

MINUTES, REGULAR MEETING
CITY COUNCIL, CITY OF LA CRESCENT, MINNESOTA
SEPTEMBER 26, 2022

Pursuant to due call and notice thereof, the second meeting of the City Council of the City of La Crescent for the month of September was called to order by Mayor Mike Poellinger at 5:30 PM in the La Crescent City Hall, La Crescent, Minnesota, on Monday, September 26, 2022.

Upon a roll call taken and tallied by the City Administrator, the following members were present: Members Ryan Hutchinson, Cheryl Jostad, Teresa O'Donnell-Ebner, Dale Williams, and Mayor Mike Poellinger. Members absent: None. Also present were City Attorney Skip Wieser, City Administrator Bill Waller, and Deputy City Clerk Angie Boettcher.

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 – SEPTEMBER 12, 2022
- 1.2 BILLS PAYABLE THROUGH SEPTEMBER 23, 2022
- 1.3
- 1.4

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. Deputy City Clerk, Boettcher made some requested changes to the September 12th minutes as follows: item 3.4 in the first sentence “**paving the parking lot at**” was added to describe the improvement for Old Hickory Park and in item 3.5. the third sentence “City Administrator Waller followed up with” was removed and Member Jostad “**called City Administrator Waller asking about information he had sent and he asked Member Jostad if this item should be added to the**” 9/12/2022 agenda was added. Member Hutchinson made a motion, seconded by Member O'Donnell-Ebner, as follows:

A MOTION TO APPROVE THE CONSENT AGENDA WITH REQUESTED CHANGES TO ITEMS 3.4 AND 3.5.

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

Ryan Hutchinson	Yes
Teresa O'Donnell-Ebner	Yes
Cheryl Jostad	Yes

Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.1 – A.J. FRELS – EXPLORE LA CROSSE

A.J. Frels, Executive Director of Explore La Crosse presented City Council with an update on the 2022 Explore La Crosse area campaign as well as the quarterly report. This was informational only, no action required.

ITEM 3.2 – ACENTEK FRANCHISE AGREEMENT

Attorney Wieser reviewed with City Council for approval the AcenTek Franchise Agreement for cable within the City limits. The City has an agreement substantially the same with Spectrum Mid-America, LLC, d/b/a Charter Communications, Inc. The agreement has been approved by AcenTek and the termination of this agreement would coincide with the termination of the Charter agreement in January of 2030. Following discussion, Member O'Donnell-Ebner introduced the following Ordinance, and moved its passage and adoption:

ORDINANCE NO. 562

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.

This Cable Franchise is entered into by the City of La Crescent, a municipal corporation organized under the laws of Minnesota and Ace Telephone Association DBA AcenTek, incorporating by reference La Crescent City Ordinance No. _____ dated _____, 2022 defining the terms and conditions for a franchise to operate a cable system within the City of La Crescent, Minnesota, and the regulation and use of the system.

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 Systems within the City of La Crescent.
- B. The City Council finds that the development of a Cable 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 the 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. To the extent any of the defined terms or definitions below are based upon or identical to the defined terms or definitions contained in federal law and definitions in federal law are changed or amended, the franchise shall be interpreted to incorporate the changed or amended definitions.

- A. “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.
- B. “Basic Cable Service” means any Cable Service tier which includes the lawful retransmission of local television broadcast signals.
- C. “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.
- D. “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.
- E. “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.
- F. “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 573; or any facilities of any electric utility used solely for operating its electric utility system.

- G. "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.
- H. "FCC" or "Commission" means the Federal Communications Commission or any legally appointed designated or elected agent or successor thereto.
- I. "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.
- J. "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); 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.
- K. "Grantee" means Ace Telephone Association, DBA AcenTek and its lawful successors, transferees, or assignees.
- L. "Gross Revenues" means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services within the Service Area, provided, however, that such phrase shall not include any taxes, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee, or credits, refunds or deposits made to Subscribers or unrecovered bad debt.
- M. "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.
- N. "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 City 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.

