

**BATAVIA CITY COUNCIL
BUSINESS MEETING**

**City Hall - Council Board Room
One Batavia City Centre
Monday, June 13, 2016
7:00 PM**

AGENDA

- I. Call to Order
- II. Invocation – Councilperson Viele
- III. Pledge of Allegiance
- IV. Approval of May 2016 Minutes
- V. Approval of April 2016 Financials
- VI. Assignment of Agenda Items
- VII. Communications
 - a. Cutro Birthday Party – Centennial Park – June 18th
- VIII. Council President Report
 - a. Announcement of the City Council Conference Meeting to be held on Monday, June 27, 2016 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre.
 - b. Proclamations – 2016 Boys Varsity Basketball
2016 Girls Varsity Basketball
2016 Girls Varsity Indoor Track
2016 Boys Varsity Outdoor Track
2016 Girls Varsity Outdoor Track
- IX. City Attorney's Report
- X. City Manager's Report
- XI. Committee Reports
- XII. Public Comments
- XIII. Council Responses to Public Comments
- XIV. Unfinished Business

XV. New Business

- #70-2016 A Resolution to Create a Deer Management Committee**
- #71-2016 A Resolution to Enter into an Agreement with Erdman Anthony for Preliminary Design, R.O.W. Incidentals, and R.O.W. Acquisitions for the City of Batavia Healthy Schools Corridor**
- #72-2016 A Resolution to Amend the 2016-2017 Police Department Budget to Reflect the Receipt of a Refund from Eotech Corporation**
- #73-2016 A Resolution to Schedule a Public Hearing and Introduce Proposed Local Law No. 3 of the Year 2016 Entitled "Amending the Business Improvement District Plan"**
- #74-2016 A Resolution to Schedule a Public Hearing for the Approval of a Cable Television Agreement Between Community Cable Corporation ("North Penn Video") and the City Of Batavia**
- #75-2016 A Resolution to Schedule a Public Hearing for the Approval of a Cable Television Agreement Between Empire Video Services Corporation ("Empire Video") and the City Of Batavia**

XVI. Executive Session... Litigation & Employment Matters

XVII. Adjournment

**GENERAL FUND
CITY OF BATAVIA
FOR PERIOD ENDED - April 30, 2016**

DESCRIPTION	ADJUSTED BUDGET	YTD TOTAL	% OF BUDGET	YTD 2015	YTD Change %	Change \$
Revenues						
Real Property Taxes	\$ 5,111,384.00	\$ 5,154,162.26	100.84%	\$ 5,041,556.33	2.23%	\$ 112,606
Payments in Lieu of Tax	\$ 52,265.00	\$ -	0.00%	\$ -		\$ -
Interest & Pen. on Tax	\$ 190,000.00	\$ 10,576.07	5.57%	\$ 5,068.42	108.67%	\$ 5,508
Sales and Use Tax	\$ 6,130,000.00	\$ -	0.00%	\$ -		\$ -
Utility Gross Receipts Tax	\$ 220,000.00	\$ 2,924.40	1.33%	\$ 3,055.65	-4.30%	\$ (131)
Cable TV Franchise	\$ 165,000.00	\$ -	0.00%	\$ -		\$ -
Clerk/Treasurer Fees	\$ 32,000.00	\$ 3,734.80	11.67%	\$ 3,710.22	0.66%	\$ 25
Charges for Tax Redemption	\$ -	\$ 600.00		\$ -		\$ 600
Marriage Licenses	\$ 3,000.00	\$ 160.00	5.33%	\$ 560.00	-71.43%	\$ (400)
Other Gen Govern Dept Inc.	\$ 15,391.00	\$ -	0.00%	\$ -		\$ -
Police Fees	\$ 2,800.00	\$ 151.50	5.41%	\$ 277.25	-45.36%	\$ (126)
Dog Seizure Fees	\$ 600.00	\$ 20.00	3.33%	\$ 40.00	-50.00%	\$ (20)
Other Public Safety Dept Inc	\$ -	\$ 25.00		\$ -		\$ 25
Vital Statistics Fees	\$ 33,000.00	\$ 2,910.00	8.82%	\$ 3,030.00	-3.96%	\$ (120)
Ambulance service revenue	\$ -	\$ -		\$ -		\$ -
Public Works Services	\$ 12,000.00	\$ 63.73	0.53%	\$ -		\$ 64
Fines & Forfeited Bail	\$ 125,000.00	\$ 17,105.00	13.68%	\$ -		\$ 17,105
Maintenance Fee - Ice Rink	\$ 36,480.00	\$ -	0.00%	\$ -		\$ -
Park User Fees	\$ 3,100.00	\$ 650.00	20.97%	\$ 325.00	100.00%	\$ 325
Special Recreat. Fac Charges	\$ 20,000.00	\$ -	0.00%	\$ -		\$ -
Other Culture & Rec Income	\$ 3,000.00	\$ -	0.00%	\$ -		\$ -
Zoning Fees	\$ 1,000.00	\$ 100.00	10.00%	\$ 100.00	0.00%	\$ -
Code Violation Charges	\$ 36,000.00	\$ -	0.00%	\$ -		\$ -
EMS Program	\$ 45,590.00	\$ -	0.00%	\$ (15,520.00)	-100.00%	\$ 15,520
Interest and Earnings	\$ 2,000.00	\$ 45.89	2.29%	\$ 146.35	-68.64%	\$ (100)
Interest and Earnings Reserves	\$ -	\$ 774.67		\$ 586.58	29.85%	\$ 178
Rental of Real Property	\$ 24,480.00	\$ 40.00	0.16%	\$ 1,808.52	-97.79%	\$ (1,769)
Rental, other - facility usage	\$ 500.00	\$ -	0.00%	\$ 150.00	-100.00%	\$ (150)
Business/Occup. Licenses	\$ 5,000.00	\$ 1,125.00	22.50%	\$ -		\$ 1,125
Games of Chance	\$ 100.00	\$ 25.00	25.00%	\$ -		\$ 25
Bingo Licenses	\$ 2,500.00	\$ 53.18	2.13%	\$ 63.95	-16.84%	\$ (11)
Dog Licenses	\$ 12,000.00	\$ 1,100.00	9.17%	\$ 1,070.50	2.76%	\$ 30
Licenses, Other	\$ 700.00	\$ 172.45	24.64%	\$ 802.28	-78.51%	\$ (630)
Bldg/Alter Permits	\$ 50,000.00	\$ 2,668.00	5.34%	\$ 13,169.11	-79.74%	\$ (10,501)
Street Opening Permits	\$ 10,000.00	\$ 400.00	4.00%	\$ 550.00	-27.27%	\$ (150)
Plumbing Permits	\$ 3,700.00	\$ 280.00	7.57%	\$ 174.00	60.92%	\$ 108
Permits, Other	\$ 6,000.00	\$ 3,290.00	54.83%	\$ 3,860.00	-14.77%	\$ (570)
Parking ticket fees	\$ 35,000.00	\$ 1,150.00	3.29%	\$ 4,275.00	-73.10%	\$ (3,125)
Forfeiture of Deposits	\$ 500.00	\$ 825.00	165.00%	\$ -		\$ 825
White Goods	\$ -	\$ -		\$ -		\$ -
Sale of Scrap/Excess Mat.	\$ 2,000.00	\$ -	0.00%	\$ -		\$ -
Minor Sales	\$ 1,300.00	\$ 23.46	1.80%	\$ 87.17	-73.09%	\$ (64)
Minor Sales - EMS Program	\$ -	\$ -		\$ -		\$ -
Sale of Real Property	\$ -	\$ -		\$ -		\$ -
Sale of Equipment	\$ 30,000.00	\$ -	0.00%	\$ -		\$ -
Insurance Recoveries	\$ -	\$ -		\$ -		\$ -
Other Comp for Loss	\$ -	\$ 4,607.45		\$ -		\$ 4,607
Refund-Prior Year Exps	\$ -	\$ -		\$ 1,031.00	-100.00%	\$ (1,031)
Healthcare Premiums	\$ 59,540.00	\$ 9,490.87	15.94%	\$ 11,879.05	-20.10%	\$ (2,388)
Healthcare Revenue	\$ -	\$ -		\$ 3,442.63	-100.00%	\$ (3,443)
Gifts and Donations	\$ -	\$ -		\$ -		\$ -
VLT	\$ -	\$ -		\$ -		\$ -
Unclassified Revenue	\$ 1,000.00	\$ -	0.00%	\$ -		\$ -
Reserve revenue	\$ -	\$ -		\$ -		\$ -
Per Capita State Aid	\$ 1,750,975.00	\$ 1,504,868.00	85.94%	\$ 1,504,868.00	0.00%	\$ -
Mortgage Tax	\$ 115,000.00	\$ -	0.00%	\$ -		\$ -
Real Property Tax Admin	\$ -	\$ -		\$ -		\$ -
State Aid - Record Mgmt	\$ -	\$ -		\$ -		\$ -
Rail Infrastructure Invest. Act	\$ -	\$ -		\$ -		\$ -
State Aid - Public Safety	\$ 43,502.68	\$ 2,147.98	4.94%	\$ (4,212.35)	-150.99%	\$ 6,360
Consolidate Highway (CHIPS)	\$ 519,980.00	\$ -	0.00%	\$ (129,055.52)	-100.00%	\$ 129,056
State Aid - Sidewalk repair	\$ -	\$ -		\$ -		\$ -
Code Enforcement - member it	\$ -	\$ -		\$ -		\$ -
Recreation Program	\$ 19,715.00	\$ 3,442.00	17.46%	\$ 3,442.00	0.00%	\$ -
Arterial Reimbursement	\$ 157,400.00	\$ -	0.00%	\$ (63,694.80)	-100.00%	\$ 63,695
State Aid - Planning Studies	\$ 75,000.00	\$ -	0.00%	\$ -		\$ -
State Aid Conservation Progr	\$ 15,000.00	\$ -	0.00%	\$ -		\$ -
Fed. Aid - Bullet Proof Vest	\$ 1,890.00	\$ -	0.00%	\$ -		\$ -
Fed. Aid - Hmld Security	\$ 100,000.00	\$ -	0.00%	\$ -		\$ -
Fed Aid - Public Safety	\$ 11,000.00	\$ -	0.00%	\$ -		\$ -
Interfund Transfers	\$ 200,000.00	\$ -	0.00%	\$ -		\$ -
TOTAL REVENUES	\$ 15,493,392.68	\$ 6,729,711.71	43.44%	\$ 6,396,656.34	5.21%	\$ 333,055

**GENERAL FUND
CITY OF BATAVIA
FOR PERIOD ENDED - April 30, 2016**

DESCRIPTION	ADJUSTED BUDGET	YTD TOTAL	% OF BUDGET	YTD 2015	YTD Change %	Change \$
Expenses						
City Council	\$ 51,700.00	\$ 7,206.18	13.94%	\$ 8,362.95	-13.83%	\$ (1,157)
City Manager	\$ 160,700.00	\$ 5,996.16	3.73%	\$ 5,900.87	1.61%	\$ 95
Finance	\$ 151,972.42	\$ 2,340.52	1.54%	\$ 2,317.37	1.00%	\$ 23
Administrative Services	\$ 326,550.00	\$ 64,044.45	19.61%	\$ 61,042.92	4.92%	\$ 3,002
Clerk-Treasurer	\$ 122,750.00	\$ 6,624.81	5.40%	\$ 3,364.24	96.92%	\$ 3,261
City Assessment	\$ 141,642.00	\$ 1,972.90	1.39%	\$ 18,660.17	-89.43%	\$ (16,687)
Legal Services	\$ 223,805.00	\$ 14,575.00	6.51%	\$ 14,325.00	1.75%	\$ 250
Personnel	\$ 139,900.00	\$ 4,499.58	3.22%	\$ 4,639.94	-3.03%	\$ (140)
Engineering	\$ 32,000.00	\$ -	0.00%	\$ -		\$ -
Elections	\$ 18,210.00	\$ 18,210.00	100.00%	\$ 11,835.00	53.87%	\$ 6,375
Public Works Admin	\$ 94,960.00	\$ 3,216.49	3.39%	\$ 3,503.13	-8.18%	\$ (287)
City Facilities	\$ 353,837.39	\$ 31,783.29	8.98%	\$ 40,191.21	-20.92%	\$ (8,408)
Information Systems	\$ 79,575.00	\$ 38,256.00	48.08%	\$ 41,495.00	-7.81%	\$ (3,239)
Contingency	\$ 250,000.00	\$ -	0.00%	\$ -		\$ -
Police	\$ 3,644,979.04	\$ 142,140.43	3.90%	\$ 148,045.17	-3.99%	\$ (5,905)
Fire	\$ 4,551,201.37	\$ 143,056.21	3.14%	\$ 154,732.01	-7.55%	\$ (11,676)
Control of Dogs	\$ 1,310.00	\$ 8.85	0.68%	\$ 956.45	-99.07%	\$ (948)
Inspection	\$ 296,406.85	\$ 12,034.37	4.06%	\$ 12,048.89	-0.12%	\$ (15)
Vital Statistics	\$ 18,410.00	\$ 579.62	3.15%	\$ 705.38	-17.83%	\$ (126)
Maintenance Admin	\$ 180,153.52	\$ 6,214.62	3.45%	\$ 6,611.86	-6.01%	\$ (397)
Street Maintenance	\$ 757,435.00	\$ 18,649.50	2.46%	\$ 14,820.65	25.83%	\$ 3,829
Public Works Garage	\$ 443,782.00	\$ 14,838.14	3.34%	\$ 14,928.41	-0.60%	\$ (90)
Snow Removal	\$ 587,609.00	\$ 6,195.86	1.05%	\$ 39,914.78	-84.48%	\$ (33,719)
Street Lights/Traf Signals	\$ 305,960.60	\$ 433.60	0.14%	\$ 1,386.66	-68.73%	\$ (953)
Sidewalk Repairs	\$ 259,980.00	\$ -	0.00%	\$ -		\$ -
Parking Lots	\$ 35,200.00	\$ -	0.00%	\$ -		\$ -
Community Development	\$ 103,215.70	\$ 422.06	0.41%	\$ -		\$ 422
Economic Development	\$ -	\$ -		\$ -		\$ -
Council on Arts	\$ 2,250.00	\$ -	0.00%	\$ 2,250.00	-100.00%	\$ (2,250)
Parks	\$ 614,430.60	\$ 14,618.87	2.38%	\$ 21,948.60	-33.39%	\$ (7,330)
Summer Recreation	\$ 70,636.58	\$ 1,271.13	1.80%	\$ 511.21	148.65%	\$ 760
Youth Services	\$ 159,775.00	\$ 4,990.54	3.12%	\$ 5,064.98	-1.47%	\$ (74)
Historic Preservation	\$ 2,100.00	\$ -	0.00%	\$ 40.00	-100.00%	\$ (40)
Celebrations	\$ 13,640.00	\$ -	0.00%	\$ 1,907.85	-100.00%	\$ (1,908)
Planning & Zoning Boards	\$ 3,200.00	\$ 75.00	2.34%	\$ 414.93	-81.92%	\$ (340)
Storm Sewers	\$ 209,809.69	\$ 5,709.18	2.72%	\$ 4,369.30	30.67%	\$ 1,340
Refuse & Recycling	\$ 64,762.00	\$ 1,250.54	1.93%	\$ 1,303.50	-4.06%	\$ (53)
Street Cleaning	\$ 310,950.00	\$ 818.09	0.26%	\$ 4,019.22	-79.65%	\$ (3,201)
Medical Insurance	\$ 1,611,970.00	\$ 121,221.34	7.52%	\$ 132,907.15	-8.79%	\$ (11,686)
Debt Service	\$ 644,445.00	\$ 40,870.88	6.34%	\$ (19,946.34)	-304.90%	\$ 60,817
Energy Lease	\$ 75,475.00	\$ -	0.00%	\$ -		\$ -
Transfer for capital projects	\$ -	\$ -		\$ -		\$ -
Transfer to other funds	\$ 322,090.00	\$ 60,750.00	18.86%	\$ -		\$ 60,750
Capital Reserves	\$ 146,265.00	\$ 146,265.00	100.00%	\$ -		\$ 146,265
TOTAL EXPENSES	\$ 17,585,053.76	\$ 941,139.21	5.35%	\$ 764,578.46	23.09%	\$ 176,561
Operating Income (Loss)		\$ 5,788,672.50		\$ 5,632,077.88	2.78%	\$ 156,495

**WATER FUND
CITY OF BATAVIA
FOR PERIOD ENDED - April 30, 2016**

DESCRIPTION	ADJUSTED BUDGET	YTD TOTAL	% OF BUDGET	YTD 2015	YTD Change %
Revenues					
Metered Water Sales	\$ 2,413,047.00	\$ 358,160.97	14.84%	\$ 58,271.57	514.64%
Bulk Water Sales	\$ 15,000.00	\$ 341.80	2.28%	\$ 163.00	109.57%
Water Service Charges	\$ 2,500.00	\$ 440.00	17.60%	\$ 1,105.00	-80.18%
Capital improvement fee	\$ 128,439.00	\$ 15,097.35	11.75%	\$ 13,634.24	10.73%
Int/Pen-Water Rents	\$ 35,000.00	\$ 1,299.79	3.71%	\$ 3,190.01	-59.25%
County Contract	\$ 1,344,083.00	\$ 414,014.23	30.80%	\$ -	
Other Govt - Walnut St Const	\$ -	\$ -		\$ -	
Interest and Earnings	\$ 1,000.00	\$ 134.26	13.43%	\$ 67.34	99.38%
Interest and Earnings-Reserve	\$ -	\$ 407.32		\$ 367.26	10.91%
State Aid - Rate study	\$ -	\$ -		\$ -	
State Aid - Planning	\$ -	\$ -		\$ -	
Federal Aid - Bank Street CDB	\$ -	\$ -		\$ -	
Rental of Real Property	\$ 550,000.00	\$ 137,500.00	25.00%	\$ -	
Sale of scrap	\$ 1,800.00	\$ -	0.00%	\$ -	
Gain on disposition of asset	\$ -	\$ -		\$ -	
Insurance recoveries	\$ -	\$ -		\$ -	
Other Compensation for Loss	\$ -	\$ 468.94		\$ -	
Healthcare premiums	\$ 11,500.00	\$ -	0.00%	\$ -	
Healthcare revenue	\$ -	\$ -		\$ 359.12	-100.00%
Unclassified revenue	\$ 5,000.00	\$ 190.00	3.80%	\$ 325.00	-41.54%
Reserve revenue	\$ 768,151.00	\$ 140,939.00	18.35%	\$ -	
Interfund transfers	\$ -	\$ -		\$ -	
Total Revenue	\$ 5,275,520.00	\$ 1,068,993.46	20.26%	\$ 77,482.54	1279.66%
Expenses					
Contingency	\$ 15,000.00	\$ -	0.00%	\$ -	0.00%
Water Admin	\$ 2,438,745.42	\$ 14,406.55	0.59%	\$ 1,583.48	809.80%
Pump Station & Filtration	\$ 1,212,678.91	\$ 30,903.72	2.55%	\$ 26,663.21	15.90%
Water Distribution	\$ 379,440.00	\$ 11,758.53	3.10%	\$ 18,039.77	-34.82%
Medical Insurance	\$ 180,210.00	\$ 12,149.72	7.58%	\$ 3,940.00	208.37%
Debt Service bonds	\$ 33,131.00	\$ 123.79	0.37%	\$ (3,396.43)	-103.64%
Energy lease	\$ 18,010.00	\$ -	0.00%	\$ -	
Transfers for capital projects	\$ 700,000.00	\$ -	0.00%	\$ -	
Transfer to Other Funds	\$ 243,740.00	\$ 8,250.00	3.38%	\$ -	
Capital Reserves	\$ 140,939.00	\$ 140,939.00	100.00%	\$ -	
Total Expense	\$ 5,341,894.33	\$ 218,631.31	4.09%	\$ 46,830.03	366.65%
Operating Income (Loss)		\$ 850,462.15		\$30,652.51	2674.53%

Consumption

*consumption in 1,000 gallons

	2016	Difference	2015	Difference	2014
April	68,563	-0.48%	68,893	14.34%	60,255
May	20,800	2.27%	20,338	22.24%	16,638
June	0	-100.00%	21,102	2.19%	20,649
July	0	-100.00%	70,939	4.61%	67,810
August	0	-100.00%	21,623	3.00%	20,993
Sept	0	-100.00%	22,223	0.62%	22,085
Oct*	0	-100.00%	83,891	9.00%	76,963
Nov	0	-100.00%	21,604	0.14%	21,574
Dec	0	-100.00%	21,247	-1.07%	21,477
Jan*	0	-100.00%	78,880	5.50%	75,713
Feb	0	-100.00%	20,838	0.39%	20,758
March	0	-100.00%	21,581	-3.08%	22,267
Total	89,363	0.15%	474,159	6.03%	447,182

89,231

**SEWER FUND
CITY OF BATAVIA
FOR PERIOD ENDED - April 30, 2016**

DESCRIPTION	ADJUSTED BUDGET	YTD TOTAL	% OF BUDGET	YTD 2015	YTD Change %
Revenues					
Sewer Rents	\$ 2,473,988.00	\$ 353,728.53	14.30%	\$ 221,993.13	59.34%
Sewer Surcharge	\$ -	\$ 23,994.19		\$ -	
Int/Pen-Sewer Rents	\$ 25,000.00	\$ 884.16	3.54%	\$ 1,077.41	-17.94%
Interest and earnings	\$ 1,280.00	\$ 495.80	38.73%	\$ 171.24	189.54%
Interest & Earnings Cap. Rsv	\$ -	\$ 505.84		\$ 178.13	183.97%
CHIPS - North/Ross	\$ -	\$ -		\$ -	
Federal Aid - Bank Str CDBG	\$ -	\$ -		\$ -	
Healthcare premiums	\$ 1,600.00	\$ -	0.00%	\$ -	
Healthcare revenue	\$ -	\$ -		\$ 326.10	-100.00%
Unclassified revenue	\$ 70,000.00	\$ 12,946.58	18.50%	\$ 29,011.50	-55.37%
Interfund transfers inc	\$ -	\$ -		\$ -	
Reserve revenue	\$ 646,200.00	\$ 730,000.00	112.97%	\$ -	
Total Revenues	\$ 3,218,068.00	\$ 1,122,555.10	34.88%	\$ 252,757.51	344.12%
Expenses					
Contingency	\$ 15,000.00	\$ -	0.00%	\$ -	
Wastewater Admin	\$ 301,265.41	\$ 15,816.53	5.25%	\$ 15,788.14	0.18%
Sanitary Sewers	\$ 422,740.00	\$ 16,662.54	3.94%	\$ 13,245.29	25.80%
Wastewater Treatment	\$ 843,888.08	\$ 28,430.24	3.37%	\$ 23,479.58	21.08%
Medical Insurance	\$ 95,310.00	\$ 7,696.33	8.08%	\$ 3,312.08	132.37%
Debt Service	\$ 229,287.00	\$ 4,953.35	2.16%	\$ (1,622.55)	-405.28%
Energy lease	\$ 7,471.00	\$ -	0.00%	\$ -	
Transfer to Other Funds	\$ 31,810.00	\$ 6,000.00	18.86%	\$ -	
Transfers for Capital projects	\$ 562,000.00	\$ -	0.00%	\$ -	
Capital Reserves	\$ 730,000.00	\$ 730,000.00	100.00%	\$ -	
Total Expenses	\$ 3,238,771.49	\$ 809,558.99	25.00%	\$ 54,202.54	1393.58%
Operating Income (Loss)		\$ 312,996.11		\$ 198,554.97	57.64%

Consumption

*consumption in 1,000 gallons

	<u>2016</u>	<u>Difference</u>	<u>2015</u>	<u>Difference</u>	<u>2014</u>
April	107,238	1.26%	105,899	17.73%	89,954
May	0	-100.00%	56,263	4.28%	53,952
June	0	-100.00%	20,897	1.95%	20,497
July	0	-100.00%	108,610	5.57%	102,880
Aug	0	-100.00%	60,763	3.70%	58,595
Sept	0	-100.00%	22,148	0.59%	22,017
Oct *	0	-100.00%	118,568	8.66%	109,123
Nov	0	-100.00%	62,618	1.53%	61,673
Dec	0	-100.00%	21,183	-1.01%	21,399
Jan *	0	-100.00%	117,594	3.30%	113,840
Feb	0	-100.00%	55,978	0.49%	55,705
March	0	-100.00%	21,572	-2.47%	22,119
Total	107,238	1.26%	772,093	5.51%	731,754

105,899

WORKERS COMPENSATION FUND
CITY OF BATAVIA
FOR PERIOD ENDED - April 30, 2016

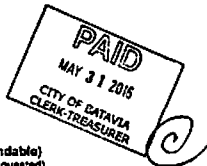
DESCRIPTION	ADJUSTED BUDGET	YTD TOTAL	% OF BUDGET	YTD 2015	YTD Change %
<u>Revenues</u>					
Workers Compensation	\$ 322,640.00	\$ -	0.00%	\$ -	
Interest and earnings	\$ -	\$ 9.46		\$ 3.70	155.68%
Interest and earnings - Cap Rsrvs	\$ -	\$ 37.59		\$ 36.50	2.99%
Insurance Recoveries	\$ -	\$ -		\$ -	
Refunds of Prior Years Expend	\$ -	\$ -		\$ 74.95	-100.00%
Reserve revenue	\$ -	\$ 75,000.00		\$ -	
 Total Revenues	 \$ 322,640.00	 \$ 75,047.05	 23.26%	 \$ 115.15	 65073.30%
 Contractual Expense	 \$ 322,640.00	 \$ 42,775.84	 13.26%	 \$ 33,848.43	 26.37%
 Total Expenses	 \$ 322,640.00	 \$ 42,775.84	 13.26%	 \$ 33,848.43	 26.37%
 Operating Income/(Loss)		 \$ 32,271.21		 \$ (33,733.28)	 -195.67%

Cutro Birthday Party

There are no estimated costs for any departments.

