

# Memo

**To:** Honorable Mayor and City Council  
**From:** Joe Kohlmann, City Administrator  
**Date:** May 14<sup>th</sup>, 2013  
**Re:** LMCC

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The LMCC has scheduled a meeting to discuss the JPA with Member Cities. The City Council should discuss this item to provide Councilmember Grothe direction for the meeting. Below is the agend and *attached* is the JPA:

To LMCC Members,

These are the names that have been submitted for a meeting to review the JPA. A meeting has been scheduled for May 15 at 5:30 PM. All cities were contacted via letter to submit the name of one LMCC Commissioner to serve on the committee. These are the names that were submitted. Eleven of the seventeen member cities have elected to participate. The agenda for the meeting is as follows:

- I. Call to Order – Hackbarth
- II. Summary of the city resolutions supporting LMCC's negotiation of the franchise for its member cities - Koenecke
- III. Comparison of LMCC franchise and PEG fee allocation with other local franchising authorities with multiple cities in the Twin Cities- Hackbarth
- IV. Adjournment

Sally Koenecke

**Action to be considered:**

Discuss the JPA and provide comments for Councilmember Grothe.

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**FINAL**  
**JOINT AND COOPERATIVE AGREEMENT**  
**LAKE MINNETONKA COMMUNICATIONS COMMISSION**  
**AMENDED 2007**

The parties to this agreement are governmental units of the State of Minnesota. This agreement is made pursuant to Minn. Stat. SS238.08 and 471.59.

**I.**

**PURPOSE**

The general purpose of this agreement is to establish an organization to study, prepare, adopt, grant, administer and enforce a single no-exclusive cable communications franchise and establish rates thereunder, in member cities in the Lake Minnetonka Suburban communities of Hennepin County, Minnesota, and to advise and provide recommendations to the member cities regarding communications matters which may affect the member cities. In order to carry out the purpose of this agreement, the parties shall appoint a commission which shall be representative of all members.

**II.**

**NAME**

The organization created by this agreement shall be known as the "Lake Minnetonka Communications Commission" (hereinafter "Commission").

**III.**

**DEFINITIONS**

For purposes of this agreement, the terms defined in this article shall have the meanings given to them.

Section I. "Commission" means the organization created pursuant to this agreement.

Section II. "Director" means the person appointed by a member City Council to be its representative on the Commission.

Section 3. "Member" means a city which enters into this agreement and is, at the time involved, a member in good standing.

Section 4. Other Definitions. Definitions of other words, terms, and phrases contained in the rules of the Minnesota Cable Communications Board (hereafter "MCCB") and the Federal Communications Commission (hereafter "FCC") are incorporated herein as though fully set forth.

**IV.**

**MEMBERS**

Section 1. The cities eligible to enter this agreement are the following Minnesota cities: Deephaven, Excelsior, Greenwood, Minnetonka Beach, Minnetrista, Orono, Shorewood, Spring Park,

Tonka Bay, Woodland, Medina, St. Bonifacius, Long Lake, Victoria, Independence, Loretto and Maple Plain, Minnesota.

Section 2. Any municipality desiring to become a member shall execute a copy of this agreement and conform to all requirements herein.

Section 3. The initial members shall be those municipalities who become members on or before September 1, 1982.

Section 4. Any other municipalities desiring to become members after September 1, 1982, may be admitted by an affirmative vote of two-thirds (2/3) of the eligible votes of the Commission. The Commission may, by resolution, impose conditions upon the admission of additional members.

## V.

### DIRECTORS

Section 1. **Qualification/Appointment.** The City Council of each member shall be entitled to appoint two directors, at least one of whom shall be a member of that council and the other a qualified voter residing within that city. The City Council of each member shall be entitled to appoint at least one alternate director. When the council of a member appoints its first two directors, it shall give notice of their appointments to the City Administrator of the City of Tonka Bay. Notice of a successor director shall be given to the Secretary of the Commission. That notice shall include the name and mailing address of the appointee which shall be deemed to be the official name and address of that appointee for the purpose of giving any notice required under this agreement.

