

**AGENDA  
OF THE CITY  
COUNCIL WORK SESSION  
CITY OF EAST GRAND FORKS  
TUESDAY, JUNE 23, 2015 – 5:00 PM**

**CALL TO ORDER:**

**CALL OF ROLL:**

**DETERMINATION OF A QUORUM:**

- 1. Discussion on Managing of City Property – Jason Stordahl**
- 2. Discussion on Strategic Planning for Pond Site – Chad Grassel**
- 3. Cable Franchise Agreement – David Murphy**
- 4. Budget Discussion – David Murphy**
- 5. Other**

**ADJOURN:**

**Upcoming Meetings**

Regular Council Meeting – July 7, 2015 – 5:00 PM – Council Chambers  
Work Session – July 14, 2015 – 5:00 PM – Training Room  
Regular Council Meeting – July 21, 2015 – 5:00 PM – Council Chambers  
Work Session – July 28, 2015 – 5:00 PM – Training Room

# Request for Council Action

Date: 6/18/2015

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: Jason Stordahl-Public Works Director

RE: Discussion on managing City owned property along the Red Lake River

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Recently we have been having issues with trespassing and misuse of the City owned property east and north of our southern most water tower. Citizens have been driving on the levee and tearing up/rutting up the grass along the river. They have brought in chairs, couches, and even placed a dock along the river. There are beer and pop cans littered all over. And we have taken residents complaints that vehicles are driving on and over the Levee at all hours of the night. We have discussed these issues department head meetings, and I have been asked to bring this before Council for discussion on how the Council would like to manage the property along the river.



# Request for Council Action

Date: June 23, 2015

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: City Administrator David Murphy

RE: Midcontinent Franchise Renewal.

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## Background

The City of East Grand Forks entered into a Franchise Agreement with Midcontinent Cable in July 2005 for ten year contract period. The contract is expiring at the end of July and needs to be renegotiated.

Midcontinent has submitted an extension of 120 days beyond the expiration date to allow for negotiations.

## Issue

Our current franchise agreement requires Midcontinent to pay the City of East Grand Forks 5% of its annual gross revenues from the East Grand Forks Service area. The franchise agreement benefits the City in the amount of approximately \$11,500 with 2014's total at \$139,847.

I have asked Kennedy & Graven Law Offices to submit a proposal to negotiate the Franchise Agreement renewal process. Kennedy & Graven has negotiated the majority of cable franchise agreements in the State of Minnesota, particularly those with Midcontinent.

The area that typically requires the most attention is how the percentage is calculated and the review process for determining the accuracy of the calculation.

## Budget Impact

Kennedy & Graven has proposed a not-to-exceed amount of \$10,000 for the process which would be paid out of the Cable Franchise Fund.

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**Action Required**

Discussion with Council regarding the proposal and if any other proposals should be sought.



Offices in  
 Minneapolis  
 Saint Paul  
 St. Cloud

470 U.S. Bank Plaza  
 200 South Sixth Street  
 Minneapolis, MN 55402  
 (612) 337-9300 telephone  
 (612) 337-9310 fax  
 www.kennedy-graven.com  
 Affirmative Action, Equal Opportunity Employer

**ROBERT J. V. VOSE**  
 Attorney at Law  
 Direct Dial (612) 337-9275  
 Email: rvose@kennedy-graven.com

June 17, 2015

VIA E-MAIL AND U.S. MAIL

Mr. David Murphy  
 City Administrator-Clerk-Treasurer  
 City of East Grand Forks  
 600 DeMers Avenue  
 East Grand Forks, MN 56721

**RE: *Midcontinent's Intent to Make a Franchise Request***

Dear David:

It was nice to talk with you recently about Midcontinent's request to renew its cable franchise. I would be pleased to assist the City.

Enclosed please find a proposal for legal services regarding this matter.

If you have any questions or comments, please contact me.

Yours truly,

Robert J.V. Vose

RJV:jms  
 Enclosure

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**KENNEDY & GRAVEN,  
CHARTERED**

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**PROPOSAL TO ASSIST WITH  
MIDCONTINENT'S FRANCHISE RENEWAL REQUEST**

**Contact Person:  
Robert J.V. Vose  
[rvose@kennedy-graven.com](mailto:rvose@kennedy-graven.com)  
612.337.9275**

**June 17, 2015**

## SUMMARY

Kennedy & Graven proposes to assist the City of East Grand Forks, MN with MidContinent's franchise renewal request.

