

MINUTES, REGULAR MEETING  
CITY COUNCIL, CITY OF LA CRESCENT, MINNESOTA  
JUNE 12, 2017

Pursuant to due call and notice thereof, the first meeting of the City Council of the City of La Crescent for the month of June was called to order by Mayor Mike Poellinger at 5:30 PM in the La Crescent City Hall, La Crescent, Minnesota, on Monday, June 12, 2017, followed by the Pledge of Allegiance.

Upon a roll call taken and tallied by the City Administrator, the following members were present: Members Bernie Buehler, Ryan Hutchinson, Brian Krenz, Dale Williams and Mayor Mike Poellinger. Members absent: None. Also present was City Administrator Bill Waller and City Attorney Skip Wieser.

Mayor Poellinger asked if anyone wished to take action to change the agenda as presented. There were no changes requested.

**ITEM 1 – CONSENT AGENDA**

At this time, the Mayor read the following items to be considered as part of the Consent Agenda for this regular meeting:

- 1.1 MINUTES – MAY 22, 2017
- 1.2 BILLS PAYABLE THROUGH JUNE 8, 2017

At the conclusion of the reading of the Consent Agenda, Mayor Poellinger asked if the Council wished to have any of the items removed from the Consent Agenda for further discussion. Member Buehler made a motion, seconded by Member Hutchinson, as follows:

**A MOTION TO APPROVE THE CONSENT AGENDA AS PRESENTED**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 3.1 – PLANNING COMMISSION MINUTES – JUNE 6, 2017**

Don Smith, Planning Commission Chairman, reviewed with City Council the Planning Commission Minutes for the June 6, 2017 meeting. The Planning Commission considered two items that require City Council consideration. The Planning Commission recommended to City Council that the Conditional Use Permit submitted by the property owner at 790 Shore Acres Road be approved to allow for an "Alternate elevation method other than the use of fill to elevate a structure's lowest floor above the Regulatory Flood Protection

Elevation" in a flood fringe area in an R-1A zoned district. The Planning Commission referenced the following conditions and findings of fact for City Council to consider:

Conditions:

1. The homeowner signs the non-conversion form allowing City Staff to inspect the flood openings to insure they are operational.
2. The lower level only be used for storage.

Findings of Fact:

1. The enclosed area is above grade on at least one side of the building.
2. The enclosed area is designed to internally flood.
3. The enclosed area is constructed with flood resistant material.
4. The enclosed area is used solely for storage.
5. Complies with FEMA and DNR designs and regulation.

Following discussion, Member Williams made a motion, seconded by Member Krenz, as follows:

**MOTION TO APPROVE THE CONDITIONAL USE PERMIT SUBMITTED FOR THE PROPERTY LOCATED AT 790 SHORE ACRES ROAD TO ALLOW FOR AN "ALTERNATIVE ELEVATION METHOD OTHER THAN THE USE OF FILL TO ELEVATE A STRUCTURE'S LOWEST FLOOR ABOVE THE REGULATORY FLOOD PROTECTION ELEVATION" IN A FLOOD FRINGE AREA IN AN R-1A ZONED DISTRICT WITH THE ABOVE STATED CONDITIONS AND TO ADOPT THE FINDINGS STATED ABOVE AND AS STATED IN THE JUNE 6, 2017 PLANNING COMMISSION MINUTES.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

The Planning Commission also recommended that a market study be completed for the development of the Race Track property "not to exceed \$14,500 with a recommendation to recover 1/2 the cost of the study in the development agreement with the successful developer." City Council will also need to approve amending the 2017 general fund budget to reflect this expenditure. Extended discussion regarding market study followed. After discussion it was the consensus of the Council to bring formal proposal back at future meeting.

Planning Commission Chairman Smith also gave an update on the Downtown Planning Process. This was informational and no action taken.

