



CITY COUNCIL AGENDA
Tuesday, January 15, 2013 at 7:00 p.m.
Springfield City Hall
170 North 3rd Street

CALL TO ORDER

- Public announcement that a copy of the Nebraska Open Meetings Law is posted in the entry to the meeting room
- Roll call
- Pledge of Allegiance

CONSENT AGENDA

All consent agenda items are approved in one motion unless removed by a Council Member. Removed items will be placed under the Regular Agenda for consideration and action by the Council.

1. Approve Minutes of the January 2, 2013 Council Meeting
2. Approve Treasurer's Report
3. Approve Invoice No. 184264 from Olsson Associates in the amount of \$6,248.17 for professional services rendered from August 5, 2012, through December 1, 2012, for work completed on Springfield Trail Phase 3
4. Consider approval of an application for a Special Designated Liquor License from the Springfield Youth Athletic Association (SYAA) for the Spring Fling event to be held on April 6, 2013 from 5:00 p.m. to 12:00 midnight, in the Sarpy County 4H Building
5. Consider an Application for a Special Designated Liquor License submitted by the Little Giants Foundation for a fundraiser event at the Sarpy County Fairgrounds on February 16, 2013, from 6:00 p.m. to 11:00 p.m.

REGULAR AGENDA

1. Lt. Mike Erhart with the Sarpy County Sheriff's Department will provide a monthly service report
2. Conduct a **Public Hearing** for the One and Six Year Road Plan; approve **Resolution 2013-2** accepting and adopting the One and Six Year Road Plan

Agenda continued on back.

3. Consider approval of **Resolution 2013-3** accepting and approving the plans, specifications, and estimates of cost of the engineers in connection with the construction of improvements in Sidewalk Improvement District 2012-1 and causing notice to bidders to be published as required by law
4. Consider approval of **Resolution 2013-4** authorizing the Mayor to enter into an Agreement for Professional Services with Olsson Associates for preliminary design for drainage improvements on Lots 5 and 6, Springfield Industrial Park
5. Consider approval of **Ordinance No. 832** granting a cable television franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink; setting forth conditions accompanying the grant of the franchise; and providing for regulation and use of the cable system
6. Presentation by Brad Harris with Layne Western regarding the relining of Well #2

DEPARTMENT REPORTS

1. Water & Parks Department – Bob Roseland
2. Library & Community Building – Randy Fleming
3. Sewer Department – Dan Craney
4. Street Department – Chad Nolte
5. Mayor’s Report – Mike Dill
6. City Staff Reports

The Mayor and City Council reserve the right to adjourn into executive session per Section 84-1410 of the Nebraska Revised Statutes.

ADJOURNMENT

MINUTES

A regular meeting of the Mayor and Council of the City of Springfield, Nebraska was held at 7:00 o’clock p.m. at City Hall on January 15, 2013. Present were Mayor Mike Dill; Council Members: Bob Roseland, Dan Craney, Chad Nolte. Absent: Randy Fleming. Notice of this meeting was given in advance by posting in three public places, one of the designated methods of giving notice. Notice of this meeting was given in advance to the Mayor and all Council Members and a copy of their receipt of notice is attached to these Minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held.

Consent Agenda

Motion by Nolte, seconded by Roseland, to approve the Consent Agenda. AYES: Roseland, Craney, Nolte. NAYS: None. Motion carried.

The City Clerk reported a balance on hand of \$941,521.38 in cash assets; Prestige Treasury - \$203,729.88; Prestige Bond - \$405,673.24; Keno Community Betterment - \$134,423.73; Keno Progressive Jackpot - \$50,015.75; Water Deposit Savings - \$4,177.14; Refundable Deposit Savings - \$1,219.56; Water Tower Savings - \$108,960.28; Sewer Restricted - \$73,085.30; Water Capital Facilities Fees - \$32,195.42; Sewer Capital Facilities Fees - \$75,122.64; City Sales Tax - \$185,214.67; Money Mark Library Bricks - \$3,445.48; Government Securities - \$199,392.24; Time Certificates as follows: Bond - \$76,300.43; Tower - \$57,064.10; Water - \$124,444.61; Park - \$11,884.66; Library Bricks - \$21,133.84; Cash Receipts - \$137,008.78; Cash Disbursements - \$54,320.71; Refunding 2010 Bond Interest Pymt-\$3,686.25.