<b>Firm</b>	Kennedy & Graven, Chartered  470 U.S. Bank Plaza, 200 South Sixth Street Minneapolis, MN 55402 (612) 337-9300
<b>Attorneys</b>	Thirty-two attorneys with over 90% of the Firm's work relating to local government law.
<b>Experience</b>	Represents, or has provided services to, approximately 300 cities; 80 townships; 100 school districts; counties; and numerous other political subdivisions and districts around the state.
<b>Scope of Services</b>	Ability to guide the City through renewal process established in Minnesota Statutes, Ch. 238 and federal law.
<b>Proposed Attorney</b>	Robert J. V. Vose – 21 years of experience in cable, telecommunications and local government law.

### **I. ABOUT THE FIRM**

Kennedy & Graven is the largest law firm in Minnesota that practices primarily local government law.

The Firm was founded in 1973 with a practice in local government law, public finance, and development. In 1989, members of a leading local government law firm, LeFevre, Lefler, Kennedy, O'Brien & Drawz, P.A., joined the Firm. Since 1989, Kennedy & Graven has expanded and diversified its representation of public sector clients to include school districts and townships.

Kennedy & Graven practices in all major areas of local government law relating to cities, including Telecommunications, Gas and Electric, Utilities and Franchise Law, and Municipal Litigation.

### **II. CABLE FRANCHISING EXPERIENCE**

The undersigned would be responsible for this project. I have assisted with many franchising requests in Minnesota. A list of clients I am representing or have recently represented in cable franchising matters is set out below:

### Cable Commissions

- Arlington, Gaylord, Winthrop, Gibbon Cable Communications System (franchise renewal)
- Apple Valley, Farmington and Rosemount Cable Commission (franchise renewal)
- Chisago Lakes Cable Commission- Chisago City, Lindstrom, and Shafer (franchise renewal)
- Greater Grand Rapids Area Cable Commission (access programming issues)
- Hudson/North Hudson Cable Board (franchise renewal, franchise transfer)
- Lake Minnetonka Cable Commission (general counsel, franchise renewal)
- Quad Cities Cable Commission (franchise renewals)
- Sherburne Wright Counties Cable Communications Commission (general counsel, franchise renewal)
- Southern Minnesota Cable Commission- Dodge Center, Mantorville, West Concord, Kenyon, and Blooming Prairie (general counsel)
- Southwest Minnesota Telecommunications Cooperative a/k/a "5Comm"- Heron Lake, Okabena, Lakefield, Round Lake, Brewster (municipal telecom venture)
- Winsted, Silver Lake, Lester Prairie Cable Commission (franchise renewal)

### Municipalities

- Albert Lea (franchise renewal)
- Albertville (competitive franchising)
- Becker (competitive franchising, franchise renewal)
- Belle Plaine (cable access dispute, franchise renewal)
- Bemidji (competitive franchising, franchise renewal)
- Brainerd (competitive franchising)
- Big Lake Township (competitive franchising, franchise renewal)
- Brownton (franchise renewal and transfer)
- Brooten (franchise renewal and transfer)
- Brooklyn Park (wireless siting)
- Brooklyn Center (wireless siting)
- Burnsville (cable City joint powers issues; franchise renewal)
- Cannon Falls (franchise renewal)
- Clinton (franchise transfer)
- Cold Spring (wireless siting)
- Cottage Grove (wireless siting)
- Credit River Township (competitive franchising)
- Detroit Lakes (franchise renewal)
- Eagan (PEG dispute, general matters)
- Faribault (competitive franchising, franchise renewal)
- Freeport (franchise renewal)
- Gaylord (wireless siting)
- Glencoe (franchise transfer)