Official Use Only:

2016-24



Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor Meredit Cutro
Type of Event Birthday party
Date of Event June 18th 2016
Time of Event (don't include set up time here - just actual event time) 1pm - 4pm
Location of Event Centennial Park
Details of Event (be as specific as possible) Birthday party with games and maybe relays in the designated park area

Contact Information:

Primary contact:

Secondary contact:

Name Meredit Cutro
Phone # 607-347-0477
E-mail address N/A

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here.

Will there be alcohol at your event? Yes ☐ No ☒ If yes, complete the following:
Type of alcoholic beverage to be served: Liquor ☐ Wine ☐ Beer ☐
Will you be providing alcohol to your group? Yes ☐ No ☐
Will you be serving alcohol to your group? Yes ☐ No ☐ Insurance certificate WILL BE required with Liquor Legal.
Will people be allowed to bring alcohol to the event? Yes ☐ No ☐
Who will be applying to the NYS Liquor Authority for the permit to sell?

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance.

TENTS/CANOPIES:

Will Tents/Canopies or other membrane structures be erected at event? Yes ☐ No ☒
Will a bounce house or other air supported structures be erected at event? Yes ☐ No ☒
Please list size(s) of Tents/Canopies or other temporary structures erected:

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING STREET CLOSURE, IN QUINCY, 30 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes ☒ No ☐ Reason:

List Street(s) and Cross Street(s) that will be affected:

Street to be closed	6
Street to be closed	6
Street to be closed	6
Street to be closed	6

Will street barricades be requested from the City? Yes ☐ No ☒ How Many?

Will traffic cones be requested from the City? Yes ☐ No ☒ How Many?
(Drop off locations of requested items must be marked on the site drawing)

PERSONAL LIABILITY INSURANCE COVERAGE IS REQUIRED FOR ALL EVENT SPONSORS

Are there any other city materials or personnel requested for the event? Identify below (there may be additional costs):
NO

POLICE

Will City Police Officers be requested for the event? Yes ☐ No ☒

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

EVENT INFORMATION (required):

Set up date 6-18-16 Set up time NOON
Tear down date 6-18-16 Tear down time 4:30 pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 6-18-16 Start time: 1pm End time: 4pm
Estimated crowd size: 12 # of Vendors/Displays: 0

WILL THE EVENT INCLUDE:

Parade: Yes ☐ No ☒ (MAP OF DESIRED ROUTE MUST BE ATTACHED)
Run or Walk: Yes ☐ No ☒ (MAP OF DESIRED ROUTE MUST BE ATTACHED)
Music: Yes ☐ No ☒ (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
Street Closure(s): Yes ☐ No ☒ (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
Other: Yes ☐ No ☒ (MAP OF DESIRED ROUTE MUST BE ATTACHED)
Fireworks or Hazardous Materials? Yes ☐ No ☒ Carnival or Amusement Rides? Yes ☐ No ☒

Name of Company Providing Music: _____ City _____
Address: _____ City _____
Music: Live Group ☐ Recorded/DJ ☐
Name of Company Providing Food: _____ City _____
Address: _____ City _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR

ELECTRIC:

Will electric be needed for the event? Yes ☐ No ☒
What will you be providing electric to?

Will generators be used? Yes ☐ No ☒

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - ☐ - DIESEL - ☐ - PROPANE - ☐

PLEASE NOTE:

- Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. Applications should be submitted at least 30 days in advance.
- Fire hydrants, Cross Streets/Alees and Store Fronts SHALL NOT BE BLOCKED by any Vehicle or Concession at any time.
- An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations.
- Fuel Containers Must be of an Approved type and Must be Properly Secured.
- Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher.
- All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. A Valid Health Department Permit Must Be Displayed.
- No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains or/into sewers.
- City Sign Ordinances Shall Be Complied With At All Times And In All Regards.
- No paint or other markings may be placed on the street surface.
- Any overtime and/or material costs in excess of \$500, as determined by City Departments, must be paid by the event sponsor or other party.
- The application fee is due at time of submission of the application and is non-refundable.
- If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

Meredit Cutro, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the Meredit Cutro (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

May 31st 2016 Meredit Cutro
Signature of Event Sponsor

Meredit Cutro
Signature - Printed or Typed

The rules and information contained within this application have been read and will be adhered to
May 31st 2016 Meredit Cutro
Signature of Applicant

Please forward this application to:

City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY
FOR OFFICIAL CITY USE ONLY**

OFFICIAL USE ONLY	
Department Approval:	Department Cost:
DPW <input type="checkbox"/> <input type="checkbox"/> Fire <input type="checkbox"/> <input type="checkbox"/> Police <input type="checkbox"/> <input type="checkbox"/>	Department Fee: <input type="checkbox"/> <input type="checkbox"/> If no comments are entered, please attach a brief explanation.

OFFICIAL USE ONLY	
Department Approval:	Department Cost:
DPW <input type="checkbox"/> <input type="checkbox"/> Fire <input type="checkbox"/> <input type="checkbox"/> Police <input type="checkbox"/> <input type="checkbox"/>	Department Fee: <input type="checkbox"/> <input type="checkbox"/> If no comments are entered, please attach a brief explanation.

Event Application #: _____

Department: _____
List Department Name Here

Department Approval

	YES	NO
DPW	<input type="checkbox"/>	<input type="checkbox"/>
Fire	<input type="checkbox"/>	<input type="checkbox"/>
Police	<input type="checkbox"/>	<input type="checkbox"/>

Department Cost Estimate: _____
If Estimated

Estimate based on: request date - list your estimate here

If Application not Approved, Provide Reason Here: request date - list your explanation here

Submitted By: _____ Date Submitted: _____

#70-2016

A RESOLUTION TO CREATE A DEER MANAGEMENT COMMITTEE

Motion of Councilperson

WHEREAS, the City has received complaints of deer in the community regarding vegetation damage and some vehicular accidents caused by deer; and

WHEREAS, in fall 2015 the City held a community meeting regarding deer in the City of Batavia and a presentation on community-based deer management was given to an audience of approximately 35 residents; and

WHEREAS, the presentation covered a variety of topics including, but not limited to, traditional concerns, community-based deer management strategies and factors influencing deer populations; and

WHEREAS, the City Council is desirous of creating an advisory Deer Management Committee ("Committee") comprised of residents to study the issue and make a recommendation to City Council; and

WHEREAS, the Committee is advisory only and can only make a recommendation to the City Council and City Council shall retain all decision making authority; and

WHEREAS, the City Council is desirous of setting clear expectations of what is to be accomplished, an outline of how resources will be authorized to complete tasks, the inclusion of residents opining on both sides of the issue and a time line for completion. It is important to stress the criticality of a well versed group of residents that will represent all aspects of this issue.

WHEREAS, the duties of Committee should be as follows:

1. Meet as a Committee and review and determine if there is a deer population problem in the City.
2. Review the methodology and process for properly evaluating, reviewing and addressing deer populations from a community-based deer management perspective.
3. To review the cost estimate methodology, costs for each alternative, discuss un-anticipated cost areas and contingencies and possible funding sources.

4. The City Manager's Office and other subject matter experts such as the NYS Department of Environmental Conservation shall assist the Committee as needed and attend meetings.
5. Make a recommendation to City Council no later than July 1, 2017.

NOW THEREFORE, BE IT RESOVLED, the City Council of the City of Batavia does hereby create the Deer Management Committee and shall advertise for interested residents to serve on said Committee.

BE IT FURTHER RESOLVED, that one City Council member shall be appointed to the Committee.

**Seconded by Councilperson
and on roll call**

#71-2016
A RESOLUTION TO ENTER INTO AN AGREEMENT
WITH ERDMAN ANTHONY FOR PRELIMINARY DESIGN,
R.O.W. INCIDENTALS, AND R.O.W. ACQUISITIONS FOR THE
CITY OF BATAVIA HEALTHY SCHOOLS CORRIDOR

Motion by Councilperson

WHEREAS, a Project for the Reconstruction of Sidewalks for Healthy Schools Corridor, P.I.N. 4755.93, is eligible for funding under Title 23 U.S. Code, as amended, that calls the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Batavia desires to advance the Project by adding a supplemental agreement to include the Preliminary Design, Right-of-way Incidentals, and Right-of-way Acquisitions; and

WHEREAS, the supplemental agreement with Erdman Anthony will increase the total amount by \$37,600; and

NOW, THEREFORE, be it resolved that City Council approves the award of a supplemental agreement for Engineering Services, Preliminary Design, Right-of-way Incidentals, and Right-of-way Acquisitions for the Reconstruction of Sidewalks for the Healthy Schools Corridor to Erdman Anthony for a total of \$ 247,600 or as otherwise modified by New York State Department of Transportation.

Motion Seconded by Councilperson
And on roll call

#72-2016
A RESOLUTION TO AMEND THE 2016-2017 POLICE DEPARTMENT BUDGET TO
REFLECT THE RECEIPT OF A REFUND FROM EOTECH CORPORATION

Motion of Councilperson

WHEREAS, the City of Batavia Police Department has received a refund in the amount of \$5,214.90 from EOTECH CORPORATION; and

WHEREAS, to properly account for the expenditure of this money, a budget amendment needs to be made; and

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendment to the 2016-2017 budget;

Effective June 13, 2016, amend the 2016-17 budget:

Increase expenditure accounts

001.3120.0201.0050	\$ 5,214.90
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Increase revenue accounts

001.0001.2690.0000	\$ 5,214.90
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Seconded by Councilperson
and on roll call

#73-2016

**A RESOLUTION TO SCHEDULE A PUBLIC HEARING AND INTRODUCE
PROPOSED LOCAL LAW NO. 3 OF THE YEAR 2016 ENTITLED “AMENDING
THE BUSINESS IMPROVEMENT DISTRICT PLAN”**

Motion of Councilperson

BE IT RESOLVED, that proposed Local Law No. 3 of the year 2016 entitled
“**LOCAL LAW NO. 3 OF THE YEAR 2016 AMENDING THE BUSINESS
IMPROVEMENT DISTRICT PLAN**” is introduced before the City Council of the
City of Batavia, New York; and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Local
Law be laid upon the desk of each member of the City Council; and

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on
said proposed Local Law at City Hall, One Batavia City Centre, Batavia, New York, at
7:00 p.m. on Monday, June 27, 2016; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be
published a public notice in the official newspaper of the City of said public hearing at
least ten (10) days prior thereto.

**Seconded by Councilperson
and on roll call**

**LOCAL LAW NO. 3 OF THE YEAR 2016
CITY OF BATAVIA**

**A LOCAL LAW AMENDING THE BUSINESS IMPROVEMENT DISTRICT
PLAN**

A LOCAL LAW amending the Business Improvement District Plan in the City of Batavia in accordance with Article 19-A of the General Municipal Law submitted to the City Clerk on June 9, 2016.

BE IT ENACTED by the City Council of the City of Batavia as follows:

SECTION 1. The Downtown Business Improvement District established by Local Law No. 6 of 1997 adopted on November 24, 1997 and further outlined in Chapter 58 of the Code of the City of Batavia, and was amended by Local Law No. 3 of 2005 adopted on June 27, 2005 to include the Ellicott Street business area, the City Council having found that the amendment of the district plan, herein attached, is in the public interest, that all notice and hearing requirements have been complied with, that all properties within the district will benefit from the amendments and that all property benefited is included in the boundaries of the district.

SECTION 2. The provision of services within the district shall be pursuant to said amended district plan of the Downtown Batavia Business Improvement District (BID). All said services shall be in addition to, and not a substitution for required municipal services provided by the City of Batavia on a city-wide basis.

SECTION 3. To the extent not explicitly provided herein, the provisions set forth in Article 19-A of the General Municipal Law shall govern the operation of the Downtown Batavia Business Improvement District and the Batavia Business Improvement District Management Association.

Insofar as the provisions of this Local Law are inconsistent with the provisions of any other Local Law or act, the provisions of this local law shall be controlling.

SECTION 4. Any additional amendments to the BID or the BID Plan shall be made in accordance with the provisions set forth in section 980-i of Article 19-A of the General Municipal Law.

SECTION 5. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect without such invalid part or parts.

A PLAN UPDATE FOR THE
BUSINESS IMPROVEMENT DISTRICT



June 2016

Prepared by City of Batavia

In 1997, a core group of property owners within Downtown Batavia Business District asked the City of Batavia to form a Business Improvement District (BID) to help foster streetscape improvements and business growth. The boundaries of the district included the historic downtown Main Street from Liberty/Summit Streets to the Upton Monument and areas to the north and south between Washington Avenue and Ellicott Street.

Since 1998, when the BID was legally formed as a non-profit entity, it has had many accomplishments and was fortunate to benefit from numerous development and streetscape projects the City has initiated, including a complete redevelopment of Main Street. The BID has also partnered with the City on a number of streetscape and beautification projects throughout the downtown core, administered a popular facade improvement program and promoted a summer concert series.

Because of the BID's success, and its visual transformation, interest in the BID grew and owners in the adjacent Ellicott Street area, just southeast of downtown, requested the City of Batavia to consider an amendment of the Downtown BID boundaries that would annex their properties to the BID. Consequently, in 2005 the City Council authorized the extension of the BID to include the adjacent Ellicott Street area.

Because the BID Plan has not been updated since 2005, the City of Batavia has prepared updates to the Plan including a change in the district assessment charge to properly reflect operations, capital accounting for surplus funds, compliance with the Open Meetings Law and Freedom of Information Law and additional budgetary compliance reporting.

I. Map and Boundary of the District

Exhibit A is a description of the boundaries of the district. Exhibit B is a list of benefitted properties by address and property owner.

II. Land Uses

Allowed uses within the district comply with the City of Batavia Zoning Ordinance. The current BID district includes the C-3 zoning district and allows such uses as retail stores, banks, offices, restaurants, hotels, places of amusement, services, shopping centers, residential uses and government buildings. Other districts included in the current BID boundaries are the C-2 zoning district which allows such uses as retail stores, restaurants, hotels, places of amusement, offices, banks and shopping centers, a small section of industrial zoned property and the P-2 planned development district on Main Street for the United Memorial Center Bank Street Campus.

There are no immediate plans to change the allowed uses within the current zoning district.

III. Activities allowed by Business Improvement District Law (Article 19-A)

The main objectives of the improvement district are to provide for attractive and functional infrastructure improvements, and to have an operational budget for marketing, communications, events and administration. The concept has created an attractive downtown area that has encouraged investment in the area and provided a pedestrian friendly environment to downtown shoppers, businesses and other downtown users.

An operational budget insures that the administrators of the improvement district can communicate and market the district to the public, downtown owners and potential investors. The operational budget also provides funds for basic administration of the Downtown District Management Association activities such

as meetings and staff.

The General Municipal Law authorizes BID's to exercise the following powers:

a.) To provide for district improvements located within the municipality to promote business activity in the district:

1. construction and installation of landscaping, planting and park areas;
2. construction of lighting and heating facilities;
3. construction of physically aesthetic and decorative safety fixtures, equipment and facilities;
4. construction of improvements to enhance security of persons and property within the district;
5. construction of pedestrian overpasses and underpasses and connections between buildings;
6. closing, opening, widening or narrowing of existing streets;
7. construction of ramps, sidewalks, plazas and pedestrian malls;
8. rehabilitation or removal of existing structures as required;
9. removal and relocation of utilities and vaults as required;
10. construction of parking lot and parking garage facilities; and
11. construction of fixtures, equipment, facilities and appurtenances as may enhance the movement, convenience and enjoyment of the public and be of economic benefit to surrounding properties such as: bus stop shelters; benches and street furniture; booth, kiosks, display cases, and exhibits; signs; receptacles; canopies; pedestrian shelters and fountains.

b.) To provide for the operation and maintenance of any district improvement.

c.) To provide for additional maintenance or other additional services required for the enjoyment and protection of the public and the promotion and enhancement of the district whether or not in conjunction with improvements authorized by this section, including:

1. enhanced sanitation services;
2. services promoting and advertising activities within the district;
3. marketing education for businesses within the district;
4. decorations and lighting for seasonal and holiday purposes; and
5. services to enhance the security of persons and property within the district.

d.) To construct improvements on the properties of businesses located within the BID for the specific purpose of increasing access from public areas to the businesses for persons with disabilities. This is the only exception to the requirement that BID improvements be made on or within municipal or district owned or leased property.

Note: Funding from a source other than the BID assessment may be spent for improvements and services that are not listed in the General Municipal Law §980-c.

IV. Improvements, operation costs and the maximum costs thereof

a) Capital Infrastructure Improvements

The Downtown Business Improvement District has enjoyed millions in infrastructure and facade improvements over the last 15 years. While most of the streetscape improvements on Main Street were funded by the state and federal governments, the remainder of streetscape and facade improvements were funded through an \$830,000 bond that will be retired with payments by the BID and the City in

2016.

In 2005 the BID expanded boundaries of the district to include Ellicott Street businesses. The district plan was subsequently amended providing for an increase in the annual BID assessment to \$120,000. An additional \$350,000 of downtown infrastructure improvements was proposed along Ellicott Street as part of district plan amendment. The improvements desired included trees, decorative lighting and sidewalk improvements that mimic the improvements already in place within the current downtown BID. The district plan continued to outline that BID members would cover 60% of the debt service related to capital improvements and the City would contribute towards 40% of the debt service. In addition, any outside sources of funds would be dedicated toward reducing the annual bond costs proportionally. Following the BID expansion the City received a \$500,000 Transportation Enhancement Program (TEP) grant and the Ellicott Street Scape project was expanded to a \$750,000 total project cost, making the local match between the City and BID \$250,000 to complete Ellicott Streetscape improvements. At the conclusion of the project both the City and BID paid for the remaining cost of the project with available funds and the City did not issue a bond or incur debt service for the project as was originally planned in the 2005 district plan amendment.

There are no immediate infrastructure or physical improvements planned, however the City and the BID expect to begin a district plan update to include infrastructure and capital improvements.

b.) Operations

1. A primary concern regarding the BID budget is that the originally adopted 2016/17 budget exceeds the General Municipal Law limits for district assessment charges used for operations. The maximum assessment requested for this year was \$120,000. As outlined in General Municipal Law §980-k, a BID is limited in the amount of money that can be raised through the assessment. The district assessment charge, excluding debt service, may not exceed 20 percent of the total general municipal taxes levied in a year against the taxable property in the BID. For 2016/17 the total general municipal taxes levied in the 2016/17 year is \$275,194. Therefore the maximum amount of district assessment charge that can be raised for operational use, excluding debt service, is \$55,038.

The City debt service payment for the 1999 infrastructure bond improvements for the 2016/17 year is \$25,651.08. The proportional share of infrastructure bond payments is 60 percent for the BID owners and 40 percent for the City of Batavia. Thus the BIDs share of debt service is \$15,391, while the City's share is \$10,260. This is the last debt service payment for the 1999 infrastructure bond improvements.

Therefore the maximum amount of district assessment charge that should have been levied should be no greater than \$70,429 (\$55,038 for operation + \$15,391 for debt service). The maximum assessment requested for this year, \$120,000, exceeds the required amount allowed for operations and debt service payments under the General Municipal Law. As a result the BID district charge that was levied May 1, 2016 was an additional \$49,571 in conflict with the General Municipal Law and the district plan with no authorized use of the additional funds.

The following budget amendments were made by the BID:

- i. The BID has budgeted \$55,020 for annual operations and management of the district.
- ii. The BIDs share of debt service is \$15,391, while the City's share is \$10,260. August 1, 2016 is the last debt service payment for the 1999 infrastructure bond improvements.
- iii. The additional levy of \$49,571 will be held in the City's Trust Account until the BID plan

can be updated and approved by City Council to include a capital infrastructure project.

2. The BID currently has a capital account that has accrued surplus funds due to debt service surpluses from prior years. As of June 6, 2016 the balance of this capital account was \$230,588.56. Currently there is no authorization under the General Municipal Law or the district plan for the BID to utilize these funds. Until the BID plan is updated, the BID will maintain the capital account in a separate bank account and on a monthly basis provide the City's Chief Fiscal Officer with statements verifying the funds have been retained. The funds will remain unutilized until the BID plan is updated and adopted by City Council outlining new capital and infrastructure improvements. At which time, funds may be accessed to offset costs related to capital and infrastructure improvements.
3. In future years, the BID proposed budget shall be forwarded to the City's Chief Fiscal Officer (City Manager) no later than January 15th of every year. The City Manager will then review the proposed budget and complete a statement to the City Council and Board of Directors indicating that the provisions of General Municipal Law 19-A have been met. This step will serve to ensure that the proposed budget is compliant with the General Municipal Law.

V. Time for Implementation

Once this plan is amended and approved by the City of Batavia, the City and BID will undertake the above referenced actions.

Operations, such as marketing, will be done on an annual, ongoing basis.

VI. Rules & Regulations of the District and the District Management Association

The Batavia Business Improvement District Management Association will continue to manage the district and oversee its administration. Formed under the Article 19-A of the General Municipal Law, the Management Association will promote the downtown by developing programs for its revitalization.