Regular Agenda

Agenda Item 1. Lt. Mike Erhart provided the Sarpy County Sheriff's Department monthly service report.

Agenda Item 2. A Public Hearing of the Springfield City Council was opened at 7:03 p.m. regarding the One and Six Year Road Plans. Dennis Graham, City Engineer with Olsson Associates, reviewed the plans. Mayor Dill asked for comments from the floor. No comments were provided and no changes were requested. Motion by Nolte, seconded by Roseland, to close the Public Hearing. AYES: Roseland, Craney, Nolte. NAYS: None. Public Hearing closed at 7:06 p.m.

Council Member Nolte introduced Resolution 2013-2 and moved its adoption. Council Member Roseland seconded the foregoing motion and on roll call on the passage and adoption of said resolution, the following voted YEA: Roseland, Craney, Nolte. The following voted NAY: None. Whereupon the Mayor declared said motion carried and said resolution passed and adopted. A true, correct and complete copy of said resolution is as follows:

RESOLUTION 2013-2

BE IT RESOLVED by the Mayor and City Council of the City of Springfield, Nebraska as follows:

WHEREAS, the City Street Superintendent has prepared and presented a One Year and Six Year Plan for Street Improvement Program for the City of Springfield, Nebraska; and

WHEREAS, a public meeting was held on the 15th day of January, 2013, in accordance with the requirements of the Board of Public Roads Classification and Standards, to present this plan and there was discussion held with respect to said plan;

THEREFORE, BE IT RESOLVED BY THE Mayor and City Council of Springfield, Nebraska, that the One and Six Year Plan for streets as presented at said public hearing has been accepted and approved.

Introduced and Passed this 15th day of January, 2013.

Ayes: Bob Roseland, Dan Craney, Chad Nolte

Nays: None

Abstain: None

Absent: Randy Fleming

Approved:

Mayor

(SEAL)

ATTEST:

City Clerk

Agenda Item 3. Dennis Graham, City Engineer with Olsson Associates, reviewed the updated plans, specifications, and estimates of cost for construction improvements in Sidewalk District No. 2012-1. Graham reviewed bids received in September 2012 and considered possible reasons for the low number of bids and the large bid amounts. Council Member Nolte introduced Resolution 2013-3 and moved its adoption. Council Member Craney seconded the foregoing motion and on roll call on the passage and adoption of said resolution, the following voted YEA: Roseland, Craney, Nolte. The following voted NAY: None. Whereupon the Mayor declared said motion carried and said resolution passed and adopted. A true, correct and complete copy of said resolution is as follows:

**RESOLUTION
2013-3**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SPRINGFIELD, NEBRASKA, as follows:

1. That the plans, specifications and estimates of cost of the engineers in connection with the construction of improvements in Sidewalk Improvement District No. 2012-1, which have theretofore been filed with the Clerk be, and the same are, accepted and approved.
2. That the Clerk is instructed to cause notice to bidders to be published as required by law for receiving bids as soon as possible.

PASSED AND APPROVED this 15th day of January, 2013.

Ayes 3

Nays 0

Abstain 0

Absent 1

Approved:

Mayor

SEAL

Attest:

City Clerk

Agenda Item 4. Council Member Nolte introduced Resolution 2013-4 and moved its adoption. Council Member Craney seconded the foregoing motion and on roll call on the passage and adoption of said resolution, the following voted YEA: Roseland, Craney, Nolte. The following voted NAY: None. Whereupon the Mayor declared said motion carried and said resolution passed and adopted. A true, correct and complete copy of said resolution is as follows:

**RESOLUTION
2013-4**

BE IT RESOLVED by the Mayor and City Council of the City of Springfield, Nebraska as follows:

WHEREAS, the City of Springfield, Nebraska, a Municipal Corporation, and Olsson Associates, wish to enter into an Agreement for Professional Services to conduct preliminary design for drainage improvements on Lots 5 and 6, Springfield Industrial Park; and

WHEREAS, professional services provided by Olsson Associates shall consist of a topographic survey and preliminary design; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Springfield, Nebraska that the Mayor is authorized to enter into an Agreement for Professional Services with Olsson Associates attached hereto as Exhibit "A".