- Graceville (franchise transfer)
- Grand Rapids (franchise transfer and enforcement, municipal network)
- Hibbing (competitive franchising, franchise renewal, wireless siting)
- Hoyt Lakes (franchise renewal)
- Hutchinson (franchise renewal)
- Kasota (franchise transfer)
- Keewatin (competitive franchising, franchise transfer)
- Kimball (franchise renewal)
- Little Falls (franchise renewal and transfer)
- Livonia Township (initial franchising)
- Ludlow, IL (franchise renewal)
- Medina (competitive franchising, wireless siting)
- Moose Lake (franchise transfer, various municipal)
- Morris (franchise renewal, competitive franchising)
- Mound (wireless siting)
- Nashwauk (competitive franchising, franchise transfer)
- New Prague (competitive franchising, franchise renewal)
- Nicollet (competitive franchising)
- Oak Grove (franchise renewal)
- Orrock Township (initial franchising)
- Otsego (competitive franchising, franchise renewal, franchise litigation)
- Owatonna (franchise renewal)
- Paynesville (competitive franchising, franchise renewal)
- Redwood Falls (competitive franchising, franchise renewal and transfer, wireless siting)
- Richfield (wireless siting)
- Robbinsdale (wireless siting and cable franchise enforcement)
- Rosemount (competitive franchising)
- Sandstone (wireless siting)
- Shakopee (franchise renewal, franchise enforcement, pole attachment agreement)
- Shoreview (franchise renewal)
- Sleepy Eye (franchise transfer)
- St. Peter (competitive franchising, franchise renewal and transfer, conduit agreement, wireless siting)
- Stewart (franchise renewal)
- Tracy (franchise renewal)
- Virginia (franchise renewal)
- Zimmerman (franchise renewal, competitive franchising)

I have worked several times with Midcontinent, a relatively small cable provider in Minnesota. My resume is attached to this proposal.

### III. PROJECT PROPOSAL

Kennedy & Graven is happy to undertake this project on behalf of the City. We are uniquely able to provide timely and accurate assistance to the City regarding specific franchising processes and issues. You are familiar with our firm, of course. My practice is focused on serving as city attorney to five cities and providing counsel to cities around the state regarding cable franchising.

Generally, cities get leverage in cable franchise renewals based on their ability to deny the renewal. A city may only deny a franchise renewal request if there are documented non-compliance issues or if the company will not agree to meet future cable-related needs identified by the city. Accordingly, the renewal process typically involves:

1. Preparation of a list of any franchise violation issues.
2. Preparation of a list of all possible future cable-related needs or concerns that the City wants addressed in a renewed franchise.
3. Negotiation of a new franchise that addresses ## 1 and 2, or proceedings to deny the requested franchise renewal. These proceedings are governed by federal law and seldom used.

### IV. MISCELLANEOUS

#### **Describe malpractice insurance coverage: carrier, limits, and exemptions.**

The Firm carries professional liability insurance with Westport Insurance Companies in the amount of \$5,000,000 per claim/aggregate. Industry standard exclusions only.

#### **Statement of Compliance with Federal and State Laws Respecting Civil Rights.**

Kennedy & Graven is an equal opportunity employer and has an established affirmative action plan and equal employment opportunity plan. The Firm has been certified by the State of Minnesota as having an approved affirmative action plan. The Firm has adopted a specific AA/EEO Policy Statement and a Policy Statement Prohibiting Sexual Harassment in the Workplace. Copies of these policies are available to the City upon request.

#### **Conflict of Interest.**

We are aware of no potential conflicts of interest.

### V. FEE PROPOSAL

I typically charge \$175 for cable-related matters. The minimum increment of time billed for each service including phone calls, correspondence and personal correspondence is six minutes.

It is common for cities to request a "not to exceed" fee. We propose a not-to-exceed amount of \$10,000 to assist with MidContinent's renewal. The actual cost may be less depending on the complexities and specific details of renewal.

The Firm will bill its out-of-pocket costs for such things as postage, long distance telephone calls, photocopying, filing fees and witness fees, and similar items.

Photocopying:	\$.10 per page
Mileage:	IRS-approved reimbursement rate
Westlaw or Lexis fees:	Actual cost charged
Other charges such as:	Actual cost charged
Messenger service	
Express mail	
Filing fees	

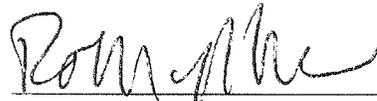
Our monthly billing statements provide detail for all fees and costs. Billings by the Firm to the City for services will be on a monthly basis, except as may otherwise be agreed upon by the parties. The billing statement shall be of sufficient detail to adequately inform the City concerning the tasks performed, the attorney or staff performing them, the time spent on each task and the nature and extent of costs and disbursements.

#### **CONCLUSION**

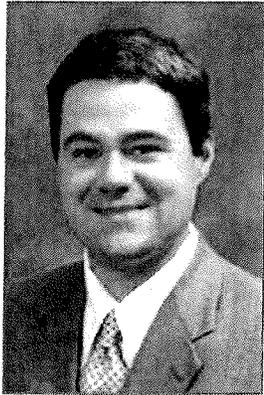
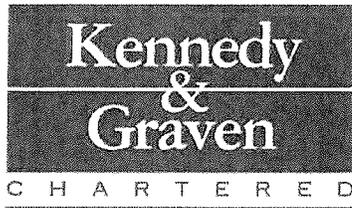
Thank you for this opportunity to offer Kennedy & Graven's services to the City. Please feel free to contact me if you have any questions or need any additional information.

Respectfully submitted,

**KENNEDY & GRAVEN, CHARTERED**



Robert J.V. Vose (Atty. Reg. No. #251872)  
Shareholder



## Robert J.V. Vose

LOCAL GOVERNMENT LAW, TELECOMMUNICATIONS  
AND UTILITY LAW, GOVERNMENT RELATIONS AND  
ADMINISTRATIVE LAW, LITIGATION

J.D., University of Minnesota, 1994  
B.A., University of Wisconsin, Madison, 1990  
Attended Gustavus Adolphus College, 1986-88

### PRIMARY PRACTICE AREAS

Bob Vose is the City Attorney for Independence, Belle Plaine, Oak Grove, Pine Island, and Victoria. He has also represented many municipalities and municipal joint powers entities in all aspects of cable television regulation, telecommunications law, telecommunications infrastructure development, and right-of-way management issues. Mr. Vose advises municipal clients in cable franchise administration and enforcement, franchise renewals and transfers, competitive franchising, and development of municipal systems. He has also represented clients in district courts and the Minnesota Court of Appeals on a number of occasions.

### BACKGROUND

Mr. Vose joined Kennedy & Graven in 1999. Mr. Vose began his career working with hundreds of municipalities around the country in the rapidly evolving area of municipal telecommunications regulation and right-of-way management. Mr. Vose concentrates on understanding and developing the unique needs of his municipal clients: from the smallest rural municipalities to the largest metropolitan-area cities. Mr. Vose is a member of the Minnesota Association of Community Telecommunications Administrators (MACTA), an association of municipal telecommunications regulators and managers affiliated with the League of Minnesota Cities. Mr. Vose has served as both legal counsel and lobbyist for the organization.

### MEMBERSHIPS AND PROFESSIONAL ACTIVITIES

Mr. Vose is a member of the American, Minnesota State and Hennepin County Bar Associations and the Communications Law Section of the Hennepin Bar. He is also a member of the National Association of Telecommunications Officers and Advisors (NATOA) and MACTA, and is on the Board of Directors for the Minneapolis Telecommunications Network.

### PERSONAL

Mr. Vose lives in Edina and enjoys sports of all kinds including tennis, hockey and golf. Mr. Vose spends time traveling, reading and is a former chair of the Minneapolis Telecommunications Network and was elected member of the Linden Hills Neighborhood council.

*"I enjoy working with local governments to ensure that telecommunications services and facilities both meet the needs of the community and local institutions but also provide an important community development tool."*

**COPY**

**PROPOSED  
FRANCHISE AGREEMENT  
FOR  
THE CITY OF EAST GRAND FORKS, MINNESOTA**

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## FRANCHISE AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO AS OF THIS \_\_\_ DAY OF \_\_\_\_\_, BY AND BETWEEN MIDCONTINENT COMMUNICATIONS, G.P. ("FRANCHISEE") AND THE CITY OF EAST GRAND FORKS, MINNESOTA ("CITY").

THIS AGREEMENT is subject to the laws of the State of Minnesota, the rules and regulations of the Federal Communications Commission ("FCC"), the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended, or as superseded by new statutes.

WHEREAS, the City adopted a Cable Television Franchise Ordinance on \_\_\_\_\_, 2005 (the "Ordinance"), which authorizes the City to issue a Franchise to operate a Cable System in the City; and

WHEREAS, Midcontinent Communications, G.P. has requested that its existing Franchise in the City be renewed in accordance with applicable law; and

WHEREAS, the City has determined that Franchisee has offered an acceptable renewal proposal for the provision of Cable Service within the City; and

WHEREAS, the City Council has determined that the renewal of the Franchise to Franchisee should be approved and that the Franchise hereinafter set forth should be adopted;

NOW, THEREFORE, In consideration of the faithful performance and strict observance by the Franchisee of all the terms hereinafter set forth or provided for, and in consideration of the grant to the Franchisee of the Franchise by the City, the parties agree as follows:

### **SECTION 1. GENERAL PROVISIONS**

#### 1.1 Grant.

A. The City hereby grants to the Franchisee a non-exclusive Franchise to construct, operate, and maintain a Cable System within the Rights-of-Way of the City in accordance with the terms and conditions of this Franchise.

B. The Franchisee agrees to abide by all the provisions of this Franchise, Cable Services Regulatory Ordinance \_\_\_\_\_, as it existed on its effective date, and other relevant and generally applicable regulations and supplemental specifications as to construction, operation, or maintenance promulgated by the City. The Franchisee hereby acknowledges that it has examined all the provisions of the Ordinance and agrees that the provisions thereof are valid, binding at this time, and enforceable as of the effective date of this Franchise.

C. The Franchisee hereby agrees that it has negotiated this Franchise Agreement in good faith and with due knowledge of its rights and responsibilities under relevant local, state, and federal laws.

D. The Franchisee hereby acknowledges that it accepts the rights granted herein in reliance upon its independent and personal investigation and understanding of the power and authority of the City to enter into this Franchise with Franchisee.

E. All other Franchises or parts of Franchises between the City of East Grand Forks and Franchisee are hereby repealed and superceded by this Franchise.

#### 1.2 Definitions.

The definitions contained in the Ordinance are incorporated herein by reference and adopted as fully as if set out verbatim.

#### 1.3 Effective Date.

This Franchise will become effective based on compliance with Section 6.8 of this Franchise Agreement.

#### 1.4 Term.

This Franchise Agreement will commence upon its effective date, as provided in Section 1.3 above, and will expire ten (10) years thereafter on \_\_\_\_\_, 2015, unless renewed, revoked, or terminated sooner as herein provided.

#### 1.5 Written Notice.

All notices, reports, or demands required to be given in writing under this Franchise Agreement will be deemed to be given when delivered personally to the Person designated below, or when five days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City:                      City Clerk  
   City of East Grand Forks  
   City Hall  
   600 Demers Avenue NW  
   East Grand Forks, Minnesota 56721

If to Franchisee: W. Tom Simmons  
Vice President of Public Policy  
Midcontinent Communications, G.P.  
5001 W. 41st Street  
Sioux Falls, S.D. 57106-1424

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

1.6 Conflict with Cable Services Code and Reservation of Rights.

The provisions of the Ordinance are incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Franchise Agreement. In the event of any conflict between the terms and conditions of this Franchise Agreement and the provisions of the Ordinance, the specific terms or provisions of this Franchise Agreement that conflict with a term of provision of the Ordinance will control subject to applicable laws. The City and Franchisee reserve all rights that they may possess under the law unless expressly waived herein.

1.7 Service Area.

This Franchise is granted for the entire geographic area of the City. In the event of annexation by the City, any new territory will immediately become part of the Service Area covered. See Appendix A which includes a current map of the system and the City.

1.8 Police Powers.

Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety, and welfare of the public. Franchisee will comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.

1.9 Level Playing Field

In addition to the requirements of the Cable Regulatory Ordinance, all Franchises granted by the City shall contain substantially similar terms and conditions and shall specifically require that the Franchisee serve the entire Franchise Area

## SECTION 2. GENERAL REQUIREMENTS

2.1 Franchise Fees.

The Franchisee will pay the City a Franchise fee in the amount of 5% of its annual Gross Revenues, as required by Section 6 of the Ordinance.

## SECTION 3. INSURANCE AND INDEMNIFICATION

3.1 Franchisee shall comply with the provisions of Section 5 of the Ordinance applicable to insurance and indemnification.

#### **SECTION 4. PERFORMANCE GUARANTEES AND REMEDIES**

##### 4.1 Security Fund.

A. Upon request by the City, Franchisee will establish and provide to City, as security for the faithful performance by Franchisee of all material provisions of this Franchise, an irrevocable letter of credit or a cash deposit, in the amount of five thousand dollars (\$5,000), and in a form that is acceptable to the City Attorney. The City shall comply with the terms of Section 8 the Ordinance as a condition precedent to any withdrawal of funds from the Security Fund.

B. Nothing herein will be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's Rights-of-Way, except as may be waived in accordance with the Ordinance.

##### 4.2 Required Reports.

Franchisee is required to submit the City all reports and information as provided in the Ordinance.

#### **SECTION 5. SYSTEM SPECIFICATIONS**

##### 5.1 System Specifications.

The System has the following characteristics:

- a.) The System was rebuilt/upgraded in 1997. During the upgrade most of the active and passive equipment was replaced, some of the coaxial cable was replaced and fiber optic technology was deployed. The system located in the City is constructed as a single trunk and single feeder system that is intended to be used for the delivery of subscriber services in the downstream, headend to home, mode of operation. The design incorporates a branching network system with signals that emanates from the System's headend, which is the antenna site for the reception of both satellite and terrestrial based signals and programming inserted into the system locally.
- b.) The System meets or exceeds Federal Communications Commission ("FCC") Technical Standards.
- c.) The System employs fiber optic technology, including 7 nodes in the City.

- d.) The System utilizes analog and digital addressable control for the delivery of premium, pay-per-view, digital and video on demand ("VOD") services.
- e.) The System is capable of passing signals of up to 750 MHz.
- f.) The upstream, home to headend, portion of the System has been activated.
- g.) The system will have standby power to assure service a minimum of 95% of the time within any week.

5.2 Public, Educational and Government Access Channels.

Consistent with applicable law, Franchisee shall offer the following access channels to each of its Subscribers who receive all or any part of the Cable Services offered on the Cable System. With the exception of this requirement, Franchisee shall have no further responsibility for or obligations to PEG Access.

A. In accordance with Section 611 of the Cable Act (47 U.S.C. §531) and Minnesota Statutes, Section 238. 084, Subd 1, the Franchisee agrees to provide as of the Effective Date of the Agreement one (1) video Channel to be designated solely for non-commercial public, educational and governmental (PEG) use ("PEG Access Channel"). The existing Channel 3 shall be the aforesaid channel and will be used for the University of North Dakota consistent with Minnesota law. An additional channel may be made available for local government use upon agreement of the company and the City.

B. A program origination signal input point shall be made available by Franchisee for live program origination at City Hall to enable program origination on the PEG Access Channel.

C. No charges may be assessed by Franchisee for Channel time or playback of pre-recorded programming on the PEG Access Channel.

5.3 Additional Requirements Regarding Access Channels.

- A. The PEG Access Channel will be provided to all Subscribers by Franchisee as a part of the Basic Cable Service.
- B. The PEG Access Channel will be made available by Franchisee for use by the City in accordance with the rules and procedures established by the City or any lawfully designated Person, group, organization, or agency authorized by the City for that purpose.
- C. The location of the PEG Access Channel shall not be changed without sixty (60) days notice to the City.
- D. Franchisee shall insure that all PEG Access Channels meet the technical standards of the FCC; provided, however, the Franchisee shall not be responsible for

defects, flaws or other impairments in the programming delivered to the Franchisee.

5.4 Geographical Coverage.

Throughout the term of this Franchise Agreement, Franchisee will extend service to every residence within ninety (90) days after a request is made for service, weather permitting.

5.5 Programming.

Programming decisions are within the sole discretion of Franchisee subject to federal law regarding notice to the City and Subscribers prior to any Channel additions, deletions, or realignments. Franchisee will make available, in keeping with the requirements of Appendix A, at least the broad categories of programming set forth therein.