A Board of Directors will manage the business of the corporation and consist of a majority of property owners. Three public representatives shall also continue to make up the Board of Directors and one each will be appointed by the City's Chief Executive Officer, City's Chief Financial Officer, and the City of Batavia Council.

Offices for the District Management Association will be within the district. This office shall be staffed, at least on a part time basis, to assist with business conducted by the Director or Board of the Business Improvement District.

Subject to any provisions of General Municipal or City Law, the Not-for Profit Corporation Law or any similar laws, the Management Association may buy, sell or exchange real property. The Association may also accept and apply for funds and contributions of real estate.

Because the Management Association is an entity in which the City levies a special assessment specifically for their use, it is necessary that the business of the BID be performed in an open and public manner. This provides for the residents and businesses that pay the BID assessment to be fully aware of and able to observe the activities of the BID Board of Directors, as well as attend and listen to the deliberations and decisions that go into the making of BID policy. In addition, providing access to meeting minutes allows residents and businesses to observe the decision-making process by the Board and to review the documents leading to those determinations.

Under General Municipal Law §980-a the requirements of a district plan may provide for “*any other item or matter required to be incorporated therein by the legislative body*”. Therefore, the Batavia City Council is requiring that the District Management Association be subject to the Open Meetings Law and the Freedom of Information Law. This is to include all Board of Directors meetings, Executive Committee meetings and sub-committee meetings. The District Management Association will post their by-laws and annual reports on the BID website, as well as Board and Committee meeting minutes within a reasonable time once adopted. In addition, the District Management Association will post the adopted budget and audited financial statements on the BID website once adopted.

VII. Business Improvement District Assessment

As outlined in Section IV of this document two sources have been identified for funding the activities of the Business Improvement District: the Business Improvement District assessment and the City of Batavia. The Business Improvement District Assessment for each property is calculated by multiplying the assessed valuation of the property by the District assessment rate.

The current BID assessment for 2016/2017 is \$120,000. This amended plan proposes the following:

1. The BID assessment, after 2016/2017, to be collected from BID members will decrease from \$120,000 to \$70,410.65. Of the assessment, \$55,020 will be utilized for operations.
2. The bond infrastructure payment will continue to be shared between the BID and City of Batavia based on a 60%/40% share respectively. August 1, 2016 will be the final bond payment of \$25,651.08. The following is a breakdown of shared costs:
 - The amount raised from the current BID members as part of the assessment is \$15,390.65.
 - The amount raised from the City of Batavia is \$10,260.43.
3. For fiscal year 2016/2017 only, \$49,589.35 of BID assessment will be retained by the City and placed in the City’s Trust Account until the BID plan can be updated and the funds can be utilized towards capital and infrastructure improvements.
4. The *estimated* BID tax rate for 2016/2017, *based on the current assessment levels*, would be approximately \$3.90615 per \$1,000 of assessed valuation (i.e., \$100,000 building would pay \$390.62). This rate changes annually based on assessment levels. It should be noted that in following years, the rate may change if additional indebtedness is assumed or an increase in operational funds is proposed within the parameters of the General Municipal Law.

VIII. Description of Boundaries

See the attached description of the boundaries of the existing BID.

IX. List of Benefitted Properties

A list of benefitted properties is attached.

City of Batavia, NY
Monday, June 6, 2016

Chapter 58. Business Improvement District

§ 58-1. Purpose and legal description.

- A. The Downtown Batavia Business Improvement District shall be and is hereby established in the City of Batavia, the City Council having found that the establishment of the district is in the public interest, that all notice, mailing and hearing requirements have been complied with, that all properties within the district will benefit from the establishment and that all property benefited is included in the boundaries of the district. The boundaries of said district are contained in the district plan submitted to this body on October 13, 1997, and as set forth below:
- B. The Downtown Batavia Business Improvement District is located in the City of Batavia, County of Genesee, State of New York, and is described as follows: Beginning at a point which is the intersection of the northerly right-of-way line of Main Street and the westerly right-of-way line of Summit Street; thence northerly along the easterly property line of a parcel owned by Key Bank a distance of 223.0 feet to the northerly property line; thence westerly along the northerly property line a distance of 66.0 feet to the westerly property line of said property; thence southerly along the westerly property line to the northerly property line of another parcel owned by Key Bank; thence westerly along the northerly property line a distance of 82.5 feet to the westerly property line of a parcel owned by Silver & Resso; thence northerly along the westerly property line a distance of 155.0 feet to the northerly property line of said parcel; thence westerly along the northerly property line a distance of 71.0 feet to the easterly right-of-way line of Wiard Street; thence southerly along the easterly right-of-way line of Wiard Street a distance of 160.0 feet to a point; thence westerly a distance of 16.0 across Wiard Street to the northerly property line of a parcel owned by the Benevolent Protective Order of Elks; thence westerly along the northerly property line a distance of 78.0 feet to the easterly property line of a parcel owned by St. Jerome Hospital; thence northerly along the easterly property line a distance of 115.0 feet to the northerly property line of said parcel; thence westerly along the northerly property line a distance of 106.0 feet to the westerly property line of said parcel; thence southerly along the westerly property line a distance of 45.0 feet of the northerly property line of a parcel owned by the YMCA; thence westerly along the northerly property line a distance of 70.0 feet to the northerly property line of a parcel owned by the City of Batavia; thence northerly along the easterly property line of a parcel owned by the City of Batavia a distance of 43.81 feet; thence westerly along the northerly property line a distance of 142.67 feet to the easterly right-of-way line of Bank Street; thence northerly along the easterly right-of-way line of Bank Street to the northerly right-of-way line of Washington Street; thence westerly along the northerly right-of-way line of Washington Street to the westerly right-of-way line of Jefferson Avenue; thence southerly along the westerly right-of-way line of Jefferson Avenue to the northerly right-of-way line of Main Street; thence westerly along the northerly right-of-way line of Main Street a distance of 80.0 feet to a point; thence southerly across Main & Ellicott Streets a distance of 225.00 feet to the southerly right-of-way line of Ellicott Street; thence easterly along the southerly right-of-way line of Ellicott Street a distance of 1,700 feet to the northerly property line of a parcel owned by Genesee Valley Transportation Corp.; thence easterly across Ellicott Street to a southerly property line of a parcel owned by Access Rentals; thence easterly along a southerly property line a distance of 471.9 feet to an easterly property line of said property; thence northerly along an easterly line a distance of 110.0 feet to a southerly property line of said property; thence easterly along a southerly property line a distance of 130.0 feet to a easterly property line of said property; thence

northerly along an easterly property line a distance of 122.77 feet to a northerly property line of said parcel; thence westerly along the northerly property line a distance of 328.11 feet to a easterly property line of said property; thence northerly along an easterly property line a distance of 14.0 feet to a northerly property line of said parcel; thence westerly along a northerly property line a distance of 137.0 feet to the easterly property line of a parcel owned by Marianne Anderson; thence northerly along the easterly property line a distance of 34.0 feet to the southerly property line of a parcel owned by Batavia Metal Products; thence easterly along the southerly property line a distance of 133.0 feet to the easterly property line of said parcel; thence northerly along the easterly property line a distance of 60.0 feet to the northerly property line of said parcel; thence westerly along the northerly property line a distance of 208.64 feet to the easterly property line of a parcel owned by Peter Garlock; thence northerly along an easterly property line a distance of 44.0 feet to a northerly property line of said parcel; thence easterly along a southerly property line a distance of 4.32 feet to a easterly property line of said parcel; thence northerly along easterly property lines of parcels owned by Peter Garlock, Jeff Humel and William Camp a distance of 94.0 feet to the southerly right-of-way line of School Street; thence northerly across School Street a distance of 33.0 feet to the northerly right-of-way line of School Street; thence easterly along the northerly right-of-way line of School Street a distance of 165.0 feet to the easterly property line of a parcel owned by Chas. Mancuso & Sons; thence northerly along the easterly property line a distance of 104.28 feet to a southerly property line of said parcel; thence easterly along a southerly property line a distance of 99.73 feet to a westerly property line of said parcel; thence southerly along a westerly property line a distance of 26.02 feet to a southerly property line of said parcel; thence easterly along the southerly property line a distance of 45.03 feet to an easterly property line of said parcel; thence northerly along an easterly property line a distance of 19.96 feet to a southerly property line; thence easterly along a southerly property line a distance of 40.0 feet to a westerly property line of said parcel; thence southerly along a westerly property line a distance of 100.98 feet to the northerly right-of-way line of School Street; thence easterly along the northerly right-of-way line of School Street to the westerly right-of-way line of Liberty Street; thence northerly along the westerly right-of-way line of Liberty Street to the northerly right-of-way line of Main Street, which is the point of the beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Batavia, County of Genesee and State of New York.

Beginning at a point on the northerly street line of Ellicott Street at its intersection with the extension thereof the east street line of Evans Street.

Thence southeasterly along the northerly street line of Ellicott Street to a point on a corner of tax map number 84.15-1-38.

Thence east along the north line of said tax map number 84.15-1-38 to a point on the southwest corner of tax map number 84.15-1-28.2.

Thence north to a point on the northwest corner of said tax map number 84.15-1-28.2.

Thence east to a point on the northeast corner of said tax map number 84.15-1-28.2 and the west street line of Liberty Street.

Thence south, along the east line of tax map number 84.15-1-28.2 and the east line of tax map number 84.15-1-29 and the west street line of Liberty Street to a point.

Thence east crossing Liberty Street to a point on the east street line of Liberty Street and the northwest corner of tax map number 84.15-1-25.1.

Thence continuing east along the north line of tax map number 84.15-1-25.1 and the north line of tax map number 84.15-1-25.2 and 84.15-1-23.1 to a point on the northeast corner of tax map number 84.15-1-23.1.

Thence south to a point on the southeast corner of tax map number 84.15-1-23.1 and the north line of tax map number 84.15-1-19.

Thence east along the north lines of tax map number 84.15-1-19 and tax map number 84.15-1-18 to a point on the northeast corner of tax map number 84.15-1-18 and the west street line of Swan Street.

Thence south along the west street line of Swan Street and the east lines of tax map numbers, 84.15-1-18, 84.15-1-19, 84.15-1-20.1, 84.66-2-18, 84.66-2-17, 84.66-2-15 to a point on the northerly street line of

Ellicott Street.

Thence continuing south crossing Ellicott Street to a point on the southerly street line of Ellicott Street and the west street line of Swan Street and the northeasterly corner of tax map number 84.66-2-32.

Thence southeasterly crossing Swan Street to a point on the northwesterly corner of tax map number 84.66-2-1.

Thence continuing southeasterly along the southerly street line of Ellicott Street to a point on the northeast corner of tax map number 84.66-2-1.

Thence south to a point on the southeast corner of tax map number 84.66-2-1.

Thence west to a point on the southwest corner of tax map number 84.66-2-1 and the east street line of Swan Street.

Thence north along the east street line of Swan Street and the west line of tax map number 84.66-2-1 to a point.

Thence west crossing Swan Street to a point on the southeast corner of tax map number 84.66-2-32.

Thence continuing west along the south lines of tax map numbers 84.66-2-32 and 84.66-2-33 to a point on the southwest corner of tax map number 84.66-2-33.

Thence north along the west line of tax map number 84.66-2-33 to a point on the southeast corner of tax map number 84.66-2-45.

Thence west to a point on the southwest corner of tax map number 84.66-2-45.

Thence north along the west line of tax map number 84.66-2-45 to a point on the southeast corner of tax map number 84.66-2-46/1.

Thence west to a point on the southwest corner of tax map number 84.66-2-46/1 and the east street line Hutchins Street.

Thence north along the east street line of Hutchins Street to a point.

Thence west crossing Hutchins Street to a point on the southeast corner of tax map number 84.66-2-47 and the west street line of Hutchins Street.

Thence continuing west to a point on a corner of tax map number 84.66-2-47.

Thence south to a point on a corner of tax map number 84.66-2-47.

Thence west to a point on a corner of tax map number 84.66-2-47.

Thence north to a point on a corner of tax map number 84.66-2-47.

Thence west to a point on a corner of tax map number 84.66-2-47 and the east street line of Goade Park.

Thence north along the east street line of Goade Park to a point.

Thence west crossing Goade Park to a point on the southeast corner of tax map number 84.66-2-66 and the west street line of Goade Park.

Thence continuing west to a point on the southwest corner of tax map number 84.66-2-66.

Thence north to a point on the southeast corner of tax map number 84.66-2-83 and the west line of tax map number 84.66-2-84.

Thence west along the south lines of tax map numbers 84.66-2-83, 84.66-2-82.1, 84.66-2-80 to a point on the southwest corner of tax map number 84.66-2-80 and the east street line of Liberty Street.

Thence north along the east street line of Liberty Street to a point

Thence west crossing Liberty Street to a point on the southeast corner of tax map number 84.66-2-10, and the intersection of the west street line of Liberty Street with the north street line of Central Avenue.

Thence west along the north street line of Central Avenue to a point on the southwest corner of tax map number 84.66-2-10.

Thence north to a point on the northwest corner of tax map number 84.66-2-10 and the most southerly corner of tax map number 84.66-2-8.

Thence northwest to a point on the southwest corner of tax map number 84.66-2-8.

Thence northeast along the westerly line of tax map number 84.66-2-8 to a point on a corner of tax

map number 84.66-2-8.

Thence westerly to a point on a corner of tax map number 84.66-2-8.

Thence northerly to a point on the northwesterly corner of tax map number 84.66-2-8 and the southerly street line of Ellicott Street.

Thence northwesterly along the southerly street line of Ellicott Street to a point on the northeasterly corner of tax map number 84.66-2-6.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.66-2-6.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.66-2-6 and the easterly line of tax map number 84.66-2-5.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.66-2-5.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.66-2-5 and the easterly line of tax map number 84.66-2-4.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.66-2-4.

Thence northwesterly to a point on a corner of tax map number 84.66-2-4.

Thence northeasterly to a point on a corner of tax map number 84.66-2-4.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.66-2-4 and the easterly line of tax map number 84.66-2-3.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.66-2-3.

Thence northwesterly along the southerly line of tax map number 84.66-2-3 and the tax map number 84.66-2-2 to a point on the southwesterly corner of tax map number 84.66-2-2.

Thence northeasterly along the westerly line of tax map number 84.66-2-2 to a point on the southeasterly corner of tax map number 84.66-2-1.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.66-2-1.

Thence northeasterly along the westerly line of tax map number 84.66-2-1 to a point on the southeasterly corner of tax map number 84.57-1-20.

Thence northwesterly along the southerly line of tax map numbers 84.57-1-20 and 84.57-1-19 to a point at the southwesterly corner of tax map number 84.57-1-19 and the easterly line of tax map number 84.57-1-18.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.57-1-18.

Thence northwesterly along the southerly line of tax map numbers 84.57-1-18 and 84.57-1-17 to a point on the southwesterly corner of tax map number 84.57-1-17 and the easterly line of tax map number 84.57-1-16.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.57-1-16.

Thence northwesterly along the southerly line of tax map number 84.57-1-16 and 84.57-1-15 to a point on the southwesterly corner of tax map number 84.57-1-15 and a southeasterly corner of tax map number 84.57-1-14.

Thence westerly to a point on a corner of tax map number 84.57-1-14.

Thence southwesterly to a point on the southeasterly corner of tax map number 84.57-1-14 and the northerly street line of Central Avenue.

Thence northwesterly along the southerly line of tax map number 84.57-1-14 and the northerly street line of Central Avenue to a point.

Thence southwesterly along the southerly line of tax map number 84.57-1-14 and the northerly street line of Central Avenue to a point on the southwesterly corner of tax map number 84.57-1-14.

Thence northerly to a point on the most westerly corner of tax map number 84.57-1-14 and the southerly line of tax map number 84.57-1-13.

Thence westerly to a point on the southwesterly corner of tax map number 84.57-1-13.

Thence northeasterly to a corner of tax map number 84.57-1-13.

Thence westerly to a point on the most southwesterly corner of tax map number 84.56-1-13 and the easterly street line of Jackson Street.

Thence northeasterly along the easterly street line of Jackson Street and the westerly lines of tax map

numbers, 84.57-1-13, 84.15-1-38 and 84.15-1-30 to a point.

Thence northwest crossing Jackson Street to a point on the westerly street line of Jackson Street and the southeasterly corner of tax map number 84.15-1-5.

Thence westerly along the southerly line of tax map number 84.15-1-5 to a point on the southwesterly corner of tax map number 84.15-1-5 and the southeasterly corner of tax map number 84.15-1-4.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.15-1-4 and the southeasterly corner of tax map number 84.15-1-2.

Thence southwesterly to a point on the most southwesterly corner of tax map number 84.15-1-2 and the easterly line of tax map number 84.15-1-35.

Thence southerly to a point of the southeasterly corner of tax map number 84.15-1-35.

Thence westerly to a corner of tax map number 84.15-1-35.

Thence southwesterly to a point on a corner of tax map number 84.15-1-35.

Thence northwesterly to a point on the southwesterly corner of tax map number 84.15-1-35 and the easterly street line of Evans Street.

Thence northeasterly along the easterly street line of Evans Street and the extension thereof to the point of beginning.

Excepting tax map numbers 84.66-2-20.1 and 84.66-2-23.1

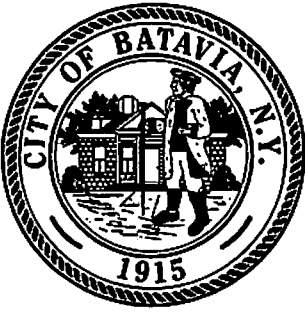
[Added 6-27-2005 by L.L. No. 3-2005]

2016 BID Properties

Tax Map #	Loc #	Loc Street	Loc Suff	Owner
84.011-1-35	21-25	Bank	St	Bank of America
84.049-1-52	2	Batavia City Centre		Chess, LLC
84.049-1-19	4	Batavia City Centre		Homestead Event Centre, LLC
84.049-1-18	5	Batavia City Centre		RTMS Properties, LLC
84.049-1-17	6	Batavia City Centre		Visler, LLC
84.049-1-16	7	Batavia City Centre		Kumpf, Charles
84.049-1-13	8	Batavia City Centre		Gomborone, James E
84.049-1-14./A	9	Batavia City Centre		Gomborone, James E
84.049-1-14./B	9A	Batavia City Centre		Gomborone, James E
84.049-1-14	10	Batavia City Centre		Gomborone, James E
84.049-1-12	11	Batavia City Centre		Adegbite, Samson G
84.049-1-11	12	Batavia City Centre		MG Services, LLC
84.049-1-58	17-20	Batavia City Centre		Trinlor Corporation
84.049-1-8	25,26	Batavia City Centre		DelPriore, Loretta A
84.049-1-7.1	27	Batavia City Centre		Idrees, Muhammad S
84.049-1-7.2	28	Batavia City Centre		Seland, Keith A
84.049-1-6	29	Batavia City Centre		Dania, Inc.
84.049-1-5	30	Batavia City Centre		Jaeger, John C
84.049-1-4	31	Batavia City Centre		Zipkin, Arne H
84.049-1-3	32	Batavia City Centre		Siverling, Erika D
84.049-1-55.1	35	Batavia City Centre		Chess, LLC
84.049-1-61.1	37	Batavia City Centre		Smile Development, LLC
84.049-1-61.1/P	37	Batavia City Centre		Smile Development, LLC
84.049-1-56	39	Batavia City Centre		Chess, LLC
84.049-1-9	40	Batavia City Centre		MD and JJ, LLC
84.049-1-68	43	Batavia City Centre		Idrees, Muhammad S
84.049-1-66	44	Batavia City Centre		Chiarmonte, Robert A
84.049-1-69	45	Batavia City Centre		Batavia Showtime, Inc.
84.049-1-65	46	Batavia City Centre		Yasses, Theresa S
84.049-1-73	47	Batavia City Centre		ALS Enterprises, LLC
84.049-1-70	48	Batavia City Centre		Di Laura, Daniel
84.049-1-67	50	Batavia City Centre		Hillside Children's Center
84.049-1-74.2	51	Batavia City Centre		City Of Batavia
84.049-1-2	One	Batavia City Centre		City of Batavia
84.049-1-27	8	Center	St	Davis Wheel Goods Inc
84.049-1-28	12-16	Center	St	Creative Properties Inc
84.058-1-55	15-23	Center	St	City Church, Inc.
84.049-1-29	20	Center	St	Center Street Smokehouse, Inc
84.049-1-30	22	Center	St	Verizon of New York
84.058-1-53	31	Center	St	Downtown Batavia Professionals
84.058-1-52	33	Center	St	Humel, Jeffrey P
84.058-1-51	35-37	Center	St	Batavia Showtime, Inc.
84.058-1-48	39-41	Center	St	BMP Holdings, LLC
84.058-1-50	43	Center	St	Anderson, Marianne
84.015-1-28.1	45	Center	St	Java Farm Supply, Inc.
84.011-3-9	6	Court	St	Devcor N.Y. Developments, Inc
84.058-1-57		East Main	St	Main & Ellicott Properties LLC
84.058-1-4.1		East Main	St	Main & Ellicott Properties LLC
84.058-1-1	200	East Main	St	Howe, David E
84.011-1-31	201	East Main	St	Genesee-Orleans Regional, Arts Council
84.058-1-2	206	East Main	St	Just Chez Realty, LLC
84.058-1-4.2	210-212	East Main	St	City Church, Inc.
84.011-1-28	213	East Main	St	United Memorial Medical Center
84.011-1-23	215	East Main	St	215 East Main Properties LLC
84.058-1-5	216	East Main	St	Main & Ellicott Properties LLC
84.011-1-22	217	East Main	St	Key Bank of New York
84.058-1-6	218	East Main	St	Genesee Patrons Ins Coop