Section 2. **Term.** Each director shall serve for a term of one year. All terms shall begin as of the effective date of this agreement. A director shall serve at the pleasure of his or her city council, and a director may be removed at any time by that city council.

Section 3. **Voting.** Each director shall have one vote for each 1,000 dwelling units or fraction thereof in the municipality represented by the director as recorded in the most recent records of the Metropolitan Council; provided, however, that each director shall have at least one vote and no director shall have more than four votes. Prior to December 31 of each year, the Secretary of the Commission shall determine the number of dwelling units in each member in accordance with this section and certify the results to the Chair. There shall be no voting by proxy, but all votes must be cast in person at Commission meetings by the director or his or her alternate. A director shall not be eligible to vote on behalf of his or her city during the time that it is in default on any contribution or payment to the Commission. During the existence of such default, the vote or votes of such member shall not be counted for the purposes of this agreement.

Section 4. **Compensation.** Directors shall serve without compensation from the Commission, but this shall not prevent a member from compensating its directors if compensation by that member is otherwise authorized by law.

Section 5. **Vacancies.** A vacancy in the office of director shall exist for any of the reasons set forth in Minnesota Statutes S351.02, or upon revocation of a director's appointment by a member duly

filed with the Commission. The city council of each member shall fill for the unexpired portion of the Term of said director any vacancy in the directors appointed or to be appointed by it. A suspected vacancy or directors failure to attend three consecutive meetings shall be reported by the Secretary of the Commission to the appointing city council for action in replacing its directors.

## VI.

### **OFFICERS**

Section 1. **Number/Election.** The officers of the Commission shall consist of a Chair, a Vice Chair, a Treasurer, and a Secretary all of whom shall be elected at the first meeting of the Commission and at the annual meeting of the Commission held in July of each year. New officers shall take office at the adjournment of the annual meeting of the Commission at which they are elected. Officers shall serve one year terms and may serve up to two consecutive terms in the same office.

Section 2. **Chair/Vice Chair.** The Chair shall preside at all meetings of the Commission and shall perform all duties incident to the office of Chair, and such other duties as may be prescribed by the Commission. The Vice Chair shall act as Chair in the absence of the Chair.

Section 3. **Secretary.** The Secretary shall be responsible for keeping a record of all the proceedings of the Commission and giving notice of the meetings.

Section 4. **Treasurer.** The Treasurer shall have custody of the Commission's funds, pay its bills, keep its financial records and generally conduct its financial affairs. The Commission shall have the right to appoint a Deputy Treasurer. All check drawn upon the Commission's bank account shall require the signatures of the Treasurer or Deputy Treasurer and the Chair or Vice Chair. The Commission's financial books and records shall be audited on or before June 1 of each year, or at such other time as the Commission may direct, by an independent auditor designated and approved by the Commission. The Commission may require the Treasurer to post a fidelity bond or other insurance against loss of Commission funds in an amount approved by the Commission, at the expense of the Commission.

Section 5. **Executive Committee.** There shall be an Executive Committee which shall consist of the four officers and three other directors elected by the Commission. To the extent determined by resolution of the Commission or by-law, the Executive Committee shall have the authority of the Commission in the management of the business of the Commission. The Executive Committee shall act only in the interval between meetings of the Commission and at all times is subject to the control and direction of the Commission. The Executive Committee shall meet at the call of the Chair or upon the call of any other three members of the Executive Committee. The date and place of the meeting shall be fixed by the person(s) calling it. At least forty-eight hours advance written notice of that meeting shall be given to all members of the Executive Committee by the person calling that meeting; however, notice may be waived by any or all members who actually attend the meeting or who give written waiver of such notice for a specified meeting.

## VII.

### EFFECTIVE DATE, MEETINGS

Section 1. This agreement is effective on the date when executive agreements and authorizing resolutions of ten (10) of the municipalities named in Article V, Section 1 have been filed as provided in this Article.