- O. "Public, Educational, or Governmental Access" means: (i) 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.
- P. "Service Area" shall mean the geographic boundaries of the Franchise Authority and shall include any additions thereto by annexation or other legal means.
- Q. "Service Tier" means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- R. "State" means the State of Minnesota and any political subdivision or agency thereof.
- S. "Subscriber" means a Person who is billed for and lawfully receives Cable Services of the Cable System with the Grantee's express permission.
- T. "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 in July 2017 but was extended until January 31, 2019.
2. Under La Crescent City Ordinance No. 525, the City Council and the Grantee entered into an extension agreement for the operation of the cable system retroactive from July 2017 through January 31, 2019, or the adoption of this franchise agreement, whichever occurs first.
3. The City Council has considered the Grantee's technical ability, financial condition, and legal qualifications and has approved the same.
4. 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 System which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services, subject to Subd. 3C1. 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.
5. 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.

- B. **Term.** The Franchise granted pursuant to this Ordinance shall be for an initial term through January 31, 2030, unless otherwise lawfully extended or terminated in accordance with the term of this Ordinance.
- C. **Non-cable services.** 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 generally applicable and nondiscriminatory local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes (M.S.) Chapter 238; provided, however, if any provisions of M.S. 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 System, open or disturb the surface of any Public Way without first obtaining a permit from the proper municipal authority providing that all other users of the Public Way are required to obtain such permits prior to commencing construction. If Grantee fails to meet the conditions of the permit the City shall have the right to put the Public Way 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 federal and state 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 Public Way 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 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 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 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 generally applicable and nondiscriminatory 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. If the City reimburses other occupants of the Public Way for purposes of the foregoing, the Grantee shall be similarly reimbursed. 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.

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 thirty five (35) prospective Subscribers per linear strand mile of cable (one cable mile) as measured from the closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of the request , 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 the nearest accessible tie-in point to connection of service to Subscribers, or a density of less than thirty-five (35) Subscribers per linear strand mile of cable, Cable Service shall be extended to such Subscriber provided that the subscriber shall pay the net additional construction costs.

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. 5(A)(1) 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 the 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, one outlet of free Basic Cable Service and one free converter to the following public facilities: La Crescent Police Department (315 Main Street), La Crescent Fire Department (336 South First Street),. 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. Grantee shall provide notice at least ninety (90) days prior to discontinuing the voluntary complimentary service described in this section.

M. **Emergency Use.**

1. Grantee shall comply with 47 U.S.C. 544 (g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS"). If the Grantee provides an EAS, then that Grantor 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. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of the use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

N. **Public, Educational, and Governmental (PEG) Access Channel.** Upon 120 days' prior written notice by the city, Grantee shall provide to each of its Subscribers who receive some or all of the Cable Services offered on the System, reception on at least one specially designated access Channel on the Cable System for use by the Grantor for non-commercial, video programming for public, education and government ("PEG") access programming ("PEG Access Channel"). Subject to applicable law, the PEG Channel shall be placed on the basic tier of service available to Subscribers. The Grantor shall administer the Channel and shall establish rules for its use.

O. **Other Access Requirements.**

1. Grantee shall have no responsibility to produce programming for or to operate the PEG Access Channel; Grantee's responsibility shall be to provide the PEG Access Channel and to allow it to be used to distribute programming produced by the City and/or other third parties. PEG Access Channel programming and operation shall be the City's responsibility, subject to any PEG Access Channel policies and procedures which the City may adopt consistent with applicable law. The PEG Access Channel shall be placed on the basic tier of service available to Subscribers.
2. **Additional PEG Access Channels.** Grantee shall only be required to provide a PEG Access Channel in addition to the one PEG Access Channel described above in accordance with applicable law, and the Grantee shall have six (6) months in which to provide a second specially designated access channel for the same purpose to the extent such PEG Access Channel is required.
3. **PEG Access Channel Operating Rules.** The Grantee shall establish rules pertaining to the administration of the specially designated PEG Access Channel(s). The rules shall be consistent with any state or federal rules or regulations relating to access channels.

