

400 UTILITIES

401 SEWER

401.1 Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The Federal Water Pollution Control Act, also referred to as the Clean Water Act, being 33 USC 1251 et seq., as amended.

ADMINISTRATION. Those fixed costs attributable to administration of the wastewater treatment works such as billing and associated bookkeeping and accounting costs.

ASTM. American Society for Testing Materials.

AUTHORITY. This city or its representative thereof.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20C, expressed in terms of milligrams per liter (mg/l).

BUILDING DRAIN. The part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. The term *CITY* when used herein may also be used to refer to the City Council and its authorized representative.

CONTROL MANHOLE. A structure specially constructed for the purpose of measuring flow and sampling of wastes.

DEBT SERVICE CHARGE. A charge levied on users of wastewater treatment facilities for the cost of repaying money bonded to construct the facilities.

EASEMENT. An acquired legal right for the specific use of land owned by others.

GARBAGE. Animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

INCOMPATIBLE WASTE. Waste that either singly or by interaction with other wastes interferes with any waste treatment process, constitutes a hazard to humans or animals, creates a public nuisance or creates any hazard in the receiving waters of the wastewater treatment works.

INDUSTRIAL USERS or *INDUSTRIES.* Entities that discharge into a publicly owned wastewater treatment works liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. Also, any nongovernmental or

nonresidential user of a publicly owned treatment works which is identified in the *Standard Industrial Classification Manual*, latest edition, which is categorized in Divisions A, B, D, E and I. For the purpose of this definition, domestic waste shall be considered to have the following characteristics: BOD₅ - less than 287 mg/l; Suspended solids - less than 287 mg/l.

INDUSTRIAL WASTE. Gaseous, liquid and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery and processing of natural resources, as distinct from residential or domestic strength wastes.

INFILTRATION. Water entering the sewage system (including building drains and pipes) from the ground through means as defective pipes, pipe joints, connections and manhole walls.

INFILTRATION/INFLOW (I/I). The total quantity of water from both infiltration and inflow.

INFLOW. Water other than wastewater that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.

INTERFERENCE. The inhibition or disruption of the city's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the city's NPDES or SDS permit. The term includes sewage sludge use or disposal by the city in accordance with published regulations providing guidelines under Section 404 of the Act (33 USC 1345) or any regulations developed pursuant to the Solid Waste Disposal Act (42 USC 6901 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state criteria applicable to the method of disposal or use employed by the city.

MAY. The term is permissive.

MPCA. The Minnesota Pollution Control Agency.

NATIONAL CATEGORICAL PRETREATMENT STANDARDS. Federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by those treatment facilities or would interfere with the operation of those treatment facilities, pursuant to Section 307(b) of the Act (33 USC 1317(b)).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT. A permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 404 of the Act (33 USC 1342 and 33 USC 1345).

NATURAL OUTLET. Any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.

NON-CONTACT COOLING WATER. The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added is heat.

NORMAL DOMESTIC STRENGTH WASTE. Wastewater that is primarily introduced by residential users with a BOD₅ concentration not greater than 287 mg/l and a suspended solids (TSS) concentration not greater than 287 mg/l.

OPERATION AND MAINTENANCE. Activities required to provide for the dependable and economical functioning of the treatment works, throughout the design or useful life, whichever is longer of the treatment works, and at the level of performance for which the treatment works were constructed. The term includes replacement.

OPERATION AND MAINTENANCE COSTS. Expenditures for operation and maintenance, including replacement.

PERSON. Any individual, firm, company, association, society, corporation or group.

pH. The logarithm of the reciprocal of the concentration of hydrogen ions in terms of grams per liter of solution.

PRETREATMENT. The treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly-owned treatment works.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have been shredded to a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 2-inch (1.27 cm) in any dimension.

PUBLIC WORKS DIRECTOR. The person appointed by the City Council to supervise the sewer and water systems of the city.

REPLACEMENT. Obtaining and installing of equipment, accessories or appurtenances which are necessary during the design life or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

REPLACEMENT COSTS. Expenditures for replacement.

SANITARY SEWER. A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters which are not admitted intentionally.

SEWAGE. The spent water of a community. The preferred term is wastewater.

SEWER SERVICE CHARGE. The aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facilities.

SEWER SERVICE FUND. A fund into which income from sewer service charges is deposited along with other income, including taxes intended to retire debt incurred through capital expenditure for wastewater treatment. Expenditure of the sewer service fund will be for operation, maintenance and replacement costs and to retire debt incurred through capital expenditure for wastewater treatment.

SEWER. A pipe or conduit that carries wastewater or drainage water.

COLLECTION SEWER. A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.

INTERCEPTOR SEWER. A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.

PRIVATE SEWER. A sewer which is not owned and maintained by a public authority.

PUBLIC SEWER. A sewer owned, maintained and controlled by a public authority.

STORM SEWER or *STORM DRAIN.* A drain or sewer intended to carry storm waters, surface runoff, ground water, subsurface water, street wash water, drainage and unpolluted water from any source.

SHALL. The term is mandatory.

STATE DISPOSAL SYSTEM (SDS) PERMIT. Any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to M.S. ' 115.07, as it may be amended from time to time for a disposal system as defined by M.S. ' 115.01(8), as it may be amended from time to time.

SUSPENDED SOLIDS (SS) or TOTAL SUSPENDED SOLIDS (TSS). The total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater*, latest edition, and referred to as non-filterable residue.

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 1317(a)).

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards, and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities.

USER. Any person who discharges or causes or permits the discharge of wastewater into the city's wastewater disposal system.

USER CHARGE. A charge levied on a user of a treatment works for the user's proportionate share of the cost of operation and maintenance, including replacement.

WASTEWATER. The spent water of a community and referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

WASTEWATER TREATMENT WORKS or TREATMENT WORKS. An arrangement of any devices, facilities, structures, equipment or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from that treatment.

WPCF. The Water Pollution Control Federation.

401.2 Administration of Sewers and General Regulations

401.2.1 Control Of Sewers. The Public Works Director, or other official designated by the City Council shall have control and general supervision of all public sewers and service connections in the city, and shall be responsible for administering the provisions of this chapter to the end that a proper and efficient public sewer is maintained.

401.2.2 Building Sewers and Connections. Building sewer construction shall meet the pertinent requirements of the Minnesota State Building Code, which is those chapters of Minn. Rules referenced in Minn. Rules part 1300.2400, subpart 6, as they may be amended from time to time, and the Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time. The applicant shall notify the City when the building sewer and connection is ready for inspection. The connection shall be made under the supervision of the Building Official or the Building Official's representative. No backfill shall be placed until the work has been inspected and approved, or until the certification has been received.

401.2.3 Tampering With Wastewater Facilities. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.

401.2.4 Cost of Repairing or Restoring Sewers. In addition to any penalties that may be imposed for violation of any provision of this chapter, the city may assess against any person the cost of repairing or restoring sewers or associated facilities damaged as a result of the discharge of prohibited wastes by that person, and may collect the assessment as an additional charge for the use of the public sewer system or in any other manner deemed appropriate by the city.

401.2.5 Restrictions On New Connections. Any new connections to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities, including but not limited to capacity for flow, BOD₅ and suspended solids, as determined by the Public Works Director.

401.2.6 Installation Of Service Connection To Public Sewer. The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the city and adjacent to any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the city shall be required at the owner's expense to install a suitable service connection to the public sewer in accordance with provisions of this code within 365 days of the date the public sewer is operational; provided, the public sewer is within 200 feet of the structure generating the wastewater. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this section, an official ten-day notice shall be served instructing the affected property owner to make the connection.

401.2.7 Deposits Of Unsanitary Manner Prohibited. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the city's jurisdiction, any human or animal excrement, garbage or objectionable waste.

401.2.8 Discharge Of Wastewater Or Other Polluted Waters. It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and the city's NPDES/SDS permit. Any person, firm, or corporation violating this provision of the City Code can warrant a civil penalty. A violation of this provision of the City Code is a misdemeanor. Each day that violation is committed or permitted to exist shall constitute a separate offense. The city may institute appropriate actions or proceedings to prevent, restrain, or correct violations or threatened violations. The imposition of any fine or sentence shall not exempt the offender from compliance with the requirements of this ordinance; and the city may pursue, by appropriate actions or proceedings, any or all additional other remedies.

401.2.9 Plainview Elgin Sanitary Sewer District. The City adopts the rules, regulations, and wastewater limitations established by the Plainview Elgin Sanitary Sewer District.

401.3 Private Wastewater Disposal System

401.3.1 Restrictions on Private Wastewater Disposal System. Except as otherwise provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

401.3.2 Public Sewer Not Available. Where a public sewer is not available under this section, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this subchapter and Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time.

401.3.3 Requirements. Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the city. The application for the permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the city.