84.011-1-21	219	East Main	St	Key Bank of New York
84.058-1-7	220	East Main	St	Walker Estates Inc
84.058-1-34	214	East Main St Rear		Mancuso Restaurant & Bowling, Lanes Inc
84.015-1-1.11	32	Ellicott	St	R & J Enterprises of Batavia
84.011-3-8	33-39	Ellicott	St	Kathy A. DuRei, LLC
84.015-1-2	40-52	Ellicott	St	Della Penna, Peter
84.011-3-7./A	45-47	Ellicott	St	VJ Gautieri Constructors, Inc
84.015-1-5	56-70	Ellicott	St	Ellicott Holdings, LLC
84.015-1-37.32	109	Ellicott	St	Wortzman Furniture Inc
84.057-1-12	198	Ellicott	St	Tenney, Paul E
84.057-1-13	200	Ellicott	St	Tenney, Paul E
84.057-1-14	204-206	Ellicott	St	Dietrick Brothers, Inc.
84.057-1-15	210	Ellicott	St	Dietrick Brothers, Inc.
84.057-1-16	212	Ellicott	St	Dietrick Brothers, Inc.
84.057-1-17	214	Ellicott	St	The City of Batavia
84.057-1-18.1	216	Ellicott	St	Nigro, Erin
84.057-1-20	220	Ellicott	St	Marchese, Paul A
84.066-1-2	224	Ellicott	St	Brumsted, Charles R Jr
84.066-1-3	226	Ellicott	St	Baiocco, John L
84.066-1-4	228-230	Ellicott	St	Habitat for Humanity of Genese
84.015-1-29./1	229	Ellicott	St	Louie's Barber Shop
84.066-1-5	232	Ellicott	St	Borrell, Richard
84.015-1-29./2	233	Ellicott	St	Agway Inc
84.066-1-6	234	Ellicott	St	Brumsted, Charles R Jr
84.066-1-8	238-240	Ellicott	St	238 Ellicott Corporation
84.066-1-9	242	Ellicott	St	Vance Group, LLC
84.066-2-80	300	Ellicott	St	Heubusch, Jeffrey G
84.066-2-81	302	Ellicott	St	Heubusch, Jeffrey G
84.066-2-82.1	306	Ellicott	St	Piscitelli, Paul V
84.066-2-3	309	Ellicott	St	Wortzman Furniture Inc
84.066-2-84	310	Ellicott	St	Towner, Dewey E
84.066-2-5	315-317	Ellicott	St	Brakel, LLC
84.066-2-47	318-326	Ellicott	St	Main & Ellicott Properties LLC
84.066-2-6.1	319 1/2	Ellicott	St	Voltura, Nicole
84.066-2-8	323	Ellicott	St	Colangelo, Amelita
84.066-2-9	327	Ellicott	St	Penna, Francis N Jr
84.066-2-10.1	329	Ellicott	St	Wortzman, Harry
84.066-2-46.1	330	Ellicott	St	Mortellaro Richard
84.066-2-11.1	331	Ellicott	St	Dommer, James H
84.066-2-12	333	Ellicott	St	Dommer, James H
84.066-2-13	335	Ellicott	St	Dommer, James H
84.066-2-15	339-341	Ellicott	St	Superior Process Service, Inc.
84.074-2-1	400	Ellicott	St	Pontillo, James D
84.066-1-58		Ellicott St Rear		The City of Batavia
84.015-1-35	7	Evans	St	R & J Enterprises of Batavia
84.049-1-24	14	Jackson	Sq	13 Jackson Square LLC
84.049-1-45	5-7	Jackson	St	105 of Batavia, Inc.
84.049-1-44.1	9	Jackson	St	Geib Land, Inc.
84.049-1-42.1	13	Jackson	St	GM Hospitality, LLC
84.049-1-40	17	Jackson	St	Sielski, Edward A
84.049-1-39	19-21	Jackson	St	Jewelco, LLC
84.049-1-38	23	Jackson	St	Matlen Corp
84.049-1-37	35-37	Jackson	St	Batavia Showtime, Inc.
84.049-1-36	39-43	Jackson	St	Mager, Leo S
84.015-1-7.2	61	Jackson	St	Angotti Beverage Corporation
84.015-1-30	99	Jackson	St	United Refining Holdings, Inc
84.049-1-35	39	Jackson St Rear		Mager, Leo S
84.011-1-1		Jefferson	Sq	Tonawanda Valley Federal , Credit Union
84.058-1-8	2	Liberty	St	Walker Estates Inc

84.058-1-33.2	4	Liberty	St	Oil Spout Inc, The
84.058-1-33.1/A	16	Liberty	St	Main & Ellicott Properties LLC
84.015-1-25.1	37	Liberty	St	Ellicott Square Plaza, LLC
84.015-1-24	39	Liberty	St	Wortzman Furniture Co
84.015-1-23.3	41-43	Liberty	St	Porter, Bruce D
84.015-1-28.2	50	Liberty	St	Fifty Liberty Street, LLC
84.015-1-29	60	Liberty	St	I.D. Booth, Inc.
84.066-1-10	102-108	Liberty	St	Vance Group, LLC
84.015-1-25.2	37	Liberty St Rear		Ellicott Square Plaza, LLC
84.015-1-23.1	41-43	Liberty St Rear		Ellicott Square Plaza, LLC
84.015-1-22	45	Liberty St Rear		Ellicott Square Plaza, LLC
84.011-1-38.21	20	Main	St	Tim Donut U.S. Limited, Inc
84.011-3-2	39-45	Main	St	Noonan, Robert C
84.049-1-72.1	44	Main	St	Wendy's Restaurants
84.049-1-53.1	50	Main	St	Hawley & Associates LLC , Stephen M.
84.049-1-53.1/P	50	Main	St	Hawley & Associates LLC , Stephen M.
84.011-3-3	55	Main	St	Batavia 55 Main Street, LLC
84.011-3-4.1	59	Main	St	59 of Batavia, LLC
84.049-1-51	60	Main	St	Burns, Robert
84.011-3-5	69-71	Main	St	First Niagara Bank, N.A.
84.049-1-50	73	Main	St	GOM, LLC
84.049-1-49	75	Main	St	Williams, Gerald O
84.049-1-48	79-81	Main	St	Loraul Properties, LLC
84.049-1-47	83	Main	St	Benderson, Nathan
84.049-1-46	85-89	Main	St	85 of Batavia, Inc.
84.011-1-38.12	90	Main	St	Tompkins Trust Company
84.049-1-20	97	Main	St	Mistler, Andrew J Sr
84.049-1-21	99	Main	St	GM Hospitality, LLC
84.011-1-37	100	Main	St	Bank of America
84.049-1-22	101-103	Main	St	105 of Batavia, Inc.
84.049-1-23	105-107	Main	St	105 of Batavia, Inc.
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84.049-1-26	113-119	Main	St	Tompkins Insurance Agencies
84.049-1-26./P	113-119	Main	St	Tompkins Insurance Agencies,
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84.049-1-33	3 1/2	School	St	Batavia Showtime, Inc.
84.049-1-32	5	School	St	Ewell, Kent
84.049-1-31	5 1/2	School	St	Lullo, Michael
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84.058-1-36	19	School	St	Main & Ellicott Properties LLC
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City of Batavia

Memorandum

To: Honorable City Council

From: Jason Molino, City Manager 

Date: June 9, 2016

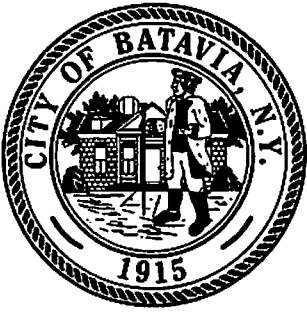
Subject: Executive Summary of the Cable Franchise Agreements with North Penn Video and Empire Video

I am pleased to inform you that we have reached tentative agreement with Community Cable Corporation d/b/a North Penn Video and Empire Video Service Corporation (collectively "NPV/EVSC") regarding cable franchises for the City of Batavia ("City"). The following is an executive summary of the major provisions of the Cable Franchise Agreements ("Agreements") negotiated with NPV/EVSC representatives. While there are many other important provisions contained in the Agreements, I have limited this summary to the major items outlined herein. The Agreements are, of course, subject to the approval of the City Council and the New York Public Service Commission ("NYPSC").

Also, it should be noted that the City essentially is dealing with a singular new market entrant entity despite the fact that there are two (2) operating companies and thus two (2) Agreements. The dual operating company model is nothing more than a reflection of the fact that the signal deliver to the City for various programming services entails both such operating companies. So, while the City is in fact entertaining approval of Franchise Agreements for each operating company, the City can and should view the situation as a combined entity and thus no different than how the City views Time Warner (soon to be Charter). The following are highlights of the new Agreement:

1. Franchise Fees (Sections 1 (q) and 6)

Under federal law, municipalities are entitled to assess a franchise fee of up to five percent (5%) of the cable operator's "gross revenues" for cable services provided within the municipality. The Agreements impose a 5% franchise fee which is the maximum percentage permitted by law.



City of Batavia

The definition of “gross revenues” in the Agreements are intended to maximize franchise fees. The definition includes an itemized list of twenty-five (25) revenue sources that will ensure the City receives the maximum amount of franchise fee revenue going forward. This list also includes several foreseeable future revenue sources (for example, “revenue from interactive cable services”) and a “catch all” item to capture non-foreseeable future revenue sources (i.e., “revenue from the provision of any other cable services”). These future revenues may be generated by services that have not yet been introduced by NPC/EVSC, but that may be over the course of the franchise term.

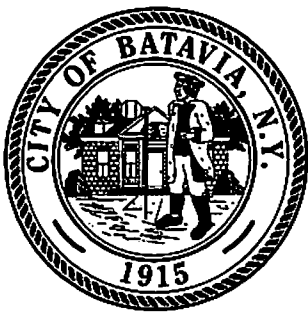
Also, under the Agreements, the City will receive franchise fee payments on a quarterly basis, specifically by May 15th, August 15, November, 15, and February 15th. The benefit of frequent payments is that the City, rather than NPV/EVSC, will be able to benefit from the time value of this money.

In addition to franchise fee revenue, the Agreements permit the City to conduct an independent audit of NPV/EVSC’s records to determine whether NPV/EVSC has paid franchise fees accurately. Should the audit reveal that franchise fees have been underpaid, NPV/EVSC must pay the underpaid amount plus interest at the then-current prime rate as published by the Wall Street Journal. Furthermore, should the audit reveal that franchise fees have been underpaid by 5% or more, NPV/EVSC also must pay the reasonable cost of the audit.

Finally, the Agreements ensure that when NPV/EVSC bundles cable, internet and/or phone services into a single package, the City will still receive its fair share of franchise fees for cable services despite the discounted pricing for bundled services. Section 6.5 of the Agreements states that the cable services portion of the bundled services discount may be reduced by no more than a proportionate share of the overall bundled services discount.

2. Customer Service Standards (Section 4 and Exhibit A)

The Agreements establish a set of comprehensive, quantifiable, and enforceable customer service standards. These standards adopt the relevant recommendations of the Federal Communications Commission (“FCC”), which are not enforceable unless they are included in a franchise agreement, the customer service standards promulgated by the NYPSC and additional standards that we added. These standards are set forth in detail in Exhibit A to the Agreements.



City of Batavia

The customer service standards in the Agreements include, but are not limited to, the following: telephone answering time limits for customer service representatives; time limits for commencing installation, service interruption, and repair work; a 4-hour "appointment window" for service calls; requirements for notices to subscribers; billing requirements, including a prohibition against late fees begin assessed fewer than 45 days after the mailing of a bill; customer complaint procedures to NPV/EVSC, as well as to the NYPSC; requirements to be met prior to disconnecting service; credits for service interruptions of 4 or more hours; a prohibition against "negative option" billings; and standards of subscriber privacy.

3. Free Services to Community Facilities (Section 7.1 and Exhibit B)

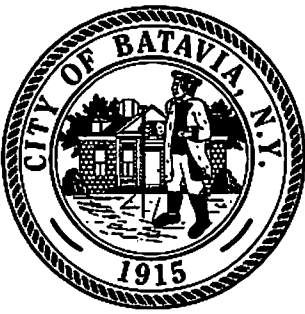
The Agreements require NPV/EVSC to provide complimentary standard-level television service to various City facilities. Specifically, NPV/EVSC is required to provide Standard Service (or the equivalent based on NPV/EVSC's then-current service level classifications), including a converter box and/or any other end user equipment needed for cable service to all public facilities listed in Exhibit B. As such, Exhibit B of the Agreement identifies those public facilities that may receive this free cable service noting that such locations also may be receiving such free cable service from Time Warner and thus rendering moot any free cable service from NPV/EVSC. NPV/EVSC will provide free installation for these facilities which are located within 150 feet aerial distance from the cable plant, the maximum distance allotted for a standard installation.

4. Right-of-Way Protections (Section 3)

The Agreements further provide numerous protections of the City's public rights-of-way. NPV/EVSC has agreed to replace and restore any public or private property disturbed by NPV/EVSC employees or any of its subcontractors. Pursuant to the Agreements, all restorations and replacements of the affected public or private property shall take place within 10 business days of the original disturbance. In addition, the Agreements include safety standards, provision of strand maps to the City upon request, requirement for disconnection and relocation of NPV/EVSC's wires and equipment upon request, and the need for City approval for cutting down any trees in the public rights-of-way.

5. Public, Educational and Governmental ("PEG") Channel (Section 7.2)

In Section 7.2 of the Agreements, the City retains the right to operate this channel for public, educational, or government programming. NPV/EVSC has agreed to make at least two (2) channels



City of Batavia

available for the City and other neighboring municipalities served by the same NPV/EVSC headend. NPV/EVSC is required to cablecast the PEG channel to all NPV/EVSC customers in the City. The City or its designee will have complete control over the content, scheduling and administration of the channel. The City may delegate these all, or a portion, of these functions to a designated access administrator; such as the school district.

Within 180 days of a written request by the City, NPV/EVSC is also required to install the direct fiber line (referred to as a "return line") and other signal distribution equipment so that programming can originate from the selected location and be distributed over the cable system. The City must pay for the initial installation of the return line and equipment, which shall be at NPV/EVSC's cost for time and materials; however, NPV/EVSC shall be responsible for maintaining the return line to the selected video origination point.

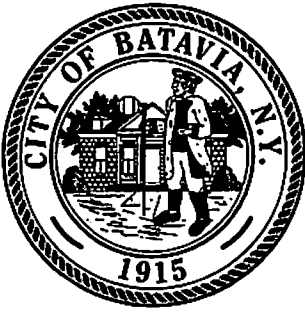
Notwithstanding the foregoing, the City currently operates an active PEG channel which involves NPV/EVSC airing content provided by the City. In keeping with NPV/EVSC's policy regarding providing varying levels of financial and/or in-kind support for active PEG channels, the City will receive financial support from NPV/EVSC in the amount of \$5,825 for capital costs associated with the City's active PEG channel. In addition, NPV/EVSC will continue to provide the aforementioned in-kind services.

6. Technical Requirements and System Specifications (Section 3)

The Agreements provide specific technical requirements for the cable system serving the City. Section 3.3 of the Agreements require the system to be built for digital television standards with a bandwidth capacity of at least 750 MHz and to provide at least 150 video channels. Further, it requires NPV/EVSC to make a sufficient portion of the bandwidth available to deliver two-way cable services, which include such services as video-on-demand. In addition, Section 3.1 requires that the cable system must meet or exceed all technical performance standards of the FCC, the National Electric Code, the National Electrical Safety Code, and the NYPSC. Finally, it requires the cable operator to test the performance of the system on a periodic basis.

7. Reporting Requirements (Sections 6.3 and 5.8)

The Agreements contain five reporting requirements to be met by NPV/EVSC throughout the term of the Agreements. The first is a detailed franchise fee report to accompany each quarterly franchise fee



City of Batavia

payment. The report must contain line items for sources of revenue received by NPV/EVSC and the amount of revenue received from each source.

Second, upon written request, NPV/EVSC must submit a customer complaint report that includes the dates, nature, and resolution of all customer complaints that have generated a work order or have necessitated a response. The term "complaint" is defined in the Agreements as any written (including electronic) or oral communication by a subscriber expressing dissatisfaction with any aspect of NPV/EVSC's business of the operation of its cable system. Consistent with federal law, this report excludes complaints from subscribers concerning specific programming content. In addition and upon request, the City may obtain from NPV/EVSC statistical information for the previous 12-month period regarding service repair requests, service interruptions, and compliance with telephone answering time standards.

Fourth, upon thirty (30) days written request, NPV/EVSC must submit financial information to the City meeting various reporting criteria noting that, as a publicly traded company, NPV/EVSC may satisfy such reporting requirement by providing the information and documents that are otherwise filed with the U.S. Securities and Exchange Commission.

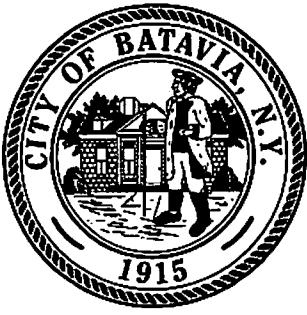
Finally, upon written request, NPV/EVSC must provide the City with copies of any reports, pleadings, or other documents/communications that it has submitted to any regulatory agency if such documents relate to its cable system in the City.

9. Liquidated Damages for Violations (Section 8.2)

Once NPV/EVSC has agreed to the obligations described in this executive summary and the other obligations contained in the Agreements, it is critical for the City to be able to enforce these obligations. One of the most effective enforcement mechanisms is predetermined monetary fines, known in the law as "liquidated damages."

Section 8.2 of the Agreements contain a provision for liquidated damages of \$250 per day for each day the violation(s) continues for eight (8) itemized violations of the Agreements¹. The City may assess such liquidated damages after providing NPV/EVSC with written notice and allowing NPV/EVSC 30 days to correct the violation, unless the nature of the violation is such that it cannot be cured within 30

¹ Please note that separate and apart from liquidated damages is a separate penalty that the City may impose if it does not receive the franchise fee from NPV/EVSC by the required due dates. This penalty is set forth in Section 6.2 of the Agreement.



days, in which case the cure period may be extended accordingly. The liquidated damages may be assessed for 120 days, after which the City may commence revocation proceedings or initiate a lawsuit against the cable operator.

10. Length of Franchise Term (Section 2.2)

Given that cable technology changes so rapidly and that franchise renewal offers an opportunity to obtain benefits from the cable operator, we prefer shorter franchise agreement terms. Conversely, cable operators typically take the position of needing a longer term to secure its capital investment in the cable system. Thus, we agreed upon a term of 10 years which is a typical length of term for cable operators.

11. Compliance with New York State Public Service Commission Standards

The New York State Public Service Commission sets forth in detail numerous provisions that must be included in all New York State cable franchise agreements. The Agreements contain and comply with all of the requirements articulated by the Commission. Upon approval of the Agreements by the City Council, a signed copy will be forwarded to NPV/EVSC for execution. Once both parties have signed the Agreements, NPV/EVSC will submit the Agreements to the NYPSC for approval. The Agreements will not take effect until it has been approved by the Commission. The timeline for Commission approval varies; however, it typically occurs within a six (6) month timeframe.

This concludes the executive summary of the major items contained in the Agreements. There are many other provisions in the Agreements, but I have attempted to highlight only the major items, of which are for the most part identical to the Time Warner Cable Agreement agreed to earlier this year. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me directly.

#74-2016

**A RESOLUTION TO SCHEDULE A PUBLIC HEARING FOR THE APPROVAL OF A
CABLE TELEVISION AGREEMENT BETWEEN COMMUNITY CABLE
CORPORATION ("NORTH PENN VIDEO") AND THE CITY OF BATAVIA**

Motion of Councilperson

WHEREAS, a public hearing is required by the New York State Public Service Commission; and

WHEREAS, a copy of the cable television franchise agreement is available for public inspection during normal business hours at the City Clerk's Office, One Batavia City Centre, Batavia, NY 14020; and

BE IT FURTHER RESOLVED, that the City Council hold a public hearing regarding granting a cable television franchise agreement by and between the City of Batavia and North Penn Video in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 PM on Monday, June 27, 2016; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least seven (7) days prior thereto.

**Seconded by Councilperson
and on roll call**

#75-2016

**A RESOLUTION TO SCHEDULE A PUBLIC HEARING FOR THE APPROVAL OF A
CABLE TELEVISION AGREEMENT BETWEEN EMPIRE VIDEO SERVICES
CORPORATION (“EMPIRE VIDEO”) AND THE CITY OF BATAVIA**

Motion of Councilperson

WHEREAS, a public hearing is required by the New York State Public Service Commission; and

WHEREAS, a copy of the cable television franchise agreement is available for public inspection during normal business hours at the City Clerk’s Office, One Batavia City Centre, Batavia, NY 14020; and

BE IT FURTHER RESOLVED, that the City Council hold a public hearing regarding granting a cable television franchise agreement by and between the City of Batavia and Empire Video in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 PM on Monday, June 27, 2016; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least seven (7) days prior thereto.

**Seconded by Councilperson
and on roll call**

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson

WHEREAS, Article 7, Section 105(1)(d), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...proposed, pending or current litigation...".

WHEREAS, Article 7, Section 105(1)(f), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation...".

WHEREAS, legal counsel for the City will have an attorney-client privileged communication that is exempt from the Open Meetings Law; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia, that upon approval of this Motion, the City Council does hereby enter into Executive Session.

**Seconded by Councilperson
and on roll call**

CABLE FRANCHISE AGREEMENT

BETWEEN

CITY OF BATAVIA

AND

COMMUNITY CABLE CORPORATION d/b/a NORTH PENN VIDEO

With assistance from:

Cohen Law Group
413 South Main Street
Pittsburgh, PA 15215
Phone: (412) 447-0130
www.cohenlawgroup.org

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the ____ day of _____, 2016 by and between the City of Batavia, a City located in Genesee County, New York (hereinafter referred to as the "City") and Community Cable Corporation d/b/a North Penn Video (hereinafter referred to as "North Penn Video").

WHEREAS, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and the rules and regulations of the New York State Public Service Commission, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City's jurisdiction; and

WHEREAS, North Penn Video has requested that the City grant North Penn Video's franchise request in order to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the City's residents; and

WHEREAS, the aforesaid Public Rights-of-Way used by North Penn Video are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for North Penn Video's use of the City's rights-of-ways as provided by federal law, obtain the use of public, educational and governmental channels, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

WHEREAS, the City has held a public hearing on the subject of cable franchise request, including reviewing the cable operator and identifying the City's future cable-related community needs; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that North Penn Video has the technical ability, financial condition, and character to operate and maintain a Cable System, and its plans for operating such system are adequate and feasible; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting North Penn Video's non-exclusive franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and North Penn Video agree as follows:

SECTION 1 **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) **Affiliated Entity** - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with North Penn Video.

(b) **Basic Service** - The service tier that includes at least the retransmission of local broadcast television signals and any Public, Educational and Governmental ("PEG") access channel.

(c) **Cable Act** - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) **Cable Service** - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) **Cable System** - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; and (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) **Channel** - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(g) **Complaint** - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of North Penn Video's business or the operation of its Cable System.

(h) **Communications Act** - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) **Drop** - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(j) Educational Access Channel - An access channel in which the programmers are school districts and not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents. This channel is for use on a non-commercial basis.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) FCC - Federal Communications Commission.

(m) Force Majeure - A catastrophic event that can be neither anticipated nor controlled that includes, but is not limited to, the following: Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State of New York or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment; and partial or entire failure of utilities.

(n) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee - The fee that North Penn Video remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Government Access Channel - A channel where the programmers are municipal government or agencies thereof and which is designated for non-commercial use.

(q) Gross Revenues - All revenue received directly or indirectly by North Penn Video or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of North Penn Video's System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;

- (10) fees for service calls;
- (11) inside wire maintenance fees;
- (12) service plan protection fees;
- (13) convenience fees;
- (14) early termination fees;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all Cable Service equipment, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) late payment fees;
- (24) NSF check charges; and
- (25) Pass-through of Franchise Fees.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by North Penn Video and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit. In the event of any dispute over the classification of Gross Revenues, the City and North Penn Video agree that reference should be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB").

(r) HD - High definition format.

(s) Leased Access or Commercial Access Channel - Any channel on North Penn Video's Cable System designated for use by any entity that is unaffiliated with North Penn Video pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(t) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.

(u) New York State Public Service Commission or "PSC" - The New York State agency charged with regulating cable television service at the state level.

(v) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(w) Normal Operating Conditions - Business conditions within North Penn Video's service department which are within the control of North Penn Video. Those conditions that are not within the control of North Penn Video include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(x) Outlet - An interior receptacle that connects a television set to the Cable System.

(y) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(z) Public Access Channel - A channel designated for use by the public on a first-come, first-served, non-discriminatory, and non-commercial basis.

(aa) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(bb) Service Interruption - The loss of picture or sound on one or more channels.