Introduced and Passed this 15th day of January, 2013.

Ayes 3

Nays 0

Abstain 0

Absent 1

Approved:

Mayor

SEAL

Attest:

City Clerk

Agenda Item 5. Council Member Nolte introduced Ordinance No. 832 entitled:

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO QWEST BROADBAND SERVICES, INC, d/b/a "CENTURYLINK"; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; PROVIDES FOR AN EFFECTIVE DATE; AND ORDERING THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM

and moved that the statutory rule requiring reading on three different days be suspended. Council Member Roseland seconded the motion to suspend the rules and upon roll call vote on the motion the following Council Members voted AYE: Roseland, Craney, Nolte. The following voted NAY: None.

The following were ABSENT: Fleming. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule was declared suspended for consideration of said ordinance. Said ordinance was then read by title and thereafter Council Member Nolte moved for final passage of the ordinance, which motion was seconded by Council Member Roseland. The Mayor then stated the question was "Shall Ordinance No. 832 be passed and adopted?" Upon roll call vote, the following Council Members voted AYE: Roseland, Craney, Nolte. The following voted NAY: None. The following were ABSENT: Fleming. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor in the presence of the Council signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto and ordered the ordinance to be published or posted as required by law and as provided therein. A true, correct and complete copy of said ordinance is as follows:

ORDINANCE 832

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO QWEST BROADBAND SERVICES, INC, d/b/a "CENTURYLINK"; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; PROVIDES FOR AN EFFECTIVE DATE; AND ORDERING THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

The City Council of Springfield, Nebraska ordains.

SECTION 1. STATEMENT OF INTENT AND PURPOSE.

Statement of Intent and Purpose. The City intends, by the adoption of this Franchise, to bring cable television competition and its associated benefits to the citizens of the City.

SECTION 2. SHORT TITLE.

This ordinance shall be known and cited as the "City of Springfield Cable Television Franchise Ordinance". Within this document it shall also be referred to as "this Franchise" or "the Franchise."

SECTION 3. DEFINITIONS.

For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.01 "Basic Service" means any level of service which includes at least the retransmission of all local must carry television broadcast signals, such other local television broadcast signals, the Public, Educational and Governmental access channel(s) required herein.

3.02 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

3.03 "City" means the City of Springfield, a municipal corporation in the State of Nebraska, its governing body, its delegations, officers, agents, employees and representatives.

3.04 "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel

selector also permits a subscriber to view all Basic Service signals delivered at designated converter dial locations.

3.05 "Drop" means the cable that connects the subscriber terminal to the nearest feeder cable of the System.

3.06 "FCC" means the Federal Communications Commission or a designated representative.

3.07 "Franchise Administrator" means the City Clerk of the City or its designee who shall be responsible for the continuing administration of the Franchise.

3.08 "Grantee" means Qwest Broadband Services, Inc., d/b/a CenturyLink or its lawful successor, transferee or assignee.

3.09 "Gross Revenues" shall mean all revenue derived directly by QBSI in connection with the operation of a Cable System to provide cable service in the County and outside the limits of any incorporated city or village within the County, pursuant to this Agreement. For purposes of this paragraph, the term "cable service" shall have that meaning set forth in Section 602(6) of the Communications Act of 1934, as amended, 47 U.S.C. Section 522(6). "Gross revenues" shall include but not be limited to basic subscriber services monthly fees, pay cable, installation, relocation, and reconnection fees, leased channel fees, converter rental, studio rental, production equipment, and personnel fees, advertising revenue and all revenues derived from any services ancillary to providing cable services on the System. For purposes of ascertaining "gross revenues", QBSI shall be permitted to deduct from "accrued gross revenues" actual bad debt loss taken during the applicable franchise period; provided that this deduction and BSI's debt collection practice shall remain subject to the review of the County's Fiscal Administrator for determining acceptable industry practice. "Gross Revenues" shall not include:

- (i) Any franchise fees or other fees, tax or assessment imposed upon QBSI or any subscriber or user by the State, County or other governmental unit and collected by QBSI on behalf of said governmental unit.
- (ii) Any revenues derived from the provision of any telecommunications service over the System or in any other manner.
- (iii) Any revenue paid by QBSI to any other person as compensation for programming delivered to QBSI or its subscribers, or for operating expenses of QBSI, to the extent such payments are made from revenues already included in QBSI's own gross revenues subject to the franchise fee.
- (iv) Promotion monies paid to QBSI by programming services to the extent such monies represent reimbursement to QBSI for promotion expenditures paid by QBSI.
- (v) The revenues of any affiliate, subsidiary, or parent when such revenue is paid by subscribers for the wholesale or retail sale or lease of goods or services of any description that are generally available from sources whose primary business is not the operation of a cable television system. Gross revenue shall include revenue received by QBSI, its affiliates, subsidiaries, or parent as a compensation for carrying programming for such sales.

3.10 "Gross Revenues" means the annual gross revenues of Grantee from all sources of operations of the System within the City including, but not limited to, Basic Service monthly fees, Pay Television fees, installation and reconnection fees, and local advertising revenues. This term does not include any sales, excise or other taxes collected by Grantee on behalf of the state, city, or other governmental unit.

3.11 "Installation" means the act of connecting the System from the feeder cable to the subscriber terminal so that cable service may be received by the subscriber.

3.12 "Living Unit" means a distinct address in the Qwest Corporation d/b/a CenturyLink (QC) network inventory where QC currently has, had in the past or had planned to provide service to a customer. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

3.13 "Pay Television" means the delivery over the System of per channel or per program audio-visual signals to subscribers for a fee or charge, in addition to the charge for Basic Service.

3.14 "Person" means any corporation, partnership, proprietorship or organization authorized to do business in the State of Nebraska, or any natural person.

3.15 "Public Property" means any real property other than a street owned by any governmental unit.

3.16. "Remote Terminal" means a Digital Subscriber Line Access Multiplexer (DSLAM) capable of offering Cable Services to Subscribers.

3.17 "Street" means the surface of and the space above and below any public street, public road, public highway, public freeway, public land, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning, in the sole opinion of the City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

3.18 "Subscriber" means any person or entity who subscribes to a service provided by Grantee by means of or in connection with the System whether or not a fee is paid for such service.

3.19 "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Policy Act of 1984, except that such facility shall be considered a System to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

3.20 "Tapping" means monitoring communications signals, where the monitor is not an authorized monitor of the communications, whether the communications is monitored by visual or electronic means, for any purpose whatsoever.

3.21 "Expanded Basic" means any level of service, whether it be a group of channels or on an individual basis that is received on an optional basis in a addition to the Basic service, but does not include Pay television channels.

SECTION 4. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

4.01 Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations.

4.02 Criteria of Selection. The Grantee's technical ability, financial condition and legal qualifications were considered and approved by the City in full public proceedings, Grantee having been afforded reasonable notice and a reasonable opportunity to be heard.

4.03 Authority for Use of Streets.

A. For the purpose of operating and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

The Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the City or directly involved in the management or operation of Cable System in the City, will also comply with the obligations of this Franchise. However, the parties acknowledge that QC will pull permits and be primarily responsible for the construction and installation of the Cable System in the public rights-of-way, which will be utilized by the Company to provide Cable Services and QC will own, operate and maintain the Cable System. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise pertaining to the delivery of Cable Services. QC's installation and maintenance of the Cable System in the public rights-of-way shall be governed by applicable law. The parties also acknowledge that if and when QC does provide Cable Services to Subscribers, QC will need to obtain a separate cable franchise from the City. To the extent the Company constructs and installs any facilities in the public rights-of-way, such installation shall be subject to the terms and conditions of this Franchise.

B. Grantee shall construct and maintain the System so as not to interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee shall individually notify all residents affected by proposed work prior to commencement of that work.

C. Notwithstanding, no Street shall be used by Grantee without permission of the City.

4.04 Franchise Term. This Franchise shall commence upon acceptance by Grantee as defined herein and shall expire fifteen (15) years from such date unless renewed, revoked or terminated sooner as herein provided.