4. **Origination Capability.**

Upon 180 days' written notice, the Grantee shall provide, at the City's request and the City's expense and ongoing costs, the ability to transmit PEG programming from:

- i. La Crescent City Hall.

Grantee, subject to applicable federal and state statutes and rules, shall be responsible for capital costs incurred by Grantee for public, educational, or governmental access equipment and facilities.

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

A. **Franchise Fee.**

1. Grantee shall pay the Grantor annually an amount equal to five percent (5%) of the Collected 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 Collected Revenues derived from the Cable System during such year. The Grantor shall have the right to review (at Grantors sole expense) the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder. Said review shall take place at the offices of the Grantee in Houston, Minnesota during normal business hours of the Grantee.

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 to the extent required by applicable law.

2. Upon request, Grantee shall provide the City with 1) current rates for Cable Services offered to Subscribers in the City.

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, 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 System from Public Ways within a reasonable period of time, which shall not be less than one year, 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 portions of the Cable System located underground so long as it does not materially interfere with the use of the Public Ways in which such property is located or with the use thereof by any public utility or other cable operator.

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. In the event the City does not render any decision on the written request for approval of a sale or transfer within one hundred twenty (120) days of submission of such a request, the request shall be deemed granted.
 - vi. 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 to the extent permitted by applicable law, 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 reasonable costs and expenses, including its attorneys' fees resulting from such sale or transfer to the extent permitted by and in compliance with applicable law.

- F. **City's Right to Purchase System.** Subject to and to the extent not preempted by federal law, 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 Public Ways, 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, or in the alternative, the City may assume ownership of, and use of the abandoned property.
- 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 FCC technical standards, and any standards set forth in its Franchise.
2. Grantee shall at all times fully comply with the provisions of the FCC 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, as amended, and as may from time to time be amended. All

construction practices shall be in accordance with all applicable sections 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 the records required under this Subd. 6(C) to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the records sought to be reviewed 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 or on a publicly available website 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.

E. Audit. The City and its agents and representatives shall have authority to arrange for and conduct at City's expense an audit of Grantee's accounting and financial records for the sole purpose of verifying the Grantee's PEG Fee payment. Grantee shall first be given thirty (30) days' written notice of the inspection and description, to the best of City's ability, of the books, records, and documents prepared in the ordinary course of business that it wants to audit. The period of limitation for recovery of any fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. No auditor engaged by the Grantor shall be compensated on a success based formula (e.g., payment based on a percentage of an underpayment, if any).

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, \$2,000,000 General Aggregate
Auto Liability including coverage owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence Combined Single Limit (C.S.L.) on all
Umbrella Liability	\$1,000,000 per occurrence

- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, 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. 8A. 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. 8A. or the Grantee fails to take steps to cure pursuant to Subd. 8B, then, the City, shall issue a written notice to the Grantee to appear before the City Administrator, to resolve the issue of non-compliance. Upon determination by the City that the Grantee is in noncompliance with the Franchise 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 therefrom. 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, 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. **Consumer Protection Provisions**

- A. **Customer Service Standards.** To the extent permitted by applicable law, 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. 10. **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 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. It shall also be unlawful for any Person to provide Cable Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise. 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 Ways, 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 or less beneficial 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 55947

With a copy to:
Attorney Al Wieser III
Wieser Law Office P. C.
33 South Walnut St., Suite 200
La Crescent, MN 55947

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

Ace Telephone Association DBA AcenTek
Attn: Mike Osborne

PO Box 360
Houston, MN 55943

With a copy to:
Attorney Terry Chiglo
PO Box 507
Houston, MN 55943

City and the Grantee may designate such other address or addresses from time to time by giving written 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.** Any prior ordinance granting a non-exclusive cable television franchise to Ace Telephone Association DBA AcenTek, 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 this _____ day of _____, 2022, subject to applicable federal, state and local law.

