



CITY COUNCIL AGENDA

April 11, 2016

6:30 PM

City of Norwood Young America
310 Elm Street West, PO Box 59, NYA MN 55368
(952) 467-1800

1. **Call Meeting of City Council to Order**

1.1 Pledge of Allegiance

2. **Approve Agenda**

3. **Introductions, Presentations, Proclamations, Awards, and Public Comment** (Individuals may address the City Council about any non-agenda item of concern. Speakers must state their name, address, and limit their remarks to three minutes. The City Council will not take official action on these items, but may refer the matter to staff for a future report or direct that the matter be scheduled for a future meeting agenda.)

- Beyond the Yellow Ribbon Proclamation

4. **Consent Agenda** (Individuals may address the City Council about any non-agenda item of concern. Speakers must state their name, address, and limit their remarks to three minutes. The City Council will not take official action on these items, but may refer the matter to staff for a future report or direct that the matter be scheduled for a future meeting agenda.)

4.1 Approve minutes of March 28, 2016 meeting

4.2 Approve payment of claims

4.3 Beyond the Yellow Ribbon Proclamation

4.4 Appointment of Swimming Pool Manager

4.5 Public Works Employee Resignation

5. **Public Hearing**

5.1 Ordinance No. 271, Jaguar Communications Cable Television Franchise

6. **Old Business**

6.1 Ditches Clean-up Plan

6.2 Resolution 2016-05, Resolution Setting a Public Hearing on Easement Vacation

7. **New Business**

7.1 2016 Crack Sealing and Seal Coating Bid Proposals

7.2 Financial Advisory Services Request for Proposals

8. **Council Member's Reports**

9. **Mayor's Report**

10. **Adjournment**

*The following informational items have been included in the Council packet for informational purposes, council review and discussion. No action is required by the City Council: 2016 Severe Weather Awareness Week; March Building Permit report, Medicine Take-Back Day notice

UPCOMING EVENTS

April 13	Economic Development Commission – 6:30 p.m.
April 14	Senior Advisory Committee – 9:00 a.m.
April 19	Parks and Rec. Commission – 5:30 p.m.; Planning Commission – 7:00 p.m.
April 25	EDA and City Council – 6:30 p.m.



TO: Honorable Mayor Diedrick and City Council Members
FROM: Steven Helget, City Administrator
DATE: April 11, 2016
SUBJECT: Beyond the Yellow Ribbon Proclamation

Crystal Dammann representing the Norwood Young America Beyond the Yellow Ribbon will be present to request the adoption of the enclosed Proclamation which proclaims May 2016 as Yellow Ribbon Month and May 14, 2016 as Yellow Ribbon Day.

Suggested Motion:

Motion to adopted the Norwood Young America Beyond the Yellow Ribbon Proclamation.

CITY OF NORWOOD YOUNG AMERICA BEYOND THE YELLOW RIBBON PROCLAMATION

WHEREAS, the residents of Norwood Young America live in freedom because of the courage, dedication to duty, and love of country displayed by those who have served and are currently serving in the United States Armed Forces; and

WHEREAS, there are residents of Norwood Young America in the United States Armed Forces who have served or are actively serving throughout the world to protect our state and country; and

WHEREAS, before military deployment and after they return home from active duty, our troops continue to be actively responsible citizens in our communities; and

WHEREAS, servicemen and women contribute to the growth and development of our city in civil life and military service; and

WHEREAS, their commitment to service inspires all Americans to be grateful for the sacrifices given to keep our country free.

NOW, THEREFORE, BE IT RESOLVED, that the Norwood Young America City Council does hereby proclaim the month of May 2016 to be Yellow Ribbon Month and May 14, 2016 to be Yellow Ribbon Day.

Adopted by the Norwood Young America City Council this 11th day of April 2016.

Tina Diedrick, Mayor
City of Norwood Young America



City of Norwood Young America
310 West Elm Street, PO Box 59
Norwood Young America, MN 55368
www.cityofnya.com
952/467-1800

CITY COUNCIL MEETING – March 28, 2016 - 6:30pm

Council Members Present: Tina Diedrick, Carol Lagergren, Craig Heher, Dick Stolz, Mike McPadden

City Staff Present: City Administrator Steve Helget, City Clerk Kelly Hayes

Also Present: Mark Lagergren – Planning Commission, Adam Gruenewald – NYA Times, Julie Kuenzel – Community Ed, Nick Jeurissen – Greystone Construction, Randy Schuster – Vickerman, Jeff Hebeisen – Citizens Insurance

1. Call Meeting of City Council to Order

City Council meeting was called to order by Mayor Tina Diedrick at 6:36pm.

2. Approve Agenda

Motion: Lagergren, second Heher to approve the agenda with the following additions: 4.6 Approve claims 25491-25496, 6.4 Resignation of Mark Simons Custodian and posting of part-time position, 6.5 Insurance Update by Jeff Hebeisen, 6.6 Ditch Cleaning. Vote 5 – 0, motion carried.

3. Introductions, Presentations, Proclamations, Awards, and Public Comment - NONE

4. Consent Agenda

4.1 Approve minutes of March 14 and 22, 2016 meetings

4.2 Approve payment of claims

4.3 Approve Consumption and Display Permits for Lano Lanes and Midtown Family Restaurant

4.4 Approve Lawful Gambling Premises Permit Application – American Legion Post 343

4.5 Approve Chamber of Commerce Street Closing Request – 7th Annual Taste of NYA

4.6 Approve payment of claims 25491 - 25496

Motion: Heher, second Stolz to approve the items listed in the consent agenda. Vote 5 – 0, motion carried.

5. Old Business - NONE

6. New Business

6.1 Vickerman Warehouse Expansion Site Plan Review

Site plan = 28,812 square foot addition to west side of building. Fire Hydrant to be installed on SW side of the building. Fire truck accessibility – 20 ft gravel roadway to be extended from compost site road and stop short of the current drainage ditch. City will maintain access road.

Motion: Lagergren, second Stolz to approve Resolution 2016-04 approving a 28,812 sq ft addition to an existing warehouse at 675 Tacoma Blvd (Vickerman Company) with an attached finalized agreement once it is reached. Vote 5 – 0, motion carried.

Motion: Lagergren, second Heher to authorize and direct the city office to amend and execute that agreement. Vote 5 – 0, motion carried.

6.2 Community Education Summer Recreation Program Contribution Request

Julie Kuenzel from NYA Community Education presented statistics of what Community Ed provides and how many people participate in the programs. Community Ed is taking over all of the swimming lesson registrations and selling of pool passes. In the past the city has donated \$5600 per year to Community Ed to assist with different programs, wages, advertisement, and supplies.

Motion: Lagergren, second Stolz to donate \$2000 to the summer recreation program, \$3000 to the summer enhanced programs and \$600 to Community Ed to cover the cost of the 2016 swimming pool planned events. Vote 5 – 0, motion carried.

6.3 Water & Sewer Department's 2016 Budget Amendment

Due to a new staff person needing additional training and the director going to leadership training, a request is being made to increase the training budget from \$1000 to \$3000.

Motion: Lagergren, second Heher to amend the 2016 Water and Sewer Department budgets instruction and training line item from \$500 to \$1500 per department. Vote 5 – 0, motion carried.

6.4 Resignation of Mark Simons Custodian – Posting temporary weekend Custodian

Motion: Stolz, second Lagergren to approve the status change of Mark Simons from a part-time custodian to a temporary “on-call” custodian. Vote 5 – 0, motion carried.

Motion: Lagergren, second Stolz to approve the posting of a Part-Time Custodian. Vote 5 – 0, motion carried.

6.5 Property/Liability Insurance Renewal Report

Motion: Lagergren, second Heher to table the discussion with Mr. Hebeisen until the next meeting. Vote 5 – 0, motion carried.

6.6 Ditch Clean-Up Report

Public Works is renting a backhoe for 4 – 6 weeks to clean up various ditches in the city, this is a budgeted item.

7. Council Member Reports

McPadden: Stiftungsfest Committee met. Parade year. Music is set up. Concerned about Old Town and restrooms.

Stolz: none

Heher: Parks working on Old Town restrooms. Getting feedback from Stiftungsfest so they can proceed.

Lagergren: none

8. Mayor's Report

EDC, Chamber and Planning Commission working on ideas for a new city logo and slogan and consolidating website.

9. Adjournment

Motion: McPadden, second Lagergren to adjourn at 7:41pm. Vote 5 – 0, motion carried.

Respectfully Submitted,

Kelly Hayes
City Clerk - Treasurer

Mayor

The following informational items have been included in the Council packet for informational purposes, council review and discussion. No action is required by the City Council: Letter of thank you to Fire Department

UPCOMING MEETINGS/EVENTS

April 11 City Council – 6:30 p.m.

April 13 Economic Development Commission – 6:30 p.m.

April 14 Senior Advisory Committee – 9:00 a.m.

April 19 Parks and Rec. Commission – 5:30 p.m.; Planning Commission – 7:00 p.m.

April 25 EDA and City Council – 6:30 p.m.

CITY OF NORWOOD YOUNG AMERICA

**VOUCHER LIST / CLAIMS ROSTER
and CHECK SEQUENCE**

To Be Approved: April 11, 2016

Pre-Paid Claims **\$23,898.89**
(Check Sequence #25497-25503; 503596-503609)

Claims Pending Payment **\$21,423.33**
(Check Sequence #25504-25537)

Grand Total **\$45,322.22**

Prepays

CITY OF NORWOOD YOUNG AMERICA

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*Check Summary Register©

APRIL 2016

Name	Check Date	Check Amt
10100 CHECKING		
Paid Chk# 025498 KLEINBANK HSA ACCOUNTS	4/1/2016	\$2,000.00 has contrib 2016 qtr 1
Paid Chk# 025499 CITIZEN STATE BANK HSA ACC	4/1/2016	\$4,000.00 has 2016 qtr 1
Paid Chk# 025500 HEALTH EQUITY	4/1/2016	\$2,000.00 has 2016 qtr 1
Paid Chk# 025501 FIRST MINNETONKA BANK	4/1/2016	\$166.67 has 2016 qtr 1
Paid Chk# 025502 MID COUNTRY BANK	4/1/2016	\$1,000.00 has 2016 qtr 1
Paid Chk# 025503 CITIZENS STATE BANK WAVERL	4/1/2016	\$500.00 has 2016 qtr 1
	Total Checks	\$9,666.67