4.05 Area Covered. This Franchise is granted for the corporate limits of the City. In the event of annexation by the City, any new territory shall become part of the area covered.

4.06 Police Powers. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public provided, however, that such ordinances shall be reasonable and not materially modify the terms of this Franchise. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power provided, however, that such general laws and ordinances shall be reasonable and not materially modify the terms of this Franchise.

4.07 Written Notice. All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivery personally to the person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to which notice is being given, as follows:

If to City:

Office of City Clerk

170 North 3rd Street
P. O. Box 189
Springfield, Nebraska 68059

If to Grantee:

Qwest Broadband Services, Inc. d/b/a CenturyLink
ATTN: Public Policy
1801 California Street, 10th Fl.
Denver, CO 80202

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

4.08 Franchise Nonexclusive. The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with state and federal law.

SECTION 5. DESIGN PROVISIONS.

5.01 Two-Way System. The City and Grantee will continue to review during the term of this Franchise the need for the technical capacity for nonvoice return communications.

5.02 Service Area

A. Grantee is hereby authorized to provide Cable Services within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

B. Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City so long as such person resides within four thousand (4,000) cable feet of an activated Remote Terminal capable of providing Cable Service. Grantee shall provide such service at non-discriminatory monthly rates for residential subscribers, consistent with applicable law. For purposes of this subsection, a request shall be deemed made on the date of one of the following: (1) signing of a service agreement; (2) receipt of funds by Grantee; (3) receipt of a written request by Grantee; or (4) receipt by Grantee of a verified verbal request.

C. Grantee is under no obligation to either (i) install distribution facilities or (ii) activate Remote Terminals capable of providing Cable Services. Grantee may not, however, without permission of the City deactivate a Remote Terminal.

5.03 Technical Standards. The System shall be designed, constructed, and operated so as to meet those technical standards established by the FCC for the operation of a cable television system.

5.04 Test and Compliance Procedures: Grantee shall perform on an annual basis all technical tests required by the FCC.

SECTION 6. SERVICE PROVISIONS.

6.01 Programming. Grantee shall provide or enable the provision of at least the following categories of programming to the extent such categories are reasonably available: (a) educational; (b) local and national news, weather and information; (c) sports; (d) general entertainment; (e) children/family oriented; (f) arts, culture and performing arts; (g) foreign language; (h) science/documentary; and (i) public, educational and government access, to the extent required by this franchise.

A. Grantee will adhere to all federal law and FCC regulations governing the carriage of local broadcast stations on cable systems. Grantee will make best efforts to continue carriage of all major over the air broadcast stations as defined by the Area of Dominant Influence that the cable system serves. .

B. Nothing herein will be construed to limit Grantees right to pass through additional costs associated with retransmission consent to its customers as allowed by the FCC.

C. Future channel additions may be made to expanded tiers of service at the discretion of the Grantee.

6.02 Public, Educational and Government Access.

A. Upon request of the City, Grantee shall provide to each of its subscribers who receive some or all of the services offered on the System reception of at least one specially designated access channel. The specially designated access channel may be used by the public, local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. Conditions for the use of each channel will be determined by agreement between Grantor and Grantee.

B. During those hours that the specially designated access channel is not being used by the public, local educational authorities or local government, Grantee may lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises.

C. Grantee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the public, local educational authorities and local government.

D. Grantee shall make the City of Omaha Public, Educational and Government channels available to subscribers in the City until such time as the City activates its own public, educational or government channel pursuant to sub-paragraph A above.

SECTION 7. CONSTRUCTION PROVISIONS.

7.01 Construction Standards.

A. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.

B. All installation of electronic equipment shall be durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.

7.02 Repair of Streets and Property. Any and all Streets or public property or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to the City's satisfaction.

7.03 Trimming of Trees. Grantee shall have the authority to trim trees located upon and which overhang streets, berms, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wire and cables of Grantee. If the trunk of the tree is on private property, the homeowner shall be notified before trimming is done.