### **ITEM 3.2 – ACENTEK FRANCHISE AGREEMENT**

City Attorney Wieser reviewed with City Council an updated Agreement with Ace Telephone Association d/b/a AcenTek and corresponding Ordinance. It is a ten (10) year Agreement with no change in the franchise fee. AcenTek has been provided with the current boundaries of the City of La Crescent and the City has requested confirmation that AcenTek is aware of the existing boundaries. The Agreement has a built in provision relating to change in municipal boundaries. Following discussion, Member Krenz introduced the following Ordinance, and moved its passage and adoption:

#### **ORDINANCE NO. 513**

#### **AN ORDINANCE OF THE CITY OF LA CRESCENT GRANTING A NON-EXCLUSIVE FRANCHISE TO ACE TELEPHONE ASSOCIATION DBA ACENTEK TO OPERATE A CABLE SYSTEM WITHIN THE CITY OF LA CRESCENT.**

The City Council of the City of La Crescent does hereby ORDAIN and grant the following Cable Services Franchise:

#### **Section 1. Cable Services Franchise Grant to Ace Telephone Association DBA AcenTek**

Subd. 1. **Statement of Intent and Purpose.** That after a full public proceeding which afforded reasonable notice and opportunity to be heard, it is hereby determined that:

- A. The City of La Crescent, pursuant to applicable laws, is authorized to grant one or more non-exclusive Franchises to construct, operate, upgrade, maintain and reconstruct Cable Services Systems within the City of La Crescent.
- B. The City Council finds that the development of a Cable Services System has the potential of having great benefits and impact upon the residents of the City, for such a System can contribute significantly to the communication needs and desires of many individuals, organizations, associations and institutions. Because of the complex and rapidly changing technology associated with cable television and other means of communication, the City Council further finds that the public convenience, safety and general welfare can best be served by granting one or more Cable Services franchises and by establishing regulatory powers which shall be vested in the City or such Persons as the City shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public, and any Cable Services franchises issued pursuant to this ordinance shall be deemed to include this finding as an integral part thereof.

Subd. 2. **Definitions.** For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with this context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” and “should” are permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Activated Channels” means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- B. “Affiliate”, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- C. “Basic Cable Service” means any Cable Service tier which includes the lawful retransmission of local television broadcast signals and any PEG Access programming required herein to be carried on the basic tier as defined in 47 U.S.C. § 522 (3)(as such may be amended from time to time).
- D. “Cable Act” collectively means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 and as the same may, from time to time be further amended.
- E. “Cable Operator” means any person or group of persons who: provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- F. “Cable Service” means: the one-way transmission to Subscribers of Video Programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
- G. “Cable System”, or “System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves Subscribers without using any Public Way; a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. Section 541(c)) to the extent such facility is used in transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; an open video system that complies with 47 U.S.C. Section 653; or any facilities of any electric utility used solely for operating its electric utility system.
- H. “City” means the City of La Crescent and all of the geographic area within its municipal boundaries. The City acts through its City Council and is empowered by federal, state and local law to grant this Franchise to Grantee.
- I. “FCC or “Commission” means the Federal Communications Commission or any legally appointed designated or elected agent or successor thereto.

- J. “Franchise” shall mean the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes construction and operation of a Cable System.
- K. “Franchise fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on the Grantee or Subscribers, or both, solely because of their status as such. The term “franchise fee” does not include: any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); payments which are required by this franchise to be made by the Grantee during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities; capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under title 17 of the United States Code.
- L. “Grantee” means Ace Telephone Association DBA AcenTek and its lawful successors, transferees, or assignees.
- M. “Normal business hours” means those hours during which most similar businesses in the community are open to serve Subscribers.
- N. “Normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- O. “Other Programming Service” means information that a cable operator makes available to all subscribers generally.
- P. “Person” means an individual, natural person, proprietorship, general or limited partnership, association, joint stock company, trust, corporation, firm, limited liability company, joint venture or other legally recognized entity, private or public, whether for profit or not for profit.
- Q. “Public Way” shall mean the surface of, and the space above and below, any public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, maintaining and removing the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, repairing, maintaining and

removing the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

- R. "Public, Educational, or Governmental Access" means: channel capacity designated, pursuant to the terms of applicable law and this Franchise, for non-commercial public, educational, or governmental use; and (ii) facilities and equipment necessary for the use of such channel capacity in accordance with the terms of applicable law and this Franchise.
- S. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means.
- T. "Service Tier" means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- U. "State" means the State of Minnesota and any political subdivision or agency thereof.
- V. "Subscriber" means a Person who lawfully receives services of the Cable System with the Grantee's express permission.
- W. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Subd. 3. **Grant of Franchise.**

A. **Grant.**

1. The City previously granted a cable television franchise which expired on July 2017.
2. The City Council has considered the Grantee's technical ability, financial condition, and legal qualifications and has approved the same.
3. There is hereby awarded to Ace Telephone Association DBA AcenTek, a non-exclusive franchise for the construction, operation, upgrading, maintenance and reconstruction of a Cable Services System which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services, subject to Subd. 3.C.1. in along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.
4. Grantee's prior cable television franchise and any extensions thereof are terminated upon the passage by the City of this Cable Services Franchise Ordinance and the acceptance by the Grantee. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein.