25497 VOID

0.00

PAYROLL APRIL 7, 2016

CHECK #	NAME	AMOUNT
503596	ARETZ, BRENT R	\$1,115.24
503597	HAYES, KELLY	\$1,294.37
503598	NIESEN, CHRISTOPHER D.	\$1,300.42
503599	LENZ, DEBRA A	\$1,203.28
503600	MENZEL, ALICIA	\$909.09
503601	SCHRUPP, JOHN O	\$1,266.48
503602	STENDER, DANIEL H	\$1,293.10
503603	WINTER, RYAN P	\$1,588.98
503604	HELGET, STEVE	\$2,039.61
503605	KLOEMPKEN, JASON A	\$990.88
503606	HOOFF, DALE H	\$185.85
503607	SIMONS, MARK	\$163.31
503608	Wolff, Justin R	\$881.61
503609	Kleinbank	<u>\$14,232.22</u>

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APRIL 2016

	Check Amt	Invoice	Comment
10100 CHECKING			
Paid Chk# 025504	4/11/2016	ANCOMCOMMUNICATIONS, INC.	
E 101-42200-323	Radio Units	\$108.00 59093	PAGER
Total ANCOMCOMMUNICATIONS, INC.		\$108.00	
Paid Chk# 025505	4/11/2016	CARVER COUNTY	
E 601-49400-350	Print/Publishing/Postage	\$265.00 1666	SP ASSESSMENTS
E 602-49450-350	Print/Publishing/Postage	\$265.00 1666	SP ASSESSMENTS
Total CARVER COUNTY		\$530.00	
Paid Chk# 025506	4/11/2016	CARVER COUNTY	
E 101-41400-438	Taxes and Assessments	\$271.67	PAVILION
G 251-22100	Escrow Collected	\$720.00	TAXES FOR HARBOR
E 101-41400-438	Taxes and Assessments	\$181.25	NORTH STATION
Total CARVER COUNTY		\$1,173.12	
Paid Chk# 025507	4/11/2016	CENTER POINT	
E 101-41940-383	Gas Utilities	\$475.10	
E 101-43100-383	Gas Utilities	\$941.11	
E 101-45200-383	Gas Utilities	\$391.56	
E 101-42200-383	Gas Utilities	\$153.45	
E 601-49400-383	Gas Utilities	\$276.75	
E 602-49450-383	Gas Utilities	\$1,405.81	
E 101-49860-383	Gas Utilities	\$23.72	
Total CENTER POINT		\$3,667.52	
Paid Chk# 025508	4/11/2016	CNA - GROUP LONG TERM CARE	
G 101-21711	Long-Term Care Ins	\$98.76	LONG TERM CARE
Total CNA - GROUP LONG TERM CARE		\$98.76	
Paid Chk# 025509	4/11/2016	G & K SERVICES	
E 101-43100-417	Uniform	\$86.21 93785540	JUSTIN'S PANTS
E 101-43100-417	Uniform	\$118.04 93791748	JUSTIN'S SHIRTS
Total G & K SERVICES		\$204.25	
Paid Chk# 025510	4/11/2016	GRAINGER	
E 601-49400-221	Repair/Maintenance Equipment	\$20.40 9062808416	UNION 1/4 IN NPT
E 601-49400-221	Repair/Maintenance Equipment	\$341.33 9063738398	AQUASTAT CONTROLLER
E 601-49400-221	Repair/Maintenance Equipment	\$297.78 9064139950	WATER CUT OUT
Total GRAINGER		\$659.51	
Paid Chk# 025511	4/11/2016	HOLIDAY FLEET	
E 101-43100-212	Motor Fuels	\$138.90	FUEL
Total HOLIDAY FLEET		\$138.90	
Paid Chk# 025512	4/11/2016	HOLLIDAY, MARK	
E 101-45200-432	Rental Refund	\$200.00	PAVILION RENTAL REFUND
Total HOLLIDAY, MARK		\$200.00	

CITY OF NORWOOD YOUNG AMERICA

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APRIL 2016

			Check Amt	Invoice	Comment
Paid Chk# 025513	4/11/2016	HOME SOLUTIONS			
E 601-49400-221		Repair/Maintenance Equipment	\$3.58		
		Total HOME SOLUTIONS	\$3.58		
Paid Chk# 025514	4/11/2016	HYDRO ENGINEERING INC			
E 101-43100-221		Repair/Maintenance Equipment	\$15.76	75067	SQUARE
		Total HYDRO ENGINEERING INC	\$15.76		
Paid Chk# 025515	4/11/2016	KELLER, TEDI			
E 101-42200-207		Training Instructional	\$112.32		MILEAGE
		Total KELLER, TEDI	\$112.32		
Paid Chk# 025516	4/11/2016	LANO EQUIPMENT			
E 101-43100-221		Repair/Maintenance Equipment	\$24.70	94636	SYNT OIL
		Total LANO EQUIPMENT	\$24.70		
Paid Chk# 025517	4/11/2016	LENZ, DEBRA			
E 101-41400-331		Travel/Meeting Expense	\$45.36		MILEAGE REIMBURSEMENT
		Total LENZ, DEBRA	\$45.36		
Paid Chk# 025518	4/11/2016	LINDS HOMETOWN HARDWARE			
E 101-42200-221		Repair/Maintenance Equipment	\$134.07		FIRE DEPT
E 601-49400-221		Repair/Maintenance Equipment	\$48.05		
E 101-43100-221		Repair/Maintenance Equipment	\$21.48		
E 602-49450-221		Repair/Maintenance Equipment	\$48.04		
		Total LINDS HOMETOWN HARDWARE	\$251.64		
Paid Chk# 025519	4/11/2016	LOFFLER COMPANIES, INC.			
E 101-41400-437		Maintenance Contract	\$296.31	18519553	COPIER RENT
		Total LOFFLER COMPANIES, INC.	\$296.31		
Paid Chk# 025520	4/11/2016	MID-COUNTY CO-OP OIL ASSN			
E 601-49400-212		Motor Fuels	\$374.64	17224	DYED DIESEL
		Total MID-COUNTY CO-OP OIL ASSN	\$374.64		
Paid Chk# 025521	4/11/2016	MINN DEPT OF PUBLIC SAFETY			
E 601-49400-223		Repair/Maintenance Bldg/Ground	\$2,970.00	333963	HAZ MAT CLEANUP AT WATER PLANT
		Total MINN DEPT OF PUBLIC SAFETY	\$2,970.00		
Paid Chk# 025522	4/11/2016	MN DEPT OF LABOR & INDUSTRY			
G 101-21721		State Bldg Surcharge Fee	\$292.85		1ST QTR 2016
		Total MN DEPT OF LABOR & INDUSTRY	\$292.85		
Paid Chk# 025523	4/11/2016	MN VALLEY ELECTRIC COOPERATIVE			
E 602-49450-381		Electric Utilities	\$33.87		LIFT STATION
E 101-43100-380		Street Lighting	\$101.63		STREET LIGHTS
E 601-49400-381		Electric Utilities	\$536.11		640 TACOMA BLVD
		Total MN VALLEY ELECTRIC COOPERATIVE	\$671.61		

CITY OF NORWOOD YOUNG AMERICA

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APRIL 2016

			Check Amt	Invoice	Comment
Paid Chk#	025524	4/11/2016	NCPERS 855401LIFE INS		
	G 101-21705	PERA Life	\$12.00		
		Total NCPERS 855401LIFE INS	\$12.00		
Paid Chk#	025525	4/11/2016	NORTH AMERICAN SAFETY INC		
	E 101-43100-210	Operating Supplies (GENERAL)	\$37.70	17492	LATEX POWDER FREE
		Total NORTH AMERICAN SAFETY INC	\$37.70		
Paid Chk#	025526	4/11/2016	NYA TIMES		
	E 101-49860-350	Print/Publishing/Postage	\$105.00	324868	POOL POSITIONS
	E 101-41300-350	Print/Publishing/Postage	\$34.02	327550	ORD 270
	E 101-41300-350	Print/Publishing/Postage	\$37.80	331228	JAGUAR CABLE TV
		Total NYA TIMES	\$176.82		
Paid Chk#	025527	4/11/2016	QUILL CORPORATION		
	E 602-49450-200	Office Supplies (GENERAL)	\$14.94	4348877	SHARPIES, PENCILS, PENS
	E 601-49400-200	Office Supplies (GENERAL)	\$14.94	4348877	SHARPIES, PENCILS, PENS
	E 101-41400-200	Office Supplies (GENERAL)	\$16.87	4348877	SHARPIES, PENCILS, PENS
	E 101-41400-200	Office Supplies (GENERAL)	\$74.95	4574597	NEWSLETTER PAPER
		Total QUILL CORPORATION	\$121.70		
Paid Chk#	025528	4/11/2016	RUPP, ANDERSON, SQUIRES, PA		
	E 101-41500-304	Legal Fees	\$139.50		ABATEMENT
	E 101-41500-304	Legal Fees	\$170.50		YA CORP
	G 810-22100	Escrow Collected	\$77.50		VICKERMAN
	E 101-41500-304	Legal Fees	\$3,604.38		MISC ATTY
	E 101-41500-304	Legal Fees	\$1,503.50		JAGUAR FRANCHISE
	E 101-41500-304	Legal Fees	\$201.50		TAX FORFEITURE
		Total RUPP, ANDERSON, SQUIRES, PA	\$5,696.88		
Paid Chk#	025529	4/11/2016	SMITH OIL CO		
	E 601-49400-212	Motor Fuels	\$87.02		
	E 602-49450-212	Motor Fuels	\$87.03		
	E 101-42200-212	Motor Fuels	\$65.50		FIRE DEPT
	E 101-43100-212	Motor Fuels	\$105.94		
	E 101-45200-212	Motor Fuels	\$45.40		
		Total SMITH OIL CO	\$390.89		
Paid Chk#	025530	4/11/2016	TECHSTAR IT SOLUTIONS		
	E 101-41400-437	Maintenance Contract	\$99.00	5575	MANAGED SERVICES
		Total TECHSTAR IT SOLUTIONS	\$99.00		
Paid Chk#	025531	4/11/2016	THOMAS, WESLEY		
	E 101-42200-207	Training Instructional	\$112.32		MILEAGE
	E 101-42200-207	Training Instructional	\$271.50		HOTEL
		Total THOMAS, WESLEY	\$383.82		
Paid Chk#	025532	4/11/2016	UNUM LIFE INSURANCE CO		
	G 101-21715	Life Ins	\$174.33		

