policy Advisory Committee, Midtown Community Works Partnership, Minneapolis Television Network Taskforce, Meet Minneapolis Board, National League of Cities Public Safety Committee, Urban Land Institute Executive Committee, Republican National Convention Taskforce, and Civilian Review Authority Taskforce; and

Whereas, as a member of the Southwest Transitway Policy Advisory Committee he advocated fiercely for a train serving the core of Minneapolis; and

Whereas, in 2008 he was honored as a Family and Children's Services Elected Official of the Year for co-authoring the "No Heat, Low Heat" ordinance protecting the rights of renters in Minneapolis; and

Whereas, Ralph Remington spent all four years of his term working with community members and city staff to develop small area plans in his ward, of which, the Uptown Small Area Plan won a Merit Award from the American Planning Association; and

Whereas, he further made his policy bones through authoring and passing the Newsrack and Aggressive Solicitation Ordinances and Cessation of War Resolution, co-authoring the Civilian Review Authority and Ranked Choice Voting Resolutions, and advocating for the extension of the City's Expanded Certification, encouraging City managers to hire women, people of color, and those with disabilities; and

Whereas, while advocating for the rights of all creatures, Ralph Remington is the only Minneapolis City Council Member to bring a bull hook into Chambers and get away with it;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That we honor and thank Ralph Remington for his leadership, humor and outstanding leadership to the citizens of Minneapolis, and that we wish him continued success in all his future endeavors.

Adopted 12/18/2009.

Absent - Hofstede.

Resolution 2009R-630, honoring Jefferson Lines, was adopted 12/18/2009 by the City Council. A complete copy of this resolution is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized resolution.

RESOLUTION 2009R-630

By Council Members Schiff, Ostrow, Gordon, Hofstede, Johnson, Samuels, Lilligren, Goodman, Glidden, Remington, Benson, Colvin Roy and Hodges

Honoring Jefferson Lines.

Whereas, the Jefferson Lines bus company was founded in 1919 and is celebrating its 90th year; and

Whereas, Jefferson Lines is a Minneapolis-based family company with roots extending into the early days of motorcoach travel; and

Whereas, the third generation of the Zelle family to actively participate in the Jefferson story now manages Jefferson Lines headquarters on East 26th Street and 21st Avenue South; and

Whereas, as one of the pioneers of the motorcoach industry, named after the Jefferson Highway which stretched from Winnipeg to New Orleans, Jefferson has a rich history of civic and philanthropic involvement in Minneapolis; and

Whereas, these civic involvements include hiring summer interns through the STEP-UP program, providing discounted bus transportation for college visits offered by Project SUCCESS, and contributing funds towards the Achieve! Career and College Initiative; and

Whereas, among registered carriers in the United States, Jefferson ranks in the top one percent for safety; and

Whereas, last year Jefferson operated over 6.5 million miles and carried over 600 thousand passengers; and

Whereas, from its first route from Minneapolis to Osseo, Minnesota, in the words of current President Charlie Zelle, Jefferson now carries "everyone from a Latino immigrant coming to work in a chicken factory in Arkansas or south Minnesota or South Dakota, or...carrying a grandmother to a clinic";

Now, Therefore, Be It Resolved by The City Council of the City of Minneapolis:

That Friday, December 18, 2009 be proclaimed as Jefferson Lines Day in the City of Minneapolis.

Adopted 12/18/2009.

UNFINISHED BUSINESS

W&M/Budget - Your Committee, having under consideration changes to the City's Financial Policies, now recommends that the proper City officers be authorized to amend said policies to expand the independent board recoupment policy (Petn No 273898).

Lilligren moved that the report be postponed. Seconded.

Adopted upon a voice vote 12/18/2009.

Absent - Hofstede.

NEW BUSINESS

Schiff moved to introduce the subject matter of ordinances amending Title 20 of the Minneapolis Code of Ordinances relating to Zoning Code, for first reading and referral to the Zoning & Planning Committee (to revise standards for installation of solar energy systems), as follows:

Amending Chapter 535 relating to Zoning Code: Regulations of General Applicability

Amending Chapter 537 relating to Zoning Code: Accessory Uses and Structures;

Amending Chapter 546 relating to Zoning Code: Residence Districts;

Amending Chapter 547 relating to Zoning Code: Office Residence Districts;

Amending Chapter 548 relating to Zoning Code: Commercial Districts;

Amending Chapter 550 relating to Zoning Code: Industrial Districts;

Amending Chapter 551 relating to Zoning Code: Overlay Districts. Seconded.
Adopted by unanimous consent 12/18/2009.
Absent - Hofstede.

Schiff moved to introduce the subject matter of ordinances amending Title 20 of the Minneapolis Code of Ordinances relating to Zoning Code, for first reading and referral to the Zoning & Planning Committee (to revise existing zoning code definitions, establish new definitions, amend provisions referencing revised definitions accordingly, and amend the tables of permitted and conditional uses accordingly), as follows:

Amending Chapter 520 relating to Zoning Code: Introductory Provisions;
Amending Chapter 546 relating to Zoning Code: Residence Districts;
Amending Chapter 547 relating to Zoning Code: Office Residence Districts;
Amending Chapter 548 relating to Zoning Code: Commercial Districts;
Amending Chapter 549 relating to Zoning Code: Downtown Districts;
Amending Chapter 550 relating to Zoning Code: Industrial Districts. Seconded.
Adopted by unanimous consent 12/18/2009.

Schiff moved to introduce the subject matter of an ordinance amending Title 20, Chapter 525 of the Minneapolis Code of Ordinances relating to Zoning Code: Administration and Enforcement, for first reading and referral to the Zoning & Planning Committee (to adjust the compensation of City Planning Commission and Board of Adjustment members, consistent with the adopted 2010 budget).
Seconded.

Adopted by unanimous consent 12/18/2009.

Schiff gave notice of intent to introduce at the next regular meeting of the City Council the subject matter of an ordinance amending Title 10, Chapter 201 of the Minneapolis Code of Ordinances relating to Food Code: Public Markets (amending the definition of public market to allow a public market to be indoors or outdoors).

Gordon gave notice of intent to introduce at the next regular meeting of the City Council the subject matter of an ordinance amending Title 12, Chapter 244 of the Minneapolis Code of Ordinances relating to Housing: Maintenance Code (making compliance with Title 11, Chapter 225, Article VI a licensing standard).

Gordon gave notice of intent to introduce at the next regular meeting of the City Council the subject matter of an ordinance amending Title 11, Chapter 225 of the Minneapolis Code of Ordinances relating to Health and Sanitation: Garbage and Refuse, (amending notice, enforcement, and penalty provisions relating to recycling at buildings having two or more dwelling units).

Lilligren moved to adjourn. Seconded.
Adopted upon a voice vote 12/18/2009.

Steven J. Ristuben,
City Clerk.

Unofficial Posting: 12/23/2009
Official Posting: 12/29/2009