7.04 Street Vacation or Abandonment. In the event any Street or portion thereof used by Grantee in connection with the provision of cable service shall be vacated by the City or the use thereof

discontinued by Grantee, during the term of this Franchise, Grantee shall at Grantee's expense forthwith remove its facilities therefrom unless specifically permitted by the City to continue the same, and on the removal thereof restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

7.05 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks' notice by the City to Grantee, Grantee shall move at the expense of the person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

SECTION 8. OPERATION AND MAINTENANCE.

8.01 Open Books and Records. The City shall have the right to inspect, upon at least twenty-four (24) hours written notice, at any time during normal business hours all books, records, maps, plans, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of Grantee located in the metropolitan Omaha area, pertaining to Grantee's Cable system operations in the City of Springfield, and which are reasonably necessary to monitor compliance with the terms of this Franchise.

8.02 Communications with Regulatory Agencies. Grantee shall submit to the City copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission which directly relate to operations of Grantee's Cable System within the City.

8.03 Annual Reports. Upon request by the City, Grantee, within one hundred eighty (180) days of the end of its fiscal year, (including the year in which the Franchise becomes effective), Grantee shall file with the City a report signed by a Certified Accountant detailing the gross revenues earned by Grantee within the City and the number of subscribers.

8.04 Audit. The City and its agents and representatives shall have authority, during normal business hours, to arrange for and conduct an inspection of the books and records of Grantee and its equipment relating to the System defined in this agreement. Grantee shall first be given forty-eight (48) hours written notice of the inspection request, the description of and purpose for the inspection and description, to the best of the City's ability, of the books, records, documents and equipment it wants to inspect. To the extent it is necessary for City to send representatives to a location outside of the State of Nebraska to inspect Grantee's books and records, Grantee shall be responsible for all reasonable travel costs incurred by City representatives.

8.05 Maps. Upon request of the City, Grantee will meet periodically with the City to review where the Grantee currently provides Cable Service within the City and its plans, if any, to expand such service area. At such meetings or at other times as reasonably necessary, Grantee will make available to the City a map showing the location of all wires, cables, other conduits, as well as other equipment within the Cable System.

8.06 Information Provided to Subscribers. Grantee shall comply with the provisions of 47 C.F.R., Sections 1602 and 1603, as they may be amended from time to time, relating to information which

must be provided to each Subscriber at the time of installation of service and thereafter annually as well as upon changes in the terms of service.

8.07 Customer Service Obligations.

A. Grantee shall comply with the customer service obligations set forth in 47 C.F.R. §76.309, as it may be amended from time to time.

B. Grantees service personnel shall present themselves in courteous manner and shall be clean and neat in appearance and dress. All service personnel will have a photo ID available for subscribers inspection upon request.

8.08 Basic Service Rate Changes. The City reserves the right to regulate rates for Basic Service and other tiered service levels, to the extent allowable under federal or state law, through approval or disapproval of a rate revision request.

8.09 Non-Regulated Rates. Prior to implementing any rate increase for Basic Service not requiring the City's approval, Grantee shall give the following notice:

A. At least thirty (30) days advance written notice to the City; and

B. At least (30) days advance written notice to subscribers.

8.10 Local Property. Grantee shall maintain its local property in good condition with proper groundskeeping and building repairs.

SECTION 9. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

9.01 Payment to City.

A. Grantee shall pay to City a franchise fee in the amount of three percent (3%) of Grantee's Gross Revenues. Changes to the amount of the franchise fee defined above will not be made unless the following conditions are met.

1. The City first provides Grantee, sixty (60) days prior to the public hearing, with written notice of intent to impose an increased Franchise fee; and

2. The City conducts a public hearing regarding its intent to impose a franchise fee and affords Grantee notice of, and an opportunity to be heard at, the public hearing.

3. Under no circumstances shall Grantee be required to pay a franchise fee in an amount greater than the incumbent cable service provider in the City.

B. The City recognizes the Grantees right to directly pass through any such imposed fee to the subscribers of the system. Grantee may, at its option, show any such fee as line item on each customer's bill.