CITY OF NORWOOD YOUNG AMERICA

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APRIL 2016

			Check Amt	Invoice	Comment
Total UNUM LIFE INSURANCE CO			\$174.33		
Paid Chk#	025533	4/11/2016			US POSTAL SERVICE
E	601-49400-350	Print/Publishing/Postage	\$130.46		
E	602-49450-350	Print/Publishing/Postage	\$130.46		
E	603-49500-350	Print/Publishing/Postage	\$130.47		
Total US POSTAL SERVICE			\$391.39		
Paid Chk#	025534	4/11/2016			UTILITY CONSULTANTS
E	602-49450-217	Lab Fees	\$587.60		
Total UTILITY CONSULTANTS			\$587.60		
Paid Chk#	025535	4/11/2016			VERIZON WIRELESS
E	602-49450-321	Telephone	\$177.27		
E	601-49400-321	Telephone	\$177.27		
E	101-42200-321	Telephone	\$611.87		FIRE DEPT ACCOUNT
E	101-43100-321	Telephone	\$184.45		
E	101-45200-321	Telephone	\$79.05		
Total VERIZON WIRELESS			\$1,229.91		
Paid Chk#	025536	4/11/2016			WASTE MANAGEMENT
E	101-41940-223	Repair/Maintenance Bldg/Ground	\$252.72		GARBAGE REMOVAL
Total WASTE MANAGEMENT			\$252.72		
Paid Chk#	025537	4/11/2016			XTREME ELECTRICAL
E	101-43100-221	Repair/Maintenance Equipment	\$29.74	16-7148	400 WATT LAMP
Total XTREME ELECTRICAL			\$29.74		
10100 CHECKING			\$21,423.33		

Fund Summary

10100 CHECKING	
101 GENERAL FUND	\$12,202.01
251 HARBOR AT PEACE	\$720.00
601 WATER FUND	\$5,543.33
602 SEWER FUND	\$2,750.02
603 STORM WATER UTILITY	\$130.47
810 Escrow - Vickerman phase 4	\$77.50
	\$21,423.33



City of Norwood Young America
310 West Elm Street, PO Box 59
Norwood Young America, MN 55368
www.cityofnya.com
952/467-1800

TO: Honorable Mayor Diedrick and Members of the City Council

FROM: Kelly Hayes, City Clerk / Treasurer

DATE: April 11, 2016

RE: Appointment of Katana Goldberg as Pool Manager

We received two applications for the Pool Manager position. On March 28, 2016, both applicants were interviewed by the Personnel Committee consisting of: Brent Aretz, Tina Diedrick, Steve Helget and myself. It is the recommendation of the Personnel Committee to appoint Katana Golberg as Pool Manager at a rate of pay of \$11.75 per hour.

RECOMMENDATION:

A motion to approve the appointment of Katana Golberg as Pool Manager for the West Carver Community Pool for the 2016 Season at a rate of pay of \$11.75 per hour.



City of Norwood Young America
310 West Elm Street, PO Box 59
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TO: Honorable Mayor Diedrick and Members of the City Council

CC: Steve Helget, City Administrator, Brent Aretz, Public Works Director

FROM: Kelly Hayes, City Clerk

DATE: April 11, 2016

RE: Accept resignation of Justin Wolff and authorize advertising for Public Works Operator I position

Justin Wolff, Public Works Operator, has accepted a new job. He submitted his letter of resignation on April 6, 2016. His last day of employment with the city will be April 27, 2016.

We wish Justin the best in his new endeavor.

Recommendation: **A motion to accept Justin Wolff's resignation from the City of Norwood America's Public Works Department with his last day of employment being April 27, 2016, and to authorize advertising the Public Works Operator I vacancy.**

Justin Wolff
6558 Kurtz Lane
Eden Prairie, MN 55346
P# 612-237-2838
e-mail:

4/6/2016

Brent Aretz
Public works director
Norwood Young America
310 Elm St. W.
Norwood Young America
Minnesota 55368

Dear Brent, Please accept this letter of my resignation from the city of Norwood Young America. My last day will be Wednesday April 27th.

I have recently received the news and offered a position with the city of Woodbury in their street division. The decision to leave was not easy but this opportunity is to exciting for me to decline, I understand my absence will be a burden on the city and the public works department.

It has been a pleasure working with you. I have learned valuable skills that I will use for years to come. I want to thank you for taking a chance on me and hiring me. I wish you and your staff all the best and I look forward to staying in touch

Sincerely,



Justin Wolff



TO: Honorable Mayor Diedrick and City Council Members

FROM: Steven Helget, City Administrator

DATE: April 11, 2016

SUBJECT: Ordinance No. 271, Jaguar Communications Cable Television Franchise

A public hearing has been scheduled for 6:30 pm on the proposed Ordinance No. 271, Jaguar Communications Cable Television Franchise (see enclosure).

At the July 13, 2015 regular City Council meeting, the Council approved a motion to commence the process to solicit other Cable Television franchise applications from different parties to include but not limited to Jaguar Communications. Jaguar submitted its application and the City has since been negotiating a Cable Television Franchise with them.

Representing Jaguar Communications at the Council meeting will be Jonathan Rodd, Director of Marketing & Sales, and Kristine Anderson, legal counsel. The City will be represented by Kelly Burns of Rupp, Anderson, Squires, and Waldspurger.

In accordance with Minn. Stat. § 238.081, Subd. 6, upon holding the public hearing, the Council must wait at least seven (7) days before adopting the franchise ordinance.

Suggested Motion:

Motion to table Ordinance No. 271, Jaguar Communications Cable Television Franchise, until the April 25, 2016 regular City Council meeting.

**CABLE FRANCHISE AGREEMENT BETWEEN
CITY OF NORWOOD YOUNG AMERICA AND
JAGUAR COMMUNICATIONS, INC.**

ORDINANCE NO. 271

AN ORDINANCE GRANTING A FRANCHISE TO JAGUAR COMMUNICATIONS, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF NORWOOD YOUNG AMERICA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS

Section 1. Short Title and Definitions

1.1 Short Title. This Franchise Agreement may be known and cited as the Jaguar Franchise.

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

- a) “Applicable Law” means any local law, or federal or state statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise Agreement.
- b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- c) “City” means the City of Norwood Young America, a municipal corporation, in the State of Minnesota, acting by and through its City Council.
- d) “City Code” means the Municipal Code of Norwood Young America, Minnesota.
- e) “City Council” means the Norwood Young America, Minnesota City Council.
- f) “Cable Communications System” or “Cable System” or “System” means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple Subscribers within a community, but

such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. 47 U.S.C. § 522.

- g) “Cable Communications Service” means:
 - (1) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and
 - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- h) “Class IV 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 System.
- i) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all signals included in the service subscribed for.
- j) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- k) “Expanded Basic Service” refers to the next tier of service above the Basic Cable Service tier excluding premium or pay-per-view services.
- l) “FCC” means the Federal Communications Commission and any legally appointed, designated, or elected agent or successor.
- m) “Fiber Optic” means a transmission medium of fiber optic cable capable of carrying cable service by means of electric lightwave impulses.
- n) “Franchise Fee” means any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such, consistent with terms set forth in Section 8 of this Agreement.
- o) “Grantee” is Jaguar Communications, Inc., a Minnesota corporation, its agents and employees, lawful successors, transferees, or assignees.

- p) “Gross Revenues” means any and all revenue derived by Grantee from the or in connection with the operation of the Cable System to provide Cable Services in the City. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, late fees, guides, home shopping revenue, installation and reconnection fees, upgrade and downgrade fees, advertising revenue, equipment rental fees, and lockout device fees. Gross Revenues shall not include refundable deposits, bad debt, investment income, capital contributions in aid of construction, and revenue derived from the delivery of data or other telecommunications services, franchise fees, PEG access grants, PEG access compensation recovery, nor any taxes, fees, or assessments of general applicability imposed or assessed by any governmental entity. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with generally accepted accounting principles.
- q) “Installation” means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- r) “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communications System.
- s) “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” shall include some evening hours, and least one night per week, and/or some weekend hours.
- t) “Normal Operating Conditions” mean 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 to the Cable System. Normal Operating Conditions as defined herein shall not be inconsistent with the definitions set forth in 47 C.F.R. § 76.309
- u) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio or video signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or other cable programming services.
- v) “PEG” means public, educational, and governmental. Reference to “access channels” shall mean “PEG access channels.”
- w) “Person” is any person, firm, partnership, limited liability entity or partnership, association, corporation, company, or other legal entity.
- x) “Service Area” means the entire geographic area that is within the City limits as it is now constituted or may in the future be constituted due to annexation of adjacent areas.

- y) “Service Interruption” means the loss of picture or sound on one or more cable channels for any amount of time.
- z) “Standard Installation” means any residential installation which can be completed using a Drop of 150 feet or less.
- aa) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the public right-of-way.
- bb) “Subscriber” means any Person who lawfully received Cable Communications Service. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant, or occupant.

Section 2. Scope of Franchise

2.1 Grant of Franchise. The City hereby grants to Grantee, a nonexclusive Franchise to install, conduct, operate, and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Franchise. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area. This franchise does not grant Grantee any right of eminent domain.

2.2 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.

The City authorizes the Grantee to occupy or use the Streets subject to (A) the provisions of this Franchise Agreement to provide Cable Services within the City; and (B) all provisions of the City Code. Notwithstanding the above grant to use the Streets, no Street shall be used by the Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created, dedicated, and exists, or with the present use of the Street.

2.3 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. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person’s financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such

pricing strategies as part of its business practice to the extent permitted under applicable law.

2.4 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 right-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. Should the Grantee fail to remove, adjust, or relocate its Facilities by the date established by the City'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 Minnesota Statutes section 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.

2.5 Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise Agreement and to assure uninterrupted service to each and all of its Subscribers, provided that such rules, regulations, terms, and conditions shall not be in conflict with provisions hereto, City Code, or other applicable law.

2.6 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.

2.7 Complimentary Service to City. At no charge to the City, the Grantee shall provide basic tier cable service to the following City entities: City Hall, Public Library, Sheriff's Deputy Office, Public Works Building, and Public Utilities Building.

2.8 Emergency Use by City. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an Emergency Alert System ("EAS") consistent with applicable federal law and regulation including 47 C.F.R., Part 11, and any applicable State or County Emergency Alert System Plan. In the case of an emergency or disaster, the Grantee shall, at the request of the City, make its System available to the City for providing information to the public regarding the emergency or disaster. The City shall have the authority to test the

system and if the system fails to perform, the Grantee shall immediately make all repairs, at Grantee's sole cost, and shall retest the system to demonstrate compliance.

2.9 Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise Agreement by reason of any failure of the City to promptly enforce compliance with this Franchise Agreement, nor does the City waive or limit any of its rights under this Franchise Agreement by reason of such failure or neglect.