(cc) Subscriber - A person or entity who contracts with North Penn Video for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

SECTION 2

GRANT OF FRANCHISE

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act, the regulations of the FCC and the rules and regulations of the New York Public Service Commission, the City hereby grants a non-exclusive and revocable franchise to North Penn Video. Subject to the terms and conditions contained herein, the City hereby grants to North Penn Video the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of ten (10) years commencing on the effective date of the Certificate of Confirmation by the PSC, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 SERVICE CLASSIFICATION AND RELATED AUTHORITY

North Penn Video acknowledges and agrees that the system over which its video service is delivered is a Cable System for which the terms and conditions shall apply for at least the term of this Agreement.

2.4 REPRESENTATIONS AND WARRANTIES

North Penn Video represents, warrants and acknowledges that, as of the Effective Date:

(1) North Penn Video is duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of New York;

(2) North Penn Video has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind North Penn Video to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(3) This Agreement is enforceable against North Penn Video in accordance with the provisions herein, subject to applicable State and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against North Penn Video which would interfere with its performance or its ability to perform the requirements of this Agreement;

(5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

2.5 NON-EXCLUSIVITY

(a) This Franchise granted to North Penn Video shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

(b) If the City grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to North Penn Video, then North Penn Video may request an amendment to this Agreement to provide North Penn Video with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the parties agree to amend this Agreement to provide North Penn Video with such competitive equity.

2.6 CHANGE IN CABLE FRANCHISE LAW

Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any entity desiring to construct, operate or maintain a Cable System in the City to obtain a Franchise from

the City and another Cable Operator actually provides Cable Service legally to Subscribers in the City without a Franchise from the City, then North Penn Video shall have the right, upon sixty (60) days prior written notice, to terminate this Franchise and operate the Cable System under the terms and conditions of the changed law. North Penn Video shall not abandon Cable Service in any portion of the Franchise Area without the City's consent and shall remain subject to all applicable laws and regulations with respect to abandonment of service including those of the NYPSC.

2.7 NO WAIVER OF RIGHTS

No course of dealing between the City and North Penn Video, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived.

2.8 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City, to the extent not inconsistent with the terms of this Franchise. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

SECTION 3

SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) North Penn Video shall operate, maintain, construct, and extend the Cable System so as to offer one-way and two-way Cable Services throughout all parts of the City where the density requirements of Section 3.2 (a) are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations, and the laws, ordinances and construction standards of the New York Public Service Commission and, generally applicable laws, ordinances and construction standards of the City.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) North Penn Video shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that North Penn Video is able to obtain from the

property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. North Penn Video shall extend the Cable System into all areas within the City where there is a minimum of twenty (20) dwelling units per cable mile of aerial cable and forty (40) dwelling units per cable mile of underground cable. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the residential dwelling units in such areas. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access and located within the Public Rights-of-Way. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises. North Penn Video shall complete said extensions within three (3) months of written notification to North Penn Video by the City that an area has met the minimum density standard set forth herein (weather permitting). North Penn Video's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred fifty (150) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit between one hundred fifty (150) feet and two hundred-fifty (250) feet aerial distance from the main distribution line, North Penn Video shall extend the Cable Service, and the Subscriber and North Penn Video shall share equally the actual cost of installation from the main distribution line. For any dwelling unit in excess of two hundred fifty (250) feet aerial distance or that requires an underground installation, North Penn Video shall extend Cable Service and the Subscriber shall pay North Penn Video's actual cost of installation from its main distribution system.

(c) The City has the right to require North Penn Video to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by North Penn Video shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating North Penn Video's facilities without technical degradation of the Cable System's signal quality. North Penn Video shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

(d) Assuming that the terms of this Section 3.2 have been met, North Penn Video shall not deny access to Cable Service to any group of potential Subscribers because of the income of the residents of the local area in which such group resides.

(e) Grantee may not abandon Cable Service in any portion of the Franchise Area without the prior written consent of Grantor.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) North Penn Video has designed, constructed and shall maintain a Cable System that has been built for digital television standards with a bandwidth capacity of at least 750 MHz and the capability of no fewer than one hundred fifty (150) video channels and shall allocate a portion of said bandwidth to deliver two-way Cable Services.

(b) North Penn Video reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

(c) North Penn Video shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough and reliable manner.

3.4 SYSTEM TESTS

(a) North Penn Video shall conduct proof of performance and other system tests as set forth below. North Penn Video shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City within thirty (30) days of a written request from the City; provided, however, that North Penn Video shall not be required to submit such reports more than one (1) time in any calendar year.

(b) North Penn Video shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement as necessary to respond to Subscriber Complaints.

(c) At a minimum, North Penn Video's tests shall include Cable System tests at intervals required by FCC regulations.

(d) North Penn Video shall maintain written records of all results of its Cable System tests performed by or for North Penn Video as required by FCC regulations. Such test results shall be available for inspection by the City upon request.

(e) Tests may be witnessed by representatives of the City, and, upon request, North Penn Video shall inform the City of the time and place of each test. The City may conduct independent tests of the system for which North Penn Video shall give its fullest cooperation, provided such tests do not interfere with the operation of the Cable System. North Penn Video shall be required to take prompt corrective measures to correct any system deficiencies and to prevent the recurrence of such deficiencies.

3.5 EMERGENCY ALERT SYSTEM

North Penn Video shall comply with the Emergency Alert System requirements of the FCC.

3.6 RATE DISCRIMINATION

All North Penn Video residential Subscriber rates and charges shall be subject to regulation in accordance with federal law, and shall be published and shall not illegally discriminate among persons in the City under similar circumstances and conditions. North Penn Video shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability. Nothing in this Section 3.6 shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(b) The offering of reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(c) The establishment of different and non-discriminatory rates and charges for different classes of services for commercial Subscribers, as well as different, monthly rates for classes of commercial subscribers; or

(d) The establishment of reduced bulk rates for residential Subscribers residing in multiple dwelling units.

3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES

(a) For any Subscriber with a disability or who is otherwise mobility-impaired, North Penn Video shall, at no charge to the Subscriber, deliver and pick up converters and other equipment at the Subscriber's home at the Subscriber's request. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to North Penn Video.

(b) North Penn Video shall work cooperatively with any services that allow hearing-impaired Subscribers to contact North Penn Video by telephone.

3.8 SERVICE TO MULTIPLE DWELLING UNITS ("MDUs")

North Penn Video and the City hereto acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and North Penn Video, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, and Section 228 of the New York Public Service Law and NYPSC's Regulations.

3.9 REPAIRS AND RESTORATION

(a) Whenever North Penn Video or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance. Upon failure of North Penn Video to comply within the time specified and the City having notified North Penn Video in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by North Penn Video upon demand by the City.

(b) Whenever North Penn Video or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. North Penn Video shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) North Penn Video's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. North Penn Video shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by North Penn Video personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever North Penn Video or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the New York One Call System (www.digsafelynewyork.com) prior to any such disturbance. North Penn Video shall adhere to any additional undergrounding requirements which the state of New York may establish in the future. North Penn Video shall adhere to all requirements of 16 NYCRR Part 753, Protection of Underground Facilities.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated

or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

3.10 SERVICE AREA MAPS

Upon request, North Penn Video shall provide to the City for its exclusive use and shall maintain at its local offices a complete set of North Penn Video service area maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. The maps shall be provided to the City in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the City's GIS format. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are underground. North Penn Video shall provide the City with updated maps within thirty (30) days after any request by the City.

3.11 DISCONNECTION AND RELOCATION

(a) North Penn Video shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring North Penn Video to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat North Penn Video the same as, and require no more of North Penn Video than, any similarly situated entity.

3.12 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give North Penn Video notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat North Penn Video the same as, and require no more of North Penn Video than, any other similarly situated entity.

3.13 TREE TRIMMING

(a) North Penn Video, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of North Penn Video. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If North Penn Video or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(l), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

3.14 CHANNEL CAPACITY

North Penn Video shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

3.15 BROADCAST CHANNELS

To the extent required by federal law, North Penn Video shall provide all Subscribers with Basic Service including, but not limited to, the following: a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Public, Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

3.16 SIGNAL SCRAMBLING

North Penn Video shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

3.17 CONTINUITY OF SERVICE

Subscribers shall continue to receive service from North Penn Video provided their financial and other obligations to North Penn Video are honored. Subject to Force Majeure provisions in Section 9.1, North Penn Video shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, North Penn Video shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, North Penn Video shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

3.18 PARENTAL CONTROL CAPABILITY

North Penn Video shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

SECTION 4

CUSTOMER SERVICE STANDARDS

North Penn Video shall comply with the customer service standards as set forth in Exhibit A to this Agreement. To the extent that any customer service standard set forth in Exhibit A to this Agreement is virtually identical to a customer service standard promulgated by the NYPSC or the Federal government, and the NYPSC or the Federal government (as applicable) amends such standard, then the customer service standard in Exhibit A to this Agreement shall reflect the amended standard.

SECTION 5

REGULATION BY THE CITY

5.1 RESPONSIBILITY OF ADMINISTRATION

The City's City Manager shall be responsible for the continuing administration of this Franchise.

5.2 RIGHT TO INSPECT

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect at the notice location for North Penn Video specified in Section 9.3, or to request copies from North Penn Video of all documents, records and other pertinent information maintained by North Penn Video which relate to the terms of this Agreement.

(b) In addition, North Penn Video shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to North Penn Video, the City may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of North Penn Video. The City may not inspect the Cable System on North Penn Video's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order North Penn Video, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

5.3 RIGHT TO CONDUCT COMPLIANCE REVIEW

The City or its representatives may conduct a full compliance review with respect to whether North Penn Video has complied with the material terms and conditions of this Agreement so long as it provides North Penn Video with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that North Penn Video may organize the necessary records and documents for appropriate review by the City. Within thirty (30) days of a written request, North Penn Video shall provide the City with copies of records and documents related to the cable compliance review.

5.4 RESERVED AUTHORITY

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

5.5 POLICE POWERS

North Penn Video's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public, provided such laws and regulations are reasonable and not materially in conflict with the terms and conditions granted in the Franchise. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement, and shall be consistent with all federal and state laws, rules, regulations and orders.

5.6 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees to the extent consistent with applicable law.

5.7 PERMITS

North Penn Video shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. North Penn Video shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. North Penn Video shall pay any and all required permit fees.

5.8 REPORTING

In addition to the other reporting requirements contained in this Agreement, North Penn Video shall provide the following reports to the City:

(a) Subscriber Complaint Reports

Within thirty (30) days of a written request, North Penn Video shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

In addition and upon request, North Penn Video shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
- (2) Breakdown by type of complaint received (i.e. complete outage, snowy picture, etc.);
- (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
- (4) Number of known service interruptions and the approximate length of time of each such interruption;
- (5) Average hold time for Subscriber service telephone calls that were received in the previous quarter;
- (6) Percentage of telephone calls answered within thirty (30) seconds during the previous quarter;
- (7) Percentage of telephone calls received within the previous quarter that were abandoned before being answered by a live operator; and
- (8) Percentage of time when all incoming telephone trunk lines were in a busy condition.

(b) Annual Financial Reports

Within thirty (30) days of a written request, North Penn Video shall submit to the City its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by North Penn Video's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. Submission by North Penn Video of the most recent U.S. Securities and Exchange Commission Annual Report Form

10-K prepared by North Penn Video Inc. shall be deemed as satisfactory compliance with this Section 5.8(b).

(c) Government Reports

North Penn Video shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which North Penn Video has submitted to any federal, state or local regulatory agencies if such documents relate specifically to North Penn Video System within the City. North Penn Video shall provide copies of such documents no later than thirty (30) days after their request.

(d) Reporting Methods

Any reporting requirements may be satisfied by system-wide statistics, except for reporting requirements related to Franchise Fees and customer complaints.

5.9 CONFIDENTIALITY

To the extent permitted under New York law, the City shall maintain as confidential any information provided to it by North Penn Video under the terms of this Franchise which North Penn Video has designated in writing as confidential. In the event that the City believes at any time that it is required by law to disclose such information to a third party, the City will so notify North Penn Video at a time prior to such disclosure that affords North Penn Video a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

**SECTION 6
COMPENSATION TO THE CITY**

6.1 FRANCHISE FEES

(a) North Penn Video shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. North Penn Video shall not deduct or otherwise credit against the Franchise Fee any tax, including property taxes and all other taxes, fees or assessments of general applicability unless allowed by applicable law. In addition, and to the extent provided in Section 622 of the Cable Act, franchise fees are separate and distinct from all other taxes, fees and assessments of general applicability.

(b) If the law changes to permit a stated Franchise Fee percentage which is greater than 5%, the City may amend the Franchise Fee percentage upon written notice to North Penn Video provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in North Penn Video's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice.

(c) The Franchise Fee shall be compliant with the NYPPSC's Franchise Standards, Section 895.1(o).

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 of the following calendar year (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, North Penn Video shall deposit the Franchise Fee payments electronically into an account as designated by the City.

6.3 QUARTERLY REPORTS

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of North Penn Video's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of North Penn Video's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of North Penn Video.

6.4 FRANCHISE FEE AUDIT

(a) The City shall have the right to conduct a Franchise Fee review or audit of North Penn Video's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such review or audit shall occur within sixty (60) months from the date the City receives such payment, after which period any such payment shall be considered final. Within forty-five (45) days of a written request, North Penn Video shall provide the City with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the City shall provide North Penn Video with a written statement indicating the basis for the alleged underpayment. North Penn Video shall have forty-five (45) days from receipt of this notice regarding an alleged underpayment to provide the City with any written objection to the results of the review or audit, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of North Penn Video's objection and shall provide North Penn Video with written notice of the determination. If North

Penn Video disputes the City's final determination, it may submit the dispute to mediation in accordance with Section 9.7 (b) below within thirty (30) days of receiving the City's written notice of determination. In the event that North Penn Video fails to submit the matter to mediation within the required time period, the City's final determination shall be binding on North Penn Video. If North Penn Video submits the matter to mediation and an agreement is not reached, either party may submit the matter to arbitration in accordance with Section 9.7(a) below within thirty (30) days of failure to reach agreement through mediation.

(c) Any Franchise Fee payment due to the City as a result of the Franchise Fee review or audit shall be paid to the City by North Penn Video within forty-five (45) days from the date the City notifies North Penn Video of its final determination. If the Franchise Fee review or audit shows that Franchise Fees have been underpaid, then North Penn Video shall pay the underpaid amount plus interest calculated at the then-current prime rate as published by the Wall Street Journal. If Franchise Fees have been underpaid by five percent (5%) or more, then North Penn Video shall also pay the reasonable cost of the review or audit.

6.5 BUNDLED SERVICES

If Cable Services subject to the Franchise Fee required under this Section 6 are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount unless otherwise required by law or Generally Accepted Accounting Principles ("GAAP").

SECTION 7 SERVICES TO THE COMMUNITY

7.1 FREE SERVICES TO COMMUNITY FACILITIES

North Penn Video shall, at no charge to the City, provide one (1) complimentary standard installation and complimentary standard Cable Service, including a converter box and/or any other end user equipment needed for this Cable Service, to all public facilities listed in Exhibit B. North Penn Video shall not offset the cost of the complimentary installation or service against Franchise Fees.

7.2 PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNELS

(a) North Penn Video shall provide to the City at least two (2) Public, Educational, and Governmental ("PEG") Access Channels in accordance with Section 611 of the Cable Act and the standards as set forth in Section 895.4 of the Rules and Regulations of the State of New York Public Service Commission ("NYPSC"). Such PEG Channels may be used for community programming related to public, educational and/or governmental activities. The City and any other municipalities served by the headend shall have complete control over the content, scheduling, administration and all other programming aspects of the PEG Channels, and may delegate such functions, or a portion of such functions, to an appropriate designee. North Penn Video shall not exercise any editorial control over PEG Channel programming. North Penn

Video shall cablecast the activated PEG Channels so that they may be received by all North Penn Video Subscribers in the City.

(b) To enable the City to utilize the PEG Channel for live programming, the City shall select one (1) location within the City's boundaries and Time Warner shall provide and install, within one hundred eighty (180) days of a written request by the City direct fiber links, including activation equipment capable of transmitting video and audio between the video origination location and the North Penn Video System such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the City. This fiber link and equipment shall be collectively known as the "Return Line." The City shall be responsible for payment for the construction and installation of the Return Line, which shall be at North Penn Video's cost for time and materials. North Penn Video shall provide the City with a cost estimate prior to commencing construction and installation of the Return Line.

(c) The City and North Penn Video further agree that all costs incurred by North Penn Video for supporting such PEG Channel may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and North Penn Video reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(d) North Penn Video shall be responsible for maintaining the Return Line to the video origination point of the PEG Channel so long as the City provides North Penn Video with access to such location and access to the PEG Channel equipment within such location.

(e) The City or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the PEG channels. The City and North Penn Video agree to work cooperatively in implementing the PEG channels through such means and in such manner as shall be mutually satisfactory.

7.3 PEG CAPITAL SUPPORT FUNDING

North Penn Video shall provide a one-time monetary grant to the City to be used for the purchase of equipment for the production of local PEG. The PEG capital support funding provided by North Penn Video shall be in the amount of \$2,912.50. Such PEG capital support funding shall be paid within six (6) months of the Effective Date and shall not be offset against any franchise fees paid to the City. North Penn Video and the City agree that the cost of such PEG capital support funding may be designated as a "cost of franchise requirements" or "external cost" as defined by the FCC.

SECTION 8 **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that North Penn Video violated any provision of this Agreement, it shall notify North Penn Video in writing of the nature of such violation and the

section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify North Penn Video of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) North Penn Video shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which North Penn Video must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that North Penn Video shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, North Penn Video has not taken reasonable steps to cure the violation, then the City may deem that Time Warner is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

8.2 LIQUIDATED DAMAGES

(a) Because North Penn Video's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Time Warner in the following amounts provided North Penn Video has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Time Warner or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

(c) The City may assess liquidated damages against North Penn Video in the following amounts provided North Penn Video has had an opportunity to cure in accordance with Section 8.1 (b).

(1) For failure to comply with the technical requirements specified in Section 3.1: \$250 per day for each day the violation continues;

(2) For failure to provide and maintain Cable Service as specified in Section 3.2(a): \$250 per day for each day the violation continues;

(3) For failure to make repairs and restorations as specified in Section 3.9: \$250 per day for each day the violation continues;

(4) For failure to submit reports in a timely fashion as specified in Section 5.8: \$250 per day for each day the violation continues;

(5) For failure to provide information and related documentation in connection with any franchise fee audit/review as specified in Section 6.4: \$250 per day for each day the violation continues;

(6) For failure to provide services to community facilities as specified in Section 7.1 and Exhibit B to the Agreement: \$250 per day for each day the violation continues;

(7) For failure to comply with the requirements of the Public, Educational, and Governmental Channel as specified in Section 7.2: \$250 per day for each day the violation continues;

(8) For failure to carry all the insurance coverage required in Section 8.4: \$250 per day for each day the violation continues.

8.3 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that North Penn Video practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) North Penn Video repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) North Penn Video repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(4) Upon the appointment of a receiver or trustee to take over and conduct the business of North Penn Video whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(i) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(ii) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of North Penn Video or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. North Penn Video shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford North Penn Video due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of New York. All notice requirements shall be met by providing North Penn Video at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by North Penn Video of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to North Penn Video.

8.4 INSURANCE

(a) North Penn Video shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in New York and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by North Penn Video or any of its contractors, subcontractors, agents or employees in the following amounts:

- (1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.
- (2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).
- (3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.
- (4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.4.

(c) North Penn Video shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.4 and without submitting insurance certificates to the City verifying that North Penn Video has obtained such alternative insurance. North Penn Video shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) North Penn Video shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City.

8.5 INDEMNIFICATION

North Penn Video shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from caused by or connected with any act or omission of North Penn Video, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of North Penn Video. The City shall give North Penn Video timely written notice of its obligation to indemnify and defend the City. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by North Penn Video, the cost for such separate counsel shall be the responsibility of the City. North Penn Video shall not indemnify the City for any claims to the extent resulting from acts of willful misconduct or negligence on the part of the City.

SECTION 9 **MISCELLANEOUS**

9.1 FORCE MAJEURE

If for any reason of Force Majeure, North Penn Video is unable in whole or in part to carry out its obligations hereunder, North Penn Video shall not be deemed in violation of this Agreement during the continuance of such inability.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement, North Penn Video shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the

areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at North Penn Video's cost.

(b) During the term of the Agreement, if North Penn Video decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require North Penn Video to remove the property, remove the property itself and charge North Penn Video with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to North Penn Video.

(c) Notwithstanding the above, North Penn Video shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow North Penn Video from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

(d) If North Penn Video abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may either: (1) designate another entity to operate the Cable System temporarily until North Penn Video restores service under conditions consistent with this Franchise, or until the Franchise is revoked and a new franchisee is selected by the City; or (2) obtain an injunction requiring North Penn Video to continue operations. If the City designates another entity to operate the Cable System, North Penn Video shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred due to North Penn Video's abandonment of the System. The City shall be entitled to exercise options (1) and (2) above if:

(1) North Penn Video fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the City authorizes a longer interruption of service; or

(2) North Penn Video, for any period, willfully and without cause, refuses to provide Cable Service in accordance with this Franchise.

9.3 NOTICES

Every notice to be served upon or made to the City shall be sent to:

City of Batavia
One Batavia City Centre
Batavia, NY 14020
Attention: Manager

with a copy to:

Cohen Law Group
413 South Main Street - Third Floor
Pittsburgh, PA 15215
Attention: Office Manager

The City may specify any change of address in writing to North Penn Video. Every notice to be served upon North Penn Video shall be sent to:

North Penn Video
34 Main St.
Prattsburgh, NY 14873

North Penn Video may specify any changes of address in writing to the City. Each delivery to North Penn Video or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

North Penn Video is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment. Additionally, North Penn Video shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State of New York. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New York, County of Genesee, or in the United States District Court for the Northern District of New York.

9.7 DISPUTE RESOLUTION

(a) Arbitration

(1) Any dispute between the parties hereto, including but not limited to, disputes or controversies arising from or related to interpretation of this Agreement, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration shall be final and

binding, and the parties shall have no right to appeal from the arbitrator's decision. The Process for resolving disputes regarding franchise fee audits or reviews shall be in accordance with Section 6.4 above.

(2) The City may initiate arbitration by resolution of its City Council, while North Penn Video may initiate arbitration by sending written notice to the City.

(3) After arbitration has been initiated, the City and North Penn Video may agree that one arbitrator may conduct the arbitration and may mutually select such arbitrator.

(4) If either the City or North Penn Video does not consent to having one arbitrator conduct the arbitration or if the parties cannot agree upon the identity of such arbitrator, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(i) If the City initiates arbitration, the City shall select one arbitrator and North Penn Video by written notice shall select one arbitrator within fifteen (15) days after receiving notice of the City's selected arbitrator. If North Penn Video initiates arbitration, it shall select one arbitrator, and the City shall select one arbitrator within fifteen (15) days after receiving notice of the North Penn Video's selected arbitrator.

(ii) The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Genesee County Court of New York.

(5) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than one hundred twenty (120) days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and North Penn Video. The arbitrator(s) shall make a written report to the City and North Penn Video on the final determination within thirty (30) days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. The arbitration shall be conducted according to the Uniform Arbitration Act.

(6) The City and North Penn Video shall share equally and separately the fees and costs of the arbitrator(s).