5. Grantee currently provides a cable system with channel capacity capable of delivering a minimum of \_\_\_\_\_ channels.

B. **Term.** The Franchise granted pursuant to this Ordinance shall be for an initial term of ten (10) years from the effective date of the Franchise, unless otherwise lawfully extended or terminated in accordance with the term of this Ordinance.

C. **Non-cable services.**

1. **Permission Granted.** Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by applicable law.

D. **Acceptance; Effective Date.** Grantee shall accept the Franchise granted pursuant hereto by signing this ordinance and filing same with the City Administrator within sixty (60) days after the passage and final adoption of this Ordinance., The effective date of this Ordinance shall be the date when the Grantee has signed the Franchise .

E. **Compliance with Laws and Regulations.** The provisions of this franchise shall be subject to applicable federal, state and local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes Annotated (M.S.A.) Chapter 238; provided, however, if any provisions of M.S.A. Chapter 238 conflict with the Cable Act or other applicable federal law or rulings, the provisions of the Cable Act or such other federal law or ruling shall have precedence. Grantee and the City shall conform to all state laws, rules and regulations regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws and regulations regarding Cable Services as they become effective. If there is a conflict between this Franchise and any City ordinance or regulation, this Franchise shall control.

Subd. 4. **Standards of Service.**

A. **Construction Standards.** Grantee shall not commence construction of a cable services system, open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from the proper municipal authority. If Grantee fails to meet the conditions of the permit the City shall have the right to put the street or public place back into the condition that existed immediately prior to use by the Grantee at the actual or reasonable expense of the Grantee, whichever is less. Such permit shall not be unreasonably withheld. All wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. The Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Franchise area or endanger the life or property of any persons.

B. **Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways by the City or others

and with the rights and reasonable convenience of owners who own property that adjoins any of said Public Ways.

- C. **Restoration of Public Ways.** If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to the condition of the Public Way existing immediately prior to such disturbance.
- D. **Relocation at Request of City.** Upon its receipt of reasonable advance notice, not to be less than sixty (60) days, the Grantee shall at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.
- E. **Relocation at Request of Third Party.** The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.
- F. **Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Public Ways of the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the City or property owner pursuant to the terms of this section.
- G. **Safety Requirements.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.
- H. **Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing



telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, either aerial or underground. Nothing contained in this section shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as, but not limited to, subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

1. **New Developments.** The City shall use its best efforts to provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Grantee shall then be responsible for coordinating such undergrounding with the developers, at Grantee's sole discretion and in compliance with the line extension requirements contained herein. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or Developer unless otherwise provided.
  2. **Local Improvement District.** If an ordinance is passed creating a local improvement district which involves placing underground all utilities including that of the Grantee which are then located overhead, the Grantee shall, upon receipt of written notice of such ordinance, participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirements of the City. The Grantee may include as external costs subject to pass through to Subscribers its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law.
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- I. **Required Extensions of Service.** The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System.
  - J. **Subscriber Charges for Extensions of Service.** No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate its cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction,

including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1,320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

K. **Annexation.** Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. The City shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days 'written notice from the Grantor, subject to the conditions set forth below. The City shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the City the amounts required by Subd. 4(O) for any Subscriber from areas annexed by the City if the City has provided a written annexation notice that includes the addresses that will be moved into the Service Area in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay such fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Subd 11(D). In any audit of fees due under this Franchise, Grantee shall not be liable for fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

L. **Service to Public Buildings.**

Grantee shall continue to provide, on a voluntary basis the following public facilities: La Crescent City Hall, La Crescent Police Department, La Crescent Fire Department, La Crescent Community Arena, and La Crescent Public Library. Additional equipment services and programming tiers to these locations will be billed according to Grantee's current pricing. No monthly service fee shall be charged for each such outlet.

M. **Emergency Use.**

1. In accordance with and at the time required by the provisions of FCC Regulations Part I 1, subpart D, Section 11.5 1, and as such provisions may from time to time be amended, the Grantee 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 state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.18.
2. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's

Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney's fees and costs.

Subd. 5. **Regulation by City.**

A. **Franchise Fee.**

1. Grantee shall pay the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year.
2. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section, together with a financial statement showing total Gross Revenues derived from the Cable System during such year. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.