5.6 Emergency Alert System.

In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51 and its other provisions which may from time to time be amended, the Franchisee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and statewide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP), and/or the State Emergency Operation Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

5.7 Technical Standards.

To the extent required by applicable law, the Franchisee will comply with FCC regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time.

5.8 Right of Inspection.

The City will have the right to inspect all construction, reconstruction, or Installation work performed by Franchisee under the provisions of the Franchise and other pertinent provisions of law, to ensure Franchisee's compliance and to protect the public health, safety, and welfare of City's citizens. Franchisee will have the right to be present at such inspection.

**SECTION 6. MISCELLANEOUS PROVISIONS**

6.1 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. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

A. Upon thirty (30) days written notice to Franchisee, the City may require an evaluation session. Evaluation sessions may occur no more than once annually beginning one year from the Effective Date of this Franchise.

B. All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice.

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 City and Franchisee deemed relevant.

D. As a result of a periodic review or evaluation session, City and Franchisee, in good faith, may develop such changes and modifications to the terms and conditions of the Franchise as are mutually agreed upon.

#### 6.2 Rights of the Franchisee.

A. The Franchisee will have the right to construct, erect, operate, and maintain in, on, along, across, above, over, and under the Rights-of-Way of the City, poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the City of a Cable System as provided in the Ordinance and this Franchise Agreement.

B. The rights herein granted will be subject to the provisions, terms, conditions, and limitations described in the Ordinance and this Franchise Agreement.

#### 6.3 Changes in Federal Law.

The City reserves the right to regulate the Franchisee to the extent permitted by federal law as amended from time to time, during the term of this Franchise.

#### 6.4 Entire Agreement.

The Ordinance and this Franchise represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. The Franchise Agreement may only be amended, supplemented, modified, or changed by a written document executed by the parties.

#### 6.5 Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed by a separate, distinct and independent portion. Such declaration shall not affect the

validity of the remaining portions hereof, which other portions shall continue in full force and effect.

6.6 Governing Law.

This Franchise Agreement shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota as applicable to contracts entered into and performed entirely within the State.

6.7 Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Franchisee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

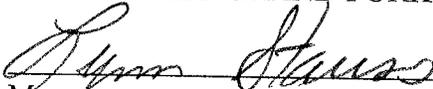
6.8 Acceptance and Effective Date.

A. Franchisee shall accept, in writing, this Franchise within thirty (30) days after approval by the City or within such additional time as may be approved by the City. This Franchise will be signed and accepted by Franchisee in accordance with the provisions of Section 12 of the Ordinance.

B. This Franchise shall be effective upon the date of written acceptance by Franchisee, the Effective Date, and shall supersede any existing Franchise between City and Franchisee.

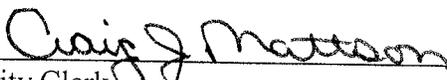
IN WITNESS WHEREOF, the City and Franchisee have executed this Franchise on the date and year first above written.

CITY OF EAST GRAND FORKS, MINNESOTA

  
\_\_\_\_\_  
Mayor

Date: July 12, 2005

ATTEST:

  
\_\_\_\_\_  
City Clerk

July 12, 2005  
\_\_\_\_\_  
(Date)

Acceptance:

Midcontinent Communications, G.P.

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W. Tom Simmons  
Vice President of Public Policy  
Midcontinent Communications, G.P.  
5001 W. 41st Street  
Sioux Falls, SD 57106-1424  
Date: \_\_\_\_\_

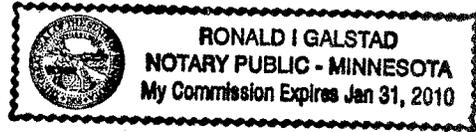
STATE OF MINNESOTA )  
COUNTY OF Polk ) ss.

The foregoing instrument was acknowledged before me on July 12, 2005, by Lynne STANGS, the Mayor of the City of East Grand Forks, Minnesota on behalf of the City.



Notary Public

STATE OF MINNESOTA )  
COUNTY OF Polk ) ss.

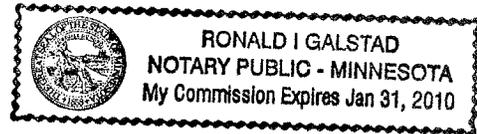


The foregoing instrument was acknowledged before me on July 12, 2005, by Craig Mattson, the City Clerk of the City of East Grand Forks, Minnesota on behalf of the City.