(b) Mediation

The City and North Penn Video agree that, should any dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, the dispute may be submitted to mediated negotiation prior to any party commencing

arbitration or litigation. The process for resolving disputes regarding franchise fee audits or reviews shall be in accordance with Section 6.4 above. In such event, the City and North Penn Video may agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the City and North Penn Video are unable to successfully conclude the mediation within sixty (60) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other party. After written termination notice has been received by the other party, either party may request arbitration, as set forth in Section 9.7(a), or may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the parties.

9.8 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither North Penn Video nor its parent nor any Affiliated Entity shall transfer or assign, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither North Penn Video nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Time Warner nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than fifty percent (50%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of North Penn Video in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by North Penn Video.

(e) North Penn Video shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City may request additional information it needs to make an informed decision on the transfer or assignment as provided in FCC regulations. The City shall have such time as provided in FCC regulations to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

(g) The City herein consents to a transfer of control to Charter Communications, Inc. pursuant to an agreement of May 23, 2015 among North Penn Video Inc., Charter Communications, Inc. and other parties.

9.9 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and North Penn Video. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein. This Agreement may be amended only by the mutual consent of the City and North Penn Video and in accordance with the regulations of the NYPSC. Any amendment must be in writing and executed by the City and North Penn Video.

9.10 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.11 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or North Penn Video may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and North Penn Video may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and North Penn Video and by the NYPSC.

9.12 COMPLIANCE WITH LAWS

North Penn Video shall comply with all federal, state and, to the extent not inconsistent with the terms of this franchise, local laws and regulations.

9.13 APPROVAL OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

All terms and conditions contained herein are subject to the approval of the New York State Public Service Commission.

9.14 FILING OF FRANCHISE WITH COMMISSION

North Penn Video shall file this Agreement and other requisite information with the New York State Public Service Commission requesting operating authorization within sixty (60) days of the City's passage of this Franchise.

9.15 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.16 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind North Penn Video, the City and their respective successors and assigns. This Agreement is authorized by Ordinance No. _____ dated _____, 2016 of the City Council.

WITNESS our hands and official seals to this Cable Franchise Agreement.

CITY OF BATAVIA

By: _____

Name: _____

Title: _____

Date: _____

NORTH PENN VIDEO SERVICES CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CUSTOMER SERVICE STANDARDS

1. DEFINITIONS

(a) "Basic channel" shall mean any channel which is provided as part of the basic service tier.

(b) "Billing dispute" shall mean a disagreement between a subscriber and a cable television company concerning:

- (1) credits for payments made by the subscriber to the cable television company;
- (2) credit or refund for service outage;
- (3) errors in billing amount; or
- (4) assessment of late charges.

(c) "Home wiring" shall mean the internal wiring contained within premises of a subscriber which does not include any active elements such as amplifiers, converters or decoder boxes or remote control units.

(d) "Collection charge" shall mean a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account by personal visit at a subscriber's home or place of business.

(e) "Commission" shall mean the New York State Public Service Commission,

(f) "Downgrade charge" shall mean a charge imposed upon a subscriber for implementing a request by the subscriber for a change in service to a less expensive tier than the tier currently subscribed to.

(g) "Late charge" shall mean a charge which is added to a cable television subscriber's account or bill for nonpayment of a previously due account.

(h) "Local office" shall mean the business office of the cable television company serving the municipality in which a billing dispute arises.

(i) "Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

(j) "Normal operating conditions" shall mean those service conditions which are within the control of a cable company. Those conditions which are not within the control of a cable company include, but are not limited to, natural disasters, civil disturbances, power outages,

telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a cable company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, channel and/or service alterations, and maintenance or upgrade of the cable system.

(k) "Service call" shall mean any work at a subscriber's premises which requires the presence of a cable television company representative and the subscriber, including but not limited to, installations, and reconnections.

(l) "Service interruption" shall mean the loss of picture or sound of one or more cable channels.

(m) "Service outage" shall mean a loss of picture or sound on all basic channels or on all channels provided on any other service tier or on one or more premium channels occurring during normal operating conditions which is not caused by the subscriber's television receiver or the subscriber.

(n) "Subscriber complaint" shall mean a notice to the commission from a cable television subscriber, whether in writing, by telephone or electronic mail, concerning an unresolved billing service or other service related matter affecting the complaining subscriber directly.

2. SUBSCRIBER COMPLAINT PROCEDURES TO NORTH PENN VIDEO

Time Warner shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Time Warner shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Time Warner promptly and in writing. When Time Warner receives such notification, the time period for Time Warner to respond as required by Section 2(a) shall commence. If the City notifies Time Warner in writing, then Time Warner shall respond in writing within the time period specified in Section 2(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Time Warner has the option of withholding the disputed amount, without a late fee or disconnection, until Time Warner has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Time Warner in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Time Warner shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

3. NORTH PENN VIDEO HOME SERVICE CALLS

North Penn Video shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any North Penn Video employee, agent, or cable contractor, including any subcontractor, shall prominently display the North Penn Video or cable contractor logo.

4. BILLING PRACTICES; BILLING PERIOD

(a) (1) Every cable television company shall adopt billing practices in compliance with sections 1 and 4 through 8 of this Exhibit A and shall provide notice to subscribers in accordance with section 10(e) of this Exhibit A.

(2) Every cable television company:

(i) shall file copies of its billing practices and payment requirements with the commission; and

(ii) shall maintain copies thereof on file in its local office for public inspection for a period of two years.

(b) Billing practices may include the opportunity for advance billing.

(c) Billing practices shall provide that a subscriber, upon request, shall be given the option of paying monthly. Use of coupon books for the remittance of monthly payments shall satisfy the monthly payment option request. If such coupon books are used by a cable television company, no other bills for service are required to be sent to subscribers.

5. BILL FORMAT, LATE CHARGES, COLLECTION CHARGES, RECONNECT CHARGES, AND DOWNGRADE CHARGES

(a) Each subscriber bill shall be clear, concise and understandable and shall:

(1) (i) include the name, address and telephone number of the cable television company; and

(ii) the toll free subscriber assistance telephone number of the

commission identified as "Unresolved Inquiries, NYS Public Service Commission" or otherwise as may be approved by the commission upon specific request by a cable company;

(2) itemize each category of service including, but not limited to, basic service, cable programming services, per channel premium services, and pay-per-view programming, and each piece of equipment for which a charge is imposed;

(3) state the billing period and clearly delineate all activity during the billing period, including but not limited to, the amount of current billing and appropriate credits or rebates, optional charges, late charges and past due balances, if any.

(b) Each subscriber bill shall specify a minimum time for payment which shall not be less than 15 days from mailing of the bill.

(c) Any late charge permitted by law or by the franchise, if imposed upon the subscriber, shall be itemized on the subscriber's bill, or notice of delinquent payment in cases where coupon books are used.

(d) If a late charge is to be imposed, it shall not be imposed sooner than 45 days after the mailing of the bill to the subscriber or the due date, if coupons are used.

(e) No cable television company shall impose a collection charge upon any subscriber, except as prescribed in Section 8(e) of this Exhibit A.

(f) No cable television company shall impose a charge for the reconnection of service, the amount of which is based solely upon a consideration of whether the subscriber was previously in arrears for an amount due said company.

(g) A cable television company may impose a downgrade charge upon the conditions and in the circumstances as follows:

(1) subscribers have been notified of such charge in writing in at least 10 point type;

(2) the charge does not exceed the amount permitted under applicable State or Federal law or regulation; and

(3) the downgrade was not requested by a subscriber affected by a significant programming change or a network change which included a retiering of service or a rate change within 30 days of the receipt by the subscriber of:

(4) a notice required by Section 10(b)(4) and (c)(4) of this Exhibit A;
or

(5) a notice of retiering or rate change as required by Section 10(a) of this Exhibit A.

6. BILLING DISPUTES, AUXILIARY EQUIPMENT, CREDITS, AND REFUNDS

(a) Every cable television company shall establish procedures for the prompt investigation of any billing dispute. The procedures shall provide for a period of at least 30 days from the date of receipt of the bill for the subscriber to file a timely complaint. The procedures shall provide that the subscriber remit the undisputed portion of the bill in question pending resolution of the portion in dispute and that the subscriber shall be responsible for paying the undisputed portion of current and future bills.

(b) Cable television service shall not be discontinued due solely to nonpayment of the portion in dispute during the period allowed herein for investigation of a billing dispute.

(c) If the billing dispute is not resolved within 30 days of the date it is received by the company, the subscriber may refer the matter to the commission in accordance with the provisions of Section 9 of this Exhibit A. If referral is not made within 30 days, the company may commence its disconnection procedures in accordance with Section 8 of this Exhibit A.

(d) The cable television company shall retain all billing complaint records for at least one year.

(e) When a cable television company supplies auxiliary equipment such as a converter or other modifying device to a subscriber the company can expect reasonable care of such equipment by the subscriber. A cable television company shall notify the subscriber and the commission in writing of any charges to subscribers for lost, stolen or damaged converters. In the event such equipment is lost, stolen or damaged, and the cable television company seeks to charge the subscriber for such equipment, the company shall give written, dated notice to the subscriber of the amount sought to be collected from the subscriber and the subscriber's opportunity to refer the matter to the commission in accordance with the provisions of Section 9 of this Exhibit A.

(f) Refund checks will be issued promptly but no later than:

(1) the subscriber's next billing cycle following a determination that a refund is warranted or 30 days after such determination, whichever is earlier; or

(2) the subscriber's next billing cycle after the return of equipment supplied by the cable company if service is terminated or 30 days after the return of the equipment, whichever is earlier.

(g) Credits for service will be issued not later than the subscriber's next billing cycle following a determination that a credit is warranted.

7. CREDIT FOR SERVICE OUTAGES

(a) Every cable television company shall provide credit to subscribers affected by any service outage in excess of four continuous hours in accordance with subdivisions (b) and (c) of this section. The four-hour period shall commence at the time the cable television company first becomes aware of the service outage.

(b) Whenever a cable television company may reasonably determine the existence and scope of a service outage as, for example, a service outage caused by a major failure in the system's headend or distribution electronic equipment, which service outage exceeds four continuous hours and some part of which occurs during the hours 6:00 p.m. to 12:00 a.m., the cable television company shall automatically credit the account of each affected subscriber.

(c) In the event a cable television company cannot determine all subscribers affected by a service outage in excess of four continuous hours or no part of such outage occurs during the hours of 6:00 p.m. to 12:00 a.m., credit shall be given to any eligible subscriber who makes application therefor by either written or oral notice within 90 days of such service outage.

(d) The minimum credit for a service outage shall be equal to one thirtieth times the applicable monthly charge for each 24-hour period during which a service outage continues for at least four hours.

(e) A cable television company shall be responsible for every service outage except for interruption of programming to provide emergency information to the public using the Emergency Alert System as defined in section 896.5 of the NYSPSC Cable Television Regulations.

8. DISCONTINUANCE OF SERVICE FOR NONPAYMENT

(a) A cable television subscriber shall not be considered delinquent in payment until at least 45 days have elapsed from the mailing of the bill to the subscriber or from the due date, if coupons are used, and payment has not been received by the cable television company.

(b) No cable television company shall physically or electronically discontinue service for nonpayment of bills rendered for service until:

(1) the subscriber is delinquent in payment for cable television service; and

(2) at least five days have elapsed after a separate written notice of impending discontinuance has been served personally upon a subscriber; or

(3) at least eight days have elapsed after mailing to the subscriber a separate written notice of impending discontinuance (for which postage has been paid by the cable television company), addressed to such person at the premises where the subscriber requests billing; or

(4) at least five days have elapsed after a subscriber has either signed for or refused a certified letter (for which postage has been paid by the cable television company), containing a separate written notice of impending discontinuance addressed to such person at the premises where the subscriber requests billing.

(c) Notice of service discontinuance shall clearly state the amount in arrears, the total amount required to be paid to avoid discontinuance of service, reconnection charges, if applicable, and the manner and date by which, and the place where, such payment must be made.

(d) No cable television company shall disconnect service for nonpayment on a Sunday, public holiday or a day when the local office of the company is not open for business without providing an opportunity for the subscriber to pay the amount in arrears on such date.

(e) When a cable television company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill provided all other applicable provisions of this section have been followed.

(f) Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment, and no cable television company shall be required to provide additional notice prior to discontinuance.

9. SUBSCRIBERS' COMPLAINTS TO THE COMMISSION; PROCEDURE

(a) A subscriber complaint will be processed by the commission after the subscriber has first attempted to resolve the particular matter with the cable television company. The procedure with respect to such complaints shall be as follows:

(1) A copy of the complaint together with a written notice requesting a statement concerning the matter described therein shall be served on the cable television company. Within 10 days, or such other period as may be specified in the notice, the cable television company shall submit a written response to the commission and shall serve a copy of said response on the complainant. The response must contain a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the matter complained of. If the subject of the complaint is the failure of the company to provide cable television service to a potential subscriber who has requested service, the commission may require the cable television company to provide, in addition to the information required by this paragraph, a map of the franchised area indicating information requested by the commission.

(2) Complaints received by the commission by telephone shall be recorded and kept on file. Where the nature of a telephone complaint warrants, the commission may request written information from the complainant. In such cases, the commission shall follow the procedure specified in paragraph (1) of this subdivision.

(3) Where numerous complaints are made, concerning a particular cable television company or where it appears that complaints have not been satisfactorily resolved by a particular company, the commission may make further inquiry of said company, which may be formal or informal, and which may include a hearing or oral argument, or both.

(b) Every cable television company shall adopt and file with the commission, in writing, its procedures for reporting and the resolution of subscriber complaints, which procedures may be in such form and contain such provisions as the company deems necessary, provided they are not in conflict with any procedures, rules or regulations of the commission. Every cable television company shall provide notice to subscribers of such procedures in accordance with Section 10(f) of this Exhibit A.

(c) (1) The commission may delegate by written notice to any of its officers or employees authority pursuant to this section to investigate, hear and resolve subscriber complaints concerning disputed bills, charges, deposits, service problems and other subscriber-related problems. Such authority shall include the authority to conduct informal hearings. Except in the instance of an appeal by any party, disposition of unresolved complaints will be determined by such officers or employees of the commission as the commission designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make a determination by conversation with the complainant or his or her representative, by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the cable television company (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant, accompanied and assisted by such friend, advisor or attorney as he or she desires, and company representatives are present. Officers or employees designated to consider complaints will afford both the complainant and the cable television company a fair and reasonable opportunity to present evidence pertinent to the complaint and to challenge evidence submitted by the other party to the dispute. The complainant or cable television company complained of may obtain a written statement of the determination, including a statement of the brief reason for the conclusion. The party adversely affected by the determination of the officer or employee designated to consider the complaint may appeal to the commission. Any such appeal shall be in writing filed with the commission within 20 days of receiving notice of the determination and shall set forth the specific basis for claiming error.

(2) After receipt of the response to a complaint, and where the procedures described in paragraph (1) of this subdivision are not applicable or cannot reasonably resolve the issues raised by a complaint, the commission, on its own initiative, the recommendation of staff or the request of the complainant or cable television company, may hold a hearing upon reasonable advance notice to all interested parties.

(3) Pending resolution of a complaint, the commission may require appropriate interim relief to either party. In the case of complaints regarding bills or deposits, the

commission, without hearing or formal order, may, and in the absence of unusual circumstances shall, preclude discontinuance of service or the issuance of any notice of discontinuance during the commission's investigation of such complaint, upon such terms and conditions as it deems appropriate.

10. TELEPHONE AVAILABILITY AND ANSWER STANDARDS; CUSTOMER SERVICE CENTERS

(a) Every cable television company shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week, provided, that after normal business hours, the access line may be answered by an answering service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

Trained company representatives must be available to respond to callers during normal business hours.

(b) Every cable television system, except a small cable television system, under normal operating conditions, shall meet the following telephone answer standards no less than 90 percent of the time, measured on a quarterly basis:

(1) telephone answer time by trained company representatives, including wait-time, shall not exceed 30 seconds from when the connection is made;

(2) if a call needs to be transferred, transfer time shall not exceed 30 seconds;

(3) callers will receive a busy signal less than three percent of the time.

(c) Information to demonstrate compliance with the telephone answer standards in subdivision (b) of this section shall be reported to the commission for normal business hours on an annual basis and shall include:

(1) the total number of days trained company representatives were available to receive incoming calls;

(2) the total number of calls received on such days;

(3) the average length of time a caller waits on hold before reaching a trained company representative;

(4) the total number of calls abandoned by incoming callers;

(5) the percentage of time callers received a busy signal; or

(6) or such other information that will document compliance with such standards.

(d) Every cable television company required to file the information specified in subdivision (c) of this section must maintain for a period of one year, a summary of records sufficient to measure and verify compliance with telephone answer standards on a quarterly basis.

(e) Annual reports on telephone answer standards shall be filed with the commission on or before January 31st of each year for the previous calendar year. Any cable television system that routinely meets or exceeds the standard in subdivisions (a) and (c) of this section may petition the commission for a waiver of the reporting requirements of this section. This waiver does not excuse a cable company from maintaining service records, subject to review by the Commission, on a quarterly basis.

(f) A cable television system will not be required to acquire equipment or perform surveys to measure compliance with telephone answer and service standards unless an historical record of complaints indicates a clear failure to comply.

(g) Customer service centers and bill payment sites shall be conveniently located and open at least during normal business hours.

11. INSTALLATIONS, OUTAGES, AND SERVICE CALLS

(a) Whenever a service call is not started within the scheduled "appointment window", as established pursuant to paragraph (3) of subdivision (b) of this section, the subscriber shall not be charged for such service call, including any installation or reconnection scheduled to be performed, unless the service call was rescheduled with the subscriber's consent before the close of business on the business day prior to the day of the scheduled "appointment window".

(b) All cable television systems under normal operating conditions, shall meet no less than 95 percent of the time, measured on a quarterly basis, the following service standards:

(1) standard installations of up to 150 feet from existing aerial distribution plant shall be performed within seven business days after an order is placed unless a subscriber requests a particular date beyond seven business days;

(2) excluding conditions beyond control of the cable company, a cable television system will:

(i) begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known; and

(ii) begin actions to correct other service problems the next business day after notification of the service problem or trouble call;

(3) the appointment window alternatives for service calls will be either:

- (i) a specific time;
- (ii) morning or afternoon hours;
- (iii) a four-hour block of the time during normal business hours;
- (iv) evenings or Saturdays during normal business hours; or
- (v) at the option of the cable television company a specific time or block of time outside of normal business hours for the express convenience of the customer; and

(4) if a cable company representative is likely to be late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as soon as possible, at a time which is convenient for the customer consistent with paragraphs (1) and (2) of this subdivision.

(c) Information to demonstrate compliance regarding the service standards contained in subdivision (b) of this section, measured on a quarterly basis, shall be reported to the commission and shall at a minimum include:

- (1) number of requests for standard installations and the number of such installations actually performed within 7 business days;
- (2) number of service interruptions and number of service interruptions responded to within and after 24 hours after notification;
- (3) number of service calls to subscribers' residences and the number of such calls completed within the appointment window;
- (4) number of installations or service calls rescheduled; and
- (5) number of credits issued for missed service calls to subscribers' premises, or such other information that will document compliance with such standards.

(d) Service reports shall be filed annually with the commission on or before January 31st of each year for the previous calendar year. Cable systems that routinely meet or exceed the requirements of subdivisions (a) and (b) of this section may petition the commission for a waiver of the report requirements of this section. This waiver does not excuse a cable company from maintaining service records on a quarterly basis, which are subject to review by the Commission.

(e) Reports of service or trouble calls by cable television systems shall be made available, upon request, and for a period not to exceed 90 days from such service or trouble call as follows:

- (1) For each trouble call reported by a single subscriber, the cable

television system shall identify:

- (i) the subscriber;
- (ii) the date and approximate time the trouble call was received;
- (iii) the date and approximate time of the response to the trouble call;
- (iv) the corrective steps taken (if any required);
- (v) the date the trouble call is closed; and
- (vi) identification of the technician or repair person.

(2) A report on each service outage shall include the following data:

- (i) brief description of the area affected sufficient to allow the later determination of the approximate number of subscribers affected;
- (ii) date and approximate time of failure;
- (iii) cause of failure; and
- (iv) date and time service was restored.

12. REMOVAL OF HOME WIRING

Upon voluntary termination of cable service by a subscriber, a cable television company shall not remove cable home wiring in which it claims ownership unless it gives the subscriber the opportunity to acquire the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the home wiring multiplied by the length in feet of such wiring. If the subscriber declines to acquire the cable home wiring, the cable television company must then remove it within thirty seven days or make no subsequent attempt to remove it or to restrict its use. Every cable television company shall provide notice to subscribers of the provisions of this section in accordance with Section 10(j) of this Exhibit A.

13. "NEGATIVE OPTION" PROMOTIONAL PRACTICES

(a) No cable television company may bill any subscriber for any service not affirmatively requested by the subscriber.

(b) For purposes of this section, a subscriber's affirmative request need not be in writing, but any cable television company relying on an oral affirmative request shall keep accurate records of the date on which, and the employee to whom, the request was made.

(c) For purposes of this section, a subscriber shall be deemed to have affirmatively requested a service if (1) the subscriber voluntarily makes payment for such service after an initial free trial period, and (2) there was included, in the notice or advertising material describing the service, a statement clearly advising the subscriber that he has incurred no obligation to pay for such service and that he need not take any action to avoid incurring any such obligation.

15. PRIVACY

(a) Notice To Subscriber Regarding Personally Identifiable Information; Definitions

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information:

(A) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(B) the period during which such information will be maintained by the cable operator;

(C) the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(D) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h) of this section—

(A) the term “personally identifiable information” does not include any record of aggregate data which does not identify particular persons;

(B) the term “other service” includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term “cable operator” includes, in addition to persons within the definition of cable operator in section 522 of this title, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b) Collection Of Personally Identifiable Information Using Cable System

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

A. obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

B. detect unauthorized reception of cable communications.

(c) Disclosure of Personally Identifiable Information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—
i. extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or
ii. the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(d) Subscriber Access To Information

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) Destruction Of Information

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order.

(f) Civil Action In United States District Court; Damages; Attorney's Fees And Costs; Nonexclusive Nature Of Remedy

(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Regulation By States Or Franchising Authorities

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Disclosure Of Information To Governmental Entity Pursuant To Court Order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

EXHIBIT B
COMMUNITY FACILITIES TO RECEIVE FREE CABLE SERVICE

City of Batavia

Batavia High School
260 State Street
Batavia, NY 14020

Batavia Middle School
96 Ross Street
Batavia, NY 14020

John Kennedy Intermediate School
166 Vine Street
Batavia, NY 14020

Jackson Primary School
411 S. Jackson Street
Batavia, NY 14020

City Hall
One Batavia City Centre
Batavia, NY 14020

Police Station
10 W. Main Street
Batavia, NY 14020

Fire Station
18 Evans Street
Batavia, NY 14020

Water Treatment Plant
480 Lehigh Avenue
Batavia, NY 14020

Waste Water Treatment Plant
5 Tredeasy Drive
Batavia, NY 14020

**Youth Bureau
12 MacArthur Drive
Batavia, NY 14020**

**Bureau of Maintenance
147 Walnut Street
Batavia, NY 14020**

CABLE FRANCHISE AGREEMENT

BETWEEN

CITY OF BATAVIA

AND

EMPIRE VIDEO SERVICE CORPORATION

With assistance from:

Cohen Law Group
413 South Main Street
Pittsburgh, PA 15215
Phone: (412) 447-0130
www.cohenlawgroup.org

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the ____ day of _____, 2016 by and between the City of Batavia, a City located in Genesee County, New York (hereinafter referred to as the "City") and Empire Video Services Corporation (hereinafter referred to as "Empire Video").