CITY OF LA CRESCENT

By: _____
Mayor

City Administrator

Accepted this _____ day of _____, 2022, subject to applicable federal and state law.

ACE TELEPHONE ASSOCIATION DBA ACEN TEK

By: _____

Title: _____

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

City Council also reviewed the Summary Ordinance for publication. The Council made the following finding of facts: that the publication of the summary informs the public of the intent and effect of the Ordinance.

Member Hutchinson then made a motion, seconded by Member Jostad as follows:

MOTION THAT A PRÉCIS FORMAT OF SAID ORDINANCE 562 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.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.3 – AGENDA REQUEST – BRUCE BAUER

City Council reviewed an agenda request from Bruce Bauer requesting permission to allow for a small motorized train to operate from noon to 2:00 p.m. on October 29th during the kid's day of the Spooktacular Haunted House being held at Bauer's Market and Garden Center. The train would start in front of Bauer's Market and proceed south down North Chestnut Street then turning west onto North 1st Street. The train will then turn around and return to its starting point. A letter from Police Chief Ahlschlager was also included stating that disruption to normal traffic flow will be minimal. Following discussion, Member William made a motion, seconded by Member Hutchinson as follows:

MOTION TO APPROVE A SMALL MOTORIZED TRAIN TO OPERATE FROM NOON TO 2:00 P.M. FROM BAUER'S MARKET THEN SOUTH ON NORTH CHESTNUT AND WEST ON

NORTH 1ST STREET AND RETURNING TO ITS STARTING POINT ON OCTOBER 29TH DURING THE KID’S DAY OF THE SPOOKTACULAR HAUNTED HOUSE BEING HELD AT BAUER’S MARKET AND GARDEN CENTER WITH THE UNDERSTANDING THAT DISRUPTION TO NORMAL TRAFFIC WILL BE MINIMAL.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O’Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.4 – PERSONNEL COMMITTEE RECOMMENDATIONS

The Personnel Committee had the following recommendations for approval by the City Council:

1. On September 23, 2019, the City Council approved a waiver to the response time requirements included in the Rules and Regulations of the Fire Department for Fire Chief Tom Paulson. The waiver was for a one-year trial period, at which time the waiver would be reviewed and evaluated and a potential extension considered. In granting the waiver, the City Council made the finding of fact that no undue hardship or hazard would result to the citizens served by the Fire Department. The City Council reviewed the waiver again in 2020 and 2021 and granted the one-year waiver to Fire Chief Paulson reaffirming the findings of fact referenced in 2019. Once again the Personnel Committee is recommending City Council approval for an additional one-year waiver to the response time requirements for Fire Chief Paulson with the same findings of fact as 2019. The waiver would run through October 31, 2023.

Following discussion, Member O’Donnell-Ebner made a motion, seconded by Member Williams as follows:

MOTION TO APPROVE AN ADDITIONAL ONE-YEAR WAIVER WHICH WOULD EXPIRE ON OCTOBER 31, 2023 TO THE RESPONSE TIME REQUIREMENTS INCLUDED IN THE RULES AND REGULATIONS OF THE FIRE DEPARTMENT FOR FIRE CHIEF TOM PAULSON REAFFIRMING THE FINDINGS OF FACT REFERENCED IN 2019 THAT NO UNDUE HARDSHIP OR HAZARD WOULD RESULT TO THE CITIZENS SERVED BY THE FIRE DEPARTMENT.

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

Ryan Hutchinson	Yes
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Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

2. That the City Council approve a mediation settlement agreement with the LELS union.

Following discussion Member Williams made a motion, seconded by Member O'Donnell-Ebner as follows:

MOTION TO APPROVE A SETTLEMENT AGREEMENT WITH THE LELS UNION FOR A FORMER CITY EMPLOYEE AND THAT THE CITY ADMINISTRATOR AND MAYOR AUTHORIZE THE SIGNED AGREEMENT.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

3. That the City Council approve the review of a PERA disability determination. A letter from the City Attorney regarding this recommendation was included and was reviewed at the meeting.