Section 2. Within thirty (30) days after the effective date of this agreement, the Mayor of Tonka Bay, Minnesota shall call the first meeting of the Commission which shall be held no later than fifteen (15) days after such call.

Section 3. The first meeting of the Commission shall be its organizational meeting. At the organizational meeting, the Commission shall select from among the directors a chair, a vice-chair, a secretary and a treasurer, and may appoint any consultants or other staff to coordinate the activities of the Commission and to draft any necessary Commission documents.

Section 4. At the organizational meeting, or as soon thereafter as it may reasonably be done, the Commission shall adopt by-laws governing its procedures including the time, place, notice for and frequency of its regular meetings, procedure for calling special meetings, and such other matters as are required by this agreement. The Commission may amend the by-laws from time to time.

Section 5. **Voting/Quorum.** No business shall be performed unless a majority of the votes of the directors present and voting at a Commission meeting vote in the affirmative, or unless a majority of the Executive Committee vote in the affirmative at a meeting. The presence of commissioners from a majority of member cities shall constitute a quorum of the Commission and a majority of those appointed shall constitute a quorum for a meeting of the Executive Committee, but a smaller number may adjourn from time to time.

## VIII.

### POWERS, RIGHTS AND DUTIES OF COMMISSION

The powers, rights and duties of the Commission shall include those set forth in the Article.

Section 1. **Franchising Authority.** It shall act as the cable communications franchising authority for the members to this agreement.

Section 2. **Grant of Franchise.** It shall prepare, adopt and grant a cable communications franchise pursuant to the Minnesota Cable Communications Act, Minn. Stat. Ch. 238,1 the rules of the MCCB and the FCC, and according to the following procedure:

a. **Needs Assessment Report.** It shall compile, make publicly available and approve a summary of the Needs Assessment Reports from member municipalities.

b. **Request for Proposals.** It shall prepare and adopt in a public hearing and perform all other acts incident to the issuance of a Request for Proposals. The adoption of the Request shall be by an affirmative vote of not less than twenty (20) directors of the Commission representing not less than ten (10) members.

c. **Designation of Company by Resolution.** After receipt and review of all proposals submitted to the Commission by cable communications companies, it shall select at a public hearing by resolution one cable communications company to which it may grant a franchise. The adoption of this resolution shall be by an affirmative vote of not less than twenty (20) directors of the Commission representing not less than ten (10) members.

d. **Adoption of Franchise Ordinance.** It shall prepare and adopt an authorization known hereafter as a “franchise ordinance” and, by that franchise ordinance, grant to one cable communications company a non-exclusive franchise to construct, operate, maintain or manage a cable communications system encompassing all of the territory of the members to this agreement. The adoption of the franchise ordinance and the grant of the franchise shall be by an affirmative vote of not less than twenty (20) directors of the Commission representing not less than ten (10) members; provided, however, that the franchising process shall cease if the cable communications company which was selected by resolution in accordance with paragraph c above is not granted the franchise by ordinance approved by a vote in accordance with this paragraph, the Commission shall promptly recommence the franchising process at any stage determined by Commission.

e. **Public Hearing.** It shall hold at least one public hearing before it adopts a franchise ordinance. At least ten (10) days prior to that public hearing, it shall publish in all official newspapers of the members a notice of that hearing. The franchise ordinance adopted by the Commission shall be signed by the Chair and attested by the Secretary.

f. **Publication/Effective Date.** The franchise ordinance shall be published within fifteen (15) days after adoption by the Commission in the official newspaper of the members. The franchise ordinance shall take effect thirty (30) days after the last date of its publication, or at such later date as fixed therein, unless four (4) or more members withdraw under paragraph g below, in which case the franchise ordinance shall not become effective. The franchise ordinance may incorporate by reference, without publication in full, (i) a statute of Minnesota, (ii) a rule of the MCCB or the FCC, and (iii) the “Proposals for Franchise” and other offers and representations submitted by the cable communications company to whom the franchise is granted.