401.3.4 Inspections. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the city or its authorized representative. The city or its representative shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the city when work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice.

401.3.5 Type, Capacity, Location, and Layout. The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

401.3.6 Direct Connection Required. At the time as a public sewer becomes available to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 365 days in compliance with this chapter, and within 365 days any septic tanks, cesspools and similar private wastewater disposal systems shall be cleaned of sludge. The bottom shall be broken to permit drainage, and the tank or pit filled with suitable material.

401.3.7 Operation and Maintenance by Owner. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the city.

401.3.8 Federal and State Requirements. No statement contained in this subchapter shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Minnesota Department of Health.

401.4 Altering, Connecting, or Disturbing Public Sewer.

401.4.1 Permit Required. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city.

401.4.2 Applications. Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

401.4.3 Classes. There shall be two classes of building sewer permits: one for residential and commercial service, and one for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any plans, specifications or any other information considered pertinent in the judgment of the city. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics and type of activity.

401.4.4 Inspection and Connection. The applicant for the building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection

and inspection shall be made under the supervision of the Public Works Director or authorized representative thereof.

401.4.5 Costs and Expenses. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.

401.5 Separate Building Sewers Required.

401.5.1 Requirements. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any connection.

404.5.2 Exceptions. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Public Works Director or his or her representative, to meet all requirements of this chapter.

401.6 Conformance To State Building And Plumbing Code Requirements.

401.6.1 Construction and Methods. The size, slopes, alignment, materials of construction of building sewers and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city.

401.6.2 Connection. The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city. All connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the city prior to installation.

401.6.3 Elevation Below Basement Floor. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by the building drain shall be lifted by an approved means and discharged to the building sewer.

401.7 Surface Runoff Or Groundwater Connections Prohibited. No person shall make connection of roof downspouts, sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system.

401.8 Excavations. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

401.9 Water Discharge into Sanitary Sewer System. The discharge of water from any roof, surface, ground, sump pump, footing tile or swimming pool or other natural precipitation into the city sanitary sewer collection system has the potential to-cause damage to residential property and over-load the Wastewater Treatment Plant (WWTP). Such damage can be caused by the backup of sewage into the living quarters of residential homes creating a potential health hazard and exceeding the capacity of the WWTP. The City, therefore, finds it essential to the maintenance of health, minimization of damage to property and to maintain the life and capacity of the WWTP that the provisions of this section be strictly enforced to avoid and minimize these problems in the future.

401.9.1 Restrictions and Definitions. No water from any roof, surface, ground, sump pump, footing tile, swimming pool or other natural precipitation shall be discharged into the sanitary sewer collection system. Dwellings, including new housing construction or houses under construction, and other buildings

and structures which require, because of the infiltration of water into basements, crawl spaces and the like, a sump pump system to discharge water shall have a permanently installed discharge line which shall not at any time discharge water into the sanitary sewer collection system. A permanent installation shall be one which provides for a year-round discharge connection to the city subdrain/storm sewer system. If there is no subdrain available, the surface discharge point shall be located no closer than four feet from the curb or as approved by the city. It shall consist of a rigid discharge line, without valving or quick connections for altering the path of discharge and, if connected to the city subdrain/storm sewer line, include a check valve.

401.9.2 Disconnections Ordered. Any person, firm or corporation having a roof, surface, ground, sump pump, footing tile or swimming pool now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in a manner as approved by the City Engineer or his or her representative.

401.9.3 Inspections. Every person owning improved real estate or contractors/builders who are building a structure within Plainview that discharges into the city's sanitary sewer system or on the ground shall allow an employee of the city or their designated representative to inspect the buildings to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. This requirement may also be met by having the property owner contract with a licensed plumber to perform the televised inspection of the sanitary sewer service and the plumber shall provide either a DVD or VHS record of the inspection to the City. The plumber must also inspect the sump pump system and complete and return an inspection form provided by the City documenting the results of the inspection. All costs associated with an inspection by a privately retained plumber shall be the responsibility of the property owner.

Any property owner or contractor/builder of a structure refusing to allow their property to be inspected within 14 days of the date city employees or their designated representatives are denied admittance to the property shall immediately become subject to the daily surcharge noted in Section 401.9.5, unless the property owner or contractor/builder of a structure pays the monthly surcharge in lieu of inspection. Any owner of property or contractor/ builder found to violate this subchapter shall make the necessary changes to comply with the subchapter and furnish proof of the changes to the city within one hundred and twenty (120) days from the date the violation was identified.

401.9.4 Future Inspections. At any future time, if the city has reason to suspect that an illegal connection may exist in a premises, the owner, after written notice, shall allow city representatives to inspect the building.

401.9.5 Penalties. In addition to the criminal penalties noted above, a civil surcharge of \$10 per day may be imposed by invoice and/or added to every sewer billing mailed to property owners or to the contractor/builder of a structure which are found not to be in compliance herein. The surcharge will be levied daily against those properties found not to be in compliance with this ordinance until the property has been certified by the City Engineer or his or her representative that the property is in compliance. The surcharge will be levied against the property owner and/or contractor/builder of a structure on the thirty-first day after notice of the violation has been provided to the owner/contractor/builder. Should an individual who has been notified of noncompliance with, and has corrected that noncompliance, be found that his or her sump pump system is out of compliance with this ordinance a second time will be fined \$100 a day commencing upon the day he or she is found to be in noncompliance. There shall be no grace period for bringing the system into compliance.

A property owner or the contractor/builder of a structure can pay a monthly surcharge of \$100 in order to avoid a viewing of the property to determine if the property is engaged in an illegal discharge into the sanitary sewer system. This surcharge shall commence on the first day of the month following the month when the property owner or contractor/builder provides written notice to the City of their intent to act pursuant to this provision and shall continue as long as the property owner or contractor/builder continues to own the property without providing the information noted above. This surcharge is intended to offset the added cost associated with having wastewater treatment facility process clear water unnecessarily when the status of a property's connection to the sanitary sewer system cannot be ascertained.

401.9.6 Deadline Extension for Undue Hardship. In the event that the strict application of the terms of this ordinance would pose an “undue hardship” to a particular property owner, the property owner can ask the City Council to grant an extension of the compliance deadlines of this ordinance. Any extension of the compliance deadline granted by the City Council shall be effective for a period not to exceed 180 days beyond the 120 day grace period set forth in Section 401.9.3 above. “Undue hardship” shall include, but is not limited to, property owners who earn less than the median annual income for Wabasha County. It shall be the responsibility of the property owner seeking the deadline extension to provide verification of the owner’s income to the satisfaction of the City staff. In the event the City Council grants a property owner an extension of the compliance deadline, the extension shall only delay compliance with the terms of the ordinance for as long as the current property owner owns the property and shall not apply to a new owner of the property.

401.10 Use of Public Services

401.10.1 Discharges of Unpolluted Water. No person shall discharge or caused to be discharged any water such as stormwater, ground water, roof runoff, surface drainage or non-contact cooling water to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to those sewers as are specifically designed as storm sewers or to a natural outlet approved by the city and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval of the city and upon approval and the issuance of a discharge permit by the MPCA.

401.10.2 Discharge of Waters or Wastes. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- A Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.
- B Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as but not limited to grease, garbage with particles greater than 2-inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.
- C Any wastewater having a pH of less than 5.0 or greater than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater disposal system.
- D Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act (33 USC 1317(a)).

401.10.3 Limited Discharges. The City adopts the rules, regulations, and wastewater limitations established by the Plainview Elgin Sanitary Sewer District. Discharges into the sanitary sewer system shall be limited to concentrations or quantities which will not harm either sewers, the wastewater treatment works, treatment process or equipment, will not have an adverse effect on the receiving stream and soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The City may set limitations lower than limitations established by the Plainview Elgin Sanitary Sewer District if the more severe limitations are necessary to meet the above objectives. In

addition to the minimum standards established by the Plainview Elgin Sanitary Sewer District, the following are also prohibited from the sanitary sewer system:

- A Any quantities of flow, concentrations, or both which constitute sludge.
- B Any garbage not properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food on the premises or when served by caterers.
- C Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.
- D Non-contact cooling water or unpolluted storm, drainage or ground water.
- E Wastewater containing inert suspended-solids such as but not limited to fullers earth, lime slurries, and lime residues, or of dissolved solids such as but not limited to sodium chloride and sodium sulfate, in quantities that would cause disruption with the wastewater disposal system.
- F Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation or ordinance of any regulatory agency, or state or federal regulatory body.

401.10.4 Discharges Hazardous To Life Or Constitute Public Nuisances. If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances which in the judgment of the Public Works Director may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment, receiving waters or soil, vegetation, and ground water, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

- A Reject the wastes;
- B Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act (33 USC 1317(b)) and all amendments thereof;
- C Require control over the quantities and rates of discharge; and
- D Require payment to cover the added costs of handling, treating and disposing of wastes not covered by existing taxes or sewer service charges.
- E If the city permits the pretreatment or equalization of waste flows, the design, installation and maintenance of the facilities and equipment shall be made at the owner's expense and shall be subject to the review and approval of the city pursuant to the requirements of the MPCA.