Following discussion Member Williams made a motion, seconded by Member O'Donnell-Ebner as follows:

MOTION TO AUTHORIZE THE CITY ATTORNEY TO FILE A PETITION FOR REVIEW OF THE PERA'S DETERMINATION OF DUTY DISABILITY FOR A PRIOR CITY EMPLOYEE AND FOR ATTORNEY WIESER TO WORK WITH IVERSON REUVERS LAW FIRM TO ASSIST IN THE MATTER.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes

Mike Poellinger Yes

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

4. That the City Council appoint Christopher Langen to fill the current vacancy on the Planning Commission.

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

MOTION TO APPOINT CHRISTOPHER LANGEN TO FILL THE CURRENT VACANCY ON THE PLANNING COMMISSION.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.5 – CALL FOR PUBLIC HEARING – EASEMENT VACATION

Attorney Wieser reviewed with City Council a petition for an Easement Vacation Request for the property at 1520 Valley Lane. It was suggested that at this time City Council approve to call for a public hearing on October 24, 2022, with time to yet be determined to consider the petition.

Following discussion, Member O'Donnell-Ebner made a motion, seconded by Member Hutchinson as follows:

MOTION TO APPROVE TO CALL FOR A PUBLIC HEARING ON OCTOBER 24, 2022 WITH THE TIME YET TO BE DETERMINED TO CONSIDER A PETITION FOR AN EASEMENT VACATION REQUEST FROM THE PROPERTY OWNERS AT 1520 VALLEY LANE.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.6 – MTU BUS LEASE

City Council reviewed the 2023 motor vehicle lease with the La Crosse MTU. The City of La Crescent owns the bus that is used in the operation of the local Apple Express bus service and leases the bus to the La Crosse MTU. In order to continue to provide the bus service, it was recommended that the City Council approve the 2023 motor vehicle lease and authorize the required signatures. Following discussion, Member Hutchinson made a motion, seconded by Member Williams as follows:

MOTION TO APPROVE THE 2023 MOTOR VEHICLE LEASE WITH THE LA CROSSE MTU AND AUTHORIZE THE REQUIRED SIGNATURES.

upon a roll call vote taken and tallied by the City Administrator, the following members voted in favor thereof, viz;

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O’Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.7 – MTU – TRANSIT OPERATING AGREEMENT

City Council reviewed the 2023 Transit Operating Agreement with the La Crosse MTU for the operation of the local Apple Express bus service. In order to continue to provide the bus service, it was recommended that City Council approve the 2023 operating agreement and authorize the required signatures. Following discussion, Member Jostad made a motion, seconded by Member Williams as follows:

MOTION TO APPROVE THE 2023 MTU TRANSIT OPERATING AGREEMENT AND AUTHORIZE THE REQUIRED SIGNATURES.

upon a roll call vote taken and tallied by the City Administrator, the following members voted in favor thereof, viz;

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O’Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.8 – PARADE PERMIT – STREET CLOSURE

City Council reviewed a letter from Police Chief Ahlschlager requesting approval to temporarily close South 4th Street between Oak and Elm Streets and temporarily post the north side of South 4th Street as “No Parking” on Friday, September 30th between the hours of 9:00 am and 11:00 am so that the La Crescent Elementary School PTO can hold the Great Green Run and Roll fun run on the sidewalks. There will be minimal disruption to daily traffic. Following discussion, Member O’Donnell-Ebner made a motion, seconded by Member Hutchinson as follows:

MOTION TO APPROVE THE TEMPORARY CLOSURE OF SOUTH 4TH STREET BETWEEN OAK AND ELM AS WELL AS TEMPORARY POSTING OF “NO PARKING” SIGNS ON THE NORTH SIDE OF SOUTH 4TH STREET ON FRIDAY, SEPTEMBER 30TH BETWEEN THE HOURS OF 9:00 AM AND 11:00 AM SO THAT THE LA CRESCENT ELEMENTARY SCHOOL PTO CAN HOLD THE GREAT GREEN RUN AND ROLL FUN RUN ON THE SIDEWALKS WITH ANTICIPATION THAT DAILY TRAFFIC WILL BE MINIMALLY DISRUPTED.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O’Donnell-Ebner	Yes
Dale Williams	Yes
Mike Poellinger	Yes