B. **Rates and Charges.**

1. The City may not regulate the rates for the provision of Cable Service, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto as amended from time to time. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.
2. A schedule of the current Subscriber charges, as well as the form of residential Subscriber contract, specifying the current length and term of subscriber contracts, shall be kept on file, and available for public inspection during normal office hours, at the office of Grantor.

C. **Renewal of Franchise.**

1. The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
2. In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. The City further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in

Subsection (c) of Section 626 of the Cable Act is considered to begin. Notwithstanding anything to the contrary set forth in this section, the Grantee and City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. The Grantee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

**D. Abandonment or Removal of Franchise Property.**

1. Grantee shall not abandon any portion of its Cable System without giving at least three (3) months prior written notice to City. A Grantee shall not abandon any portion of the Cable System without compensating the City for any damages resulting to the City from the abandonment.
2. Subject to 47 U.S.C. § 546, at the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days, except to the extent grantee is authorized or utilizing the System pursuant to other Applicable Laws.
3. Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

**E. Sale or Transfer of Franchise.**

1. This Franchise or Cable System shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, other than to an entity controlling, controlled by, or under common control with the Grantee, without full compliance with the procedure set forth in this Section and Minn. Stat. § 238.083.
2. The provisions of this Section shall apply to the sale or transfer of all or a portion of Grantee's assets, merger (including any parent and its subsidiary entity), consolidation, creation of a subsidiary entity or sale or transfer of stock or other interest in Grantee so as to create a new controlling interest in the Cable System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
  - i. The parties to the sale or transfer shall make a written request to City for its approval of a sale or transfer. City shall then make a determination pursuant to this Franchise as to the exercise of its first right of refusal to purchase System.
  - ii. City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary.

- iii. If a public hearing is deemed necessary pursuant to (ii) above, such hearing shall be conducted within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. 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 City.
    - iv. Within thirty (30) days after the public hearing, City shall approve or deny in writing the sale or transfer request, or it shall exercise its right of first refusal. Approval shall not be unreasonably withheld.
    - v. Grantee, upon transfer, shall within sixty (60) days thereafter file with City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.
  3. In reviewing a request for sale or transfer, the City may inquire into the qualifications of the prospective controlling party, and Grantee shall assist City in so inquiring. City may condition said transfer upon the new controlling party's compliance with the terms and conditions of this Franchise. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise, and reimbursing City for all costs and expenses, including its attorneys' fees resulting from such sale or transfer.
- F. **City's Right to Purchase System.** The City shall be entitled to a right of first refusal of any bona fide offer to purchase the Grantee as set forth in section E above. Bona fide offer as used in this Section means a written offer which has been accepted by Grantee subject to City's rights under this Franchise. The price to be paid by City shall be the bona fide offer for the Cable System including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within ninety (90) days of City's receipt from Grantee of a copy of written bona fide offer. If the City decides to exercise this right of first refusal, the City must complete its acquisition of the Cable System within 60 days after notifying Grantee of its decision to do so.
- G. **Purchase by City Upon Non-Renewal or Revocation.** City may, upon the payment of a fair valuation, purchase, take over and hold the property and plant of Grantee in whole or in part in the following circumstances.
  1. If such purchase or taking over be at the non-renewal of the Franchise, subject to 47 U.S.C. § 546, such valuation shall be at fair market value determined on the basis of the cable system valued as a going concern, but with no value attributed to the Franchise itself.
  2. If such purchase or taking over be at the revocation of the Franchise for cause, such valuation shall be at an equitable price.
- H. **Removal of Property.** Upon revocation, termination, non-renewal or forfeiture of this Franchise, subject to 47 U.S.C. § 546, Grantee shall, if the City so requests, remove all of its cables, wires and appliances from the streets, alleys, and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. If the same are not

so removed, the City may cause the same to be removed and recover the reasonable costs thereof from Grantee.

- I. **Continuing Administration Responsibility.** The office of the City Administrator shall be responsible for the continuing administration of this Franchise.

Subd. 6. **Technical Compliance**

A. **Technical Standards.**

1. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement.
2. Grantee shall at all times fully comply with the provisions of the Federal Communications Commission technical standards at Section 76, Subpart K of the Code of Federal regulations and found in 47 CFR §§ 76.601 to 76.617, as may be amended from time to time. Upon the City's request, Grantee shall provide the City with a copy of any tests required to be performed pursuant to FCC standards.
3. All installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended. All construction practices shall be in accordance with all applicable section of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.
4. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.