1. Franchise Fees shall not be due the City for any such areas that operate under the authority of another franchise.

2. Franchise fees are to be payable to the City within forty-five days following the end of each quarter.

9.02 Service to Public Buildings. Grantee shall provide 1 outlet of Basic and Expanded Basic service to all City owned or public buildings and schools within 4,000 cable feet of an activated Remote Terminal capable of providing Cable Service and which are not already being served by another cable service provider. Public buildings shall not include hospitals or nursing homes that charge for care or residency. Additional outlets will be installed at normal residential installation rates. Pay Television services will be excluded from the free service offerings.

9.03 Damages and Defense.

A. Grantee shall hold harmless the City for all damages and penalties as a result of the upgrading, extending, reconstructing, operation and maintenance of the Cable System. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of the upgrading, extending, reconstruction, operation and maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

B. Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in paragraph (A) above. These expenses shall include all expenses, such as reasonable attorneys' fees, incurred by the City.

9.04 Liability Insurance.

A. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City with regard to all damages mentioned in paragraph A of Section 9.05 hereof, in the minimum amounts of:

1. Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death to any one (1) person;
2. One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident;
3. One Million Dollars (\$1,000,000.00) for all other types of liability.

B. At time of acceptance, Grantee shall furnish to the City a certificate of insurance or other evidence that an insurance policy conforming to the provisions of this paragraph has been obtained. Said certificate shall be approved by the City and such insurance policy shall require that the City be notified thirty (30) days prior to any expiration or cancellation.

9.05 City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, after notice and a hearing, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event that:

- A. Grantee substantially violates any material provision of this Franchise; or
- B. Grantee intentionally attempts to evade any of the material provisions of the Franchise; or
- C. Grantee intentionally practices any fraud or deceit upon the City or subscriber; or
- D. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or

E. Grantee materially misrepresents a fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise.

9.06 Procedures for Revocation.

A. The City shall provide Grantee with a written notice of the cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. The City shall provide Grantee with written findings of fact which are the basis of the revocation.

B. Grantee shall be provided the right to a public hearing affording due process before the City prior to revocation.

C. After the public hearing and upon determination by the City to revoke the Franchise, Grantee shall have a period of thirty (30) days, from the date of the City's determination, within which to file an appeal with an appropriate state or federal court or agency.

D. During the appeal period, the Franchise shall remain in full force and effect.

9.07 Payment for Use of City Owned Poles. Should Grantee desire to attach its equipment to utility poles owned and maintained by the City, it shall have the right to do so, so long as Grantee meets the specifications of the National Electric Code. Grantee shall pay to the City a per pole rate equivalent to the rates paid by Grantee to other entities for similar usage of utility poles within the city limits. If Grantee is paying for use of utility poles to more than one pole owner, and the rate between the two providers is different, Grantee shall pay the lower of the two rates to the City.

SECTION 10. FORECLOSURE AND ABANDONMENT.

10.01 Foreclosure. Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

10.02 Abandonment. Grantee may not abandon System or any portion thereof without having first given three (3) months written notice to the City.

SECTION 11. TRANSFER AND PURCHASE.

Sale or Transfer of Franchise.

A. This Franchise or 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 without full compliance with the procedure set forth in this Section.

B. The provisions of this Section of this Franchise shall not apply to any transfer of the cable franchise to an affiliate of the Grantee.

C. The provisions of this Section shall apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation or sale or transfer of stock in Grantee so as to create a new controlling interest in the System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A corporate reorganization of any kind

which does not result in a change of controlling interest shall not be deemed a sale or transfer of the Franchise under the terms of this Section.

1. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer.
2. The 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 due to potential adverse effect on Grantee's subscribers.
3. If a public hearing is deemed necessary pursuant to (2) above, such hearing shall be conducted within sixty (60) days of notification of Grantee of its intent to sell. 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 the City.
4. If the City fails to respond within 120 days of the request , such request shall be deemed granted.
5. In reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the technical, legal and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise. In no event shall such sale or transfer be unreasonably withheld.

SECTION 12. RIGHTS OF INDIVIDUALS PROTECTED.

Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, sex or age.

SECTION 13. MISCELLANEOUS PROVISIONS.

13.01 Compliance with Laws. Grantee and the City shall conform to all state laws and rules regarding cable communications not later than one year after they become effective unless otherwise stated. Grantee and the City shall conform to all federal laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform with all the City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise, provided however, that such ordinance, resolution, file or regulation shall be reasonable and not materially modify the terms of this Franchise.

13.02 Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

13.03 Compliance with Federal, State and Local Laws.

A. If any federal or state law or regulation shall require or permit Grantee to perform any service or act or shall prohibit Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee shall notify the City of the point of conflict believed to exist between such law or regulation.

B. If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof

and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

13.04 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance.

13.05 Administration of Franchise.

A. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and Federal and State law.

B. Grantee shall construct, operate and maintain the System subject to the supervision of all the authorities of the City who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the System.

C. The System and all parts thereof shall be subject to the right of periodic inspection by the City provided that such inspection shall not interfere with the operation of the System and such inspections take place during normal business hours.

13.07 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed here, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

SECTION 14. EFFECTIVE DATE; PUBLICATION; AND TIME OF ACCEPTANCE.

14.01 Publication: Effective Date. This Franchise shall be signed by the Mayor and attested by the City Clerk. This Ordinance shall be published in pamphlet form and a notice to this effect shall be published once in the official newspaper of the City or public information. This Franchise shall take effect upon publication, subject to acceptance by Grantee.

14.02 Time of Acceptance and Exhibits.

A. Grantee shall have thirty (30) days from the date of adoption of this Franchise to accept this Franchise in form and substance acceptable to the City. Such acceptance by Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place within thirty (30) days or such other time as the City might allow, this Franchise shall be null and void.

B. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. Grantee shall provide all services and offerings specifically set forth herein to provide cable television services within the City.

C. Grantee shall reimburse the City for certain costs and expenses in connection with the granting of the Franchise and ongoing administration of this franchise in the amount of Ten Thousand

Dollars (\$10,000.00). Such payment shall be made no later than thirty days following the City's approval of this Franchise and Grantee's acceptance thereof.

D. With its acceptance, Grantee shall also deliver any insurance certificates required herein.

PASSED AND APPROVED THIS 15th DAY OF JANUARY, 2013.

Mayor

(SEAL)

Attest:

City Clerk

Agenda Item 6. Brad Harris with Layne Western reviewed the condition of well #2 in City Park. Harris reported that a video of the well was taken back in 2010 that showed barnacle buildup on the casing. He noted that this type of buildup is usually where a pit is starting to form. Since then, the Council has considered relining the well as a proactive measure in case the well caved in. Harris reviewed lining and pump options. Rick Lee, water operator, reported that well#3 on Platteview Road does not pump what it was originally intended to pump. Dennis Graham, Olsson Associates, reviewed procedures for installing a new well. Council requested that Layne Western submit an updated proposal for the relining of well #2 in City Park for consideration at a February meeting.

Department Reports

Agenda Item 1. No Department Report from Roseland.

Agenda Item 2. No Department Report from Fleming (absent).

Agenda Item 3. Craney reported that replacing the interior doors at the Community Building with new fire doors would cost over \$1,000 each to replace. He also mentioned that replacing the doors would require new headers/doorway structure changes. The Council decided to just put new hardware on the existing doors.

Agenda Item 4. No Department Report from Nolte.

Agenda Item 5. Mayor Dill reported that he planned to meet with Craig Shives, property owner, and a representative of Pinnacle Bank, trustee and beneficiary, of 280 South 2nd Street, on January 18.

Agenda Item 6. No other city staff reports were provided.

Executive Session

Motion by Nolte, seconded by Roseland, to enter into executive session at 7:55 p.m. for the purpose of possible litigation. AYES: Roseland, Craney, Nolte. NAYS: None.

Motion by Roseland, seconded by Craney, to leave executive session at 8:33 p.m. AYES: Roseland, Craney, Nolte. NAYS: None.

Adjournment

Motion by Nolte, seconded by Roseland, to adjourn. AYES: Roseland, Craney, Nolte. NAYS: None. Meeting adjourned at 8:34 p.m. Motion carried.

I, the undersigned, City Clerk for the City of Springfield, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Council on January 15, 2013; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the City Clerk; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

Kathleen Gottsch
City Clerk