g. **Withdrawal.** At any time after the franchise ordinance has been adopted by the Commission, but not later than five days before its effective date, a member may withdraw for any cause from the Commission by giving written notice of its withdrawal to the Secretary of the Commission. A member’s withdrawal under this paragraph shall be effective upon the receipt of the notice of withdrawal by the Secretary of the Commission. A member which does not withdraw under this paragraph shall be bound by the franchise ordinance adopted and granted by the Commission. If four (4) or more members withdraw under this paragraph, the franchising process shall cease.

h. **Amendment.** The Commission may review and amend the franchise ordinance in

accordance with the procedures set forth in this agreement and the rules of the MCCB and FCC upon the affirmative vote of not less than two-thirds (2/3) of the votes of the directors present and voting representing not less than ten (10) members. The Commission shall hold at least one public hearing before it amends a franchise ordinance or establishes rates therein. At least ten (10) days prior to that public hearing, it shall publish in the official newspapers of the members a notice of that public hearing. An amendment to the franchise ordinance shall be signed by the Chair and attested by the Secretary. An amendment to the franchise ordinance shall be published in the official newspaper of the members within fifteen (15) days after adoption by the Commission, and any amendment shall take effect upon publication or at such later date as is fixed therein.

Section 3. **Administration/Enforcement.** It shall administer and enforce the cable communications franchise ordinance; provided that the franchise ordinance may permit the enforcement and administration of certain of its provisions by members to this agreement, for which services the Commission may pay or reimburse its member.

Section 4. **Rates.** It shall establish rates charged subscribers by the cable communications company.

Section 5. **Lobbying.** It may submit written comments on rules, regulations or legislation regarding cable communications proposed by or pending before the MCCB, the FCC, the Minnesota Legislature, or Congress, or it may direct its representatives to appear and testify on cable communications before these governmental bodies.

Section 6. **Advisory Authority: Investigation and Recommendations.** It may investigate such matters or concerns regarding communications and/or the regulation of communications services or the use of rights-of-way within the member cities to provide such services which affect the member cities, and provide advice and recommendations relating thereto. The expense of making such investigations and providing any such advice and recommendations shall be borne by the Commission, or the relevant communications provider, to the extent provided by law.

Section 7. **Gifts/Grants.** It may accept gifts, apply for and use grants and may enter into agreements required in connection therewith and it may hold, use and dispose of money or property received as a gift or grant in accordance with the terms hereof.

Section 8. **Contracts.** It may enter into any contracts deemed necessary by the Commission to carry out its powers and duties, subject to the provisions of this agreement. Contracts shall be let and purchases shall be made in accordance with the legal requirements applicable to contracts and purchases by Minnesota statutory cities. It may not purchase real estate without the prior approval of at least two-thirds (2/3) of its members.

Section 9. **Advisory Bodies.** It may appoint advisory bodies to make recommendations to it on communications matters.

Section 10. **Consultants.** It may act or cause others to act in any manner regarding

(i) the study of cable communications, (ii) the preparation of a franchise ordinance and other documents required to grant such a franchise, (iii) the evaluation of proposals, (iv) the administration and enforcement of a cable communications franchise, and (v) the establishment of rates thereunder.

Section 11. **Other Actions.** It shall take such action as it deems necessary and appropriate to accomplish the general purposes of the Commission and it may exercise any other power necessary and incidental to the implementation of its powers and duties.

Section 12. **Amendments and Agreement.** It shall recommend for enactment by its members amendments to this agreement which will facilitate the administration and enforcement of the franchise granted by it, and the establishment of rates thereunder.

Section 13. **Members Building Codes.** Nothing in this agreement or in the franchise ordinance adopted by the Commission shall be deemed to waive the requirements in each member's codes and ordinances regarding zoning, building or construction permits, fees or manner of construction.

## IX.

### **FINANCIAL MATTERS**

Section 1. **Contributions 1982.** For the remainder of the calendar year 1982, the financial contributions of the parties in support of the Commission shall be \$800 for each allocated vote of each director representing said members on the Commission (eg. Excelsior - 2 votes times two (2) directors equals four (4) times \$800, or \$3,2000 initial contribution). In the event a franchise is granted by the Commission, the financial contributions of the member municipalities up to the date of the grant of the franchise, as well as all other reasonable expenses incurred by the member municipalities in the cable television franchising process, shall be recovered and paid to the member municipalities from the acceptance fee of the franchise grantee. The 1982 contribution by the members shall be the maximum contribution and no further contributions are to come from the members without approval by each member.

Section 2. **Contributions: Subsequent Years.** Contributions for the year 1983 and subsequent years sufficient to satisfy the final budget of the Commission shall be established in relation to the allocated votes of each member and shall come from the franchise fees or from Grantee as an acceptance fee or as an advance on the franchise fees.

Section 3. **Annual Budget Process.** A proposed budget the ensuing calendar year shall be formulated by the Commission on or before August 31 of each year and the final adoption of a budget for the ensuing calendar year shall be made by the Commission by September 30. Within fifteen (15) days after final adoption, the Commission Secretary shall send the budget to each member for review and approval. That budget shall be effective unless rejected by a majority of the members within 45 days after its receipt by them. If the budget is not timely approved by a majority of the members, the Commission shall promptly adopt a revised budget and shall submit it to each member for review and approval. The Commission budget shall be funded only from monies collected from Grantee as

application fees, or funds charged to Grantee as advances on franchise fees. This Commission may also budget the expenditure of funds received from grants, gifts, or the like.

Section 4. **Expenditures.** The Commission expenditures shall not exceed the current budget of the Commission without prior written authorization of all member cities.

## X.

### **WITHDRAWAL**

Section 1. A member may withdraw from the Commission prior to the effective date of the franchise ordinance by filing a written notice with the Secretary by October 15 of any year giving notice of withdrawal effective as of the end of that calendar year; and membership shall continue until the effective date of withdrawal. A notice of withdrawal may be rescinded at any time by a member. If a member withdraws pursuant to this section, the member shall have no claim on the assets of the Commission. A member shall not withdraw until the member's financial contribution for the calendar year is paid in full.

Section 2. **Withdrawal for Cause.** A member may withdraw from the Commission after the effective date of the franchise ordinance as prescribed by Article VIII, Section 5, paragraph f only (I) if the Commission itself breaches or violates this agreement, or (ii) if the Commission fails to commence enforcement of the ordinance within four months after being notified by a member of the existence of a violation of the ordinance occurring within the territorial limits of that city.

Section 3. **Notice of Withdrawal.** A member withdrawing from the Commission under this article shall send to the MCCB and the Commission Secretary a written Notice of Withdrawal which shall specify both the grounds and the effective date of its withdrawal.

Section 4. **Effectiveness of Ordinance after Withdrawal.** The franchise ordinance adopted and granted by the Commission shall provide that it is effective and enforceable within the territorial limits of a city which has withdrawn from the Commission under this article and a city which withdraws from the Commission shall be bound by the terms of any cable communications franchise previously adopted and granted by the Commission. A city which has withdrawn shall be the exclusive authority to administer and enforce the cable communications franchise ordinance as to its corporate boundaries.

Section 5. **Cooperation.** The Commission and a city which withdraws under this article shall cooperate with each other and the cable communications operator and shall use their best efforts to achieve an orderly and efficient transfer to that city of the administrative and enforcement authority over the cable communications system established within the withdrawn city.

Section 6. **Access to Commission Assets.** A member withdrawing from membership at a time when such withdrawal does not result in dissolution of the Commission shall forfeit its claim to any assets of the Commission except that it shall have access, at a reasonable cost and under such conditions

as the Commission may determine, to any cable communications programs, files or other materials developed for its use while it was a member.

Section 7. **Merger.** The merger of two or more municipalities then parties to this agreement shall not be deemed a withdrawal of the merged municipalities for the purposes of this agreement. In the event of a merger of two or more municipalities then parties to this agreement, the newly created municipality shall be entitled to the number of votes on the Commission calculated pursuant to Article V, Section 3 of this agreement and based upon the number of dwelling units within the newly formed municipality. Any subsequent financial contribution to the Commission required of a merged municipality shall be calculated pursuant to this agreement based upon the new vote allocation of the merged municipality.

## XI.

### **DISSOLUTION**

Section 1. **Method.** The Commission shall be dissolved (a) when a sufficient number of members withdraw from the Commission to reduce the total number of remaining continuous members to less than nine (9), or (b) upon an affirmative vote of two-thirds (2/3) of the directors of the Commission.

Section 2. **Distribution of Assets.** Upon dissolution, the remaining assets of the Commission, after payment of all obligations, shall be distributed among the then existing members in proportion to their contributions, or in such other way as those members may agree.

Section 3. **Necessary Measures.** In the event of a dissolution the Commission shall determine the measure necessary to effect the dissolution and shall provide for the taking of such measures as promptly as circumstances permit and subject to the terms of this agreement.

Section 4. **Effectiveness of Ordinance after Dissolution.** The franchise ordinance adopted and granted by the Commission shall provide that it is effective and enforceable within the corporate limits of all cities which were members prior to the dissolution of the Commission, and those cities shall be bound by the terms of any cable communications franchise previously adopted and granted by the Commission. After dissolution, each city shall be the exclusive authority to administer and enforce the cable communications franchise ordinance within its corporate boundaries.

## XII.

### **ARBITRATION**

Section 1. **Compulsory Arbitration.** Any controversy arising out of or relation to this agreement including but not limited to the withdrawal by a member for cause from the Commission shall be settled by a Board of Arbitrators in accordance with the provisions of the Uniform Arbitration Act, Sections 572.08 to 572.30, Minnesota Statutes.

Section 2. **Board of Arbitrators.** The Board of Arbitrators may be comprised of one individual mutually selected by the Commission and the member which has raised the issue in controversy. If the Commission and member are unable to agree upon a single arbitrator, the Board of Arbitration shall be comprised of three (3) individuals, one of whom shall be appointed by the

Commission, the second appointed by the member which has raised the issue in controversy, and the third appointed by the other two arbitrators. Upon failure to agree upon selection the third arbitrator, that individual shall be appointed by the Chief Judge of the Fourth Judicial District, Hennepin County, Minnesota.

### XIII.

#### INDEMNIFICATION

The Commission and its member municipalities shall indemnify and hold harmless any member municipality for damages, including reasonable attorneys' fee, incurred as a result of any action brought against said member municipality and resulting from the joined act or omission of the Commission established herein. Said responsibility for indemnification shall be proportional to the contribution of any member municipality.

### XIV.

#### EFFECTIVE DATE

Section 1. **Execution of Agreement.** A member entering into this agreement shall do so by the duly authorized execution of a copy of this agreement by its proper officer. Thereafter, the Clerk or other appropriate officer of that member shall file a duly executed copy of this agreement, together with a certified copy of the authorizing resolution and any initial contribution required by Article VIII with the City Administrator of the City of Tonka Bay.

Section 2. **Effective Date.** This agreement shall become effective when (a) it has been authorized by ten (10) of fourteen (14) eligible cities, and b) all appropriate documents have been filed as provided above.

Section 3. **Previous Agreement Superseded.** This agreement, when effective under Section 2 above, supersedes all previous agreements between the members hereto establishing a joint cable communications commission.

### XV.

#### DURATION

This agreement shall continue in effect from year to year until termination in accordance with the terms of this agreement.

IN WITNESS WHEREOF, the undersigned governmental unit has caused this agreement to be signed and delivered on its behalf.

EXECUTED as of \_\_\_\_\_, 19\_\_\_\_\_.

CITY OF

(SEAL)

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