- B. **Technical Violations.** The parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called technical breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

1. In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or
2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

C. **Records required and City's right to inspect.**

1. **Reports Required.** The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the City upon request.



2. The Grantee shall at all times maintain:
  - i. A record of all written complaints received regarding customer service, interruptions or degradation of Cable Service shall be maintained for one (1) year, including the resolution of such complaints.
  - ii. A full and complete set of plans, records and strand maps showing the location of the Cable System.
  - iii. All records of revenues and other financial information relative to the computation of the Franchise Fee set forth herein.
  - iv. An accurate count of the number of Subscribers in the Service Area.
3. **Inspection of Records.** Grantee shall permit any duly authorized representative of the City, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the City. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

**D. Annual Reports.**

1. Upon request, Grantee shall, within ninety (90) days of each calendar year end, submit a written end of the year report to City with respect to the preceding calendar year containing the following information as it pertains to the Cable System authorized pursuant to this Ordinance:
  - i. A Summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to Cable Services commenced or discontinued during the reporting year;
  - ii. A report of total Subscribers for each quarter.
2. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during Normal Business Hours.
3. All reports and records required under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this Ordinance or the Franchise agreement.

- E. **Monitoring and Compliance Reports.** Upon request, Grantee shall provide a written report of the FCC performance tests for the System required in Part 76, Section 76.601 of FCC rules and regulations.
- F. **Additional Reports.** Grantee shall prepare and furnish to City, at the times and if prepared in the ordinary course of business, such mutually agreed to additional reports with respect to its operation, affairs, transactions or property, which are reasonably necessary for the administration and enforcement of the Franchise, provided, however, Grantee shall not be required to disclose any information which it reasonably deems confidential or proprietary.

Subd. 7. **Insurance, Indemnification and Bonds or Other Surety**

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

|   |  |
|---|--|
| Workers' Compensation   | Statutory Limits   |
| Commercial General Liability  | \$1,000,000 per occurrence,<br>Combined Single Liability (C.S.L.)<br>\$2,000,000 General Aggregate |
| Auto Liability including coverage<br>hired autos Umbrella Liability | \$1,000,000 per occurrence C.S.L. on all owned, non-owned  |
| Umbrella Liability  | \$1,000,000 per occurrence C.S.L.  |

- B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- D. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

Subd. 8. **Enforcement and Termination of Franchise**

- A. **Notice of Violation.** In the event that the City believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

- B. **Grantee's Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the notice described in Subd. 8 A. to respond to the City contesting the assertion of noncompliance or; (b) to cure such default or; (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date of completion.
- C. **Public Hearing.** In the event that Grantee disputes the noncompliance or fails to respond to the notice described in Subd. 8.A. pursuant to the procedures set forth in Subd. 8.B., or in the event that the alleged default is not remedied within thirty (30) days after the Grantee is notified of the alleged default pursuant to Subd. 8.A. or the Grantee fails to take steps to cure pursuant to Subd. 8.B, then, the City, shall issue a written notice to the Grantee to appear before the City Administrator, to resolve the issue of noncompliance. Upon determination by the City that the Grantee is in noncompliance with the Franchise Agreement and that no proposed remedy is satisfactory to the City, the City shall make a written recommendation to schedule a public hearing to investigate the alleged default. Said public hearing shall be held at the next regularly scheduled hearing of the City that is scheduled at a time that is not less than twenty (20) business days there from. The City shall notify the Grantee, in writing, of the time and place of such hearing and provide the Grantee with an opportunity to be heard.
- D. **Enforcement.**
1. Subject to applicable federal and state law, in the event the City, after such hearing, determines that Grantee is in default of any provision of the Franchise, the City may:
    - i. Commence an action at law for monetary damages or seek other equitable relief;
    - ii. In the case of a substantial default of a material provision of the Franchise, any willful and continued attempt by Grantee to evade the provisions of the Franchise, or Grantee practices fraud or deceit upon the City, declare the Franchise Agreement, and the rights and privileges thereof, to be revoked; or
    - iii. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.
  2. Any such determination by the City shall be subject to review *de novo* by a court of competent jurisdiction. During any appeal period, this Franchise shall remain in full force and effect unless the term thereof sooner expires.
  3. The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance.
- E. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, unavailability of equipment, access to third party facilities including by not limited to poles, conduits, or railroad crossings, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control.