401.10.5 Increasing the Use of Process Water. No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained section 401, or contained in the National Categorical Pretreatment Standards or any state requirements.

401.10.6 Pretreatment or Flow-Equalizing Facilities. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

401.10.7 Grease, Oil, and Sand Interceptors. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Public Works Director, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in ' 51.082(B)(2), any flammable wastes as specified in ' 51.081(A), sand or other harmful ingredients; except that interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Public Works Director. Any removal and hauling of the collecting materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.

401.10.8 Industrial Wastes; Installations. Where required by the city, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with necessary meters and other appurtenances in the building sewer to facilitate observation,

sampling, and measurement of wastes. The structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the city. The structure shall be installed by the owner at his or her expense and shall be maintained by the owner to be safe and accessible at all times.

401.10.9 Industrial Wastes; Requirements. The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the City or the Plainview Elgin Sanitary Sewer District, be required to provide laboratory measurements, tests or analyses of waters or wastes to illustrate compliance with this chapter and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the city. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the city at times and in the manner as prescribed by the city. The owner shall bear the expense of all measurements, analyses and reporting required by the city. At those times as deemed necessary, the city reserves the right to take measurements and supplies for analysis by an independent laboratory.

401.10.10 Measurements, Tests, and Analyses of Water and Wastes. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis subject to approval by the Plainview Elgin Sanitary Sewer District.

401.10.11 Protection From Accidental Discharge Of Prohibited Materials. Where required by the city, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this chapter. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Plainview Elgin Sanitary Sewer District for review and approval prior to construction of the facility. Review and approval of the plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. Users shall notify the City of Plainview and the Plainview Elgin Sanitary Sewer District immediately upon having a slug or accidental discharge of substances of wastewater in violation of this chapter to enable countermeasures to be taken by the Plainview Elgin Sanitary Sewer District to minimize damage to the wastewater treatment works. The notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the city on account thereof under any state and federal law. Employers shall ensure that all employees who may cause or discover a discharge are advised of the emergency notification procedure.

401.10.12 Permitting Substance Or Matter To Flow Or Pass Into Public Sewers. No person having charge of any building or other premises which drains into the public sewer shall permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. Within 30 days after receipt of written notice from the city, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform other work as the Public Works Director may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of 30 days, the Public Works Director may cause the work to be completed at the expense of the owner or representative thereof.

401.10.13 Repairing Service Connection. Whenever any service connection becomes clogged, obstructed, broken or out of order, or detrimental to the use of the public sewer, or unfit for the purpose of drainage, the owner shall repair or cause the work to be done as the Public Works Director may direct. Each day after 30 days that a person neglects or fails to so act shall constitute a separate violation of this section, and the Public Works Director may then cause the work to be done, and recover from the owner or agent the expense thereof by an action in the name of the city.

401.10.14 Catch Basin Or Waste Traps Required For Motor Vehicle Washing Or Servicing Facilities. The owner or operator of any motor vehicle washing or servicing facility shall provide and maintain in serviceable condition at all times a catch basin or waste trap in the building drain system to prevent grease, oil, dirt or any mineral deposit from entering the public sewer system.

401.10.15 Special Agreement And Arrangement. No statement contained in this subchapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern; provided, that National Categorical Pretreatment Standards and the city's NPDES/SDS Permit limitations are not violated.

401.11 Sewer User Rate Schedule for Charges. Each user of sewer service shall pay the charges applicable to the type of service, and in accordance with the provisions set forth in this section. The purpose of this section is to provide for sewer service charges to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the city's wastewater treatment system, and local capital costs incurred in the construction of the city's wastewater treatment system.

401.12 Sewer Service Charges.

401.12.1 Sewer Service Charge. The city hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

401.12.2 Sewer Rental - For the purpose of providing funds to pay for the construction, operation, repair and administration expenses of the Plainview Sewer Collection and Disposal System, a sewer rental is hereby levied and assessed against each lot, parcel of land, building or premises situated within the corporate limits of the City of Plainview, now or hereafter having any connection with the sanitary sewer system of said City or otherwise discharging domestic sewage, commercial and industrial waste, water or other liquids, either directly or indirectly into the sanitary sewer system of said City.

401.12.3 Sewer Service Charges - Sewer service charges are hereby imposed upon all users in a total amount sufficient to pay the costs of operation, maintenance, and replacement (OM & R) costs and capital costs of the disposal system. Sewer service charge shall consist of the sum of the Capital Charge and User Charge. In certain cases, User Charge may be replaced by either the Minimum User Charge or the Industrial User Charge.

A "User Charge" is the fee imposed upon all units of service of the treatment works in a total amount sufficient to pay the costs of operation and maintenance, including costs of replacement of and for the wastewater disposal system.

B "Capital Charge" shall be imposed on all connections and shall be sufficient to recover capital and interest costs of the construction of the disposal system. Costs to be recovered shall consist of costs for City owned facilities as well as the City share of the sanitary district facilities. Capital charge shall be determined independent of usage by dividing the annual cost of capital repayment (including interest) by the number of equivalent connections. Industrial Capital Charges shall be determined by the City Council.

C. "Industrial User Charge" shall be applied to significant industrial users whose waste is routinely monitored as part of the industrial pre-treatment program and shall become applicable as the rate-determining method when the industrial waste is stronger than domestic strength and the industrial charge as determined by the method described in **Subs. 3.6** of the Wastewater Rate System Report is greater than the user charge to the industry determined by application of the user rate.

Industrial users discharging wastewater that is stronger than domestic strength will be subject to regular monitoring of their waste for BOD and SS and flows. The BOD and SS and flow data become the basis of the industrial user charge determined by the unit rates calculated and are applied in lieu of the user charge if greater than the user charge. The industrial user charge is based on:

V = billable volume in 1,000 gal.

B = measured BOD in 100 lb.

S = measured SS in 100 lb.

The amounts duly billed for sewer service shall be charged in accordance with the billing, collection, delinquent, disconnection and reconnection policies as the water department.

401.12.4 Revenues Deposited in Sewer Service Fund. Revenues collected for sewer service shall be deposited in a separate fund known as “The Sewer Service Fund”. Income from revenues collected will be expended to off-set the cost of operation, maintenance and equipment replacement for the facility and to retire the debt for capital expenditure. Sewer service charges and the sewer service fund will be administrated in accordance with the provisions of this section.

401.12.5 Connection Fee, SAC. A connection fee as fixed in the Ordinance Establishing Fees and Charges adopted pursuant to this code, as that ordinance may be amended from time to time, shall be charged to each user connecting a new service to the Sanitary Sewer System.

401.12.6 Determination of Sewer Service Charges. The sewer service rates and charges to users of the wastewater treatment facility shall be as established by ordinance or resolution prior to the adoption of this code, unless amended or modified in the Ordinance Establishing Fees and Charges, as that ordinance may be amended from time to time.

401.12.7 Owner Responsible. The owner of the premises shall be liable to pay for the service to their premises, and the service is furnished to the premises by the city only upon the condition that the owner of the premises is liable therefore to the city.

401.12.8 Additional Costs Borne by Discharger. Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger of the wastes, at no expense to the city.

401.13 Powers and Authority of Inspectors

401.13.1 Permission Required, Unless Administrative Search Warrant or Emergency Situation. The Public Works Director or other duly authorized employees or agents of the city, bearing proper credentials and identification, are authorized, with the permission of the licensee, owner, resident or other person in control of property within the city, to enter all properties for the purpose of inspection, observations, maintenance, measurement, sampling and testing pertinent to the discharges to the city's sewer system in accordance with the provisions of this chapter. If the licensee, owner, resident or other person in control of property within the city does not permit the entrance to the property, the city shall obtain an administrative search warrant as provided for in Section 100 before entering the property, except in emergency situations.

401.13.2 Authorized Employees Obtaining Information for Industrial Processes. The Public Works Director or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the type and source of discharge to the wastewater collection system. An industry may withhold information considered confidential; however, the industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

401.13.3 Authorized Employees to Observe Safety Rules. While performing necessary work on private properties, the Public Works Director or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the property owner shall be held

harmless for injury or death to the city employees and the city shall indemnify the property owner, subject to the constitution and laws of the State of Minnesota, against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the company to maintain safe conditions.

401.13.4 Authorized Employees Permitted To Enter All Property With Easements. The Public Works Director or other duly authorized employees of the city, as well as employees of the Plainview Elgin Sanitary Sewer District bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of but not limited to inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

401.14 Penalty.

401.14.1 Written Notice. Any person found to be violating any provisions of section 401 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person who shall continue any violation beyond the time limit provided for this section shall be punished as a misdemeanor, as provided in section 100. Each day in which any violation occurs shall be deemed as a separate offense.