Section 3. Construction Standards

3.1 Construction Standards.

- a) Within ninety (90) days of granting the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;
- b) Within ninety (90) days of granting the Franchise, the Grantee shall secure all necessary agreements and authorizations with appropriate corporations to utilize existing fiber optic cable for purposes of fulfilling this Agreement; and
- c) In accordance with Minnesota Statutes section 238.084(m), any required construction of the Cable System shall commence no later than 240 days after the Effective Date, shall proceed at a reasonable rate of not less than fifty (50) plant miles constructed per year of the Franchise Agreement term, and construction throughout the authorized franchise area must be substantially completed within five (5) years of granting the Franchise.

The above-stated requirements may be waived by the City only upon occurrence of unforeseen events or acts of God.

3.2 Construction Codes and Permits.

- a) Pursuant to applicable local law, the Grantee shall obtain all necessary permits from the City before commencing construction on its Cable Communications System, including the opening or disturbance of a Street, sidewalk, driveway, or public place. The Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to the construction, operation, or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property. In the event that Grantee fails to meet the conditions of such a permit, the City may seek remedies under this Franchise Agreement.
- b) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise Agreement and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise Agreement and applicable provisions of local, state, and federal law.

3.3 Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement,

relocation, operation, maintenance, or reconstruction of the System shall be promptly and fully restored by the Grantee, at its expense, to a condition as required by the City Code or if no standard is included in the City Code, to a condition as good as that prevailing prior to Grantee's work, as approved by the City in the case of Streets and other public property. If the Grantee shall fail to promptly perform the restoration required herein, the City shall have the right to put the Streets, public property, or private property back into good condition at the Grantee's expense.

3.4 Conditions on Street Use.

- a) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating, and/or altering any Street; constructing, laying down, repairing, maintaining, or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- b) All System transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys, and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys, and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and, upon request, the Grantee shall file with the City updates of such maps, plats, and permanent records annually if changes have been made in the System.

Upon the City's written request the Grantee shall provide a complete set of maps showing the routing of the Cable System plant and facilities in the Streets, but excluding detail on proprietary electronics or other proprietary information that is related to the Grantee's specific design of the Cable System contained therein and Subscriber Drops. The maps shall be provided in an electronic format acceptable to the City without the Grantee incurring unreasonable expense. The Grantee shall also provide plant map updates on a biannual basis in the event that additional plant has been constructed during that period.

- c) If at any time during the period of this Franchise the City shall elect to vacate, alter, or change the grade or location of any Street, alley, or other public way, the Grantee shall, at its own expense, upon reasonable notice by the City, remove and relocate System fixtures, and in each instance comply with the standards and specifications of the City. If the City provides reimbursement to other occupants of the Street, the Grantee shall be likewise reimbursed in accordance with the City's procedures and guidelines.
- d) The Grantee shall not place System fixtures above or below ground where the same will interfere with any gas, electric, telephone, water, or other utility fixtures and all such System fixtures placed in any Street shall be so placed as to comply with all requirements of the City.

- e) The Grantee shall, on request of any Person holding a moving permit issued by the City, temporarily move its fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee may require payment in advance and shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- f) Nothing contained in this Franchise Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities.

3.5 *Undergrounding of Lines.*

- a) In all areas of the City where all other utility lines are placed underground, the Grantee shall construct and install its cables, wires, and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
- b) The Grantee shall be granted access to any easements granted to a public utility, municipal utility, or utility district in any areas annexed by the City or new developments.

3.6 *Safety Requirement.*

- a) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- b) The Grantee shall install and maintain its System fixtures and other equipment in accordance with the applicable requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that they will not interfere with any installations of the City or of any public utility serving the City.
- c) All System structures and all System lines, equipment, and connections in, over, under, and upon the Streets, sidewalks, alleys, and public ways and places of the City, wherever situated or located, shall at all times be kept and maintained by the Grantee in good condition, order, and repair so that the same shall not be menace or endanger the life or property of any Person.

3.7 *Multiple Dwelling Unity ("MDU") Installations.*

- a) The Grantee shall comply with applicable federal and state law in installing and maintaining equipment and wiring serving residents of MDUs and shall, to the extent required by such laws, accommodate the residents' ability to choose among competing providers of Cable Services, without interference or unreasonable delay.

- b) The Grantee shall provide access to wiring leads controlled by a lockbox or similar device to another Grantee within twenty-four (24) hours of receipt of notice that said access is required. The Grantee reserves the right to impose reasonable security precautions on access to its property and its Cable System.

Section 4. Design Provisions

4.1 *Minimum Channel Capacity.*

- a) The Grantee shall provide a System utilizing equipment which is capable of delivering at least eighty (80) channels of programming.
- b) All programming decisions remain the sole discretion of the Grantee. Grantee shall notify the City and Subscribers in writing prior to any channel additions, deletions, or realignments. Written notice should be provided within forty-five (45) days but in no event fewer than twenty (20) days prior to any channel additions, deletions, or realignments.

4.2 *Operation and Maintenance of System.* The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 6 herein and shall occur during periods of minimum use of the System.

4.3 *Technical Standards.* The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Communications Systems pursuant to the FCC's rules and regulations found at 47 U.S.C. §§ 76.601 – 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Violation of applicable standards is subject to penalties contained in Section 9.4.

4.4 *FCC Reports.* The results of tests required to be filed by the Grantee with the FCC shall also be copied to the City.

4.5 *Nonvoice Return Capability.* Grantee is required to use fiber optic having the technical capacity for nonvoice return communications.

4.6 *Lockout Device.* Upon the request of a Subscriber, the Grantee shall provide by sale or lease a Lockout Device.

Section 5. State Mandated Franchise Terms

5.1 *General Provisions.*

- a) **Compliance with Minnesota Statutes.** It shall be unlawful for any Person to construct, operate, or maintain a Cable Communications System in the City unless such Person or

the Person for whom such action is being taken shall have first obtained and shall currently hold a valid cable communications franchise. This Franchise shall comply with all provisions contained in Minnesota Statutes Chapter 238, and as amended.

- b) **Conformance with State and Federal Laws and Rules.** If any federal or state law or regulation shall require or permit the City or the Grantee to perform any service or act or shall prohibit the City or the Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. The Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and 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 on the date fifteen (15) years after the Effective Date. 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 Agreement 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 considers it to be in the public interest that residents of the City have alternatives in service and providers, and intends by granting this and other franchises and by the terms hereof to foster fair competition among providers and to inhibit anti-competitive practice by the Grantee and other providers. The City has granted a similar franchise to another Cable Service provider. The City reserves the right to grant a similar franchise to another Cable Service provider at any time during the period of this Franchise, consistent with Minnesota Statutes section 238.08, subdivision 1(b) and 47 U.S.C. § 541. Grantee acknowledges and accepts the existence of one or more competing providers of Cable Services in the City, and agrees to compete fairly and to refrain from engaging in anti-competitive practices.
- 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 section 238.083 shall occur without the approval of the City, conditioned that the sale or transfer is completed consistent with Minnesota Statutes section 238.083. Said approval shall not be required where the Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

The City shall have thirty (30) days from the receipt of the request and all applicable exhibits to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the Grantee's Subscribers

resulting from the sale or transfer. If a public hearing is deemed necessary, such hearing shall be commenced within sixty (60) days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time, and place of the hearing and shall briefly state the substance of the action to be considered by the City.

Within one hundred twenty (120) days of receipt of transfer request, unless the Grantee agrees to an extension of time, the City shall approve or deny in writing the sale or transfer request. The City shall set forth in writing with particularity its reason(s) for denying approval. The City shall not unreasonably withhold its approval.

The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest. In no event shall a transfer or assignment of ownership be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

If allowed under state and federal law, Grantee shall pay all of the 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. The City shall have the right of first refusal of any bona fide offer to purchase the 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 four (4) 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 as the City deems appropriate.
- g) **Public Inspection.** The Grantee shall make available for public inspection: (1) the current Subscriber charges; (2) the length and terms of residential Subscriber contracts; 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. The administrator or other City designees shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise Agreement. The City may issue such reasonable rules and regulations concerning the construction, operation, and maintenance of the System as are consistent with the provisions of the Franchise Agreement and law.

- 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”) during the term of the Franchise Agreement 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.

In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:

- (1) Promptly notify the Grantee in writing of any claim or legal proceeding which gives rise to such right;
- (2) Afford the Grantee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding; and
- (3) Fully cooperate with reasonable requests of the Grantee, at the Grantee’s expense, in its participation in, and control, compromise, settlement, or resolution or other disposition of such claim or proceeding.

It shall be the obligation of the Grantee to promptly notify the City of any pending or threatened litigation that would be likely to adversely affect the City.

- j) **Insurance.** The Grantee shall carry insurance, and provide to the City original insurance certificates signed by insurance agent 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 \$1,500,000 for personal injury or death of any one Person, \$3,000,000 for personal injury or death of two or more Persons in any one occurrence, \$1,500,000 for property damage to any one Person, and \$1,500,000 for property damage resulting from any one act or occurrence.
- (2) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$500,000 per accident.
- (3) 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 \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease for 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 the Grantee self-insures, the Grantee shall certify annually that it has met all of the State of Minnesota requirements for self-insuring. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) days advance written notice has been provided to the City.

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 sixty (60) 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.**

- (1) At the time the Franchise agreement becomes effective and thereafter until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a performance bond, irrevocable standby letter of credit, certificate of deposit, or other type of instrument approved by the City in an amount as the City reasonably deems to be adequate compensation for damages resulting from the Grantee's nonperformance. The City may, from year to year and in its sole discretion, reduce the amount of the performance bond or instrument.
- (2) At the time of acceptance of this Franchise Agreement, the Grantee shall deliver to the City a cash deposit, performance bond, or an irrevocable and unconditional Standby Letter of Credit, in form and substance acceptable to the City, from a National or State bank approved by the City, in the amount of \$10,000. Interest on the deposit shall accrue to the Grantee. In addition to the requirements of this Section and based upon the Grantee's ongoing performance in restoring the City's Streets in compliance with all permits issued by the City, the City reserves the right to impose additional security obligations upon the Grantee. The City may require the Grantee to provide a deposit in the form of a certified check, a surety bond, or corporate undertaking in favor of the City for any expense incurred by the City in repairing of damage to any portion of the City Streets caused by work performed under a permit.