Subd. 9. **Unauthorized Reception**

- A. **Misdemeanor.** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the City shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law that will enforce the intent of this section.

Subd. 10. **Consumer Protection Provisions**

- A. **Customer Service Standards.** The City hereby adopts the customer service standards set forth in 47 C.F.R. §76.309 and §§ 76.1601-1604 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

Subd. 11. **Miscellaneous Provisions**

- A. **Preemption.** If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.
- B. **Actions of City.** In any action by the City or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- C. **Franchise Required.** It shall be unlawful for any Person to construct, operate or maintain a Cable Services System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Services Franchises granted by City shall contain the same substantive terms and conditions.
- D. **Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an

alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

- E. **Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the City shall be addressed as follows:

City of La Crescent  
Attn: City Administrator  
315 Main Street  
La Crescent, MN 56537

The notices or responses to the Grantee shall be addressed as follows:

Ace Telephone Association DBA AcenTek  
Attn:

\_\_\_\_\_  
\_\_\_\_\_

City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

- F. **Descriptive Headings.** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- G. **Repealer.** Ordinance No. 388. An ordinance granting a non-exclusive cable television franchise to Ace Telephone Association dated July 8, 2012, is hereby repealed upon this ordinance becoming effective.
- H. **Severability.** If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**PASSED AND ADOPTED** by the City Council of the City of La Crescent, Minnesota, this 12th day of June, 2017.

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Mayor

ATTEST:

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City Administrator

The foregoing motion was duly seconded by Member Williams and upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The ordinance was declared duly passed and adopted.

City Attorney Wieser then reviewed with Council the Summary Ordinance for publication. The Council made the following findings of facts: that publication of the summary informs the public of the intent and effect of the Ordinance.

Member Krenz then made a motion, seconded by Member Williams as follows:

**MOTION THAT A PRÉCIS FORMAT OF SAID ORDINANCE NO. 513 BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE CITY AND WITH “OFFICIAL COPY” SO MARKED BE KEPT ON FILE IN THE OFFICE OF THE CITY ADMINISTRATOR AND AUTHORIZING THE CITY ATTORNEY TO CORRECT ANY CLERICAL ERRORS IN ORDINANCE NO. 513.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 3.3 – XCEL ENERGY FRANCHISE AGREEMENT**

City Attorney Wieser reviewed with City Council an ordinance for NSP d/b/a as Xcel Energy granting permission to continue to operate its electric distribution system in the City of La Crescent. The City is in the process of negotiating some of the terms with representatives from Xcel. Specifically, the term of the franchise, along with relocation of utility poles in the event of relocation or improvement of City right-of-way, such as



construction of a walking or biking trail. In addition, the City is seeking review of this ordinance by the City Engineer. It is anticipated that these matters will be finalized and the ordinance will be in final form at the June 26, 2017 meeting. No action taken.

**ITEM 3.4 – ANNEXATION PETITION**

City Attorney Wieser reviewed with City Council a Petition requesting annexation by property owners at 56 Crescent Avenue. Before the adoption of an Ordinance the City will need to hold a public hearing and provide 30 days written notice to La Crescent Township and contiguous property owners. It was recommended that the Petition be accepted and that a Public Hearing be scheduled for July 24, 2017 at 5:35 p.m. Following discussion, Member Buehler made a motion, seconded by Member Hutchinson, as follows:

**MOTION TO ACCEPT THE PETITION FOR ANNEXATION FROM THE PROPERTY OWNERS AT 56 CRESCENT AVENUE AND CALL FOR A PUBLIC HEARING ON JULY 24, 2017 AT 5:35 PM AT CITY HALL.**

Upon a roll call vote taken and tallied by the City Attorney, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 3.5 – PERSONNEL COMMITTEE RECOMMENDATION**

City Administrator Waller gave an overview to City Council regarding the following recommendations from the Personnel Committee:

1. That the City Council approve the hiring of Ashley Zblewski as the City's GreenStep intern. Ms. Zblewski is a senior at Viterbo University, majoring in environmental biology with a minor in sustainability. We are suggesting that the rate of pay for the position be set at \$12.00 per hour.
2. That the City Council approve the closing of City Hall on Monday, July 3, 2017. City employees would agree to take a day of vacation on July 3, 2017, in exchange for the building being closed. We would provide notice in advance of the closing.