401.14.2 Expense, Loss or Damage. Any person violating any of the provisions of 401 shall become liable to the city for any expense, loss or damage occasioned by the city by reason of that violation.

401.14.3 Charges Levied. Each and every sewer service charge levied is made a lien upon the lot or premises served, and all charges which are on October 31 of each year past due and delinquent shall be certified to the County Auditor by November 29 for collection. Nothing in this section shall be held or construed as in any way stopping or interfering with the right of the city to levy as taxes or assessments against any premises affected any delinquent or past due sewer service charges. As an alternative to levying a lien, the city may, at its discretion, file suit in a civil action to collect amounts as are delinquent and due against the occupant, owner or user of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Attorney's fees shall be fixed by order of the court. In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 10%.

402 WATER

402.1 General Operation. The city does hereby make provision for the establishment of a municipal water system (hereinafter called the water system) to be operated as a public utility.

402.2 Use of Water Service. No person other than a city employee shall uncover or make or use any water service installation connected to the city water system except in the manner provided by this chapter. No person shall make or use any installation contrary to the regulatory provisions of this chapter. No person shall permit water from the water system to be used for any purpose to circumvent this chapter.

402.3 Damage to Water System. No unauthorized person shall remove or damage any structure, appurtenance, or part of the water system or fill or partially fill any excavation or move any gate valve used in the water system. No person shall make any connection of an electrical welder to the city water main, appurtenance or service or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services.

402.4 No New Connections Beyond City Boundaries. No property and/or home or business located outside the City limits of Plainview shall be allowed to connect to the municipal water system. Those persons desiring municipal water service must first annex into the City limits. Those that currently have a legal water connection may continue to access the municipal water system.

402.5 Connection To System Required; Use Of Private Wells.

402.5.1 Unlawful to Construct Private Well. With the exception of the two existing industrial wells, it shall be unlawful to construct, reconstruct, or repair any private water system which is designed or intended to provide water for human consumption. Private wells, to provide water for other than human consumption, may be constructed, maintained and continued in use after connection is made to the water system; provided, there is no means of cross-connection between the private well and municipal water supply at any time. Hose bibbs that will enable the cross-connection of the two systems are prohibited on internal piping of the well system supply. Where both private and city systems are in use, outside hose bibbs shall not be installed on both systems.

402.5.2 New Building Must Connect to Water System. All new homes or buildings must connect to the municipal water system.

402.5.3 City To Determine Expansion of Water System. Where new homes or buildings do not have water available to the property, the city shall determine whether and under what conditions the municipal water system will be extended to serve the property.

402.5.4 Private Wells To Be Closed After Municipal Connection. Once a home or building is connected to the municipal water supply, the private well must be closed. All well abandonment shall be done in accordance with M.S. 103I.301 to 103I.345 and Minn. Rules Ch. 4725, Wells and Borings, as it may be amended from time to time.

402.6 Use Of Water From Fire Hydrants; Temporary Connections.

402.6.1 Use of Fire Hydrants. Except for extinguishment of fires, no person, unless authorized by the Public Works Director or Public Works Department, shall operate fire hydrants or interfere in any way with the water system.

402.6.2 Temporary Connection To Fire Hydrants. An owner of a private water system may make a temporary above ground connection to a fire hydrant. The method of connection to the private system and the type of meter used shall conform to all existing requirements of this chapter and city ordinance and shall meet the approval of the Public Works Director.

402.7 Water Deficiency, Shut Off And Use Restrictions. The city shall not be liable for any deficiency or failure in the supply of water to consumers, whether occasioned by shutting the water off for

the purpose of making repairs or connections or from any other cause whatsoever. In case of fire, or alarm of fire, or in making repairs of construction of new works, water may be shut off without notice at any time and kept off as long as necessary. In addition, the City Council shall have the right to impose reasonable restrictions on the use of the city water system in emergency situations.

402.8 General Water Regulations

402.8.1 Supply from One Service. No more than one housing unit or building shall be supplied from one service connection. Each unit served shall have a separate water meter.

402.8.2 Tapping of Water Mains Restricted. No person, except persons authorized by the Public Works Director shall tap any distributing main or pipe of the water supply system or insert stopcocks or ferrules therein.

402.8.3 Abandoned or Unused Services. If the premises served by water has been abandoned, or if the service has not been used for one year, then the service shall be shut off at the curb stop box by the city and the water meter will be removed. When new buildings are erected on the site of old ones, and it is desired to increase or change the old water service, no connections with the mains shall be made until all the old service has been removed.

402.8.4 Disconnection Permit. An excavation permit must be obtained to disconnect from the existing water service curb stop box. The fee for the permit shall be set by the City Council.

402.8.5 Service Pipes. Every service pipe shall be laid so as to allow at least one foot of extra length in order to prevent rupture by settlement. The service pipe must be placed no less than seven feet below the ground and in a manner as to prevent rupture by freezing. Service pipes must extend from the curb stop box to the inside of the building, or if not taken into the building, then to the hydrant or fixtures which it is intended to supply. Type K copper tubing shall be used. All services over two inches shall be ductile or cast iron. All underground joints are to be mechanical, except joints under floors shall be silver soldered, unless otherwise approved by the Public Works Director. Joints of copper tubing shall be kept, to a minimum, with not more than one joint used for service for each 70 feet in length. Splicing may be approved with three-piece unions only. All joints and connections shall be left uncovered until inspected by the Public Works Director and tested at normal water line pressure. Unions must be three-part type. All services over two inches shall be ductile iron or cast iron. Connections with the mains for domestic supply shall be at least one inch up to the house.

402.8.6 Connection to Other Water Supplies Restricted. No water pipe of the water system shall be connected with any pump, well, tank, or piping that is connected with any other source of water supply except to service municipal systems.

402.9 Location of Curb Stop Box. Curb stop boxes will be installed with rods on the right-of-way line or easement limits at a location as determined by the City Engineer to be best suitable to the property and shall be left in a vertical position when backfilling is completed. Curb stop boxes will be installed at an approximate depth of seven feet below the finished ground elevation and the top of the curb stop box shall be adjusted to be flush with the finished ground elevation. Curb stop boxes must be firmly supported by a masonry block. No person shall erect any fence or plant any tree or other landscaping that would obstruct, or place a structure on, park a motor vehicle on, or otherwise obstruct the use of the curb stop box, or cause damage to the same.

402.10 Water Meters.

402.10.1 Generally. Except for extinguishment of fires, no person, unless otherwise authorized by the Public Works Department, shall use water from the water system or permit water to be drawn therefrom unless the same be metered by passing through a meter supplied or approved by the city. No person not authorized by the Public Works Director shall connect, disconnect, take apart, or in any manner change or cause to be changed or interfere with any meter or the action thereof, or break any meter or valve seal.

- A Where a consumer has need for a larger line in addition to his or her domestic line, as in the case of a commercial consumer who needs a one-inch line for normal use and a six-inch or larger line for a fire sprinkler system, he or she will be permitted to run one line into the premises and “Y” off into two lines at the building. When this is done, the meter will be attached to the small or domestic line and a check valve as well as one-inch detection meter shall be put on the large line.
- B The city shall maintain and repair all meters when rendered unserviceable through ordinary wear and tear and shall replace them if necessary. When replacement, repair, or adjustment of any meter is rendered by the act, neglect (including damage from freezing or hot water backup) or carelessness of the owner or occupant of the premises, any expense caused the city thereby shall be charged against and collected from the water consumer.
- C A consumer may, by written request, have his or her meter tested by depositing an amount sufficient to cover the costs associated with testing the meter. In case a test should show an error of over 5% of the water consumed, a correctly registering meter will be installed, and the bill will be adjusted accordingly and the testing deposit refunded. This adjustment shall not extend back more than one billing period from the date of the written request.
- D All water meters and remote readers shall be and remain the property of the city.
- E Authorized city employees shall have access at reasonable hours of the day to all parts of every building and premises connected with the water system for reading of meters and inspections.
- F It shall be the responsibility of the consumer to notify the city to request a final reading at the time of the customer's billing change.

402.10.2 Water meter setting. All water meters hereafter installed shall be in accordance with the Minnesota Plumbing Code and any standards established by resolution of the City Council.

402.11 Repairs

402.11.1 Determination Of Need For Repairs. Based on the information supplied by the property owner or available to the city, the city will make a determination whether a problem exists in that portion of the service which is the city's responsibility. If the problem appears to exist in the areas for which the city has no responsibility, the private owners will be responsible for correction of the problem.

402.11.2 Excavation Or Repair Of Water Service. The city will arrange for the investigative digging up and repair of any water service where the problem apparently exists within that area for which the city has responsibility. Unless it is clearly evident, however, that the problem is the responsibility of the city, the excavation and repair will not be made until the property owner requests the city in writing to excavate or repair the service and agrees to pay the cost. The owner further agrees to waive public hearing and be special assessed the cost of the excavation and repair if the problem is found to be other than the city's responsibility. The city will make the determination for responsibility of the cost of investigation or repair. The matter of whether the dig up is done by city forces or contracted would depend on the urgency or need of repair and the availability of city forces to do the work. Recovery by the city for faulty construction will depend upon the circumstances and the decision of the City Council on the likelihood of recovery.

402.11.3 Failure to Repair. In case of failure upon the part of any consumer or owner to repair any leak occurring in his or her service pipe within 24 hours after verbal or written notice, as determined by the Public Works Director, the water may be turned off by the city and shall not be turned on until the leak has been repaired and a fee has been paid to the city.

402.12 Excavation and Construction Requirements. No excavation shall be made until a permit for the connection has been issued by the city.

402.12.1 Separation. No water service pipe or water connection shall be installed in the same trench or closer than ten feet horizontally to a sewer trench or drain laid, or to be laid, either in the street or in private property, except that the water pipe on private property may be in a common trench with a sewer

drain which is of a material that is in conformance with the current Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time.

402.12.2 Water Above Sewer. Where it is desired to lay the water service pipe and the building sewer pipe in the same trench, or in separate trenches less than ten feet apart, the water service pipe shall be above the sewer pipe unless approved by the City Engineer. It shall be placed at least one foot above the sewer and on a solid shelf excavated at one side of the trench. The sewer pipe shall be of a material that is in conformance with the Minnesota Plumbing Code with tested watertight joints. The water service pipe shall be watertight and corrosion resistant. K-copper pipe and ductile or cast iron water pipe with specially protected joints is acceptable for this construction. Ductile iron pipe shall conform to the American Water Works Association specifications for this pipe. Bell joint clamps with rubber gaskets are provisionally acceptable as extra protection for the joints on cast iron water pipe. In all cases, precautions shall be taken to assure a firm foundation for the pipes. The intervening space between the pipes shall be backfilled with compacted earth.

402.12.3 Surfaced Street. In case the installation is on a surfaced street, the following shall apply: All backfill materials shall be mechanically compacted in 12-inch layers to the density of the adjacent material in the roadway area and to the existing street grades in accordance with the Minnesota Department of Transportation Standards. Complete surface restoration shall be made at property owners expense.

402.13 Water Connections; Applications and Charges.

402.13.1 Connection Applications. All applications for service installations and for water service shall be made to the City Clerk. All applications for initial service installations and water service shall be made by the owner or agent of the property to be served and shall state the size and location of service connection required. The applicant shall, at the time of making application, pay to the city the amount of fees as established by the City Council or deposit required for the installation of the service connection as hereinafter provided. Applications for services larger than one inch shall be accompanied by two sets of plans or sketches indicating preferred location of service pipe and size of service based on building demand. The size of the water service connections and meter shall be subject to approval of the City Engineer. Utility services provided to non-owner occupants of residential property are responsible for payment of a deposit for services to the City.

402.13.2 Connection Charges. A permit must be obtained to connect to the existing water service leads at the curb stop box. The city shall install or have installed all service connections from the water main to the curb stop box including the stop box.

402.13.3 Additional Charges. Additional charges shall be paid at the time of making application for tapping and making connections with the water main to where a curb stop box and service lead is not previously installed. The charge shall include the tapping of the water main, corporation cocks, the installation of a service line, the installation of a curb stop box, cost of restoring disturbed areas and all other costs related to the installation.

402.13.4 Connection Charge, WAC. There shall be a connection charge levied by the city to contribute to the payment of the costs of the City's water system.

402.13.5 Water Services Stopped. When water services have been stopped because of a violation of this chapter, the city shall collect the fee before service is recommenced.

402.14 Water User Rates and Charges

402.14.1 Water Unit. A water unit (hereinafter called unit) shall be one residential equivalent connection based on usage of 1,000 gallons.

402.14.2 Rates, Fees, and Charges Generally. The City Council shall establish a schedule of all water rates, fees and charges for permits or services.

402.14.3 Water Service Billing; Change of Address. All bills and notices shall be mailed or delivered to the address where service is provided. If nonresident owners or agents desire personal notice

sent to a different address, they shall so note on the water service application. Any change or error in address shall be promptly reported to the City Clerk.

402.15 Water Rates and Water Meters. The rate due and payable by each user within the city for water taken from the water system shall be established by the City Council.

402.15.1 Water Meter Faulty. In case the meter is found to have stopped, or to be operating in a faulty manner, the amount of water used will be estimated in accordance with the amount used previously in comparable periods of the year.

402.15.2 Minimum Rate Begin. The minimum rates established shall begin to accrue after connection of the service pipe with the curb stop box, and the installation of a water meter and the water turned on.

402.15.3 Installation. A meter shall be installed on the water valve in the house.

402.16 Water Rental. For the purpose of providing funds to pay for the operation, repair, additional construction, and administrative expenses of the Plainview Municipal Water System, a water rental is hereby levied and assessed against each lot, parcel of land, building or premises situated in the corporate limits of the City of Plainview, now, or hereafter having any connection with the municipal water system of said City, either directly or indirectly.

402.16.1 Rate Charged - There is hereby levied and assessed against each lot, parcel of land, building or premises having a connection with the municipal water system of said City, whether directly or indirectly, a water service charge or rental payable as established from time to time by the City Council by Resolution.

402.16.2 Payment. The rental rates or charges herein set forth shall be due and payable on due date as specified in the billing. If such rental charge as herein set forth is not paid by the due date, the City shall disconnect water and/or certify the same to the County Auditor of the County of Wabasha. If a measurement of the use of the water system is not made due to damage to a meter or for any other reason, then the customer shall be charged a rate based upon a rate based upon the rate paid for the same period of the previous year.

402.16.3 Collection of Charges. Any prepayment or overpayment of charges may be retained by the city and applied on subsequent charges. If a monthly service charge is not paid when due, then a penalty of 10% shall be added thereto. In the event a user fails to pay his or her water user fee within a reasonable time following discontinuance of service, the fee shall be certified by the City Clerk and forwarded to the County Auditor or other collection agency for collection pursuant to Minnesota Statutes Section 444.075.

402.16.4 Disconnection. The City shall endeavor to collect delinquent bills promptly. If the customer has not paid their municipal utility account balance in full at the end of the month that the bill was due in, the account shall be considered delinquent. The City shall immediately disconnect a delinquent utility account. In the event a customer tenders a payment to the City which is refused for non-sufficient funds, then the City may immediately terminate service to the delinquent Customer by shutting off the water.

When water service to any premises has been discontinued, service shall not be restored except upon the payment of all delinquent amounts due plus a fee for re-connection as established by the City Council in Section 801, General Fees, Fines, and Charges.

402.16.5 Owner's Liability for Water Service. In the event the owner of the property does not occupy the property, but has rented the property out to a tenant pursuant to a written lease, and the owner has contracted with the City directly for utility service on behalf of the tenant, the owner of the premises receiving City water service shall be liable for water service consumed upon the premises. For purposes of this Section, "owner" shall be defined to include the fee owner, contract for deed vendor, contract for deed vendee, life tenants and remaindermen of the property in question. The City may rely on the records in the office of the Wabasha County Recorder to determine the legal owner of the property.

402.16.6 Voluntary Disconnection. Any person desiring a disconnection with the City water system for any other reason must serve written notice to the City Clerk at least seven (7) days before such disconnection is desired. The fee for this service shall as established by the City Council in Section 801, General Fees, Fines, and Charges. No re-connection shall be made until the reconnection fee has been paid. In the event of a disconnection due to a mortgage foreclosure, impending bankruptcy, or other similar event which results in the Customer ceasing to occupy the property, water service will only be reconnected when the lender or other party temporarily responsible for management of the property pays the fee to cover the cost for disconnection and subsequent reconnection prior to transfer of ownership of the property to any subsequent purchaser.

402.17 Powers and Authority of Inspectors. The Public Works Director and other duly authorized employees of the city, upon proper identification, are authorized, with the permission of the licensee, owner, resident or other person in control of property within the city, to enter upon all properties for the purpose of inspections, maintenance, observation and testing in accordance with the provisions of this chapter. If the licensee, owner, resident or other person in control of property within the city does not permit the entrance to the property, the city shall obtain an administrative search warrant before entering the property, except in emergency situations.

402.18 Discontinuance of Service. Water service may be shut off at any connection.

402.19 Authorized Employees to Turn Water On and Off. No person, except an authorized city employee or a private contractor acting on behalf of the City, shall turn on or off any water supply at the curb stop box.

402.20 Liability for Expense, Loss, or Damage. Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned by the city by reason of the violation.

403 NATURAL GAS

403.1 Franchise Granted. The City of Plainview, (hereinafter referred to as "Grantor") hereby grants a non-exclusive franchise to Aquila, Inc, d/b/a Aquila Networks, a Delaware corporation, (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

403.2 Term. The rights and privileges granted by this Ordinance shall remain in effect for a period of 20 years from the effective date of this Ordinance.

403.3 Franchise Fees

403.3.1 Compensation. The laws of the State of Minnesota authorize a payment of compensation to a city by the provider of natural gas services in the form of the imposition of a city franchise fee to raise revenue or to defray costs accruing as a result of such operations, or both. This payment is commonly referred to as a franchise fee.

403.3.2 Franchise Fee. During the term of the Franchise, and as a condition of its grant, a City franchise fee is hereby imposed on the Company as indicated in the table below. The volumetric fee rate is per 100 cubic feet of gas by volume, transported, sold, furnished or delivered by Company to a retail customer located within the current and future limits of City, utilizing any of the Company's services or facilities.

	<i>Commercial</i>	<i>Industrial</i>	<i>Interruptible</i>	<i>Residential</i>
<i>Flat Fee (annual) per meter</i>	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00
<i>Volumetric Fee (per 100 cu.ft volume)</i>	\$ 0.01	\$ 0.01	\$ 0.005	\$ 0.01

403.3.3 Franchise Fee Adjusted. The Franchise Fee shall be adjusted for net write-off of uncollectible accounts and corrections of bills theretofore rendered. The Company may list the local franchise fee collected from customers as a separate item on bills for utility service issued to customers.

403.3.4 Franchise Fee Effective. The franchise fee shall be effective January 1, 2004 following adoption of this Ordinance and shall continue until amended or repealed by the City during the term of this Ordinance. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance.

The Company must report and pay the franchise fee to the City on a quarterly basis. Such payment shall be made not more than thirty days following the close of the period for which payment is due. Company shall provide information by customer class to City to show how the fee was determined.

The franchise fee rates provided may be adjusted annually for inflation, based upon the most recent Urban Consumer Price Index inflation adjustment rates. Such adjustment shall not require formal amendment to this Ordinance.

If any person challenges the collection, any aspect of the franchise fee or any other payment to be made to City pursuant to this Franchise, the Company must promptly give notice to City and must, in any case, diligently and continuously exercise its efforts to sustain said fee and payments and the time and manner of its collection. If at any time the MPUC, or other authority having proper jurisdiction, prohibits recovery of the franchise fee costs, then the Company will no longer be obligated to collect and pay the franchise fee. The Company agrees to make its records related to the calculation and payment of the franchise fee available for inspection by the City at reasonable times.

If for any reason the amount or rate of the franchise fee is determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City or Company, be reduced to the maximum amount or rate permitted by law.

The franchise fee is in lieu of any other permit or licensing fee, charge or cost imposed by the City on the Company for providing gas service or performing work necessary to provide gas service. The City cannot charge the Company any right-of-way fee imposed by a right-of-way ordinance or other ordinance or City practice during this franchise term.

403.4 Governing Rules And Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

403.5 Construction And Maintenance Of Company Facilities. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee **at its sole expense**, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than

one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities.

403.6 Extension Of Company Facilities. Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

403.7 Relocation Of Company Facilities. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

403.8 Confidential Information. Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

403.9 Force Majeure. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible

once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

403.10 Hold Harmless. Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

403.11 Severability. If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

403.12 Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

403.13 Repeal Conflicting Ordinances. This ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No 183 of the City of Plainview, Minnesota is hereby repealed as of the effective date hereof.

403.14 Effect And Interpretation Of Ordinance. The captions which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this ordinance.

403.15 Effective Date And Acceptance. This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument of passage by the governing body effective January 1, 2004, and filed with the City Clerk of the City of Plainview Minnesota. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

404 CABLE COMMUNICATIONS. The City Council of Plainview, Minnesota ordains that a cable communications franchise for the installation, operation, and maintenance of a cable communications system within the city as specified in the cable service territory previously established and approved by the Board is granted to US Cable provided, however, that said franchise shall be subject to the following terms and performance conditions. Definitions:

1. “Franchisor” is the City of Plainview. Franchisor is sometimes referred to as “Franchising Authority”.
2. “Franchisee” is US Cable of Coastal- Texas, L.P., hereinafter “US Cable”.
3. “FCC” is the Federal Communications Commission of the United States.
4. “FCC Regulations” are all laws, rules, and regulations of the Federal Communications Commission including but not limited to the Cable Act (47 U.S.C. Section 546), the Cable T.V. Consumer Protection Act of 1992, and Sub-part K of Part 76 of FCC’s rules and regulations, Title 47, Sections 76.601 to 76.617.
5. “Class IV Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communication system.
6. “Gross annual subscriber revenues” shall mean revenues derived from monthly subscriber receipts from basic cable service, tier service and pay cable services.
7. “Non-voice return communications” means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.
8. The word “shall” is mandatory.
9. The word “may” is permissive.
10. Other words and phrases shall have the meaning ascribed to them by federal law.

404.1 Compliance With FCC’s Regulations And Minnesota Statues. The franchise shall at all times be in compliance with the regulations of the FCC and to the extent not preempted by FCC regulation, Minnesota Statues Chapter 238. Both the franchisee and franchising authority shall conform to Minnesota State Law rules and regulations regarding cable communications not later than one year after they become effective and to federal laws and regulations pertaining to cable communications as they become effective.

404.2 Compliance With State And Federal Laws. The franchisee and the franchising authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable as they become effective.

404.3 Previous Franchises. This franchise shall supersede and replace any previous ordinance or agreement granting a franchise to franchisee or to Mark Twain Cablevision which was assigned to franchisee.

404.4 Franchise Terms. The franchise shall have a franchise term of seven (7) years.

404.5 Renegotiation Of Franchise Terms. Renegotiation between the franchisor and franchisee shall occur pursuant to FCC regulations.

404.6 Franchise Exclusivity. This franchise agreement is non-exclusive; provided, however, that a franchise or license shall be required for every provider of cable service and shall include substantially similar terms and conditions as this franchise

404.7 Sale Or Transfer Of The Franchise, Sale Or Transfer Of Stock. Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited (other than to an entity controlling, controlled by, or under common control with the Franchisee), except at the approval of the franchising authority which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to FCC regulations and Minnesota Statute Section 238.083.

404.8 Access To Financial Records. The franchising authority is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice. The franchisee shall file with the franchising authority annually reports of gross subscriber revenues and other information, as the franchising authority deems appropriate.

404.9 Rates And Rate Change Procedure. To the extent allowable by FCC regulations, the franchisor hereby reserves the right to approve any and all proposed rate increases. Rate change procedures shall be governed in all instances by FCC regulations including but not limited to C.R.F. Part 76 Sub. N. The franchisor reserves its right to adopt a rate regulation plan and establish cable service rates at such time as such city rate regulation is permitted under federal law. The franchisee shall make available to the City all current subscriber charges which shall then be made available for public inspection at Plainview City Hall. Franchisee shall also make available the length and terms of residential subscriber contracts and they shall then be available for public inspection at Plainview City Hall.

404.10 Franchise Administrator. The mayor and City Council shall be responsible for the continuing administration of this franchise as advised by the Plainview-Elgin Cable Communications Board.

404.11 Liability Insurance. Upon being granted a franchise, and upon the filing of the acceptance, the franchisee shall file with the city clerk and shall thereafter during the entire term of such franchise maintain in full force and effect at its own cost and expense each of the following policies of insurance: Comprehensive general liability insurance with bodily injury liability insurance in an amount not less than \$1,000,000.00 resulting from any one occurrence, and property damage liability insurance in an amount not less than \$1,000,000.00 resulting from any one occurrence. All insurance provided for above shall be with a company or companies with an A+:AAAAA or B rating authorized to do business in the state. Policies or certificates of insurance shall be endorsed by a local insurance agency licensed by the state.

404.12 Bond Required By Franchisee; Indemnification of City By Franchisee

a. **Performance Bond to City.** Upon being granted a franchise, and upon the filing of the acceptance required, the franchisee shall file with the city clerk and shall thereafter, annually, during the entire term of such franchise, maintain in full force and effect a corporate surety bond or other adequate surety agreement in an amount approved by the council and not to exceed \$10,000. The bond or agreement shall be so conditioned that in the event that the franchisee shall fail to comply with any one or more of the provisions of this ordinance or of such franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or loss, or costs suffered or incurred by the city as a result thereof, including attorney's fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs which may be default, up to the full principal amount of such bond. Such condition shall be a continuing obligation during the entire term of such franchise and thereafter until the franchisee shall have satisfied in full any and all obligations to the city, which arise out of or pertain to said franchise. Neither the provisions of this section, nor any bond accepted by the city pursuant hereto, nor any damages recovered by the city thereunder shall be construed to excuse faithful performance by the franchisee, or limit the liability of the franchisee under a franchise issued hereunder or for damages either to the full amount of bond or otherwise. The amount of the bond or agreement shall be fixed by the city council by

resolution; the amount may be changed by the council from time to time on its own initiative or upon application by the franchisee.

b. Hold Harmless Agreement. The franchisee shall indemnify and hold harmless the city, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of action, suits, proceedings, damages (including but not limited to, damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by the franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the franchisee's cable television system), costs or liabilities (including costs or liabilities of the city with respect to its employees), of any kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost and expenses resulting or arising out of any of the same, including any attorney's fees, accountant's fees, expert witness' fees or consultant's fees, court cost, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the franchisee, or the granting thereof by the city. Policies of liability insurance, or certificates of insurance above required shall contain a clause acknowledging the existence of this agreement and extending coverage therefor. Notwithstanding the foregoing, Franchisee will not indemnify the Franchisor for any damages which are attributable solely to Franchisor's own negligence or for PEG access programming.

c. Defense of Litigation. In order for City to assert its rights to be indemnified, defended, and held harmless pursuant to Section 12b and c, City must with respect to each claim promptly notify Franchisee in writing of any claim or legal proceeding which gives rise to such right. The franchisee at the sole risk and expense of the franchisee, upon timely written demand of the city, made by and through the city attorney, shall appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to the exercise of or the enjoyment of such franchise, or the granting thereof by the city. The franchisee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order directive, or demand rendered, made or issued against the franchisee, the city, its officers, boards, commissions, agents, or employees in any of these premises, and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy or insurance, deposit, undertaking, or other assurance required here-under or otherwise. Franchisee shall fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and City shall fully cooperate with reasonable requests of Franchisee; provided Franchisee shall consult with City prior to entering into any settlement, compromise or disposition.

404.13 Liability For Injury To Franchisee's Facilities. Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regarding, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

404.14 Public Hearing Re: Franchisee's Credentials. The franchisee's technical ability, financial condition, and legal qualification were considered and approved by the franchising authority in a full public hearing proceeding affording reasonable notice and a reasonable opportunity to be heard pursuant FCC regulations.

404.15 Channel Capacity. The franchisee shall operate a cable system with a channel capacity available for immediate or potential use equal to the equivalent of two hundred thirty (230) television channels. The franchisee also agrees to provide cable based Internet access for subscribers who wish to pay for this service if it is economically and technically feasible to do so in franchisee's discretion;

provided, however, that nothing herein shall be construed to authorize City to regulate Internet services of any kind provided by franchisee unless authorized by federal law.

404.16 Emergency Use Of Facilities. Franchisee shall provide an audio emergency alert override on Channels 2 through 13 to allow the Franchisor's police department to break into normal programming in the event of an emergency. The audio emergency alert over-ride system shall be operational on the effective date of this franchise.

404.17 Authorization To Commence Construction. The franchisee shall obtain building and use permits from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway, or public place. If the franchisee fails to meet the conditions of the permits, the franchising authority may proceed with both civil and criminal remedies provided for in Plainview's Municipal Code, Land Management Ordinance, the State Building Code, Minnesota State Statutes and applicable federal law or standards. Franchisee is hereby granted access to the public rights-of-way and easements that have been dedicated for compatible uses. The franchisee and subscribers must assume the cost of the use of the rights-of-way. This means that if franchisee disturbs any street, sidewalk, driveway, or other public place in order to install or maintain cable television related equipment, it must restore the disturbed area to the condition it was in before the work commenced at its sole expense.

404.18 Compliance With Applicable Codes. All wires, conduits, cable, and other property and facilities of the franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

404.19 Relocation Of Wires, Etc. The following procedure shall be used by the franchisee and franchising authority for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in said street, right-of-way, or public place whenever the franchising authority undertakes public improvements which affect the cable equipment. The franchisee shall be solely responsible for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in said street, right-of-way, or public place whenever the franchising authority undertakes public improvements which affect the cable equipment. Any and all expenses incurred hereunder shall be borne by the franchisee.

404.20 Technical Standards. The rules and regulations of the Federal Communications Commission relating to cable communications systems are incorporated by reference. The results of any tests required by the Federal Communications Commission shall be filed within 30 days of the conduct of such tests with the franchising authority.

404.21 Special Testing. In the event that special testing is required to determine the source of technical difficulties, the Franchisee shall be responsible for all of the costs of said special testing and the Franchising Authority shall bear no responsibility for said costs.

404.22 Non-Voice Return Capability. The franchisee shall provide a cable communications system having the technical capacity for non-voice return communications.

404.23 Subscriber Policy. No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns of practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the

permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type of classification of Class IV cable communications activity planned for the purpose.

1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to the company and its employees for internal business use, and also to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make such data available.

2. Written permissions from the subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR Section 4.202 W. 1.

404.24 Subscriber Complaints. All complaints by the franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the franchisee. The franchisee shall adhere to and follow its service and maintenance policy outlined in the proposal previously submitted to the City Council, which proposal was a determining factor in the granting of the franchise. In addition, the franchisee shall adhere to the most current FCC Customer Service Standards.

404.25 Repairs And Complaints. The franchisee shall provide at least a toll-free or collect telephone number for the reception of subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service with 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by the Franchisee unless caused by the malice or negligence of the subscriber. In addition, the franchisee shall adhere to the most current FCC Customer Service Standards.

404.26 Termination, Forfeiture, Or Expiration Of Franchise. The city shall have the right to terminate and cancel any franchise granted pursuant to this ordinance and all rights and privileges of the franchisee of such franchise in the event that the franchisee substantially violates any material provision of the franchise ordinance, which generally includes but is not limited to uncured violations within franchisee's control which result in serious disruptions of service to multiple customers. To the extent allowed by FCC regulations, such termination procedure shall be conducted as follows:

1 The city council shall make written demand that the franchisee do or comply with any such provision. If the failure, refusal, or neglect of the franchisee continues for a period of thirty (30) days following such written demand, the city council shall place its request for termination of the franchise upon the next regular council meeting agenda at which meeting the council shall set a date, time and place for a public hearing on the request of the city council for the termination of the franchise. The franchisee shall be given notice of said public hearing in writing at least ten (10) days prior to the date of said hearing. Notice of the date, time and place of said hearing shall be published by the city clerk at least one ten (10) days prior to the date of such hearing in the newspaper of general circulation within the city.

2 The city council shall consider the request for termination and shall hear any persons interested therein including the franchisee and shall determine in its discretion whether or not any failure, refusal, or neglect by the franchisee was with just cause.

3. If such failure, refusal, or neglect by the franchisee was with just cause, the council shall direct the franchisee to comply with such time and manner and upon such terms as reasonable.

4 If the council shall determine such failure, refusal, or neglect by the franchisee was without just cause, then the council may by resolution declare that the franchise of such franchisee shall be terminated and forfeited unless there be compliance by the franchisee within such period as the council may fix, which period shall not be less than ninety days.

404.27 Abandonment. The franchisee may not abandon any portion of the cable communications service provided hereunder without having given one (1) year prior notice to the franchising authority. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

404.28 Removal Of Cable Equipment Upon Termination Of Forfeiture. Upon termination or forfeiture of a franchise, the franchisee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the franchising authority so requests at its sole expense. The franchisee shall restore personal and real property to the original condition existing prior to the time of location of the franchisee's cable, wires, and appliances in the city. Any failure therein shall allow the franchising authority to forfeit the bond of franchisee.

404.29 The Municipal Right To Purchase System. If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system. The franchisee shall give the franchising authority the first privilege of purchasing the system at the price and on the terms of any bona fide offer so made to the franchisee. This privilege shall be given by a notice sent to the franchising authority at City Hall by registered or certified mail, requiring the franchising authority to accept the offer in writing and to sign a suitable contract to purchase the system within a period of sixty (60) days after the mailing of the notice.

404.30 Access Channels

A) The franchisee shall provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on specially designated access channels. Franchisee shall provide up to two (2) as specially designated access channels for public, educational and government use based on demonstrated need. "Demonstrated Need" shall be defined pursuant to Minnesota Statutes §238. Only one specially designated access channel shall be required to be placed on the VHS frequencies of Channels 2 through 13. Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement. The specially designated access channels may be used by the public, local educational authorities and local government on a first come, nondiscriminatory basis at no cost or charge. During those hours that the specially designated access channels are not being used by the public, local educational authorities or local government, to the extent allowed by FCC regulations, the franchisee shall lease time to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. The franchisee may also use the specially designated access channels for local origination during those hours when the channels are not in use by the public, local educational authorities, local government, or commercial or noncommercial users who have leased time on the specially designated access channels.

B) The franchisee shall establish rules pertaining to the administration of the specially designated access channel.

C) Nothing in this section shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiations between the parties to a franchise.

D) The franchisee shall operate and make readily available for public use, at least the minimum equipment necessary to perform good quality playback and prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment.

404.31 Franchise Payments. In consideration of the granting and exercise of a franchise to use the streets of the city for the operation of a cable television system, the franchisee shall pay to the city, during the terms of its franchise an amount of money computed by the city for the reasonable value of the time spent by city employees, their agents or consultants, and the city's out-of-pocket expenses incurred in enforcing the regulatory provisions of this franchise.

The reasonable value of this time shall be deemed to equal three (3) per cent of the franchisee's gross annual revenues within their franchise area and shall be paid quarterly to the Franchisor. In the event the City of Plainview shall pass a resolution so requesting, this payment shall increase to five (5) per cent of the franchisee's gross annual revenues within their franchise area upon ninety (90) days written notice to franchisee.

Payments shall be made quarterly to the city treasurer from the date of acceptance of the franchise.

The city shall notify the franchisee in writing of the annexation of any areas to the city and services furnished by the franchisee to such areas shall be included in the franchisee's annual revenues from the first day of the second month following such notification.

The city shall have the right to audit the franchisee's accounting and financial records upon reasonable notice; and the franchisee shall file annually with the city a report setting forth gross revenues from the franchised area and such other information as the city may deem appropriate.

404.32 Severability. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions thereof. The council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of the franchisee hereunder. This franchise is intended to comply with the franchise standards of the FCC. To the extent that the provisions of this ordinance should conflict with the franchise standards of the FCC, the franchise standards of the FCC shall take precedence.

404.33 Duties Of Service. In addition to other service regulations adopted by the council, and excepting circumstances beyond the franchisee's control, such as acts of God, riots, war, and civil disturbances, and in providing the foregoing services, the franchisee shall:

A) Limit system failures to minimum time duration by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after occurrence, irrespective of holidays or other non-business hours.

B) Render efficient service throughout the term of the franchise, making repairs promptly and interrupting service only for good cause for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during the period of minimum use of the system.

C) Maintain a toll free number for the purpose of operating and maintaining the cable television system and receiving complaints. The phone number shall be listed in directories of the telephone company serving the city. The franchisee shall be prepared to receive and shall receive complaints and requests for repairs or adjustments at any time, day or night, seven (7) days a week.

D) Unless otherwise authorized by the mayor, maintain a written record or log, listing dates of customer complaints, identifying the subscriber, and describing the nature of the complaint, and when and what action was taken by the franchisee in response thereto: such record shall be kept at the franchisee's local office for a period of five (5) years from the date of the complaint. The log shall be available for inspection during regular business hours, without further notice or demand, by the mayor.

E) Not charge a subscriber for each day no service is provided. A day is defined as a period of time exceeding twelve (12) hours in a twenty-four (24) hour period, commencing twenty-four (24) hours after an occurrence resulting in no service. "No Service" is defined as failure to provide one (1) or more channels to a customer, which channel or channels has been requested by the customer as a part of his service. "No Service" also is defined as any period of time during which the system does not produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is producing a colored picture) that is free from distortion and free from ghost images without material degradation of color fidelity and intelligence and includes any period of time that the system does not distribute signals of adequate strength to produce good pictures with good sound to all television receivers (provided that they are in good repair and properly adjusted) of all subscribers without causing cross-modulation in the cables or interfering with other electrical or electronic systems or the reception of other television or radio receivers in the area not connected to the system.

F) Pay all costs incurred in making repairs, adjustments, or activations unless otherwise provided in this ordinance or the subscriber contract.

G) In all instances, franchisee shall comply with customer service standards as adopted and described in Section 24 above.

H) The franchisee shall not deny access to cable service because of the income of the residents of the local area.

404.34 Acceptance Of Franchise By Franchisee

A) No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the city clerk. Written acceptance, which shall be approved by the city attorney as to form and substance, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, or in such franchise or otherwise specified as herein provided.

B) The written acceptance shall be filed by the franchisee not later than 12:01 p.m. of the twentieth day next following the effective date of this ordinance.

C) In default of filing of such written acceptance as herein provided, the franchisee shall be deemed to have rejected and repudiated the franchise. Thereafter, subject to federal law, the acceptance of the franchisee shall have no rights, remedies, or redress in the premises, unless and until the council, by resolution, shall determine that such acceptance be received or filed, and then upon such terms and conditions as the council may impose.

D) In any case, and in any instance, all rights, remedies, and redress in these premises which may or shall be available to the city, shall at all times be available to the city and shall be preserved and maintained and shall continuously exist in and to the city and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by reason of any of these premises or otherwise.

404.35 Amendments. There is hereby reserved to the city and the franchisee the power to amend at any time and from time to time any section of this ordinance upon mutual written agreement so as to require additional or greater standards of construction, operation, maintenance, or otherwise, on the part of the franchisee to reflect technical and economic changes occurring during the franchise term, and

to enable the city and the franchisee to take advantage of new developments in the cable television industry so as to more effectively, efficiently, and economically serve the public.

404.36 Construction The franchise shall:

- A) Obtain permission from the proper municipal authority before commencing any construction of cable communications system.
- B) Give the city reasonable notice or proposed construction so as to coordinate all work between the municipality and the franchisee.
- C) First, obtain a permit from the city before opening or disturbing the surface of any street, sidewalk, driveway, or public place for any purpose.
- D) Place lines, conduits, cables, and other property in the streets and public places pursuant to such permit as may be determined by the proper municipal authority.
- E) Upon completion of any work requiring the opening of any street or public place, restore the same including the paving and its foundations to as good a condition as formerly and in a manner and quality approved by the proper municipal authority and exercise reasonable care to maintain the same thereafter in good condition.
- F) Perform all work with due diligence.
- G) Locate, construct, install, and maintain all wires, conduits, cables, and other property and facilities as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets and public places of the municipality and to keep and maintain all of its property in good condition, order, and repair so that the same shall not menace or endanger the life and property of any person.
- H) Construct and install all wires, cables, amplifiers, and other property of the franchisee in an orderly and workmanlike manner.
- I) Install cables and wires parallel with existing telephone and electric wires whenever possible and arrange multiple cable configuration in parallel and bundled with due respect for engineering considerations.
- J) Construct, install, maintain, and operate any cable communication system or any facility employed in connection therewith in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code, the Bell Telephone System Code of Pole Line Construction, and any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto and in accordance with local zoning regulations, subdivisions and building regulations.
- K) Design construct, install, maintain, and operate the cable communication system so as not to endanger or interfere with the safety of persons or property in the city.
- L) Keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the municipality.

404.37 Right Of Inspection. The city shall have the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used in part or in whole by the franchisee.

404.38 City Of Elgin Extension. The parties acknowledge that the City of Elgin, Minnesota, granted an extension permit to franchisee's predecessor to provide cable services to the City of Elgin by resolution of the Elgin City Council dated July 11, 1983. Franchisee covenants and agrees that said permit shall have no effect on this ordinance and that the City of Plainview shall have no duty or obligation or liability to franchisee for anything arising outside of the terms of this ordinance, or for the furnishing or failure to furnish cable television services to properties outside the corporate limits of the City of Plainview.

404.39 Lockout Device. Upon request of a subscriber, franchisee shall provide by sale a lockout device capable of preventing the viewing of a premium channel by a keyed lock system.

404.40 Work Performed By Others. Franchisee must inform the franchising authority in writing of the names and addresses of any entity other than the franchisee which performs substantial service pursuant to the franchise.

404.41 Costs Of Establishing This Ordinance. The franchisee shall assume the costs of publication of this franchise as such publication is required by law and for all reasonable legal expenses of the franchisor necessary to establish the franchise up to a maximum amount of Four Thousand Five Hundred Dollars and no cents (\$4500). A bill for such cost shall be presented to the franchisee by the city clerk upon the filing of acceptance by franchisee and franchisee shall pay said bill at that time.

404.42 Company Will Not Contest Validity Of Franchise. The franchisee agrees by the acceptance of this franchise that it will not at any time set up against the city in any claim or proceeding, any condition or term of this franchise as unreasonable, arbitrary, or void, or that the City had no power of authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this franchise in their entirety.

404.43 Worker's Compensation Insurance. No acceptance of the franchise by the franchisee under Section 34 of this ordinance shall be effective until the franchisee has provided proof of compliance with Minnesota Statutes Section 176.182 (Worker's Compensation) to the City Council in a form and substance approved by the City Attorney. Such proof of compliance shall be submitted to the City Council at the time of acceptance as provided under Section 34.

404.44 Effective Date. The effective date shall be February 25, 2004.