WHEREAS, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and the rules and regulations of the New York State Public Service Commission, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City's jurisdiction; and

WHEREAS, Empire Video has requested that the City grant Empire Video's franchise request in order to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the City's residents; and

WHEREAS, the aforesaid Public Rights-of-Way used by Empire Video are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Empire Video's use of the City's rights-of-ways as provided by federal law, obtain the use of public, educational and governmental channels, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

WHEREAS, the City has held a public hearing on the subject of cable franchise request, including reviewing the cable operator and identifying the City's future cable-related community needs; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that Empire Video has the technical ability, financial condition, and character to operate and maintain a Cable System, and its plans for operating such system are adequate and feasible; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting Empire Video's non-exclusive franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Empire Video agree as follows:

SECTION 1 **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) **Affiliated Entity** - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Empire Video.

(b) **Basic Service** - The service tier that includes at least the retransmission of local broadcast television signals and any Public, Educational and Governmental ("PEG") access channel.

(c) **Cable Act** - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) **Cable Service** - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) **Cable System** - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; and (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) **Channel** - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(g) **Complaint** - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Empire Video's business or the operation of its Cable System.

(h) **Communications Act** - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) **Drop** - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(j) Educational Access Channel - An access channel in which the programmers are school districts and not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents. This channel is for use on a non-commercial basis.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) FCC - Federal Communications Commission.

(m) Force Majeure - A catastrophic event that can be neither anticipated nor controlled that includes, but is not limited to, the following: Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State of New York or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment; and partial or entire failure of utilities.

(n) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee - The fee that Empire Video remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Government Access Channel - A channel where the programmers are municipal government or agencies thereof and which is designated for non-commercial use.

(q) Gross Revenues - All revenue received directly or indirectly by Empire Video or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Empire Video's System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;

- (10) fees for service calls;
- (11) inside wire maintenance fees;
- (12) service plan protection fees;
- (13) convenience fees;
- (14) early termination fees;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all Cable Service equipment, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) late payment fees;
- (24) NSF check charges; and
- (25) Pass-through of Franchise Fees.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by Empire Video and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit. In the event of any dispute over the classification of Gross Revenues, the City and Empire Video agree that reference should be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB").

(r) HD - High definition format.

(s) Leased Access or Commercial Access Channel - Any channel on Empire Video's Cable System designated for use by any entity that is unaffiliated with Empire Video pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(t) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.

(u) New York State Public Service Commission or "PSC" - The New York State agency charged with regulating cable television service at the state level.

(v) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(w) Normal Operating Conditions - Business conditions within Empire Video's service department which are within the control of Empire Video. Those conditions that are not within the control of Empire Video include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(x) Outlet - An interior receptacle that connects a television set to the Cable System.

(y) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(z) Public Access Channel - A channel designated for use by the public on a first-come, first-served, non-discriminatory, and non-commercial basis.

(aa) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(bb) Service Interruption - The loss of picture or sound on one or more channels.

(cc) Subscriber - A person or entity who contracts with Empire Video for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

SECTION 2 **GRANT OF FRANCHISE**

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act, the regulations of the FCC and the rules and regulations of the New York Public Service Commission, the City hereby grants a non-exclusive and revocable franchise to Empire Video. Subject to the terms and conditions contained herein, the City hereby grants to Empire Video the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of ten (10) years commencing on the effective date of the Certificate of Confirmation by the PSC, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 SERVICE CLASSIFICATION AND RELATED AUTHORITY

Empire Video acknowledges and agrees that the system over which its video service is delivered is a Cable System for which the terms and conditions shall apply for at least the term of this Agreement.

2.4 REPRESENTATIONS AND WARRANTIES

Empire Video represents, warrants and acknowledges that, as of the Effective Date:

(1) Empire Video is duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of New York;

(2) Empire Video has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind Empire Video to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(3) This Agreement is enforceable against Empire Video in accordance with the provisions herein, subject to applicable State and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against Empire Video which would interfere with its performance or its ability to perform the requirements of this Agreement;

(5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

2.5 NON-EXCLUSIVITY

(a) This Franchise granted to Empire Video shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

(b) If the City grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Empire Video, then Empire Video may request an amendment to this Agreement to provide Empire Video with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the parties agree to amend this Agreement to provide Empire Video with such competitive equity.

2.6 CHANGE IN CABLE FRANCHISE LAW

Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any entity desiring to construct, operate or maintain a Cable System in the City to obtain a Franchise from the City and another Cable Operator actually provides Cable Service legally to Subscribers in the City without a Franchise from the City, then Empire Video shall have the right, upon sixty (60) days prior written notice, to terminate this Franchise and operate the Cable System under the terms and conditions of the changed law. Empire Video shall not abandon Cable Service in any portion of the Franchise Area without the City's consent and shall remain subject to all

applicable laws and regulations with respect to abandonment of service including those of the NYPSC.

2.7 NO WAIVER OF RIGHTS

No course of dealing between the City and Empire Video, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived.

2.8 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City, to the extent not inconsistent with the terms of this Franchise. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) Empire Video shall operate, maintain, construct, and extend the Cable System so as to offer one-way and two-way Cable Services throughout all parts of the City where the density requirements of Section 3.2 (a) are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations, and the laws, ordinances and construction standards of the New York Public Service Commission and, generally applicable laws, ordinances and construction standards of the City.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) Empire Video shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Empire Video is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Empire Video shall extend the Cable System into all areas within the City where there is a minimum of twenty (20) dwelling units per cable mile of aerial cable and forty (40) dwelling units per cable mile of underground cable. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions

thereof, of the total amount of aerial or underground cable necessary to make service available to the residential dwelling units in such areas. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access and located within the Public Rights-of-Way. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises. Empire Video shall complete said extensions within three (3) months of written notification to Empire Video by the City that an area has met the minimum density standard set forth herein (weather permitting). Empire Video's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred fifty (150) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit between one hundred fifty (150) feet and two hundred-fifty (250) feet aerial distance from the main distribution line, Empire Video shall extend the Cable Service, and the Subscriber and Empire Video shall share equally the actual cost of installation from the main distribution line. For any dwelling unit in excess of two hundred fifty (250) feet aerial distance or that requires an underground installation, Empire Video shall extend Cable Service and the Subscriber shall pay Empire Video's actual cost of installation from its main distribution system.

(c) The City has the right to require Empire Video to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Empire Video shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Empire Video's facilities without technical degradation of the Cable System's signal quality. Empire Video shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

(d) Assuming that the terms of this Section 3.2 have been met, Empire Video shall not deny access to Cable Service to any group of potential Subscribers because of the income of the residents of the local area in which such group resides.

(e) Grantee may not abandon Cable Service in any portion of the Franchise Area without the prior written consent of Grantor.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) Empire Video has designed, constructed and shall maintain a Cable System that has been built for digital television standards with a bandwidth capacity of at least 750 MHz and the capability of no fewer than one hundred fifty (150) video channels and shall allocate a portion of said bandwidth to deliver two-way Cable Services.

(b) Empire Video reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration

of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

(c) Empire Video shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough and reliable manner.

3.4 SYSTEM TESTS

(a) Empire Video shall conduct proof of performance and other system tests as set forth below. Empire Video shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City within thirty (30) days of a written request from the City; provided, however, that Empire Video shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Empire Video shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement as necessary to respond to Subscriber Complaints.

(c) At a minimum, Empire Video's tests shall include Cable System tests at intervals required by FCC regulations.

(d) Empire Video shall maintain written records of all results of its Cable System tests performed by or for Empire Video as required by FCC regulations. Such test results shall be available for inspection by the City upon request.

(e) Tests may be witnessed by representatives of the City, and, upon request, Empire Video shall inform the City of the time and place of each test. The City may conduct independent tests of the system for which Empire Video shall give its fullest cooperation, provided such tests do not interfere with the operation of the Cable System. Empire Video shall be required to take prompt corrective measures to correct any system deficiencies and to prevent the recurrence of such deficiencies.

3.5 EMERGENCY ALERT SYSTEM

Empire Video shall comply with the Emergency Alert System requirements of the FCC.

3.6 RATE DISCRIMINATION

All Empire Video residential Subscriber rates and charges shall be subject to regulation in accordance with federal law, and shall be published and shall not illegally discriminate among persons in the City under similar circumstances and conditions. Empire Video shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of

race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability. Nothing in this Section 3.6 shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(b) The offering of reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(c) The establishment of different and non-discriminatory rates and charges for different classes of services for commercial Subscribers, as well as different, monthly rates for classes of commercial subscribers; or

(d) The establishment of reduced bulk rates for residential Subscribers residing in multiple dwelling units.

3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES

(a) For any Subscriber with a disability or who is otherwise mobility-impaired, Empire Video shall, at no charge to the Subscriber, deliver and pick up converters and other equipment at the Subscriber's home at the Subscriber's request. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to Empire Video.

(b) Empire Video shall work cooperatively with any services that allow hearing-impaired Subscribers to contact Empire Video by telephone.

3.8 SERVICE TO MULTIPLE DWELLING UNITS ("MDUs")

Empire Video and the City hereto acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Empire Video, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, and Section 228 of the New York Public Service Law and NYPSC's Regulations.

3.9 REPAIRS AND RESTORATION

(a) Whenever Empire Video or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance. Upon failure of Empire Video to comply within the time specified and the City having notified Empire

Video in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Empire Video upon demand by the City.

(b) Whenever Empire Video or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Empire Video shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Empire Video's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Empire Video shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Empire Video personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Empire Video or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the New York One Call System (www.digsafelynewyork.com) prior to any such disturbance. Empire Video shall adhere to any additional undergrounding requirements which the state of New York may establish in the future. Empire Video shall adhere to all requirements of 16 NYCRR Part 753, Protection of Underground Facilities.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

3.10 SERVICE AREA MAPS

Upon request, Empire Video shall provide to the City for its exclusive use and shall maintain at its local offices a complete set of Empire Video service area maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. The maps shall be provided to the City in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the City's GIS format. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are

underground. Empire Video shall provide the City with updated maps within thirty (30) days after any request by the City.

3.11 DISCONNECTION AND RELOCATION

(a) Empire Video shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring Empire Video to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Empire Video the same as, and require no more of Empire Video than, any similarly situated entity.

3.12 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Empire Video notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Empire Video the same as, and require no more of Empire Video than, any other similarly situated entity.

3.13 TREE TRIMMING

(a) Empire Video, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Empire Video. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Empire Video or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(l), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

3.14 CHANNEL CAPACITY

Empire Video shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

3.15 BROADCAST CHANNELS

To the extent required by federal law, Empire Video shall provide all Subscribers with Basic Service including, but not limited to, the following: a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Public, Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

3.16 SIGNAL SCRAMBLING

Empire Video shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

3.17 CONTINUITY OF SERVICE

Subscribers shall continue to receive service from Empire Video provided their financial and other obligations to Empire Video are honored. Subject to Force Majeure provisions in Section 9.1, Empire Video shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Empire Video shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Empire Video shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

3.18 PARENTAL CONTROL CAPABILITY

Empire Video shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

SECTION 4 **CUSTOMER SERVICE STANDARDS**

Empire Video shall comply with the customer service standards as set forth in Exhibit A to this Agreement. To the extent that any customer service standard set forth in Exhibit A to this Agreement is virtually identical to a customer service standard promulgated by the NYPSC or the Federal government, and the NYPSC or the Federal government (as applicable) amends such standard, then the customer service standard in Exhibit A to this Agreement shall reflect the amended standard.

SECTION 4

CUSTOMER SERVICE STANDARDS

North Penn Video shall comply with the customer service standards as set forth in Exhibit A to this Agreement. To the extent that any customer service standard set forth in Exhibit A to this Agreement is virtually identical to a customer service standard promulgated by the NYPSC or the Federal government, and the NYPSC or the Federal government (as applicable) amends such standard, then the customer service standard in Exhibit A to this Agreement shall reflect the amended standard.

SECTION 5

REGULATION BY THE CITY

5.1 RESPONSIBILITY OF ADMINISTRATION

The City's City Manager shall be responsible for the continuing administration of this Franchise.

5.2 RIGHT TO INSPECT

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect at the notice location for North Penn Video specified in Section 9.3, or to request copies from North Penn Video of all documents, records and other pertinent information maintained by North Penn Video which relate to the terms of this Agreement.

(b) In addition, North Penn Video shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to North Penn Video, the City may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of North Penn Video. The City may not inspect the Cable System on North Penn Video's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order North Penn Video, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

5.5 POLICE POWERS

Empire Video's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public, provided such laws and regulations are reasonable and not materially in conflict with the terms and conditions granted in the Franchise. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement, and shall be consistent with all federal and state laws, rules, regulations and orders.

5.6 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees to the extent consistent with applicable law.

5.7 PERMITS

Empire Video shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Empire Video shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Empire Video shall pay any and all required permit fees.

5.8 REPORTING

In addition to the other reporting requirements contained in this Agreement, Empire Video shall provide the following reports to the City:

(a) Subscriber Complaint Reports

Within thirty (30) days of a written request, Empire Video shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

In addition and upon request, Empire Video shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
- (2) Breakdown by type of complaint received (i.e. complete outage, snowy picture, etc.);

- (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
- (4) Number of known service interruptions and the approximate length of time of each such interruption;
- (5) Average hold time for Subscriber service telephone calls that were received in the previous quarter;
- (6) Percentage of telephone calls answered within thirty (30) seconds during the previous quarter;
- (7) Percentage of telephone calls received within the previous quarter that were abandoned before being answered by a live operator; and
- (8) Percentage of time when all incoming telephone trunk lines were in a busy condition.

(b) Annual Financial Reports

Within thirty (30) days of a written request, Empire Video shall submit to the City its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Empire Video's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. Submission by Empire Video of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Empire Video Inc. shall be deemed as satisfactory compliance with this Section 5.8(b).

(c) Government Reports

Empire Video shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Empire Video has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Empire Video System within the City. Empire Video shall provide copies of such documents no later than thirty (30) days after their request.

(d) Reporting Methods

Any reporting requirements may be satisfied by system-wide statistics, except for reporting requirements related to Franchise Fees and customer complaints.

5.9 CONFIDENTIALITY

To the extent permitted under New York law, the City shall maintain as confidential any information provided to it by Empire Video under the terms of this Franchise which Empire

Video has designated in writing as confidential. In the event that the City believes at any time that it is required by law to disclose such information to a third party, the City will so notify Empire Video at a time prior to such disclosure that affords Empire Video a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

SECTION 6

COMPENSATION TO THE CITY

6.1 FRANCHISE FEES

(a) Empire Video shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Empire Video shall not deduct or otherwise credit against the Franchise Fee any tax, including property taxes and all other taxes, fees or assessments of general applicability unless allowed by applicable law. In addition, and to the extent provided in Section 622 of the Cable Act, franchise fees are separate and distinct from all other taxes, fees and assessments of general applicability.

(b) If the law changes to permit a stated Franchise Fee percentage which is greater than 5%, the City may amend the Franchise Fee percentage upon written notice to Empire Video provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Empire Video's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice.

(c) The Franchise Fee shall be compliant with the NYPSC's Franchise Standards, Section 895.1(o).

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 of the following calendar year (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Empire Video shall deposit the Franchise Fee payments electronically into an account as designated by the City.

proportionate share of the overall discount unless otherwise required by law or Generally Accepted Accounting Principles ("GAAP").

SECTION 7

SERVICES TO THE COMMUNITY

7.1 FREE SERVICES TO COMMUNITY FACILITIES

Empire Video shall, at no charge to the City, provide one (1) complimentary standard installation and complimentary standard Cable Service, including a converter box and/or any other end user equipment needed for this Cable Service, to all public facilities listed in Exhibit B. Empire Video shall not offset the cost of the complimentary installation or service against Franchise Fees.

7.2 PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNELS

(a) Empire Video shall provide to the City at least two (2) Public, Educational, and Governmental ("PEG") Access Channels in accordance with Section 611 of the Cable Act and the standards as set forth in Section 895.4 of the Rules and Regulations of the State of New York Public Service Commission ("NYPSC"). Such PEG Channels may be used for community programming related to public, educational and/or governmental activities. The City and any other municipalities served by the headend shall have complete control over the content, scheduling, administration and all other programming aspects of the PEG Channels, and may delegate such functions, or a portion of such functions, to an appropriate designee. Empire Video shall not exercise any editorial control over PEG Channel programming. Empire Video shall cablecast the activated PEG Channels so that they may be received by all Empire Video Subscribers in the City.

(b) To enable the City to utilize the PEG Channel for live programming, the City shall select one (1) location within the City's boundaries and Time Warner shall provide and install, within one hundred eighty (180) days of a written request by the City direct fiber links, including activation equipment capable of transmitting video and audio between the video origination location and the Empire Video System such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the City. This fiber link and equipment shall be collectively known as the "Return Line." The City shall be responsible for payment for the construction and installation of the Return Line, which shall be at Empire Video's cost for time and materials. Empire Video shall provide the City with a cost estimate prior to commencing construction and installation of the Return Line.

(c) The City and Empire Video further agree that all costs incurred by Empire Video for supporting such PEG Channel may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and Empire Video reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(d) Empire Video shall be responsible for maintaining the Return Line to the video origination point of the PEG Channel so long as the City provides Empire Video with access to such location and access to the PEG Channel equipment within such location.

(e) The City or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the PEG channels. The City and Empire Video agree to work cooperatively in implementing the PEG channels through such means and in such manner as shall be mutually satisfactory.

7.3 PEG CAPITAL SUPPORT FUNDING

Empire Video shall provide a one-time monetary grant to the City to be used for the purchase of equipment for the production of local PEG. The PEG capital support funding provided by Empire Video shall be in the amount of \$2,912.50. Such PEG capital support funding shall be paid within six (6) months of the Effective Date and shall not be offset against any franchise fees paid to the City. Empire Video and the City agree that the cost of such PEG capital support funding may be designated as a "cost of franchise requirements" or "external cost" as defined by the FCC.

SECTION 8 **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that Empire Video violated any provision of this Agreement, it shall notify Empire Video in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Empire Video of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Empire Video shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Empire Video must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Empire Video shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, Empire Video has not taken reasonable steps to cure the violation, then the City may deem that Time Warner is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

8.2 LIQUIDATED DAMAGES

(a) Because Empire Video's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Time Warner in the following amounts provided Empire Video has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Time Warner or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

(c) The City may assess liquidated damages against Empire Video in the following amounts provided Empire Video has had an opportunity to cure in accordance with Section 8.1 (b).

(1) For failure to comply with the technical requirements specified in Section 3.1: \$250 per day for each day the violation continues;

(2) For failure to provide and maintain Cable Service as specified in Section 3.2(a): \$250 per day for each day the violation continues;

(3) For failure to make repairs and restorations as specified in Section 3.9: \$250 per day for each day the violation continues;

(4) For failure to submit reports in a timely fashion as specified in Section 5.8: \$250 per day for each day the violation continues;

(5) For failure to provide information and related documentation in connection with any franchise fee audit/review as specified in Section 6.4: \$250 per day for each day the violation continues;

(6) For failure to provide services to community facilities as specified in Section 7.1 and Exhibit B to the Agreement: \$250 per day for each day the violation continues;

(7) For failure to comply with the requirements of the Public, Educational, and Governmental Channel as specified in Section 7.2: \$250 per day for each day the violation continues;

(8) For failure to carry all the insurance coverage required in Section 8.4: \$250 per day for each day the violation continues.

8.3 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Empire Video practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Empire Video repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Empire Video repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(4) Upon the appointment of a receiver or trustee to take over and conduct the business of Empire Video whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(i) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(ii) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Empire Video or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Empire Video shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford Empire Video due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of New York. All notice requirements shall be met by providing Empire Video at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Empire Video of mitigating circumstances

or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Empire Video.

8.4 INSURANCE

(a) Empire Video shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in New York and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Empire Video or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.4.

(c) Empire Video shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.4 and without submitting insurance certificates to the City verifying that Empire Video has obtained such alternative insurance. Empire Video shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Empire Video shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City.

8.5 INDEMNIFICATION

Empire Video shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from caused by or connected

with any act or omission of Empire Video, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Empire Video. The City shall give Empire Video timely written notice of its obligation to indemnify and defend the City. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Empire Video, the cost for such separate counsel shall be the responsibility of the City. Empire Video shall not indemnify the City for any claims to the extent resulting from acts of willful misconduct or negligence on the part of the City.

SECTION 9

MISCELLANEOUS

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Empire Video is unable in whole or in part to carry out its obligations hereunder, Empire Video shall not be deemed in violation of this Agreement during the continuance of such inability.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement, Empire Video shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Empire Video's cost.

(b) During the term of the Agreement, if Empire Video decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Empire Video to remove the property, remove the property itself and charge Empire Video with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to Empire Video.

(c) Notwithstanding the above, Empire Video shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Empire Video from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

(d) If Empire Video abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its

option, may either: (1) designate another entity to operate the Cable System temporarily until Empire Video restores service under conditions consistent with this Franchise, or until the Franchise is revoked and a new franchisee is selected by the City; or (2) obtain an injunction requiring Empire Video to continue operations. If the City designates another entity to operate the Cable System, Empire Video shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred due to Empire Video's abandonment of the System. The City shall be entitled to exercise options (1) and (2) above if:

(1) Empire Video fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the City authorizes a longer interruption of service; or

(2) Empire Video, for any period, willfully and without cause, refuses to provide Cable Service in accordance with this Franchise.

9.3 NOTICES

Every notice to be served upon or made to the City shall be sent to:

City of Batavia
One Batavia City Centre
Batavia, NY 14020
Attention: Manager

with a copy to:

Cohen Law Group
413 South Main Street - Third Floor
Pittsburgh, PA 15215
Attention: Office Manager

The City may specify any change of address in writing to Empire Video. Every notice to be served upon Empire Video shall be sent to:

Empire Video Services Corporation
34 Main St.
Prattsburgh, NY 14873

Empire Video may specify any changes of address in writing to the City. Each delivery to Empire Video or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Empire Video is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment. Additionally, Empire Video shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State of New York. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New York, County of Genesee, or in the United States District Court for the Northern District of New York.

9.7 DISPUTE RESOLUTION

(a) Arbitration

(1) Any dispute between the parties hereto, including but not limited to, disputes or controversies arising from or related to interpretation of this Agreement, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration shall be final and binding, and the parties shall have no right to appeal from the arbitrator's decision. The Process for resolving disputes regarding franchise fee audits or reviews shall be in accordance with Section 6.4 above.

(2) The City may initiate arbitration by resolution of its City Council, while Empire Video may initiate arbitration by sending written notice to the City.

(3) After arbitration has been initiated, the City and Empire Video may agree that one arbitrator may conduct the arbitration and may mutually select such arbitrator.

(4) If either the City or Empire Video does not consent to having one arbitrator conduct the arbitration or if the parties cannot agree upon the identity of such arbitrator, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(i) If the City initiates arbitration, the City shall select one arbitrator and Empire Video by written notice shall select one arbitrator within fifteen (15) days after receiving notice of the City's selected arbitrator. If Empire Video initiates

arbitration, it shall select one arbitrator, and the City shall select one arbitrator within fifteen (15) days after receiving notice of the Empire Video's selected arbitrator.

(ii) The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Genesee County Court of New York.