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

ITEM 3.9 – LIONS CLUB – CANDLELIGHT HIKE

City Council reviewed a letter from the La Crescent Lions Club requesting to host a family-friendly fall-lighted trail hike using the Wagon Wheel Trail Bridge and the Wagon Wheel Trail from the bridge to Shore Acres on Saturday, October 29, 2022 from 6:00 pm to 9:00 pm. The club is also requesting permission to use a UTV on the Wagon Wheel Trail to assist with event setup including clearing the trail and placement of luminaria. City Council also reviewed a letter from Police Chief Ahlschlager requesting one or two La Crescent Police Reserve Unit Officers to assist with traffic control from approximately 5:00 pm to 10:00 pm, placement of barricades on the short section of street between Eitzen State Bank and Wieser Law Office and by the railroad tracks on the road leading to the city brush site, and additional miscellaneous assistance from the Public Works crew. The Police Chief also cited other details and rules that would need to be followed. Following discussion, Member Williams made a motion, seconded by Member Jostad as follows:

MOTION TO APPROVE A FAMILY-FRIENDLY FALL-LIGHTED TRAIL HIKE HOSTED BY THE LA CRESCENT LIONS CLUB ON SATURDAY, OCTOBER 29, 2022 FROM 6:00 PM TO 9:00 PM USING THE WAGON WHEEL TRAIL BRIDGE AND THE WAGON WHEEL TRAIL FROM THE BRIDGE TO SHORE ACRES, THE USE OF A UTV ON THE WAGON WHEEL

TRAIL TO ASSIST WITH EVENT SETUP, AND APPROVING THE REQUESTS FROM POLICE CHIEF AHLSCHLAGER TO HAVE ONE OR TWO LA CRESCENT POLICE RESERVE UNIT OFFICERS TO ASSIST WITH TRAFFIC CONTROL FROM APPROXIMATELY 5:00 PM TO 10:00 PM, PLACEMENT OF BARRICADES ON THE SHORT SECTION OF STREET BETWEEN EITZEN STATE BANK AND WIESER LAW AND BY THE RAILROAD TRACKS ON THE ROAD LEADING TO THE CITY BRUSH SITE, ADDITIONAL MISCELLANEOUS ASSISTANCE FROM THE PUBLIC WORKS CREW, AND THE CITED DETAILS AND RULES THAT NEED TO BE FOLLOWED.

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Dale Williams	Yes
Mike Poellinger	Yes

Member O'Donnell-Ebner abstained. The motion was declared duly carried.

ITEM 3.10 – 2023 PRELIMINARY BUDGET & LEVY

City Administrator Waller reviewed with City Council the requirements needed to approve the proposed 2023 general fund budget. By September 30, the City Council is required to adopt a resolution setting the preliminary levy and set the date for the public meeting at which time the proposed budget and levy will be discussed, and the final budget and levy determined. As part of the budget review and adoption process, it was noted to City Council that they cannot adopt the 2023 general fund budget until after the public meeting in November and once the preliminary levy is set, the City Council has the discretion to lower the levy, but the City Council cannot increase the preliminary levy. Administrator Waller reviewed with City Council the “first draft” of the resolution that sets the preliminary levies for 2023 which was sent out in the City Council packet on September 23, 2022. Administrator Waller then reviewed a second resolution labeled “revised” dated September 26, 2022, which was provided to the Council before the Council meeting. The “revised” resolution was modified as follows, that the two ‘601’ fund items be removed and instead be included in the budget for the water department and fund #332, 2020A G.O Bond for the Horse Track Meadows development be reduced from \$218,000.00 to \$174,000.00. These changes result in the debt service levy being reduced from \$1,218,438.00 to \$1,086,600.00 and the total levy being reduced from \$3,656,717.00 to \$3,524,879.00 with a proposed levy increase of 5.4%. The final total City levy in 2022 was \$3,343,638.00 and the revised proposed total levy for 2023 is \$3,524,879.00. It was recommended that the City Council adopt the “revised” resolution that was presented at the meeting setting the preliminary levies for 2023 and that the public meeting is set for 6:00 p.m., on Monday, November 28, 2022. Following discussion, Member Jostad made a motion and introduced the following resolution, and moved its passage and adoption:

MOTION TO SET THE DATE AND TIME FOR THE PUBLIC MEETING FOR MONDAY, NOVEMBER 28, 2022 AT 6:00 P.M. AT WHICH TIME THE PROPOSED 2023 GENERAL BUDGET AND LEVY WILL BE DISCUSSED, AND THE FINAL BUDGET AND LEVY

DETERMINED.

RESOLUTION 09-22-30

**RESOLUTION MAKING PRELIMINARY GENERAL LEVIES FOR
COLLECTION WITH REAL ESTATE TAXES PAYABLE IN THE
CALENDAR YEAR 2023**

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

1. It is hereby determined and declared that there shall be and there is hereby levied upon all taxable property within the City for the general purposes of the City, as provided by law, to be collected in the year 2023 as part of the general taxes due and payable in the year 2023 a direct ad valorem tax in the amount of \$2,257,010.00 as provided by State law to be levied and collected in the manner provided by law.
2. Be it also hereby determined and declared that there shall be and there is hereby levied upon taxable property within the City of La Crescent for public library service, a tax in the amount of \$181,269.00 to be collected in the year 2023, as authorized by Minnesota Statutes, Section 134.33 and 134.34.
3. It is hereby found, determined, and declared that the amounts set forth in a column at the right to be levied with taxes to be collected in the calendar year 2023, in conjunction with the various bonds issued and sinking funds described below:

FUND #	YEAR	DESCRIPTION	TO BE LEVIED FOR COLLECTION IN CALENDAR YEAR 2023
322	2015A	G.O. Refunding Bonds – Apple Blossom Acres	\$3,500.00
325	2016A	G.O. Refunding Rec. Fac. Bonds – Aquatic Center	\$199,900.00
327	2016A	G.O. Improvement Bonds – Oak St. Recon.	\$115,800.00
328	2017A	G.O. Equipment Certificates	\$120,500.00
329	2018A	G.O. Improvement Bonds – Streets/Veterans Park	\$148,500.00
330	2019A	G.O. Equipment Certificates – Fire Truck	\$48,800.00
331	2019B	G.O. Improvement Bonds – Street Recon.	\$30,600.00
332	2020A	G.O. Improvement Bonds – HTM	\$174,000.00
333	2020A	G.O. Bonds – Tax Abatement - Ice Arena	\$17,700.00
334	2022A	G.O. Imp.Bonds/Equip.Cert. & CIP Bonds	\$227,300.00
		TOTAL DEBT SERVICE LEVY	\$1,086,600.00

4. Total levy for the City of La Crescent for collection in 2023 is \$3,524,879.00.

ADOPTED this 26th day of September, 2022.

SIGNED:

Mayor

ATTEST:

City Administrator

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

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	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 9 – CHAMBER OF COMMERCE

A member from the Chamber of Commerce was in attendance and gave Council an update.

La Crescent Library Director, Jess Witkins reviewed with City Council the 2023 proposed library budget.

There being no further business to come before the Council at this time, Member Williams made a motion, seconded by Member O'Donnell-Ebner to adjourn the meeting. Upon a roll call vote taken and tallied by the City Administrator, the following Members present voted in favor thereof, viz;

Ryan Hutchinson	Yes
Cherryl Jostad	Yes
Teresa O'Donnell-Ebner	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 6:18 PM.

APPROVAL DATE: _____

SIGNED:

Mayor

ATTEST:

City Administrator