Notary Public

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss.



The foregoing instrument was acknowledged before me on \_\_\_\_\_ 2005, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ on behalf of the Franchisee.

\_\_\_\_\_  
Notary Public

## **APPENDIX A Map of the System and City**

## **APPENDIX B**

### **BROAD CATEGORIES OF PROGRAMMING**

The communications industry is rapidly changing. New programming and other services are continually emerging. The City acknowledges Franchisee's exclusive right to select the programming and services to be offered to Subscribers. Franchisee will nonetheless monitor the needs of the community, consider the results of surveys regarding those needs, and comply with all FCC cable programming rules. During the term of this Franchise, Franchisee will offer programming services that meet at least the following broad programming categories:

- A. Regional Programming
- B. News and Information
- C. Educational Programming
- D. Weather
- E. Movies and Entertainment
- F. Children's and Family Programming
- G. Sports
- H. Comedy
- I. Music or Performing Arts

# Request for Council Action

Date: June 23, 2015

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: City Administrator David Murphy

RE: Budget Discussion.

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## Background

The Council and Staff have agreed to start the 2016 budget process early and to meet monthly. Last month Capital Improvement items were discussed. This month I have put wages and benefits on the agenda for discussion.

I would like to have direction and consensus from Council regarding wages and benefits prior to union negotiations. The sheet that is included shows the wage and benefit costs estimated for 2016 compared to 2015. The salaries for 2016 are based on a 2% COLA increase and estimated step increases. The Employer Insurance Contribution is based on a 4% increase.

## 2015 Budgeted Salaries

Department	Total Salary	PERA	FICA	Insurance Contribution	Total
Admin	\$235,547.00	\$17,366.00	\$18,019.00	\$42,723.00	\$313,655.00
Finance	\$88,605.00	\$6,535.00	\$6,778.00	\$14,332.00	\$116,250.00
Police Dept	\$1,534,911.00	\$241,307.00	\$30,293.00	\$229,576.00	\$2,036,087.00
Fire Dept	\$709,818.00	\$99,795.00	\$8,932.00	\$98,685.00	\$917,230.00
Comm Develop	\$210,319.00	\$15,774.00	\$16,089.00	\$34,649.00	\$276,831.00
EDHA	\$305,653.00	\$21,459.00	\$23,382.00	\$72,870.00	\$423,364.00
Library	\$327,002.00	\$24,525.00	\$25,015.00	\$18,624.00	\$395,166.00
Parks	\$413,185.00	\$30,913.00	\$31,609.00	\$56,139.00	\$531,846.00
Public Works	\$494,914.00	\$37,119.00	\$37,861.00	\$87,719.00	\$657,613.00
	\$4,319,954.00	\$494,793.00	\$197,978.00	\$655,317.00	\$5,668,042.00

## 2016 Budgeted Salaries

Department	Total Salary	PERA	FICA	Insurance Contribution	Total
Admin	\$253,147.00	\$18,686.00	\$19,366.00	\$44,456.00	\$335,655.00
Finance	\$94,419.00	\$6,963.00	\$7,223.00	\$14,909.00	\$123,514.00
Police Dept	\$1,600,495.00	\$251,743.00	\$31,806.00	\$236,716.00	\$2,120,760.00
Fire Dept	\$748,596.00	\$106,077.00	\$9,495.00	\$102,898.00	\$967,066.00
Comm Develop	\$176,797.00	\$13,260.00	\$13,525.00	\$21,666.00	\$225,248.00
EDA	\$150,209.00	\$11,266.00	\$11,491.00	\$24,963.00	\$197,929.00
Library	\$338,543.00	\$21,476.00	\$25,898.00	\$19,604.00	\$405,521.00
Parks	\$413,959.00	\$30,971.00	\$31,669.00	\$64,542.00	\$541,141.00
Public Works	\$517,783.00	\$38,834.00	\$39,611.00	\$91,087.00	\$687,315.00
	\$4,293,948.00	\$499,276.00	\$190,084.00	\$620,841.00	\$5,604,149.00

There is a difference in these years because the City no longer has housing staff budgeted for 2016.