(5) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than one hundred twenty (120) days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Empire Video. The arbitrator(s) shall make a written report to the City and Empire Video on the final determination within thirty (30) days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. The arbitration shall be conducted according to the Uniform Arbitration Act.

(6) The City and Empire Video shall share equally and separately the fees and costs of the arbitrator(s).

(b) Mediation

The City and Empire Video agree that, should any dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, the dispute may be submitted to mediated negotiation prior to any party commencing arbitration or litigation. The process for resolving disputes regarding franchise fee audits or reviews shall be in accordance with Section 6.4 above. In such event, the City and Empire Video may agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the City and Empire Video are unable to successfully conclude the mediation within sixty (60) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other party. After written termination notice has been received by the other party, either party may request arbitration, as set forth in Section 9.7(a), or may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the parties.

9.8 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither Empire Video nor its parent nor any Affiliated Entity shall transfer or assign, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Empire Video nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Time Warner nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than fifty percent (50%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Empire Video in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Empire Video.

(e) Empire Video shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City may request additional information it needs to make an informed decision on the transfer or assignment as provided in FCC regulations. The City shall have such time as provided in FCC regulations to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

(g) The City herein consents to a transfer of control to Charter Communications, Inc. pursuant to an agreement of May 23, 2015 among Empire Video Inc., Charter Communications, Inc. and other parties.

9.9 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Empire Video. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein. This Agreement may be amended only by the mutual consent of the City and Empire Video and in accordance with the regulations of the NYPSC. Any amendment must be in writing and executed by the City and Empire Video.

9.10 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.11 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Empire Video may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Empire Video may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Empire Video and by the NYPSC.

9.12 COMPLIANCE WITH LAWS

Empire Video shall comply with all federal, state and, to the extent not inconsistent with the terms of this franchise, local laws and regulations.

9.13 APPROVAL OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

All terms and conditions contained herein are subject to the approval of the New York State Public Service Commission.

9.14 FILING OF FRANCHISE WITH COMMISSION

Empire Video shall file this Agreement and other requisite information with the New York State Public Service Commission requesting operating authorization within sixty (60) days of the City's passage of this Franchise.

9.15 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.16 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Empire Video, the City and their respective successors and assigns. This Agreement is authorized by Ordinance No. _____ dated _____, 2016 of the City Council.

WITNESS our hands and official seals to this Cable Franchise Agreement.

CITY OF BATAVIA

By: _____

Name: _____

Title: _____

Date: _____

EMPIRE VIDEO SERVICES CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CUSTOMER SERVICE STANDARDS

1. DEFINITIONS

(a) "Basic channel" shall mean any channel which is provided as part of the basic service tier.

(b) "Billing dispute" shall mean a disagreement between a subscriber and a cable television company concerning:

- (1) credits for payments made by the subscriber to the cable television company;
- (2) credit or refund for service outage;
- (3) errors in billing amount; or
- (4) assessment of late charges.

(c) "Home wiring" shall mean the internal wiring contained within premises of a subscriber which does not include any active elements such as amplifiers, converters or decoder boxes or remote control units.

(d) "Collection charge" shall mean a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account by personal visit at a subscriber's home or place of business.

(e) "Commission" shall mean the New York State Public Service Commission,

(f) "Downgrade charge" shall mean a charge imposed upon a subscriber for implementing a request by the subscriber for a change in service to a less expensive tier than the tier currently subscribed to.

(g) "Late charge" shall mean a charge which is added to a cable television subscriber's account or bill for nonpayment of a previously due account.

(h) "Local office" shall mean the business office of the cable television company serving the municipality in which a billing dispute arises.

(i) "Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

(j) "Normal operating conditions" shall mean those service conditions which are within the control of a cable company. Those conditions which are not within the control of a cable company include, but are not limited to, natural disasters, civil disturbances, power outages,

telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a cable company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, channel and/or service alterations, and maintenance or upgrade of the cable system.

(k) "Service call" shall mean any work at a subscriber's premises which requires the presence of a cable television company representative and the subscriber, including but not limited to, installations, and reconnections.

(l) "Service interruption" shall mean the loss of picture or sound of one or more cable channels.

(m) "Service outage" shall mean a loss of picture or sound on all basic channels or on all channels provided on any other service tier or on one or more premium channels occurring during normal operating conditions which is not caused by the subscriber's television receiver or the subscriber.

(n) "Subscriber complaint" shall mean a notice to the commission from a cable television subscriber, whether in writing, by telephone or electronic mail, concerning an unresolved billing service or other service related matter affecting the complaining subscriber directly.

2. SUBSCRIBER COMPLAINT PROCEDURES TO EMPIRE VIDEO

Time Warner shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Time Warner shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Time Warner promptly and in writing. When Time Warner receives such notification, the time period for Time Warner to respond as required by Section 2(a) shall commence. If the City notifies Time Warner in writing, then Time Warner shall respond in writing within the time period specified in Section 2(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Time Warner has the option of withholding the disputed amount, without a late fee or disconnection, until Time Warner has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Time Warner in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Time Warner shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

3. EMPIRE VIDEO HOME SERVICE CALLS

Empire Video shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Empire Video employee, agent, or cable contractor, including any subcontractor, shall prominently display the Empire Video or cable contractor logo.

4. BILLING PRACTICES; BILLING PERIOD

(a) (1) Every cable television company shall adopt billing practices in compliance with sections 1 and 4 through 8 of this Exhibit A and shall provide notice to subscribers in accordance with section 10(e) of this Exhibit A.

(2) Every cable television company:

(i) shall file copies of its billing practices and payment requirements with the commission; and

(ii) shall maintain copies thereof on file in its local office for public inspection for a period of two years.

(b) Billing practices may include the opportunity for advance billing.

(c) Billing practices shall provide that a subscriber, upon request, shall be given the option of paying monthly. Use of coupon books for the remittance of monthly payments shall satisfy the monthly payment option request. If such coupon books are used by a cable television company, no other bills for service are required to be sent to subscribers.

5. BILL FORMAT, LATE CHARGES, COLLECTION CHARGES, RECONNECT CHARGES, AND DOWNGRADE CHARGES

(a) Each subscriber bill shall be clear, concise and understandable and shall:

(1) (i) include the name, address and telephone number of the cable television company; and

(ii) the toll free subscriber assistance telephone number of the

commission identified as "Unresolved Inquiries, NYS Public Service Commission" or otherwise as may be approved by the commission upon specific request by a cable company;

(2) itemize each category of service including, but not limited to, basic service, cable programming services, per channel premium services, and pay-per-view programming, and each piece of equipment for which a charge is imposed;

(3) state the billing period and clearly delineate all activity during the billing period, including but not limited to, the amount of current billing and appropriate credits or rebates, optional charges, late charges and past due balances, if any.

(b) Each subscriber bill shall specify a minimum time for payment which shall not be less than 15 days from mailing of the bill.

(c) Any late charge permitted by law or by the franchise, if imposed upon the subscriber, shall be itemized on the subscriber's bill, or notice of delinquent payment in cases where coupon books are used.

(d) If a late charge is to be imposed, it shall not be imposed sooner than 45 days after the mailing of the bill to the subscriber or the due date, if coupons are used.

(e) No cable television company shall impose a collection charge upon any subscriber, except as prescribed in Section 8(e) of this Exhibit A.

(f) No cable television company shall impose a charge for the reconnection of service, the amount of which is based solely upon a consideration of whether the subscriber was previously in arrears for an amount due said company.

(g) A cable television company may impose a downgrade charge upon the conditions and in the circumstances as follows:

(1) subscribers have been notified of such charge in writing in at least 10 point type;

(2) the charge does not exceed the amount permitted under applicable State or Federal law or regulation; and

(3) the downgrade was not requested by a subscriber affected by a significant programming change or a network change which included a retiering of service or a rate change within 30 days of the receipt by the subscriber of:

(4) a notice required by Section 10(b)(4) and (c)(4) of this Exhibit A;
or

(5) a notice of retiering or rate change as required by Section 10(a) of this Exhibit A.

6. BILLING DISPUTES, AUXILIARY EQUIPMENT, CREDITS, AND REFUNDS

(a) Every cable television company shall establish procedures for the prompt investigation of any billing dispute. The procedures shall provide for a period of at least 30 days from the date of receipt of the bill for the subscriber to file a timely complaint. The procedures shall provide that the subscriber remit the undisputed portion of the bill in question pending resolution of the portion in dispute and that the subscriber shall be responsible for paying the undisputed portion of current and future bills.

(b) Cable television service shall not be discontinued due solely to nonpayment of the portion in dispute during the period allowed herein for investigation of a billing dispute.

(c) If the billing dispute is not resolved within 30 days of the date it is received by the company, the subscriber may refer the matter to the commission in accordance with the provisions of Section 9 of this Exhibit A. If referral is not made within 30 days, the company may commence its disconnection procedures in accordance with Section 8 of this Exhibit A.

(d) The cable television company shall retain all billing complaint records for at least one year.

(e) When a cable television company supplies auxiliary equipment such as a converter or other modifying device to a subscriber the company can expect reasonable care of such equipment by the subscriber. A cable television company shall notify the subscriber and the commission in writing of any charges to subscribers for lost, stolen or damaged converters. In the event such equipment is lost, stolen or damaged, and the cable television company seeks to charge the subscriber for such equipment, the company shall give written, dated notice to the subscriber of the amount sought to be collected from the subscriber and the subscriber's opportunity to refer the matter to the commission in accordance with the provisions of Section 9 of this Exhibit A.

(f) Refund checks will be issued promptly but no later than:

(1) the subscriber's next billing cycle following a determination that a refund is warranted or 30 days after such determination, whichever is earlier; or

(2) the subscriber's next billing cycle after the return of equipment supplied by the cable company if service is terminated or 30 days after the return of the equipment, whichever is earlier.

(g) Credits for service will be issued not later than the subscriber's next billing cycle following a determination that a credit is warranted.

7. CREDIT FOR SERVICE OUTAGES

(a) Every cable television company shall provide credit to subscribers affected by any service outage in excess of four continuous hours in accordance with subdivisions (b) and (c) of this section. The four-hour period shall commence at the time the cable television company first becomes aware of the service outage.

(b) Whenever a cable television company may reasonably determine the existence and scope of a service outage as, for example, a service outage caused by a major failure in the system's headend or distribution electronic equipment, which service outage exceeds four continuous hours and some part of which occurs during the hours 6:00 p.m. to 12:00 a.m., the cable television company shall automatically credit the account of each affected subscriber.

(c) In the event a cable television company cannot determine all subscribers affected by a service outage in excess of four continuous hours or no part of such outage occurs during the hours of 6:00 p.m. to 12:00 a.m., credit shall be given to any eligible subscriber who makes application therefor by either written or oral notice within 90 days of such service outage.

(d) The minimum credit for a service outage shall be equal to one thirtieth times the applicable monthly charge for each 24-hour period during which a service outage continues for at least four hours.

(e) A cable television company shall be responsible for every service outage except for interruption of programming to provide emergency information to the public using the Emergency Alert System as defined in section 896.5 of the NYSPSC Cable Television Regulations.

8. DISCONTINUANCE OF SERVICE FOR NONPAYMENT

(a) A cable television subscriber shall not be considered delinquent in payment until at least 45 days have elapsed from the mailing of the bill to the subscriber or from the due date, if coupons are used, and payment has not been received by the cable television company.

(b) No cable television company shall physically or electronically discontinue service for nonpayment of bills rendered for service until:

(1) the subscriber is delinquent in payment for cable television service; and

(2) at least five days have elapsed after a separate written notice of impending discontinuance has been served personally upon a subscriber; or

(3) at least eight days have elapsed after mailing to the subscriber a separate written notice of impending discontinuance (for which postage has been paid by the cable television company), addressed to such person at the premises where the subscriber requests billing; or

(4) at least five days have elapsed after a subscriber has either signed for or refused a certified letter (for which postage has been paid by the cable television

company), containing a separate written notice of impending discontinuance addressed to such person at the premises where the subscriber requests billing.

(c) Notice of service discontinuance shall clearly state the amount in arrears, the total amount required to be paid to avoid discontinuance of service, reconnection charges, if applicable, and the manner and date by which, and the place where, such payment must be made.

(d) No cable television company shall disconnect service for nonpayment on a Sunday, public holiday or a day when the local office of the company is not open for business without providing an opportunity for the subscriber to pay the amount in arrears on such date.

(e) When a cable television company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill provided all other applicable provisions of this section have been followed.

(f) Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment, and no cable television company shall be required to provide additional notice prior to discontinuance.

9. SUBSCRIBERS' COMPLAINTS TO THE COMMISSION; PROCEDURE

(a) A subscriber complaint will be processed by the commission after the subscriber has first attempted to resolve the particular matter with the cable television company. The procedure with respect to such complaints shall be as follows:

(1) A copy of the complaint together with a written notice requesting a statement concerning the matter described therein shall be served on the cable television company. Within 10 days, or such other period as may be specified in the notice, the cable television company shall submit a written response to the commission and shall serve a copy of said response on the complainant. The response must contain a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the matter complained of. If the subject of the complaint is the failure of the company to provide cable television service to a potential subscriber who has requested service, the commission may require the cable television company to provide, in addition to the information required by this paragraph, a map of the franchised area indicating information requested by the commission.

(2) Complaints received by the commission by telephone shall be recorded and kept on file. Where the nature of a telephone complaint warrants, the commission may request written information from the complainant. In such cases, the commission shall follow the procedure specified in paragraph (1) of this subdivision.

(3) Where numerous complaints are made, concerning a particular cable television company or where it appears that complaints have not been satisfactorily

resolved by a particular company, the commission may make further inquiry of said company, which may be formal or informal, and which may include a hearing or oral argument, or both.

(b) Every cable television company shall adopt and file with the commission, in writing, its procedures for reporting and the resolution of subscriber complaints, which procedures may be in such form and contain such provisions as the company deems necessary, provided they are not in conflict with any procedures, rules or regulations of the commission. Every cable television company shall provide notice to subscribers of such procedures in accordance with Section 10(f) of this Exhibit A.

(c) (1) The commission may delegate by written notice to any of its officers or employees authority pursuant to this section to investigate, hear and resolve subscriber complaints concerning disputed bills, charges, deposits, service problems and other subscriber-related problems. Such authority shall include the authority to conduct informal hearings. Except in the instance of an appeal by any party, disposition of unresolved complaints will be determined by such officers or employees of the commission as the commission designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make a determination by conversation with the complainant or his or her representative, by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the cable television company (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant, accompanied and assisted by such friend, advisor or attorney as he or she desires, and company representatives are present. Officers or employees designated to consider complaints will afford both the complainant and the cable television company a fair and reasonable opportunity to present evidence pertinent to the complaint and to challenge evidence submitted by the other party to the dispute. The complainant or cable television company complained of may obtain a written statement of the determination, including a statement of the brief reason for the conclusion. The party adversely affected by the determination of the officer or employee designated to consider the complaint may appeal to the commission. Any such appeal shall be in writing filed with the commission within 20 days of receiving notice of the determination and shall set forth the specific basis for claiming error.

(2) After receipt of the response to a complaint, and where the procedures described in paragraph (1) of this subdivision are not applicable or cannot reasonably resolve the issues raised by a complaint, the commission, on its own initiative, the recommendation of staff or the request of the complainant or cable television company, may hold a hearing upon reasonable advance notice to all interested parties.

(3) Pending resolution of a complaint, the commission may require appropriate interim relief to either party. In the case of complaints regarding bills or deposits, the commission, without hearing or formal order, may, and in the absence of unusual circumstances shall, preclude discontinuance of service or the issuance of any notice of discontinuance during the commission's investigation of such complaint, upon such terms and conditions as it deems

appropriate.

10. TELEPHONE AVAILABILITY AND ANSWER STANDARDS; CUSTOMER SERVICE CENTERS

(a) Every cable television company shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week, provided, that after normal business hours, the access line may be answered by an answering service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

Trained company representatives must be available to respond to callers during normal business hours.

(b) Every cable television system, except a small cable television system, under normal operating conditions, shall meet the following telephone answer standards no less than 90 percent of the time, measured on a quarterly basis:

(1) telephone answer time by trained company representatives, including wait-time, shall not exceed 30 seconds from when the connection is made;

(2) if a call needs to be transferred, transfer time shall not exceed 30 seconds;

(3) callers will receive a busy signal less than three percent of the time.

(c) Information to demonstrate compliance with the telephone answer standards in subdivision (b) of this section shall be reported to the commission for normal business hours on an annual basis and shall include:

(1) the total number of days trained company representatives were available to receive incoming calls;

(2) the total number of calls received on such days;

(3) the average length of time a caller waits on hold before reaching a trained company representative;

(4) the total number of calls abandoned by incoming callers;

(5) the percentage of time callers received a busy signal; or

(6) or such other information that will document compliance with such standards.

(d) Every cable television company required to file the information specified in subdivision (c) of this section must maintain for a period of one year, a summary of records

sufficient to measure and verify compliance with telephone answer standards on a quarterly basis.

(e) Annual reports on telephone answer standards shall be filed with the commission on or before January 31st of each year for the previous calendar year. Any cable television system that routinely meets or exceeds the standard in subdivisions (a) and (c) of this section may petition the commission for a waiver of the reporting requirements of this section. This waiver does not excuse a cable company from maintaining service records, subject to review by the Commission, on a quarterly basis.

(f) A cable television system will not be required to acquire equipment or perform surveys to measure compliance with telephone answer and service standards unless an historical record of complaints indicates a clear failure to comply.

(g) Customer service centers and bill payment sites shall be conveniently located and open at least during normal business hours.

11. INSTALLATIONS, OUTAGES, AND SERVICE CALLS

(a) Whenever a service call is not started within the scheduled "appointment window", as established pursuant to paragraph (3) of subdivision (b) of this section, the subscriber shall not be charged for such service call, including any installation or reconnection scheduled to be performed, unless the service call was rescheduled with the subscriber's consent before the close of business on the business day prior to the day of the scheduled "appointment window".

(b) All cable television systems under normal operating conditions, shall meet no less than 95 percent of the time, measured on a quarterly basis, the following service standards:

(1) standard installations of up to 150 feet from existing aerial distribution plant shall be performed within seven business days after an order is placed unless a subscriber requests a particular date beyond seven business days;

(2) excluding conditions beyond control of the cable company, a cable television system will:

(i) begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known; and

(ii) begin actions to correct other service problems the next business day after notification of the service problem or trouble call;

(3) the appointment window alternatives for service calls will be either:

(i) a specific time;

(ii) morning or afternoon hours;

(iii) a four-hour block of the time during normal business hours;

(iv) evenings or Saturdays during normal business hours; or

(v) at the option of the cable television company a specific time or block of time outside of normal business hours for the express convenience of the customer; and

(4) if a cable company representative is likely to be late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as soon as possible, at a time which is convenient for the customer consistent with paragraphs (1) and (2) of this subdivision.

(c) Information to demonstrate compliance regarding the service standards contained in subdivision (b) of this section, measured on a quarterly basis, shall be reported to the commission and shall at a minimum include:

(1) number of requests for standard installations and the number of such installations actually performed within 7 business days;

(2) number of service interruptions and number of service interruptions responded to within and after 24 hours after notification;

(3) number of service calls to subscribers' residences and the number of such calls completed within the appointment window;

(4) number of installations or service calls rescheduled; and

(5) number of credits issued for missed service calls to subscribers' premises, or such other information that will document compliance with such standards.

(d) Service reports shall be filed annually with the commission on or before January 31st of each year for the previous calendar year. Cable systems that routinely meet or exceed the requirements of subdivisions (a) and (b) of this section may petition the commission for a waiver of the report requirements of this section. This waiver does not excuse a cable company from maintaining service records on a quarterly basis, which are subject to review by the Commission.

(e) Reports of service or trouble calls by cable television systems shall be made available, upon request, and for a period not to exceed 90 days from such service or trouble call as follows:

(1) For each trouble call reported by a single subscriber, the cable television system shall identify:

(i) the subscriber;

(ii) the date and approximate time the trouble call was received;

- (iii) the date and approximate time of the response to the trouble call;
- (iv) the corrective steps taken (if any required);
- (v) the date the trouble call is closed; and
- (vi) identification of the technician or repair person.

(2) A report on each service outage shall include the following data:

- (i) brief description of the area affected sufficient to allow the later determination of the approximate number of subscribers affected;
- (ii) date and approximate time of failure;
- (iii) cause of failure; and
- (iv) date and time service was restored.

12. REMOVAL OF HOME WIRING

Upon voluntary termination of cable service by a subscriber, a cable television company shall not remove cable home wiring in which it claims ownership unless it gives the subscriber the opportunity to acquire the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the home wiring multiplied by the length in feet of such wiring. If the subscriber declines to acquire the cable home wiring, the cable television company must then remove it within thirty seven days or make no subsequent attempt to remove it or to restrict its use. Every cable television company shall provide notice to subscribers of the provisions of this section in accordance with Section 10(j) of this Exhibit A.

13. "NEGATIVE OPTION" PROMOTIONAL PRACTICES

(a) No cable television company may bill any subscriber for any service not affirmatively requested by the subscriber.

(b) For purposes of this section, a subscriber's affirmative request need not be in writing, but any cable television company relying on an oral affirmative request shall keep accurate records of the date on which, and the employee to whom, the request was made.

(c) For purposes of this section, a subscriber shall be deemed to have affirmatively requested a service if (1) the subscriber voluntarily makes payment for such service after an initial free trial period, and (2) there was included, in the notice or advertising material describing the service, a statement clearly advising the subscriber that he has incurred no obligation to pay for such service and that he need not take any action to avoid incurring any such obligation.

15. PRIVACY

(a) Notice To Subscriber Regarding Personally Identifiable Information; Definitions

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall

provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information:

(A) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(B) the period during which such information will be maintained by the cable operator;

(C) the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(D) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h) of this section—

(A) the term “personally identifiable information” does not include any record of aggregate data which does not identify particular persons;

(B) the term “other service” includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term “cable operator” includes, in addition to persons within the definition of cable operator in section 522 of this title, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b) Collection Of Personally Identifiable Information Using Cable System

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

A. obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

B. detect unauthorized reception of cable communications.

(c) Disclosure of Personally Identifiable Information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—
i. extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or
ii. the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(d) Subscriber Access To Information

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) Destruction Of Information

A cable operator shall destroy personally identifiable information if the information is no

longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order.

(f) Civil Action In United States District Court; Damages; Attorney's Fees And Costs; Nonexclusive Nature Of Remedy

(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Regulation By States Or Franchising Authorities

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Disclosure Of Information To Governmental Entity Pursuant To Court Order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

EXHIBIT B
COMMUNITY FACILITIES TO RECEIVE FREE CABLE SERVICE

City of Batavia

Batavia High School
260 State Street
Batavia, NY 14020

Batavia Middle School
96 Ross Street
Batavia, NY 14020

John Kennedy Intermediate School
166 Vine Street
Batavia, NY 14020

Jackson Primary School
411 S. Jackson Street
Batavia, NY 14020

City Hall
One Batavia City Centre
Batavia, NY 14020

Police Station
10 W. Main Street
Batavia, NY 14020

Fire Station
18 Evans Street
Batavia, NY 14020

Water Treatment Plant
480 Lehigh Avenue
Batavia, NY 14020

Waste Water Treatment Plant
5 Tredeasy Drive
Batavia, NY 14020

Youth Bureau
12 MacArthur Drive
Batavia, NY 14020

Bureau of Maintenance
147 Walnut Street
Batavia, NY 14020