Following discussion, Member Buehler made a motion, seconded by Member Williams, as follows:

**MOTION TO APPROVE THE HIRING OF ASHLEY ZBLEWSKI AS THE CITY'S GREENSTEP INTERN WITH THE RATE OF PAY FOR THE POSITION TO BE SET AT \$12.00 PER HOUR.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |

|                 |     |
|-----------------|-----|
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

Following discussion, Member Krenz made a motion, seconded by Member Williams, as follows:

**MOTION TO APPROVE THE CLOSING OF CITY HALL ON MONDAY, JULY 3, 2017 WITH CITY EMPLOYEES AGREEING TO TAKE A DAY OF VACATION ON JULY 3, 2017, IN EXCHANGE FOR THE BUILDING BEING CLOSED AND TO PROVIDE NOTICE IN ADVANCE OF THE CLOSING.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 3.6 – LIVING FOR LIZ REQUEST**

City Administrator Waller reviewed with City Council a request from Living for Liz to build a temporary sand volleyball court that would be utilized by LizFest on August 12<sup>th</sup>, 2017. A volleyball tournament has been a consistent part of LizFest, but has taken place off- site at Twin Creeks in Hokah because at least two courts are needed for a tournament. The temporary volleyball court would be located behind Schmitt's Time Out Tavern on the grass bordering the parking lot. It was recommended to City Council to approve the request, and authorize the City maintenance department to assist with the construction of the facility.

Following discussion, Member Buehler made a motion, seconded by Member Hutchinson, as follows:

**MOTION TO APPROVE THE BUILDING OF A TEMPORARY SAND VOLLEYBALL COURT THAT WOULD BE UTILIZED BY LIZFEST ON AUGUST 12<sup>TH</sup>, 2017 BEHIND SCHMITTY'S TIME OUT TAVERN ON THE GRASS BORDERING THE PARKING LOT AND TO AUTHORIZE THE CITY MAINTENANCE DEPARTMENT TO ASSIST WITH THE CONSTRUCTION OF THE FACILITY.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 3.7 – MnDOT MASTER PARTNERSHIP CONTRACT**

City Administrator Waller reviewed with City Council a letter from MnDOT regarding the renewal of the City's master partnership contract between the City and MnDOT. The contract is utilized primarily for testing on State aid improvement projects, and other inspection services. The City has a current master partnership contract with MnDOT that will be expiring. It was recommended to City Council to approve the master partnership contract with MnDOT by adopting the resolution, and authorizing the Mayor and City Administrator to sign the contract. Following discussion, Member Williams introduced the following resolution and moved its passage and adoption:

**RESOLUTION NO. 06-17-11**

**A RESOLUTION TO ENTER INTO A MASTER PARTNERSHIP CONTRACT WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the Minnesota Department of Transportation (MnDOT) wishes to cooperate closely with local units of government to coordinate the delivery of transportation services and maximize the efficient delivery of such services at all levels of government; and

WHEREAS, MnDOT and local governments are authorized by Minnesota Statutes Sections 471.59, 174.02, and 161.20, to undertake collaborative efforts for the design, construction, maintenance and operation of state and local roads; and

WHEREAS, the parties wish to be able to respond quickly and efficiently to such opportunities for collaboration, and have determined that having the ability to write “work orders” against a master contract would provide the greatest speed and flexibility in responding to identified needs.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of La Crescent, Minnesota, as follows:

1. That the City of La Crescent enter into a Master Partnership Contract with the Minnesota Department of Transportation, a copy of which was before the Council.
2. That the proper City officers are authorized to execute such contract, and any amendments thereto.
3. That the La Crescent City Engineer is authorized to negotiate work order contracts pursuant to the Master Contract, which work order contracts may provide for payment to or from MnDOT, and that the City Engineer may execute such work order contracts on behalf of the City of La Crescent without further approval by this Council.

ADOPTED this 12<sup>th</sup> day of June, 2017.

SIGNED:

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Mayor

ATTEST:

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City Administrator

The foregoing motion was duly seconded by Member Krenz and upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried and the resolution duly passed and adopted.