- (3) The performance bond or Letter of Credit shall provide that funds will be paid to the City, upon written demand of the City, and in an amount reasonably determined by the City in payment for penalties charged pursuant to this Franchise Agreement, in payment for any monies owed by the Grantee to the City or any Person pursuant to its obligations under this Franchise Agreement, or in payment for any damage incurred by the City or any Person as a result of any acts or omissions by the Grantee pursuant to this Franchise Agreement. The City shall be permitted to take necessary action to collect on the security.
- (4) At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of the City, is necessary to cure the alleged violation) following receipt of notice as prescribed in Section 9.1, provided the Grantee remains in violation of one or more terms, conditions, or provisions of this Franchise Agreement, in the sole opinion of the City, the City may draw from the performance bond or Letter of Credit all penalties and other monies due the City from the date of the local receipt of notice.
- (5) Whenever the performance bond or Letter of Credit is drawn upon, the Grantee may, within seven (7) days of such draw, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by the Grantee. All penalties shall continue to accrue from the performance bond or Letter of Credit during any appeal pursuant to this Section. The City shall hear the Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter. In the event the City determines that no violation has taken place, the City shall refund to the Grantee, with interest, all monies drawn from the performance bond or Letter of Credit by reason of the alleged violation.
- (6) If said performance bond or Letter of Credit or any subsequent performance bond or Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise Agreement, it shall be renewed or replaced during the term of this Franchise Agreement to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise Agreement. The renewed or replaced performance bond or Letter of Credit shall be in the same form and with a bank authorized herein and for the full amount stated in this Section.
- (7) If the City draws upon the performance bond or Letter of Credit or any subsequent performance bond or Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the City a like replacement performance bond or Letter of Credit or certification of replenishment in the amount of \$10,000 as a substitution of the previous performance bond or Letter of Credit. This shall be a continuing obligation for any draws upon the performance bond or Letter of Credit.
- (8) If any performance bond or Letter of Credit is not so replaced or replenished, the City may draw on said performance bond or Letter of Credit for the whole

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

- (9) The collection by the City of any damages, monies, or penalties from the performance bond or Letter of Credit shall not affect any other right or remedy available to the City, nor shall any act, or failure to act, by the City pursuant to this performance bond or Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise Agreement or otherwise.
- (10) In addition to recovery of monies owed by Grantee to the City or any person or damages to the City or any Person as a result of any acts or omissions by the Grantee pursuant to this Franchise Agreement, the City in its sole discretion may charge to and collect from the performance bond or Letter of Credit the penalties contained in Section 9. Each violation of this Section shall be considered a separate violation for which a separate penalty may be imposed.
- l) **No Relief from Liability.** Nothing in the Franchise Agreement 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) **System Capacity and Technical Design.** See Section 4.1.
- o) **Permits.** See Section 3.
- 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 City Code and other 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 Grantee'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. All procedures completed under this provision shall comply with City Code.

- 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 FCC's rules and regulations relating to cable communications systems and found at 47 C.F.R. §§ 76.601 to 76.617, as amended. The results of tests required by the Federal Communications Commission shall 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 City shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by the City. In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within the Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond the Grantee's reasonable control then the cost of said test shall be borne by the City.

- t) **Subscriber Privacy.** No signals of a Class IV 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 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 shall 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 provision (t)(1) of this Section.

- u) **Complaint Resolution Procedure.** See Section 6.
- v) **Receipt of Complaints.** See Section 6. Grantee shall immediately provide a consumer complaint telephone number at the City to subscribers that request the consumer complaint number.
- w) **Franchise Termination.** The City has the right to revoke, terminate, or cancel the Franchise Agreement and the rights and privileges of the Franchise Agreement 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 Agreement and shall allow the Grantee a minimum of thirty (30) days after service of the notice in which to correct the violation. The City shall provide the Grantee with the basis for revocation, termination, or cancellation.

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

- x) **Abandonment.** No Person operating a Cable Communications System, notwithstanding any provision in the Franchise Agreement, may abandon a Cable Communications System or a portion of it without having given ninety (90) days prior written notice to the City. 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 Agreement, 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 within twelve (12) months after the City gave written demand for removal, the Grantee will be subject to the procedures of applicable local law and the City shall have the right

to declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

- z) **Access Channels.** The Grantee shall provide three (3) channels to be used for public, educational, or government programming.
 - (1) The Grantee shall provide to each of its subscribers who receive Cable Service offered on the system, reception on at least one specially designated access channel.
 - (2) The Grantee shall establish rules for the administration of Access Channels, unless the Access Channel(s) is administered by the City.
- aa) **PEG Support.** 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.
- bb) **Minimum Channel Capacity.** See Section 4.1.
- cc) **Regional Channel 6.** The VHF Channel 6 is designated for uniform regional channel usage as required in Minnesota Statutes section 238.02, subdivision 31(c), and Minnesota Statutes section 238.43.

5.2 Definitions. The definitions included in Section 1 of the Franchise Agreement shall control. For any terms not included in Section 1, 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 6. Customer Service Standards

6.1 Subscriber Inquiry and Complaint Procedures.

- a) The City hereby adopts the customer service standards set forth in 47 C.F.R. § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects.
- b) The Grantee shall maintain a convenient bill payment location or online access for matters such as receiving Subscriber complaints, handling Subscriber payments and billing questions, resolving equipment malfunction and replacement, and providing customer service information. The Grantee shall assign a trained cable technician to the City who shall respond within the time parameters prescribed in Section 6. The Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

- c) The Grantee will maintain a local or toll-free 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.
- d) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
- e) The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- f) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- f) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- h) All Subscribers and members of the general public may direct complaints regarding the Grantee's Service or performance to the City Administrator or his designee.

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

- a) Standard installations will be performed expeditiously, with a goal of being performed within thirty (30) business days after an order has been placed, assuming the System has been fully constructed. "Standard" installations are those that are located up to 125 feet from the existing distribution system. Normal Operating Conditions presume that weather is acceptable for construction to occur; and, delays occasioned by uncontrollable weather conditions that render construction unwarranted, unsafe, or impossible are excluded from Grantee's service installation requirements. Normal Operating Conditions exclude Grantee's initial fiber optic overlay construction and initial fiber-to-the-home construction; and, Grantee is specifically permitted to engage in presale activities prior to and while undergoing initial construction within any part of the City.
- 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) Under normal circumstances, 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.
- f) The Grantee shall bear the costs in making adjustments, repairs, or normal installations when such matters are not the result of Subscriber choices or damage. Subscribers shall bear the cost of adjustments, repairs, and extra-normal installations that are the result of non-standard choices made by the Subscriber or are the result of Subscriber-caused damage.
- g) The Grantee shall cooperate with Subscribers and with any other provider of Cable Services within the City, in accommodating changes of Cable Service, so that Subscribers will be free to choose providers without interference or delay from the Grantee. A Subscriber may notify the Grantee of the desire to terminate or change service orally or in writing, and the Grantee shall not require any particular form of such notice. Upon being notified of such desire, the Grantee shall terminate the Subscriber's service as soon as commercially practicable and shall promptly make arrangement with the Subscriber for any necessary service call to accommodate the termination of its Cable Service and the changeover to another service provider in the event that such a service call is necessary. The Grantee shall terminate its Drop in accordance with FCC requirements. The Grantee shall accept a return of any Converter or other equipment furnished to the Subscriber by the Grantee, regardless of the manner of delivery, and shall promptly issue any refund or credit to which the Subscriber may be entitled.

6.3 *Refund and Credits.*

- 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) If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twelve (12) or more consecutive hours, the Grantee shall automatically credit each Subscriber pro rata for such interruption. Credit shall appear on the next billing cycle.

- c) In the event a Subscriber establishes or terminates service and receives less than a full month's service, the Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.
- d) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

6.4 Billing.

- a) Consistent with 47 C.F.R. § 76.1619, bills shall be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. Bills shall not be misleading or omit material information. Notwithstanding anything to the contrary in this Section, the Grantee may consolidate costs on Subscriber bills as may be permitted by Section 622(c) of the Cable Act at 47 U.S.C. § 542(c).
- b) In the case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- c) The Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee, or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce the Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.
- d) Subject to the privacy provisions of 47 U.S.C. § 521 et seq., the Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of the Grantee. Upon request, the Grantee shall provide the City with a written summary of such complaints and their resolution.

6.5 Subscriber Contracts. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of the Grantee's current subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee's Subscriber contracts shall be uniform in terms and conditions applicable to each class of Subscribers and Cable Services.

6.6 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.
- b) The Grantee shall not exercise deceptive sales procedures when marketing its Cable Television Services within the City. The Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulations.

6.7 *Information to the City.*

- a) The Grantee shall, upon request, provide the City with information which shall describe in detail the Grantee's compliance with each and every term and provision of this section.
- b) The Grantee shall, upon request, provide the City with any standard form residential Subscriber contract utilized by the Grantee. If no such written contract exists, the Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.

6.8 *Rate and Service Changes.*

- a) Customers will be notified of any changes in rates, programming services, channel positions, or other information as required by Section 6.6. Grantee shall give customers written notice within forty-five (45) days but in no event fewer than twenty (20) days of the change.
- b) In addition to the requirement of paragraph (a) of this Section regarding advance notification to Subscribers of any changes in rates, programming services, or channel positions, the Grantee shall give written notice within forty-five (45) days but in no event fewer than twenty (20) days to both Subscribers and the City before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs, or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee shall identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

- (1) The 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 within forty-five (45) days but in no event fewer than twenty (20) days before any proposed increase is effective. The notice should include the name and address of City Administrator. When possible, the Grantee shall provide written notice to the City of any increase in price at least sixty (60) days before any proposed increase is effective.
- (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.
- (3) Notwithstanding any other provision of this section, the 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.

6.9 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. In exercising its jurisdiction to regulate any such rates, the City will adhere to regulations adopted by the FCC at 47 C.F.R. § 76.900, et seq. as amended from time to time.

Section 7. Public Access Provisions

7.1 Public, Educational, and Government (“PEG”) Access.

- a) The City or its designee is hereby designated to operate, administer, promote, and manage PEG access to the Cable System established pursuant to this Section 7.
- b) The Grantee shall dedicate three (3) channels for PEG access use as follows: the public access channel shall be on Channel [XX], the educational access channel shall be on Channel [XX], and the government access channel shall be on Channel 6. The City may, upon ninety (90) days advance written request to the Grantee, require that the Grantee provide a fourth PEG channel which shall be located by mutual agreement of the City and the Grantee. All residential Subscribers who receive all or any per of the total services offered on the System shall be eligible to receive all of said PEG access channels at no additional charge.
- c) The Grantee shall monitor the PEG channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG channels; provided, however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. The PEG channels must be receivable by Subscribers without special expense other than the expense required to receive Basic Cable Service. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service.

- d) The Grantee shall also maintain activated two-way capability in the connections serving the Norwood Young America City Hall and Central High School solely for the purpose of transmitting PEG access programming to the Grantee's headend for retransmission to all Subscribers on the System.
- e) The Grantee shall provide a two-way fiber connection to facilitate the exchange of programming to/from Grantee's headend, including live cablecast programming from City Hall and Central High School. The Grantee shall also provide fiber connections from the following locations to City Hall to facilitate live cablecast programming to be controlled by the playback equipment at City Hall: Central Elementary School, Central High School, and Pavilion.
- f) The Grantee shall be responsible for programming the public access channel provided under this Franchise. The Grantee will provide at its sole cost all required playback equipment to allow residents and Subscribers to submit public access programming to be carried on Channel [XX]. These programming submissions may be in the form of VHS taps, DVDs, mini DVDs, MPEG, or other commonly accepted industry format. The Grantee shall maintain a reasonable and convenient location in the City open during Normal Business Hours to permit such programming submissions. The City shall have no responsibility for the public access channel but the City shall have input on any rules governing the public access channel as developed by the Grantee. The Grantee shall provide the public access channel free of charge to the City and Subscribers except for the standard cost of subscribing to the Basic Service tier of programming offered on the Grantee's Cable System. At any time during the term of this Franchise Agreement, the City may, upon a minimum of ninety (90) days advance written notice to the Grantee, assume control of the public access channel and playback obligations and the Grantee shall fully cooperate in such change of control. If the City chooses to locate public access playback facilities at the City Hall or Central High School, the Grantee shall, free of charge, ensure that the fiber connections to such locations can facilitate the additional programming to be distributed to the Grantee's headend.
- g) It shall be the responsibility of the City to provide premise equipment to facilitate governmental access programming and telecasts. Such equipment may consist of cameras, microphones, lights, editing and playback equipment, and other equipment as necessary. The Grantee shall be responsible for the distribution of the PEG channels after the signal leaves the City Hall or Central High School. Both the City Hall and Central High School shall have a designated demarcation point, often referred to as a fiber patch panel, at the location where the Grantee's fiber enters each building. Any and all costs associated with any PEG access channels or signals after the PEG access channels/signals leave the City Hall or Central High School demarcation point shall be provided free of charge by the Grantee to the City and Central High School. The Grantee will provide at no cost to the City or Central High School, two permanent encoders that the City may use for governmental and educational access programming. The Grantee shall also provide and maintain one additional portable encoder for use by the City at any other location. The Grantee shall maintain and replace said encoders throughout the term of this Franchise Agreement.

- h) The Grantee shall provide the PEG channels as part of the Basic Cable Service, viewable by Subscribers without the needs for additional equipment beyond that required to receive the Basic Cable Service.
- i) At such time as the Grantee converts its Basic Cable Service tier from an analog to digital format, the City's PEG channels will continue to be carried along with the programming on the Basic Cable Service tier, or said equivalent. Such PEG channels shall be accessed by Subscribers through use of standard digital equipment compatible with Grantee's Cable System.
- j) In the event the City and the Grantee mutually agree to the relocation of the PEG channels from their present channel locations (Channels 6, [XX], [XX]), the City and the Grantee agree that the PEG channels will be located reasonably close in proximity to other broadcast channels and/or other commercial video channels, excluding pay service programming. The Grantee agrees that PEG channels immediately below Channel 1 are not considered in reasonably close proximity. The Grantee agrees not to encrypt the PEG channels any differently than other commercial channels available on the system.

7.2 Access Capital Grant. The City reserves the right to require the Grantee to collect on behalf of the City a per Subscriber fee initially set at \$.50 per month, which may be increased to a maximum of \$1.50 per month by vote of the City Council after notice and an opportunity to be heard is afforded to the public solely to fund PEG access-related capital expenditures (hereafter "Access Fee"). Any increase in the Access Fee by the City shall occur only once every two (2) years upon approval of the City Council and upon ninety (90) days advance written notice to the Grantee. The Access Fee is not part of the Franchise Fee required in Section 8 herein, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other applicable law.

7.3 Access Compensation. The Grantee shall provide \$10,000 to the City within thirty (30) days of the Effective Date of this Franchise Agreement for purposes of acquiring, maintaining, operating, and upgrading PEG equipment. Grantee may recover the Access Compensation in accordance with the applicable law provided, however, that Grantee agrees to only recover the Access Compensation from Subscribers over a period of ten (10) years in recognition of the parties' shared desire to minimize the rate impact on Subscribers.

Section 8. Compensation and Auditing

8.1 Amount of Compensation. Grantee shall pay as a Franchise Fee in accordance with Section 622 of the Cable Act to the City, throughout the duration of this Franchise, of three percent (3%) of Grantee's Gross Revenues, as defined in Section 1.2(p). The City shall have the right to increase the Franchise Fee to an amount determined by the City Council or to take full advantage of the maximum amount permitted by the FCC. Any increase of the Franchise Fee shall be approved by City Council.

8.2 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 5.1(f) and 8.6.
- 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, or Force Majeure.

8.3 *Payments and Quarterly Reports.*

- a) **Payments.** The Grantee's Franchise Fee payments to the City shall be computed quarterly following the Effective Date of this Franchise Agreement. Payments shall be due and payable within thirty (30) days following the end of each calendar quarter.
- b) **Quarterly Reports.** Each Franchise Fee payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of the 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.

8.4 *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 three percent (3%) per annum computed monthly, and if so paid with interest within thirty (30) days of due date, shall not constitute an event of default.

8.5 *Franchise Fee is Not a Tax.* The Grantee acknowledges and agrees that the Franchise Fees payable by the Grantee to the City pursuant to this Section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.

The Grantee shall not apply or seek to apply all or any part of any taxes, fees, or assessments of general applicability levied or imposed by the City (including any such tax, fee, or assessment imposed by the City or cable operators or their services) or that do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by the Grantee to the City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of the Grantee.

8.6 *Audits.*

- a) All amounts shall be subject to audit and recomputation by the City. 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 four (4) years of the date payment was due.

- b) Upon reasonable prior written notice, the City shall have the right to inspect, upon reasonable notice, at any time during Normal Business Hours, those records maintained by the Grantee which related to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the City which are reasonably necessary to monitor and enforce the Grantee's compliance with the provisions of this Franchise. All such documents pertaining to financial matters that may be the subject of inspection by the City shall be retained by the Grantee for a minimum period required by applicable laws. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliated entity, or third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of the Grantee's offices more convenient to the City or its duly authorized agent.
- c) 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 "Finally Settled 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.
- d) 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.

8.7 *Proprietary Information.* The Grantee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without the City obtaining its own copies of such books and records. Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable non-disclosure agreement. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for the City's monitoring and enforcement of Franchise obligations are provided to the City. To the extent that the Grantee insists that records must be reviewed outside of the City, and the City's designated representative(s) must travel or otherwise incur costs to be able to review such information, the Grantee shall pay all reasonable, itemized travel costs incurred by the City's representative(s) traveling from the City to such designated locations. To the extent that the Grantee does provide books or records directly to the City, the City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by applicable law. The Grantee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary.

8.8 *Reports to be Filed with the City.* The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions, or property, as they relate to the System, which Grantee and the City may in good faith agree upon taking into consideration the Grantee's need for the continuing confidentiality as prescribed herein. Neither the City nor the Grantee shall unreasonably demand or withhold information requested pursuant to this Section.

Section 9. Enforcement and Penalties

9.1 *Notice and Opportunity to Cure.* In the event the City believes that the Grantee has not complied with the material terms of the Franchise Agreement, 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 the Grantee in an attempt to resolve the issue through good faith consultation in the ordinary course of business. The City delegates to the Cable Administrator the authority to make initial determinations regarding noncompliance with the Franchise Agreement and to issue written notice of any alleged violations. Unless otherwise agreed upon by the parties in writing, the Grantee shall have thirty (30) days from the date of the notice to cure the alleged noncompliance (the "Cure Period"). If the Grantee intends to cure the alleged noncompliance, but is unable to within the Cure Period, the 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.

9.2 *Dispute Resolution.* If either party asserts that the other party is in default in the performance of any obligation herein, the complaining party shall notify the other party of the default and desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the

dispute is not resolved within thirty (30) days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Franchise Agreement or for such other relief as may be permitted by law or equity.

9.3 Remedies for Non-Compliance. The Carver 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 Agreement, and the assessment of liquidated damages.

a) Liquidated Damages.

(1) Amounts of Liquidated Damages. Because the Grantee's failure to comply with provisions of the Franchise Agreement will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and the 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 the 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. 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 the Grantee of a financial obligation, but shall be in addition to any such actual performance.

(2) In the event the City assesses liquidated damages, the Grantee shall have thirty (30) days to pay the damages assessed. If the Grantee does not pay the damages assessed within thirty (30) days, the City in its sole discretion may collect the damages from the security prescribed in Section 5.1(k).

(3) The 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 10.5.

b) Liquidated damages shall be assessed commencing on the date Grantee received notice as provided for in Section 10.6 as follows:

(1) For violation of applicable Subscriber service standards:

(A) For failure to maintain a local or toll-free call line consistent with Section

- 6.1: \$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 6.1: \$250 per day for each day or part thereof that such violation continues;
 - (C) For failure to answer Subscriber calls as required by Section 6.1 of the Franchise Agreement, 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 \$2,000 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, the Grantee shall pay the City \$4,000 each quarter. Nothing in this Section is intended to increase or modify the Grantee's reporting requirements under the Franchise;
 - (D) For violations of Subscriber privacy pursuant to Section 5.1(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 6.3: \$50 per day for each day or part thereof that such violation continues;
 - (F) For failure to provide written information consistent with Section 6.5: \$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 6.6: \$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 5.1(g): \$50 per day for each day or part thereof that such violation occurs;
 - (I) For any other failure of subscriber service standards: \$100 per day for each day or part thereof that such violation occurs; and
- (2) For violation of applicable operational standards:
- (A) For transfer of the Cable System without first seeking the City's approval under Section 5.1(e) in a manner consistent with federal regulations: \$500 per day for each day or part thereof that such violation continues;
 - (B) For failure to supply PEG access channels required by Section 5.1(z): \$500 per day for each day or part thereof that such violation continues.
 - (C) For failure to maintain insurance under Section 5.1(j) or security under Section 5.1(k): \$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 45 days of identification of noncompliance in reports filed with the FCC pursuant to 47 C.F.R. §§ 76.601 – 76.617: \$500 per day for each day or part thereof that such violation continues.
- (4) For all other material violations of the Franchise: \$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 the 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 9.3, that any material breach has not been cured by the Grantee, irrespective of the number of subscribers affected.

- c) 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 Agreement or applicable law.
- d) Except as otherwise provided in Section 9.3, 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 9 of this Franchise Agreement, the remedies provided for in this Franchise Agreement, are cumulative and not exclusive, the exercise of one 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 Agreement shall not be construed as a limit on the liability of the Grantee under the Franchise Agreement or an excuse of faithful performance of any obligation of the Grantee.
- f) 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) 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 percent (5%) of Grantee's Gross Revenues in any twelve (12) month period.

Section 10. Miscellaneous Provisions

10.1 Work Performed by Others. All provisions of this Franchise Agreement shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise.

10.2 Amendment of Franchise. Any amendment to this Franchise Agreement shall only be effective upon written acceptance by the Grantee. The City shall act pursuant to the provisions of this Franchise Agreement.

10.3 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 Agreement shall not be affected, except as is otherwise provided in this Franchise Agreement.

10.4 Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in Carver County District Court, and if in the federal courts, in the United States District Court for the District of Minnesota.

10.5 Force Majeure. The 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 the Grantee to perform its obligations hereunder if such failure or delay is caused by factors beyond the control of the 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 the Grantee's capacity to perform, then the 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, the 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.

10.6 Written 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:
Jaguar Communications, Inc.
Attn: Kristine Anderson
213 South Oak Avenue
Owatonna, MN 55060
- b) Notices to the City shall be mailed to:
City of Norwood Young America
Attn: City Administrator
310 Elm St W
PO Box 59
Norwood Young America, MN 55368
- c) Nonbinding courtesy copy shall be mailed to:
Rupp, Anderson, Squires & Waldspurger
Attn: Jay Squires
333 S 7th St Ste 2800
Minneapolis, MN 55402
- d) The Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Grantee and whose acts will be considered to bind the Grantee.

10.7 Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing, and legal changes during the term of this Franchise Agreement. Therefore, in order to provide for a maximum degree of flexibility in this Franchise Agreement, and to help achieve a continued, advanced, and modern System, the following evaluation provisions shall apply:

- a) The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to the Grantee, provided, however, there shall not be more than one review session during each three (3) year period commencing on the Effective Date of this Franchise.
- b) All evaluation sessions shall be open to the public and notice of sessions published in the same was as a legal notice. The Grantee shall notify its Subscribers of all evaluation sessions by announcement on at least one Basic Service channel of the System between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days preceding each session.
- c) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies, and any other topics the City and the Grantee deem relevant.
- d) As a result of a periodic review or evaluation session, the City and the Grantee shall develop such changes and modifications to the terms and conditions of the Franchise, as

are mutually agreed upon and which are both economically and technically feasible.

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

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

10.10 *Binding Acceptance.* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns.

10.11 *Governing Law.* This Franchise Agreement shall be governed in all respects by the law of the State of Minnesota.

10.12 *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.

JAGUAR COMMUNICATIONS, INC.

Date: _____
_____ Representative

CITY OF NORWOOD YOUNG AMERICA

Date: _____
_____ Mayor

Date: _____
_____ City Administrator



TO: Honorable Mayor Diedrick and City Council Members
Steve Helget, City Administrator

FROM: Brent Aretz, Public Works Director

DATE: April 11, 2016

SUBJECT: 2016 Ditch or Pond Clean-up

The following is a list of ditch areas and storm ponds proposed to be cleaned out this year. The order in which they are listed may not be followed exactly due to weather and staff availability. Some areas may be completed this spring and the rest completed later this year in the fall or winter. Enclosed is a map identifying the storm water mains and ditches located throughout the community.

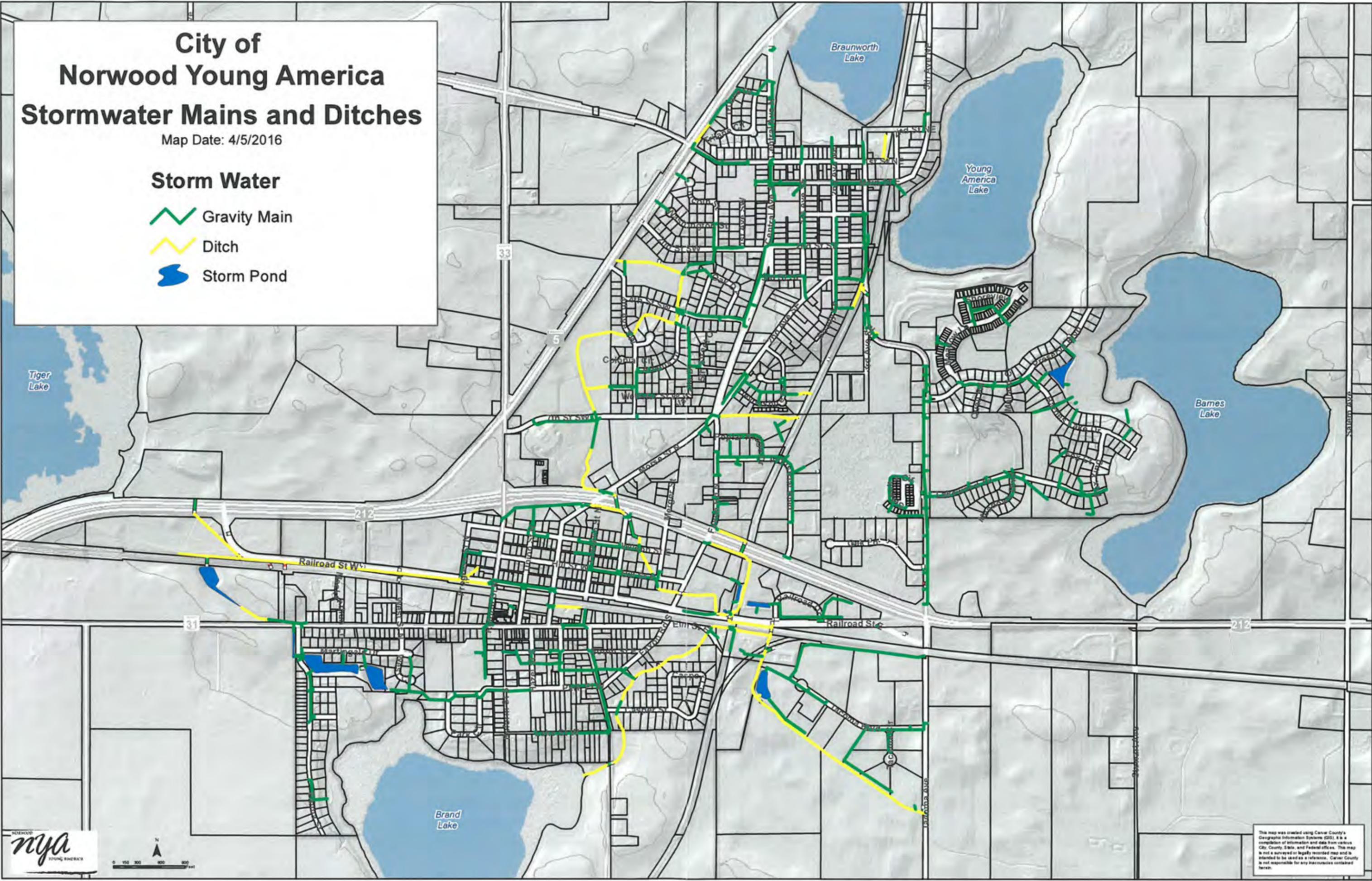
1. The culvert Dairy Queen Culvert trail that leads to Elementary School needs to be lowered 18" that will lower the water north to Friendship Park.
2. Five way stop east along tree line to culvert
3. Railroad Street where goes under Railroad Tracks across from The Haven.
4. Inlet and outlet pond at The Haven and The Harbor
5. Inlets and outlets from Peace Villa to Hwy 212 where possible
6. Southwest 7th Street to Webster Street
7. Friendship Park from Hwy 5 to 4th Ave S.W.
8. Martingale ponds inlet and outlet
9. Railroad Street from Reform Street to city limits west
10. Inlet and outlet Lakewood Trail and Fox Circle
11. County Road 31 to Railroad Tracks inlet and outlet
12. Morse Street East to Franklin Street
13. Raise a sanitary sewer manhole on Webster Street for WWTP

City of Norwood Young America Stormwater Mains and Ditches

Map Date: 4/5/2016

Storm Water

-  Gravity Main
-  Ditch
-  Storm Pond





TO: Honorable Mayor Diedrick and City Council Members
FROM: Steven Helget, City Administrator
DATE: April 11, 2016
SUBJECT: Resolution 2016-05, Resolution Setting a Public Hearing on a
Vacation

At the March 28, 2016 regular City Council meeting, the Council approved a site plan as submitted by Vickerman Company. Proposed with the expansion of Vickerman's building is to reconfigure the existing storm water pond. On the original Tacoma West Industrial Park plat a drainage and utility easement is identified for the pond. A new utility & drainage easement is to be created with a new legal description depicting the location of the new pond. Proposed is to schedule a public hearing for April 25th at 6:30 pm for the purpose of considering vacating the current drainage & utility easement.

Suggested Motion:

Motion to approve Resolution 2016-05, Resolution Setting a Public Hearing on a Vacation.



This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible for any inaccuracies contained herein.

Map Date: 4/7/2016



RESOLUTION 2016-05

A RESOLUTION SETTING A PUBLIC HEARING ON A VACATION

The City Council of the City of Norwood Young America, Minnesota does hereby resolve as follows:

WHEREAS, the City Council pursuant to Minnesota Statute §412.851 desires to consider the vacation of a part of the drainage and utility easement located on Lot 1, Block 2, Tacoma West Industrial Park,

NOW THEREFORE, BE IT FURTHER RESOLVED by the City Council of Norwood Young America, Carver County, Minnesota:

1. The Council will consider the vacation of such easement and a public hearing shall be held on such proposed vacation on the 25th day of April, 2016, before the City Council in the City Hall Council Chambers located at 310 Elm Street W., Norwood Young America at 6:30 pm.
2. The City Clerk is hereby directed to give published, posted and mailed notice of such hearing as required by law.

Adopted by the City Council this 11th day of April, 2016.

Tina Diedrick, Mayor

ATTEST:

Kelly Hayes, City Clerk/Treasurer



TO: Honorable Mayor Diedrick and City Council Members
Steve Helget, City Administrator

FROM: Brent Aretz, Public Works Director

DATE: April 11, 2016

SUBJECT: 2016 Crack Sealing and Seal Coating Proposals

Bargen Inc. was solicited to provide a bid for performing the crack sealing on city streets again this year. The total cost of their proposal is \$8,300 for the following streets:

Tri Lane Drive
Tri Lane Circle
Main Street East
5th Ave. NE.
1st Ave SE
1st Street SE
2nd Street se
3rd Street SE
2nd Street SW
2nd Ave SW
Washington Street
Lincoln Street
Devonshire Drive
Muirfield Circle
Poplar Ridge Drive
Faxon Road from the RR tracks to Oak
Fox Court

In respect to past seal coating projects, enclosed is a map identifying the streets and years where sealing coating was completed. In addition, enclosed is a map identifying the streets proposed to be seal coated in 2016. Proposed is hire Bargen Inc. to apply the RePlay Agricultural Oil Seal to the streets that were included in the 2013 mill and overlay project. Since Bargen is an exclusive distributor of this product, no other companies were solicited. Bargen's proposal is to complete 62,361 yards at \$1.50/yard with a total cost of \$93,541.50.

Proposed is to also seal coat some streets utilizing rock material. The City has stockpiled rock from past seal coat projects that can be utilized again. Three companies were solicited from to provide bids for performing the project. The proposals received are as follows:

Pearson Bros. Inc.	\$0.98 per square yard
Caldwell Asphalt Company	\$1.33 per square yard
Allied Blacktop Company	\$1.46 per square yard

Lastly, proposed is to seal coat the trail located along Tacoma Avenue (County Road 34) commencing on the north end. Proposed is to hire Bargaen Inc. to apply the RePlay Agricultural Oil Seal at a cost not to exceed \$6,000. In order to stay within budget, the entire trail will not be completed this year.

Suggested Motions:

Motion to approve Bargaen, Inc. bid to complete street crack sealing.

Motion to approve Bargaen, Inc. bid to complete street seal coating.

Motion to approve Pearson Brothers, Inc. bid to complete street seal coating.

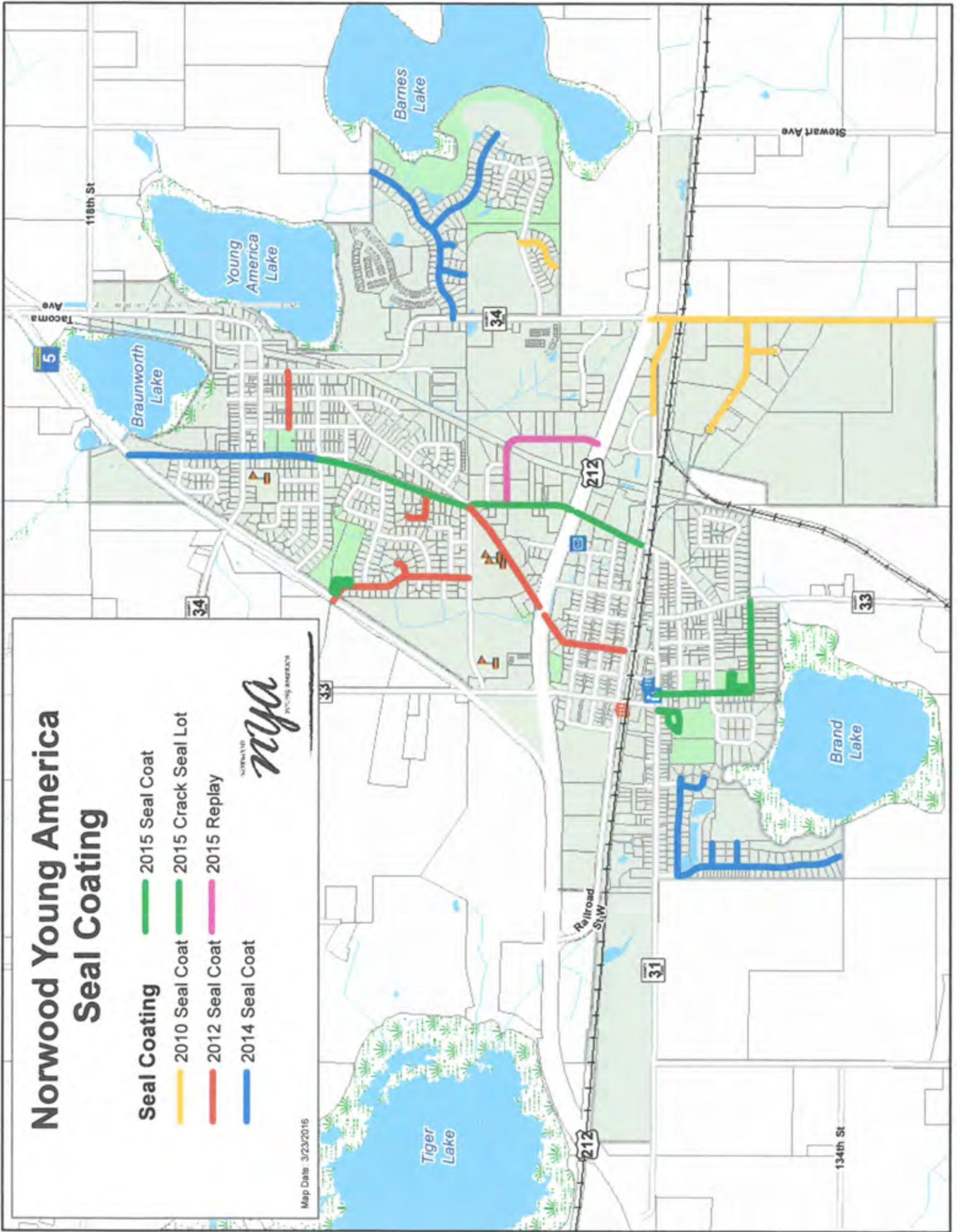
Motion to approve Bargaen, Inc. bid to complete trail seal coating.

Norwood Young America Seal Coating

- Seal Coating**
- 2015 Seal Coat
 - 2010 Seal Coat
 - 2012 Seal Coat
 - 2014 Seal Coat
 - 2015 Crack Seal Lot
 - 2015 Replay



Map Date: 3/23/2016



Norwood Young America Seal Coating

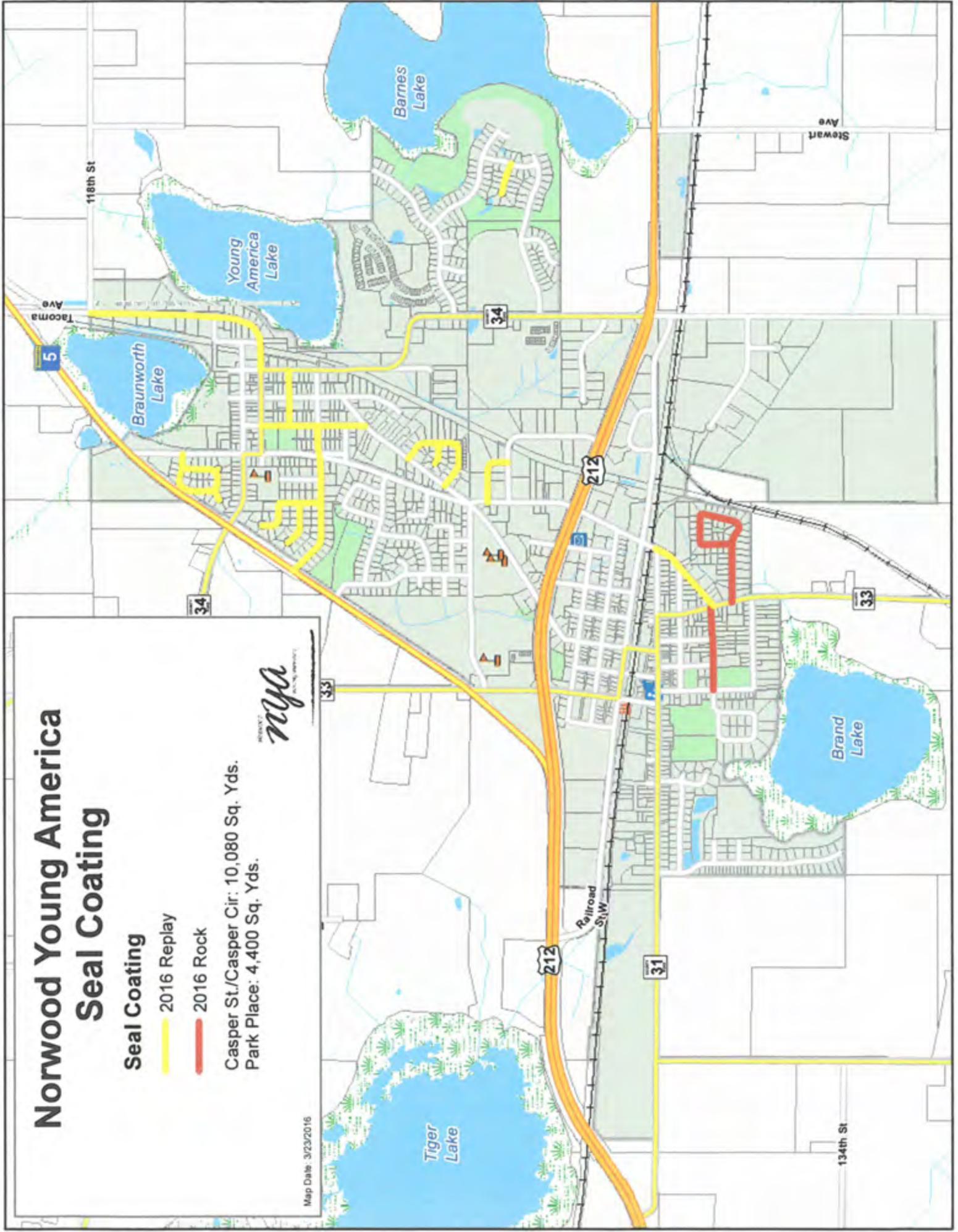
Seal Coating

- 2016 Replay
- 2016 Rock

Casper St./Casper Cir: 10,080 Sq. Yds.
Park Place: 4,400 Sq. Yds.



Map Date: 3/23/2016





Sheldon R. Chesky
President & CEO

April 5 , 2016

City of Norwood Young America
Attn: Brent Aretz
PO Box 59
Norwood Young America, MN 55368

Dear Mr. Aretz,

This letter is provided as an Official Certification per your request. Bargaen Inc. (Mountain Lake, MN) is the exclusive Distributor of all of our Products, including RePlay®Agricultural Oil Seal and Preservation Agent in the States of Minnesota, Wisconsin, North Dakota, South Dakota and Iowa. Please note that RePlay is a patented product of BioSpan Technologies, Inc.

Thank you for your consideration, ,

Sheldon R.Chesky, PhD, MBA
President and Chief Operating Officer



TO: Honorable Mayor Diedrick and City Council Members

FROM: Steven Helget, City Administrator

DATE: April 11, 2016

SUBJECT: Financial Advisory Services - Request for Proposals

As directed by the City Council, request for proposals for financial advisory services were solicited from Ehlers, Springsted, Northland Securities, and David Drown & Associates. Enclosed are their proposals. The subcommittee appointed by the Council reviewed the proposals and elected to interview two of the companies. Ehlers and Springsted were interviewed on April 4th. Based on the submitted proposals and interviews, the committee's recommendation is to continue to utilize Ehlers as the City's financial advisor.