### **ITEM 3.8 – STATE BONDING APPLICATION RESOLUTION**

City Administrator Waller reviewed with City Council that the City has received a \$1,000,000 Transportation Alternatives Program grant from MnDOT to build a bicycle/pedestrian bridge over Highway 14/16/61. This is the third phase of the Wagon Wheel improvement project, and the grant funds are programmed for 2021. The total estimated cost of the third phase of the Wagon Wheel improvement project is approximately \$2,800,000. The City continues to look for grant/funding opportunities to cover the balance of the project costs. One opportunity might be to have the project included in the next State bonding bill. One of the requirements of this process is for the City Council to adopt a resolution in support of the application. It was recommended to City Council to adopt the resolution, and authorize that the City submit an application to include funding for the third phase of the Wagon Wheel improvement project in the 2018 bonding bill. Following discussion, Member Hutchinson introduced the following resolution and moved its passage and adoption:

#### **RESOLUTION NO. 06-17-12**

#### **A RESOLUTION OF SUPPORT/CITY OF LA CRESCENT AUTHORIZING FILING OF APPLICATION AND COMMITMENT TO EXECUTE THE GRANT AGREEMENT FOR THE 2018 STATE BONDING BILL**

WHEREAS, the State of Minnesota, office of the Management and Budget, requests a Resolution of support for 2018 Capital Budget requests from Local Governments per its statutory requirements found in M.S.16A.86, Subd.3a (6).

WHEREAS, the City of La Crescent desires to request bonding funds to complete its project named the City of La Crescent Wagon Wheel Trail project that is located in the City of La Crescent, Minnesota.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of La Crescent, Minnesota, as follows:

- 1) The City of La Crescent is in support of the completion of the Wagon Wheel Trail Project.
- 2) That the total cost of completing the project shall be \$3 million and City of La Crescent is requesting \$2 million to be included in the state bonding bill.
- 3) The City of La Crescent agrees to enter into necessary and required agreements with the office of Management and Budget for the specific purpose of completing the project.
- 4) That City Administrator, Bill Waller, and/or City of La Crescent is authorized and directed to execute said application and serve as the official liaison with the office of Management and Budget.

ADOPTED this 12<sup>th</sup> day of June, 2017.

SIGNED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

The foregoing motion was duly seconded by Member Buehler and upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried and the resolution duly passed and adopted.

### **ITEM 3.9 – CITY COUNCIL MEETING PACKETS**

City Administrator Waller reviewed with City Council the distribution of City Council meeting packets electronically to members of the City Council. It was recommended that City Council members be given an electronic device to access their City e-mail, and the packets for City Council meetings. For those members of

the City Council and staff that would rather utilize their own electronic device, it was recommended that the City Council set a yearly technology allowance. It was proposed that beginning July 1, 2017, a \$125.00 per year technology allowance be authorized for City Council and appropriate City staff. Following discussion, Member Hutchinson made a motion, seconded by Member Krenz, as follows:

**MOTION TO AUTHORIZE A \$125.00 PER YEAR TECHNOLOGY ALLOWANCE FOR CITY COUNCIL AND APPROPRIATE CITY STAFF BEGINNING JULY 1, 2017.**

Upon a roll call vote taken and tallied by the City Administrator, all Members present voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |

and none voted against the same. The motion was declared duly carried.

**ITEM 8.1 – CORRESPONDENCE – BALDNER’S/McCABE’S**

Mayor Poellinger reviewed with City Council correspondences from Gerald and Betty Baldner of 98 Shore Acres Drive and Mike and Tonya McCabe of 222 Shore Acres Drive regarding water traffic and the disturbance of fishing boats during fishing tournaments on the river in the area of their homes. It was the consensus of City Council to forward to City Attorney Wieser for review.

**ITEM 8.2 – CORRESPONDENCE – HOUSTON COUNTY ROUND TABLE**

Correspondence from Rep. Tim Walz’ staff inviting the Mayor and City Council to the Rural Way of Life Round Table Discussion to be held June 13, 2017 from 4:00 p.m. to 5:15 p.m. at the Houston Nature Center.

**ITEM 9 – CHAMBER OF COMMERCE**

Travis Minegar of the Chamber of Commerce updated City Council on the Slice of Life to be held June 20, 2017 and the Golf Outing on July 20, 2017.

There being no further business to come before the Council at this time, Member Krenz made a motion, seconded by Member Hutchinson, to adjourn the meeting. Upon a roll call vote taken and tallied by the City Administrator, all Members voted in favor thereof, viz;

|                 |     |
|-----------------|-----|
| Bernie Buehler  | Yes |
| Ryan Hutchinson | Yes |
| Brian Krenz     | Yes |
| Dale Williams   | Yes |
| Mike Poellinger | Yes |



and none voted against the same. The motion was declared duly carried and the meeting duly adjourned at 6:35 PM.

APPROVAL DATE: \_\_\_\_\_

SIGNED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator