

AGENDA
FEBRUARY 1, 2012
BOARD OF TRUSTEES
VILLAGE OF BRIARCLIFF MANOR, NEW YORK
REGULAR MEETING – 7:30 PM

Board of Trustees Announcements

Village Managers Report

Public Comments

1. Authorize Village Manager to Execute Agreements
 - a) Cable Franchise Agreement – Cablevision
 - b) North East Special Recreation
2. Election Inspectors for Annual Village Election 2012
3. Fire Department Membership
4. Minutes
 - November 16, 2011 – Regular Meeting
 - January 4, 2012 – Regular Meeting
 - January 11, 2012 – Special Meeting
 - January 18, 2012 – Special Meeting

NEXT REGULAR BOARD OF TRUSTEES MEETING – FEBRUARY 15, 2012

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
FEBRUARY 1, 2012

1A. CABLE TELEVISION FRANCHISE AGREEMENT WITH CABLEVISION

RESOLUTION AUTHORIZING THE VILLAGE OF BRIARCLIFF MANOR TO RENEW A CABLE FRANCHISE AGREEMENT WITH CABLEVISION OF WAPPINGERS FALLS, INC., TO OPERATE A CABLE SYSTEM IN THE VILLAGE OF BRIARCLIFF MANOR

WHEREAS, the Village of Briarcliff Manor (the "Village") is a "franchising authority" in accordance with Title VI of the Communications Act of 1934, (the "Communications Act"), and is authorized to grant one or more nonexclusive cable television franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended (collectively the "Cable Laws");

WHEREAS, the Village, granted a franchise renewal to American Cable Systems, Inc. d/b/a Continental Cablevision ("Continental") on March 2, 1995; and

WHEREAS, Continental was acquired by U. S. West, Inc., in 1996 and renamed MediaOne Group, Inc. and;

WHEREAS, on May 6, 1999, MediaOne Group, Inc. merged with Meteor Acquisitions, Inc., a wholly owned subsidiary of AT&T Corp. ("AT&T") to become Meteor Acquisition Group, Inc. d/b/a MediaOne of New York, Inc., a wholly owned subsidiary of AT&T; and

WHEREAS Cablevision of Wappingers Falls, Inc. ("Franchisee"), or its predecessor, with the approval of both the Village and the New York State Public Service Commission ("Commission"), acquired certain assets from AT&T, including the cable system and franchise in the Village on April 18, 2000; and,

WHEREAS, Franchisee has submitted a proposed Franchise Renewal Agreement to operate a cable system within the Village; and

WHEREAS, The Village and Franchisee have mutually agreed to the terms of a Franchise Renewal Agreement; and

WHEREAS, the Village has determined that the Franchisee is and has been in substantial compliance with all terms/provisions of its existing franchise and applicable law; and

WHEREAS, the Village has determined that Franchisee has the requisite legal, technical and financial capabilities to operate a cable system within the Village and that Franchisee's proposal for renewal of the franchise meets the cable related needs of the Community; and

WHEREAS, a duly noticed Public Hearing, affording an opportunity for all those interested parties within the Village to be heard on the proposed Franchise Renewal Agreement, was held before the Village on January 4, 2012.

NOW, THEREFORE, be it

RESOLVED, that the Village Board of Trustees determines that it is in the best interest of the public to award a Franchise Renewal Agreement to the Franchisee; and be it

FURTHER RESOLVED that the Village Board of Trustees concludes that the terms of Franchise Renewal Agreement is reasonably comparable in its totality with the terms of the Agreement between the Village and Verizon NY, Inc., (Case # 07-V-1524, confirmed by the Commission on January 18, 2008), and does not contain economic or regulatory burdens which, when taken as a

whole, are greater or lesser than those burdens placed upon the party to the other agreement, or any other cable television franchisee operating in the same franchise area; and, with regard to the provision of facilities and support for Public, Educational and Governmental Access are competitively neutral; and be it

FURTHER RESOLVED that the Board of Trustees hereby authorizes the Mayor or Village Manager to enter into a Franchise Renewal Agreement with Cablevision of Wappingers Falls, Inc., and to execute any other documents necessary to effectuate the granting of the franchise renewal on behalf of the Village of Briarcliff Manor.

Dated: _____, 2012

CABLE FRANCHISE AGREEMENT
BY AND BETWEEN
THE VILLAGE OF BRIARCLIFF MANOR, NEW YORK
AND
CABLEVISION OF WAPPINGERS FALLS, INC.

TABLE OF CONTENTS

| <u>ARTICLE</u> | <u>PAGE</u> |
|--|--------------------|
| 1. DEFINITIONS..... | 2 |
| 2. GRANT OF AUTHORITY | 6 |
| 3. PROVISION OF CABLE SERVICE | 8 |
| 4. SYSTEM FACILITIES | 9 |
| 5. PEG SERVICES | 10 |
| 6. FRANCHISE FEES | 12 |
| 7. REPORTS AND RECORDS | 13 |
| 8. INSURANCE AND INDEMNIFICATION | 15 |
| 9. TRANSFER OF FRANCHISE..... | 17 |
| 10. RENEWAL OF FRANCHISE..... | 17 |
| 11. ENFORCEMENT AND TERMINATION OF FRANCHISE | 18 |
| 12. MISCELLANEOUS PROVISIONS..... | 19 |

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Connection and Origination Points

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Village of Briarcliff Manor, a validly organized and existing political subdivision of the State of New York (the “Local Franchising Authority” or “LFA”) and Cablevision of Wappingers Falls, Inc., a corporation duly organized under the applicable laws of the State of New York (the “Franchisee”).

WHEREAS, the LFA wishes to grant Franchisee a renewal of its nonexclusive franchise to construct, install, maintain, extend and operate a cable system in the Franchise Area as designated in this Franchise;

WHEREAS, the LFA is a “franchising authority” in accordance with Title VI of the Communications Act, (see 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended;

WHEREAS, Franchisee has completed the upgrade of its existing telecommunications and information services network through the installation of a hybrid coaxial-fiber network (“Fiber Network”) in the Franchise Area which transmits both the Cable and Non-Cable Services, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

WHEREAS, the Fiber Network will occupy the Public Rights-of-Way within the LFA, and Franchisee desires to use portions of the Fiber Network to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s Cable System is adequate and feasible in a full public proceeding affording due process to all parties;

WHEREAS, The LFA believes that the Franchisee is and has been in substantial compliance with all terms/provisions of its existing franchise and applicable law;

WHEREAS, the LFA has found Franchisee to be financially, technically and legally qualified to continue to operate the Cable System;

WHEREAS, the LFA has determined that in accordance with the provisions of the Cable Law, this Franchise complies with NY PSC’s franchise standards and the grant of a nonexclusive franchise to Franchisee is consistent with the public interest;

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions;

NOW, THEREFORE, in consideration of the LFA’s grant of a renewal franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the

terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel*: A video Channel, which Franchisee shall make available to the LFA without charge for Public, Educational, or Governmental noncommercial use for the transmission of video programming as directed by the LFA.

1.2 *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.3 *Basic Service*: Any service tier which includes the retransmission of primary local television broadcast signals as well as, to the extent required by applicable law, the PEG Channels required by this Franchise.

1.4 *Bundled Service*: The offering of Cable Services with any Non-Cable Service offering for a single aggregate price.

1.5 *Cable Law*: Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.

1.6 *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as amended.

1.7 *Cable System or System*: Shall be defined herein as the facility, which is the subject of this Franchise, consisting of antennae, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receiver/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing analog and/or digital audio, video, data or other forms of electronic, electromechanical, optical or electrical signals.

1.8 *Channel*: A portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel.

1.9 *Communications Act*: The Communications Act of 1934, as amended.

1.10 *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

1.11 *Educational Access Channel*: An Access Channel available for noncommercial use solely by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C. to this Agreement.

1.12 *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.13 *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service, or monitor utility poles to which Franchisee's Fiber Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.14 *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA, and such additional areas that may be annexed or acquired.

1.15 *Franchisee*: Cablevision of Wappingers Falls, Inc. and its lawful and permitted successors, assigns and transferees.

1.16 *Government Access Channel*: An Access Channel available for the sole noncommercial use of the LFA.

1.17 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand and pay-per-view; (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the

exceptions below. The allocation of advertising revenue shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

Gross Revenue shall not include: Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders as amended; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.18 *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), as amended.

1.19 *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.20 *Local Franchise Authority (LFA)*: The Village of Briarcliff Manor, New York, or the lawful successor, transferee, or assignee thereof.

1.21 *Local Law*: Village of Briarcliff Manor's General Code (Chapter 100) (Cable Television) adopted 9-11-1969 by Ord. No. 159, as amended from time to time.

1.22 *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.23 *Normal Business Hours*: 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.

1.24 *NY PSC*: The New York Public Service Commission.

1.25 *PEG*: Public, Educational, and Governmental.

1.26 *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.27 *Public Access Channel*: An Access Channel available for noncommercial use solely by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

1.28 *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.29 *Service Area*: All portions of the Franchise Area where Cable Service is being offered as described in **Exhibit B** attached hereto.

1.30 *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.31 *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), as amended.

1.32 *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.33 *Transfer of the Franchise*:

1.33.1 Any transaction in which:

1.33.1.1 a fifty percent ownership or greater interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

1.33.1.2 the rights held by Franchisee under the Franchise and the certificate of confirmation issued therefor by the NY PSC are transferred or assigned to another Person or group of Persons.

1.33.2 However, notwithstanding Sub-subsections 1.33.1.1 and 1.33.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.34 *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), as amended.

2. GRANT OF AUTHORITY: LIMITS AND RESERVATIONS

2.1 *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Law, the LFA hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 *The Fiber Network*: Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3 *Effective Date and Term*: This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be eleven (11) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

2.4 *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere, with existing facilities of the Cable System or Franchisee's Fiber Network.

2.5 *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, including but not limited to the Communications Act.

2.6 *No Waiver:*

2.6.1 The failure of the LFA on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state or federal law, or to require compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse Franchisee from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2 The failure of the Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or such performance has been specifically waived in writing.

2.7 *Construction of Agreement:*

2.7.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545, as amended.

2.7.3 Should any change in state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, the Franchisee may terminate this Agreement without further obligation to the LFA, or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8 *Local Authority:* Nothing in this Agreement shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of its police power including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the LFA may deem necessary in the exercise of its police power; provided, however, that such laws and regulations are reasonable, not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations, and orders. The LFA acknowledges that it

will be unnecessary to enforce the provisions of LFA's Local Law, and LFA expressly waives all of the provisions and powers of LFA's Local Law.

2.9 *Restoration of Municipal Property:* Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Franchisee and restored to pre-existing condition at Franchisee's expense.

2.10 *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, that Subscriber's premises are restored to pre-existing condition if damaged by the Franchisee's employees or agents in any respect in connection with the installation, repair, or disconnection of Cable Service.

3. **PROVISION OF CABLE SERVICE**

3.1 *Service Area:*

3.1.1 *Service Commitment Area:* Franchisee shall continue to offer Cable Service to all residential Subscribers in the Service Area, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in developments or buildings that are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis; (G) in areas where the occupied residential dwelling unit density does not meet the density and other requirements set forth in Sub-subsection 3.1.1.1. and Section 3.2; and (H) to Subscribers who fail to abide by the Franchisee's terms and conditions of service.

3.1.1.1 *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than twenty five (25) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active Fiber Network trunk or feeder line. Should, through new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.2 *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income of the residents in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's Fiber Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the

actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility.

3.3 *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred fifty (150) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred fifty (150) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred fifty (150) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged; provided, however that if such equipment becomes defective, Franchisee shall replace it consistent with the Franchisee's terms and policies for the provision of equipment to residential Subscribers.

3.4 *Contribution in Aid:* Notwithstanding the foregoing, Franchisee shall comply at all times with the requirements of Section 895.5 of the NY PSC rules and regulations.

4. **SYSTEM FACILITIES**

4.1 *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

4.2 *System Characteristics:* During the term hereof Franchisee's Cable System shall meet or exceed the following requirements:

4.2.1 The System shall be designed and operated to provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

4.2.2 The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

4.3 *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may

be made by direct cable connection, microwave link, satellite, or other appropriate methods, to the extent required by law and voluntarily agreed upon by Franchisee.

4.4 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC and the State of New York, including the NY PSC’s rules and regulations and the current New York EAS Plan, in order that emergency messages may be distributed over the System.

5. **PEG SERVICES AND FRANCHISE GRANT**

5.1 *PEG Set Aside:*

5.1.1 In order to ensure universal availability of public, educational and government programming, Franchisee shall provide capacity for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and one (1) dedicated Government Access Channel (collectively, “PEG Channels”). If required by applicable law, the PEG Channels shall be provided on Franchisee’s Basic Service tier.

5.1.2 The programming to be carried on each of the PEG Channels set aside by the Franchisee is reflected in **Exhibit C** attached hereto. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall inform Franchisee in accordance with NY PSC rules and regulations.

5.1.3 Franchisee shall provide the technical ability to play back pre-recorded programming provided to Franchisee consistent with this Section. Franchisee shall transmit programming consistent with the dedicated uses of PEG Access Channels. Franchisee shall comply at all times with the requirements of Section 895.4 of the NY PSC rules and regulations.

5.2 *PEG Access Connections:*

5.2.1 LFA shall designate in its sole discretion those sites within the Franchise area for the connection of PEG access facilities with the Cable System (“PEG Access Connection Sites”), defined and identified on **Exhibit D** to this Agreement.

5.2.2 Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Connection Sites (as set forth in **Exhibit D**) in order to permit the signals to be correctly routed from the PEG Access Interconnection Site to the appropriate PEG Access Channel for distribution to Subscribers.

5.2.3 The LFA shall provide the Franchisee at each PEG Access Connection Site a suitable video signal for each PEG Channel. Franchisee, upon receipt of the suitable video

signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of the LFA's failure to cooperate or provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify the LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4 Such upstream transmission provided by Franchisee shall comply with applicable standards governing the transport and distribution of PEG signals to Subscribers. Channel or channels provided by Franchisee for PEG services shall provide transmission quality comparable to the transmission quality of other channels included in the Basic Service Tier, subject to limitations, if any, in the quality of the signal as received by the Franchisee.

5.2.5 If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, the Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended uses.

5.3 *Backup Facilities and Equipment:* Subject to Section 5.2, Franchisee shall design, build and maintain all PEG upstream feeds, connections and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4 *PEG Grant:*

5.4.1 Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. Such Grant shall be used solely by the LFA for PEG Access equipment, including but not limited to, studio and portable production equipment, editing equipment, and program playback equipment, or for renovation or construction of PEG Access facilities, and for any other PEG capital related needs of the LFA.

5.4.2 Except as set forth below in Section 5.4.2, the Franchisee shall pay an initial PEG Grant in the amount of FIFTY SIX THOUSAND DOLLARS (\$56,000) payable in three (3) installments (the "Initial PEG Grant") as follows:

(i) The first (1st) installment of EIGHTEEN THOUSAND SIX HUNDRED SIXTY SIX AND 66/100 DOLLARS (\$18,666.66), shall be payable within thirty (30) days after the Effective Date.

(ii) The second (2nd) installment of the Initial PEG Grant in the amount of EIGHTEEN THOUSAND SIX HUNDRED SIXTY SIX AND 67/100 DOLLARS (\$18,666.67), shall be payable within thirty (30) days after the third (3rd) anniversary of the Effective Date.

(iii) The third (3rd) installment of the Initial PEG Grant in the amount of EIGHTEEN THOUSAND SIX HUNDRED SIXTY SIX AND 67/100 DOLLARS (\$18,666.67), shall be payable within thirty (30) days after the seventh (7th) anniversary of the Effective Date.

5.4.2.1. The second (2nd) installment of the Initial PEG Grant shall not become due and payable unless and until Verizon New York, Inc. (or its affiliate or subsidiary), and any other provider of Cable Services in the Franchise Area, has made Initial PEG Grant payments to the LFA in the total amount of THIRTY SEVEN THOUSAND THREE HUNDRED THIRTY THREE AND 33/100 DOLLARS (\$37,333.33). The third (3rd) installment of the Initial PEG Grant shall not become due and payable unless and until Verizon New York, Inc. (or its affiliate or subsidiary), or any other provider of Cable Services in the Franchise Area, has made Initial PEG Grant payments to the LFA in the total amount of FIFTY SIX THOUSAND DOLLARS (\$56,000).

5.4.3 Subject to Sections 5.4.4 and 5.4.5 below, in addition to the sum set forth in section 5.4.2, the Franchisee shall pay the LFA a PEG grant (the "Annual PEG Grant") not to exceed the aggregate amount of ONE HUNDRED FORTY FOUR THOUSAND, NINE HUNDRED TWO DOLLARS (\$144,902) payable in eleven (11) installments as follows:

(i) An annual grant in the first year of the term of the Agreement in the amount of SEVEN THOUSAND THREE HUNDRED THIRTY SEVEN DOLLARS (\$7,337); (ii) an annual grant in years two (2) through six (6) of the Agreement in the amount of ELEVEN THOUSAND FIVE DOLLARS (\$11,005) per annum; (iii) an annual grant in years seven (7) through eleven (11) of the Agreement in the amount of SIXTEEN THOUSAND FIVE HUNDRED EIGHT DOLLARS (\$16,508) per annum, or, at the Franchisee's option, ONE DOLLAR AND THIRTY FIVE CENTS (\$1.35) per month, per Subscriber in the Service Area.

5.4.4 The Annual PEG Grant payments shall not become due and payable unless and until Verizon New York, Inc. (or its affiliate or subsidiary) (collectively "Verizon"), commences and continues to make Annual PEG Grant Payments to the LFA in accordance with Sections 5.4.3 and 5.4.4 of Verizon's cable television franchise agreement with the LFA confirmed by the NY PSC on January 18, 2008 (PSC Case No. 07-V-1524) ("Verizon Franchise). The method of calculating the PEG Grant pursuant to Section 5.4.3 (iii) of this Agreement shall be at the option of Franchisee. Should the Franchisee choose to pay the Annual PEG Grant in years seven (7) through eleven (11) on a per subscriber basis, the Annual PEG Grant shall be calculated by multiplying the total number of Subscribers per month in each of the twelve (12) months following the previous anniversary of the Effective Date. The Annual PEG Grant payment shall become due and payable within thirty (30) days after each subsequent anniversary of the Effective Date until the eleventh (11th) anniversary of the Effective Date, or until the franchise is terminated by either party.

5.4.5 Upon request, LFA shall provide the Franchisee within 60 days: (1) an annual report setting forth the summary of all expenditures for PEG Access equipment and

facilities from the PEG Grants paid to the LFA, and the amounts, if any, reserved for future capital expenditures for such purposes; and (2) written verification that all other cable providers in the LFA have satisfied the equivalent Annual PEG Grant franchise obligation as that contained in Sections 5.4.2 and 5.4.3 hereof. Notwithstanding any provision in this Agreement to the contrary, the Franchisee shall be permitted to take a credit against the Franchise Fee described in Section 6.1 of this Agreement for the full value of any PEG Grant provided by the Franchisee that is used by the LFA for any purpose not listed in Section 5.4.1 of this Agreement.

5.4.6 The LFA and the Franchisee agree that Franchisee's PEG access commitments pursuant to this Section 5, along with other valuable consideration, are at least competitively neutral to the PEG access commitments of the Franchise between Verizon New York Inc. and the LFA confirmed by the NY PSC on January 18, 2008 (PSC Case No. 07-V-1524), for purposes of Section 895.1(f) of the rules of the NYPSC.

5.5 *Indemnity for PEG:* The LFA may require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

5.6 *Recovery of Costs:* To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the Initial PEG Grant, the Annual PEG Grant or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

6. **FRANCHISE FEES**

6.1 *Payment to LFA:* Beginning sixty (60) days after the Effective Date of this Agreement, Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. The payment for Franchise Fees shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of

execution of this agreement is nine percent (9%) per annum) per annum during the period such unpaid amount is owed.

6.2 *Supporting Information:* Each Franchise Fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

6.3 *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4 *Bundled Services:* If Franchisee provides a Bundled Service to Subscribers, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunications service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5 *Section 626 Treatment:* Franchisee agrees that it will cease to apply the Franchise Fee as an offset against the special franchise tax provided for in N.Y. Real Property Tax Law Section 626 . Further, the LFA agrees that it shall impose the same special franchise tax offset waiver restriction upon all new and existing providers of Cable Service or cable service (as such term may be defined by other providers) in the Service Area expressed in writing in the franchise agreement of each respective cable provider. Notwithstanding anything herein to the contrary, if an existing or new provider of Cable Service or cable service (as such term may be defined by other providers) begins at some future date to use its offset right against the special franchise tax, the Franchisee may also use its offset right and the above waiver is no longer in effect. The operation of Section 6.5 shall be strictly limited to Franchise Fees lawfully imposed upon Cable Service, and shall not be construed to affect the Franchisee's rights under any provision of State or Federal law regarding the provision of services other than Cable Services.

7. **REPORTS AND RECORDS**

7.1 *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records

not relating to the provision of Cable Service in the Service Area. Subject to the requirements of the New York Freedom of Information Law (“FOIL”), the LFA shall treat any information disclosed by Franchisee as proprietary and confidential under Section 87 (2) (d) of the New York Public Officers Law, and shall only disclose it to employees, representatives, and agents thereof who the LFA deems to have a need to know, or in order to enforce the provisions hereof. For the purpose of this section, “proprietary and confidential” information includes, but is not limited to: information related to the Cable System design, trade secrets; subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Franchisee to be competitively sensitive. If the LFA receives a request under FOIL, or similar law for the disclosure of information that the Franchisee has designated as confidential, trade secret or proprietary, the LFA shall notify the Franchisee of such request. If LFA determines in good faith that public disclosure of the requested information is required under FOIL, LFA shall so notify Franchisee and before making disclosure shall give Franchisee a reasonable period of time to seek to obtain judicial redress to preclude disclosure. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

7.2 *Records Required:* Franchisee shall at all times maintain:

7.2.1 Records of all written complaints for a period of six (6) years after receipt by Franchisee. The term “complaint” as used herein refers to complaints about any aspect of the Cable System or Franchisee’s cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

7.2.2 Records of outages for a period of six (6) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

7.2.3 Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

7.2.4 Records of installation/reconnection and requests for service extension for a period of six (6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

7.2.5 A map showing the area of coverage for the provisioning of Cable Services.

7.3 *System-Wide Statistics:* Subject to the requirements of Section 895.1(t) of the NY PSC rules and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

7.4 *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA’s imposition of substantially similar obligations to those contained in this Section 7.4 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the

accurate payment of Franchise Fees and the Annual PEG Grants, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable and customary costs of the audit, together with any additional amounts due to the LFAs as a result of such audit, shall be paid by Franchisee to the LFA within sixty (60) days following written notice to Franchisee by the LFA of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the LFA's audit expenses shall not exceed an aggregate of FIVE THOUSAND DOLLARS (\$5,000.00). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

8. INSURANCE AND INDEMNIFICATION

8.1 *Insurance:*

8.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

8.1.1.1 Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA applicable to a standard form general liability policy.

8.1.1.2 Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

8.1.1.3 Workers' Compensation Insurance in conformity with all legal requirements of the State of New York.

8.1.1.4 Employers' Liability Insurance at least in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

8.1.1.5 Excess liability or umbrella coverage of not less than five million dollars (\$5,000,000).

8.1.2 The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance, and excess liability or umbrella coverage.

8.1.3 Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4 Each of the required insurance policies shall be with insurance companies qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event Franchisee's insurance carrier is downgraded to a rating of lower than Best's A-, Franchisee shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-.

8.1.5 Upon written request, Franchisee shall deliver to LFA copies of Certificates of Insurance showing evidence of the required coverage.

8.2 *Indemnification:*

8.2.1 Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and, in any event, the LFA shall provide the Franchisee with written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, or attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

8.2.2 With respect to Franchisee's indemnity obligations set forth in Subsection 8.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising

hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

8.2.3 The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

8.2.4 The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

9. TRANSFER OF FRANCHISE

9.1 *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.33 above.

10. RENEWAL OF FRANCHISE

10.1 *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.11 below, the Cable Law and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

10.2 *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 and complete renewal of the Franchise prior to expiration of its term.

10.3 *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

10.4 *Consistent Terms*: Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

11.1 *Notice of Violation*: If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with the Franchisee. If these discussions do not lead to a resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the “Noncompliance Notice”).

11.2 *Franchisee’s Right to Cure or Respond*: Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to timely remedy such noncompliance and notify the LFA of the steps being taken and the date by which Franchisee projects that it will complete cure of such noncompliance. Upon cure of any noncompliance, the LFA shall provide written confirmation that such cure has been effected.

11.3 *Public Hearing*: The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied or commenced to remedy the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

11.4 *Enforcement*: Subject to Section 12.11 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

11.4.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

11.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

11.4.3 In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5 *Revocation*: Should the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at

least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1 At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of the hearing.

11.5.2 Following the second public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the LFA in writing and thereafter the LFA shall determine (i) whether an event of default has occurred under this Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

11.5.3 The LFA may, at its sole discretion, take any lawful action that it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

11.6 *Abandonment of Service*: Franchisee shall not abandon any Cable Service or portion thereof without the LFA's prior written consent as provided in the Cable Law.

12. MISCELLANEOUS PROVISIONS

12.1 *Actions of Parties*: In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

12.2 *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

12.3 *Preemption*: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall

thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA.

12.4 *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

12.4.1 Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardships being placed upon Franchisee that outweigh the benefits to be derived by the LFA and/or Subscribers.

12.5 *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

12.5.1 Notices to Franchisee shall be mailed to:

Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, NY 11714
Attention: Vice President, Government Affairs, Suburban New York

With a copy to:

Cablevision of Wappingers Falls, Inc.
1111 Stewart Avenue
Bethpage, NY 11714
Attention: Legal Department

12.5.2 Notices to the LFA shall be mailed to:

Village Manager
Village of Briarcliff Manor
1111 Pleasantville Road
Briarcliff Manor, NY 10510

12.5.3 with a copy to:

Wormser, Kiley, Galef & Jacobs, LLP
399 Knollwood Road, Suite 205
White Plains, NY 10603
Att: Daniel Pozin, Esq.

12.6 *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provision of this Agreement are superseded by this Agreement.

12.7 *Amendments and Modifications*: Amendments and/or modifications to this Franchise shall be mutually agreed to in writing by the parties and subject to the approval of the NY PSC, pursuant to the Cable Law.

12.8 *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

12.9 *Severability*: If any section, subsection, sub-subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sub-subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

12.10 *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

12.11 *Fiber Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's Fiber Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the Fiber Network or to relocate the Fiber Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

12.12 *NY PSC Approval*: This Franchise is subject to the approval of the NY PSC. Franchisee shall file an application for such approval with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

12.13 *Rates and Charges*: The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law.

12.14 *Employment Practices*: Franchisee will not refuse to hire, nor will it 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.

12.15 *Customer Service*: Franchisee shall comply with the consumer protection and customer service standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.

12.16 *No Third Party Beneficiaries*: Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.17 *LFA Official*: The Village Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

12.18 *No Waiver of LFA's Rights*: Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall be construed as a waiver of the LFA's rights under applicable federal and state law.

12.19 *Level Playing Field*: The parties agree that the terms and conditions of this Agreement are in compliance with the level playing field requirements of the NY PSC.

AGREED TO THIS _____ DAY OF _____, 2012.

LFA:
VILLAGE OF BRIARCLIFF MANOR

By: _____
[Title]

FRANCHISEE:
CABLEVISION OF WAPPINGERS FALLS, INC.

By: _____
Dan Ahouse, Vice President – Government Affairs

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Connection and Origination Points

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

1. Village Hall, 1111 Pleasantville Road, Briarcliff Manor, NY 10510
2. Police Department, 1111 Pleasantville Road, Briarcliff Manor, NY 10510
3. Youth Center, 5 Van Lu Van Road, Briarcliff Manor, NY 10510
4. Highway Department, 85 Old Route 100, Briarcliff Manor, NY 10510
5. Village Library, 1 Library Road, Briarcliff Manor, NY 10510
6. St. Theresa School, 300 Dalmeny Road, Briarcliff Manor, NY 10510
7. Briarcliff Manor High School, 444 Pleasantville Road, Briarcliff Manor, NY 10510
8. Briarcliff Manor Middle School, 444 Pleasantville Road, Briarcliff Manor, NY 10510
9. Todd School, 45 Ingham Road, Briarcliff Manor, NY 10510
10. Main Fire House, 1111 Pleasantville Road, Briarcliff Manor, NY 10510
11. Scarborough Firehouse, 591 Scarborough Road, Briarcliff Manor, NY 10510

EXHIBIT B
SERVICE AREA

The Service Area is the Franchise Area. The construction of the Franchisee's Fiber Network has been completed throughout the Franchise Area subject only to Subsection 3.1.1 and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area, nor is a map of the Service Area necessary.

EXHIBIT C
PEG CHANNELS

The Franchisee will transmit PEG Programming as provided by the LFA as directed.

EXHIBIT D
PEG ACCESS CONNECTION AND ORIGINATION POINTS
VILLAGE OF BRIARCLIFF MANOR

Subject to the requirements set forth in Subsection 5.2 of the Agreement, the following Government Access Channel PEG Access Connection Site (“PEG Access Connection Site No. 1”) shall be operable within one hundred twenty (120) days of the Effective Date:

Briarcliff Manor Village Hall
1111 Pleasantville Road
Briarcliff Manor, NY 10510

Subject to the requirements set forth in Subsection 5.2 of the Agreement, the following Educational Access Channel PEG Access Connection Site (“PEG Access Connection Site No. 2”) shall be operable within one hundred twenty (120) days of the Effective Date:

Briarcliff Manor Middle/High School
444 Pleasantville Road
Briarcliff Manor, NY 10510

Subject to the requirements set forth in Subsection 5.2 of the Agreement, a Public Access Channel PEG Access Connection Site (“PEG Access Connection Site No. 3”) shall be made operable as follows:

1. LFA shall request such PEG Access Connection Site No. 3 in writing (the PEG Access Connection Site No. 3 Request”), (a) specifying the location for such PEG Access Connection Site No. 3 at a site reasonably acceptable to Franchisee and within the boundaries of the LFA; and (b) notifying Franchisee that such PEG Access Connection Site No. 3 is fully functional for its intended purpose; and
2. Franchisee shall, at its own expense, make such PEG Access Connection Site No. 3 operable within one hundred twenty (120) days after Franchisee receives the PEG Access Connection Site No. 3 request.

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
FEBRUARY 1, 2012

**1B. AUTHORIZE VILLAGE MANAGER TO EXECUTE AGREEMENT--
NORTH EAST WESTCHESTER SPECIAL RECREATION**

BE IT RESOLVED that the Village Manager is hereby authorized and directed to execute an interagency agreement with North East Westchester Special Recreation, Inc. to expire on December 31, 2012 for the provision of a therapeutic recreation program for residents with disabilities.



MEMO TO: Philip Zegarelli, Village Manager

FROM: Henry Jamin *HJ*

DATE: January 4, 2012

RE: 2012 North East Special Recreation Interagency Agreement

Attached please find two original copies of the 2012 North East Westchester Special Recreation Interagency Agreement for your review and execution. I am hopeful that the Board of Trustees will be able to approve this year's agreement at one of their upcoming meetings.

The total 2012 contract amount of \$7,269.17 is \$90.33 more than the 2011 contract. This 1.25% increase is due to an adjustment to our "per participant" municipal contribution amount, which is based upon a 3-year average of actual Village residents participating in North East programs. The 2012 contract reflects an increase in our average number of participants from 24 in the 2011 budget to 25 for 2012. Our actual number of resident participants has fluctuated between a low of 21 and a high of 26 over the past four years.

North East continues to do an outstanding job in delivering recreational services to our residents with special needs, and we are fortunate to be a part of this most worthwhile municipal consortium. Please note that although our contribution amount had a slight increase for 2012, the agency budget reflects a zero percent increase in total funding from the twelve participating municipalities. I have included detailed municipal match information, including both "per capita" and "per participant" contributions, in the event that you are curious about the total funding amounts assessed to each community. In addition, I've also provided an extra sheet with a few additional facts & points of interest regarding the North East budget and funding sources.

Please let me know if you have any questions or concerns regarding this matter. If all is in order, I would appreciate it if you would sign the agreements and return one to the North East office at the following address:

North East Westchester Special Recreation, Inc.
63 Bradhurst Avenue
Hawthorne, NY 10532

The other original is for your files at Village Hall. Please return a copy of the agreement to our office as well. Our per capita payment is now due and we will process it as soon as the agreement is formally executed.

Thank you for your attention and consideration!



NORTH EAST SPECIAL RECREATION - 2012 BUDGET

Additional Facts & Points of Interest

- The "Municipal Match" portion of the North East budget totals \$134,893. This amount is the total funding supplied by all twelve of the municipalities in the consortium, and accounts for 14.2% of North East's total budget of \$951,853. Municipal funding for the agency has been held at a 0% increase for the past three years.
- Briarcliff Manor's 2012 contribution of \$7,269.17 amounts to 0.76% of the North East Operating Budget.
- Municipal Funding contributions for 2012 in order from greatest to least are:

| | |
|----------------------------|--------------------|
| 1. Mount Pleasant | \$ 22,046.56 |
| 2. Somers | \$ 18,522.47 |
| 3. Bedford | \$ 16,400.91 |
| 4. New Castle | \$ 14,538.28 |
| 5. Mt. Kisco | \$ 14,439.21 |
| 6. Lewisboro | \$ 10,603.19 |
| 7. Pleasantville | \$ 7,535.18 |
| 8. Briarcliff Manor | \$ 7,269.17 |
| 9. North Castle | \$ 6,739.84 |
| 10. Pound Ridge | \$ 6,263.11 |
| 11. Sleepy Hollow | \$ 5,888.90 |
| 12. North Salem | <u>\$ 4,646.23</u> |
| Total | \$134,893.05 |

- Additional Funding sources for North East operations include:

| | |
|-------------------------|-----------|
| Federal & NYS Funding | \$481,506 |
| Participant User Fees | \$250,963 |
| Donations & Fundraising | \$ 48,864 |
| Westchester County | \$ 25,606 |
| Grants | \$ 10,021 |

NORTH EAST WESTCHESTER SPECIAL RECREATION, INC.

INTERAGENCY AGREEMENT

This agreement made on the (1st.) day of (January), (2012 by and between North East Westchester Special Recreation Inc., a NFPC organized pursuant to laws of State of New York and the Town of Mount Pleasant, a municipal corporation of the State of New York, the Town of New Castle, a municipal corporation of the State of New York, the Town of Bedford, a municipal corporation of the State of New York, the Town of Somers, a municipal corporation of the State of New York, the Town of Lewisboro, a municipal corporation of the State of New York, the Town of North Castle, a municipal corporation of the State of New York, the Village-Town of Mount Kisco, a municipal corporation of the State of New York, the Village of Sleepy Hollow, a municipal corporation of the State of New York, the Village of Pleasantville, a municipal Corporation of the State of New York, The Town of North Salem, a municipal corporation of the State of New York, The Town of Pound Ridge, a municipal corporation of the State of New York, The Village of Briarcliff Manor, a municipal Corporation of the State of New York; shall enable said municipalities the opportunity to provide a collective program of Therapeutic Recreation services for individuals with disabilities through participation in (North East Westchester Special Recreation Inc.)

Now, therefore, the parties hereto agree as follows:

- FIRST:** The parties shall jointly operate a therapeutic recreation program for individuals with disabilities residing or domiciled within the corporation limits of their respective municipalities irrespective of age or degree of the disabling condition.
- SECOND:** The program shall be funded through each municipality in accordance with a schedule of fees attached hereto and made part hereof establishing respective local shares which shall be in addition to any third party sources of funding. Additionally, the parties agree to help with fund raising events in support of North East Westchester Special Recreation Inc. Said local share shall be paid to North East Westchester Special Recreation in two installments; the first before the last day of February, and the second on the last day of July in any calendar year in which this agreement shall be operative.

- THIRD:** The substantive program policy shall be the joint responsibility of all the parties; but shall be carried out administratively by North East Westchester Special Recreation, Inc.; in the manner as any other programs for which said municipality would otherwise individually be responsible. Administrative services include, but are not limited to, accounting, payroll, legal, personnel, insurance, and risk management. In addition, the agency on behalf of the program, may apply and receive grants and other third party sources of revenue and may further enter into agreements on behalf of the program with other governmental agencies and non-profit organizations providing full or partial support of any program or activity to be provided hereunder.
- FOURTH:** The Board of Directors, consisting of the Recreation Department Chief Administrator from each of the parties, shall have policy making power for the program and which shall further have the power to adopt rules, regulations and procedures for the governing of the program affairs in a manner consistent herewith.
- FIFTH:** North East Westchester Special Recreation shall procure and maintain liability insurance at its own cost and expense relating to all activities sponsored by and performed by the program, which insurance shall protect the interest of the parties hereto as named insured. Members of the North East Board of Directors shall be indemnified should suit be brought against them. A copy of the insurance coverage is submitted herewith naming North East Westchester Special Recreation, Inc. as the insured party to the benefit of the individual municipality.
- SIXTH:** The chief fiscal officer of North East Westchester Special Recreation shall be the Treasurer.
- SEVENTH:** Programs shall be held throughout the participating municipalities, utilizing existing community facilities.
- EIGHTH:** North East Westchester Special Recreation shall provide services for residents of participating communities and will accommodate non-resident participants in accordance with agency guidelines currently enforced.

NINTH: This agreement shall be effective for the calendar year and upon further agreement of the parties, may be amended and/or extended from year to year thereafter.

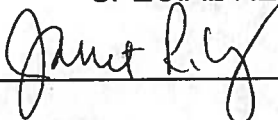
TENTH: This Agreement may be executed by the separate signatures of the parties hereto on any number of counter part copies hereof, and each of said executed copies shall become effective when so executed by North East Westchester Special Recreation, Inc. and each particular municipality, and only after all of the municipalities to this Interagency Agreement have been signed, which would then bind all parties thereto.

Each counter part signed copy shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date appearing next to their signature below.

NORTH EAST WESTCHESTER
SPECIAL RECREATION INC.

1/1/12
Date

By: 

Janet Riley
Name Printed

Title: Executive Director

Municipality/Town/Village of: _____

Date

By: _____

Name Printed Title

2012
MUNICIPAL MATCH CONTRIBUTIONS
(3-Year Average)

Per Capita .458
Per Participant 151.80

| | 2012 | 2012 | 2012 |
|---------------|------------|-----------|------------|
| TOTALS | Per Capita | Per Part | Total |
| Bedford | 8,304.91 | 8,096.00 | 16,400.91 |
| Briarcliff | 3,524.77 | 3,744.40 | 7,269.17 |
| Lewisboro | 5,644.39 | 4,958.80 | 10,603.19 |
| Mt. Kisco | 4,572.21 | 9,867.00 | 14,439.21 |
| Mt. Pleasant | 11,977.16 | 10,069.40 | 22,046.56 |
| New Castle | 8,010.88 | 6,527.40 | 14,538.28 |
| North Castle | 4,968.84 | 1,771.00 | 6,739.84 |
| Sleepy Hollow | 4,219.10 | 1,669.80 | 5,888.90 |
| North Salem | 2,369.23 | 2,277.00 | 4,646.23 |
| Pleasantville | 3,284.78 | 4,250.40 | 7,535.18 |
| Pound Ridge | 2,164.51 | 4,098.60 | 6,263.11 |
| Somers | 8,402.47 | 10,120.00 | 18,522.47 |
| | 67,443.25 | 67,449.80 | 134,893.05 |

Note all figures are carried out 6 decimal places.

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
FEBRUARY 1, 2012

2. ELECTION INSPECTORS FOR VILLAGE ELECTION MARCH 20, 2012

FINALIZING NAMES...WILL PROVIDE PRIOR TO MEETING

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
FEBRUARY 1, 2012

3. FIRE DEPARTMENT MEMBERSHIP

BE IT RESOLVED, that the Board of Trustees of the Village of Briarcliff Manor hereby approves the membership of **Christina Veit** to the Briarcliff Manor Fire Company.

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
FEBRUARY 1, 2012

4. MINUTES

- November 16, 2011 – Regular Meeting
- January 4, 2012 – Regular Meeting
- January 11, 2012 – Special Meeting
- January 18, 2012 – Special Meeting

Village Board of Trustees
Regular Meeting
November 16, 2011
7:30 p.m.

The Regular Meeting of the Board of Trustees of the Village of Briarcliff Manor, New York was held in the Village of Briarcliff Manor Village Hall, at 1111 Pleasantville Road, Briarcliff Manor, New York on the 16th of November 2011 commencing at 7:30 p.m.

Present

David Venditti, Deputy Mayor
Anthony N. Capasso, Trustee
Lori A. Sullivan, Trustee

Also Present

Philip Zegarelli, Village Manager
Christine Dennett, Village Clerk
Clinton Smith, Village Counsel

Absent

William J. Vescio, Mayor
Robert Mayer, Trustee

FY 2011-2012 – 4 Month Budget Report

The Village Manager gave a brief presentation on the first 4 months of the FY 2011-2012 budget.

The Board requested a copy of the presentation be put on the website.

The Village Manager gave a brief update on the North State Road Project and its targeted completion date.

Board of Trustees Announcements by Trustee Sullivan

- The Autumn Desserts Social hosted by the Friend of the Library will be on 11/17 at 7:30pm.
- The Briarcliff Has Heart 5th annual run will be on Memorial day 2012
- College SAT practice test review classes are available at the Library and Community Center. Please call for more information.
- Cathy Burkhart has recently resigned from the Library Board. The Board thanked her for her service.
- Platform tennis season has arrived.
- Basketball and floor hockey still have a limited number of spots available.
- The Recreation Brochure will be on website by 11/23.
- The Community Bonfire will be on 12/4 at 5pm

Village Managers Report

- The Village will be offering extended office hours for parking permit and taxes collection on 12/17 and 12/21 and 12/28.
- The Village Hall doors will be installed soon.
- The Library window replacement in the old section will be starting soon.
- The exterior lighting project for Village Hall is going out to bid.
- The extra funds from the NYSERDA grant will be used to install solar panels at Village Hall.
- The Chappaqua Road Traffic Signal Bid will be in next week
- The Village DPW is working continuously to pick up storm debris and then will move on to leaves. Residents are asked to bring it to the curb but not into the street. Please don't blow leaves in the street. Summonses will be issued.
- Scarborough Road is being paved.

Public Comments

There were no public comments.

Schedule Public Hearing – Cable Franchise Agreement – Cablevision

The Board requested Village Attorney, Dan Pozin give a brief presentation at an upcoming work session.

Upon motion by Trustee Capasso, seconded by Trustee Sullivan, the Board voted unanimously to approve the following resolution:

BE IT RESOLVED that a Public Hearing is hereby scheduled for January 4, 2012 to hear and discuss the Cable Franchise Agreement with Cablevision.

Amend Master Fee Schedule – Credit Card or Debit Card Transactions

Upon motion by Trustee Capasso, seconded by Trustee Sullivan, the Board voted unanimously to approve the following resolution:

BE IT RESOLVED that the Board of Trustees does hereby amend the Master Fee Schedule for the Village of Briarcliff Manor as follows:

EFFECTIVE DECEMBER 1, 2011

Visa, Mastercard or Discover Credit or Debit Card in person Transaction Fee (Village Hall) 2.5% per transaction

Resolution Approving Stipulation and Settlement of Action Commenced Against Town of Ossining

Village Attorney Smith stated the action was not to effectuate the Settlement but to meet the Village's obligation with the New York State Open Meetings Law.

Upon motion by Trustee Capasso, seconded by Trustee Sullivan, the Board voted unanimously to approve the following resolution:

WHEREAS, the Board of Trustees ("Board") of the Village of Briarcliff Manor, New York ("Village"), duly brought a legal action against the Town of Ossining ("Town") entitled *Village of Briarcliff Manor v. Town of Ossining*, Westchester County Supreme Court Index No 4513/2011 ("Lawsuit"), to enforce an Intermunicipal Agreement made between the Village and the Town dated April 29, 2002 ("IMA"), and apply the Village zoning to the Town Highway/DPW site on Old Route 100 in the Village ("Town Site"); and

WHEREAS, the Village Board held a hearing under *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), on October 20, 2010 ("*Monroe* Hearing"), and issued a resolution with findings on the same which, among other things, asserted that the Town should be required to comply with the Village's zoning and land use regulatory jurisdiction and authority on December 1 & 15, 2010 ("*Monroe* Resolution"); and

WHEREAS, the Village served a Summons and Complaint on the Town and filed the same with the Court on February 10, 2011; and

WHEREAS, following service and filing of pleadings, the Town and Village entered into discussions of settlement with one another and with the Court; and

WHEREAS, in those discussions, the Town agreed to make certain changes and improvements to the Town Site to bring the Town Site into compliance with the IMA and the Village's zoning provisions; and

WHEREAS, on the basis of the Town's agreement, the Board authorized Village Counsel to execute a Stipulation of Settlement and Discontinuance of Action for resolution of the Lawsuit in executive session on November 8, 2010; and

WHEREAS, Village Counsel entered into a So Ordered Stipulation of Settlement and Discontinuance of Action with attorneys for the Town on November 10, 2011, and the same also was "So Ordered" and filed by the Court on November 10, 2011 ("*Settlement Stipulation*"); and

WHEREAS, resolution of the Lawsuit on the terms set forth in the Settlement Stipulation is consistent with and further implements the *Monroe* Resolution;

NOW, THEREFORE, BE IT:

RESOLVED, that execution of the Settlement Stipulation and resolution of the Lawsuit on the terms set forth therein is hereby ratified, affirmed, and approved.

Adjournment

The Board wished everyone a Happy Thanksgiving.

Upon motion by Trustee Sullivan, seconded by Trustee Capasso, the Board voted unanimously to adjourn the regular meeting at 8:25pm.

Respectfully Submitted By,

Christine Dennett
Village Clerk

Village Board of Trustees
Regular Meeting
January 4, 2012
7:30 p.m.

The Regular Meeting of the Board of Trustees of the Village of Briarcliff Manor, New York was held in the Village of Briarcliff Manor Village Hall, at 1111 Pleasantville Road, Briarcliff Manor, New York on the 4th of January, 2012 commencing at 7:30 p.m.

Present

William J. Vescio, Mayor
David Venditti, Deputy Mayor
Robert Mayer, Trustee
Lori A. Sullivan, Trustee

Also Present

Philip Zegarelli, Village Manager
Christine Dennett, Village Clerk
Daniel Pozin, Village Counsel
Robin Rizzo, Village Treasurer
Clinton Smith, Village Counsel

Absent

Anthony N. Capasso, Trustee

Board of Trustees Announcements by Trustee Sullivan

- Scarborough Station Parking Permits are still available and credit cards are accepted as a form of payment.
- Winter Recreation Programs have begun. Please visit the website for more information.
- A ski/snowboard program for grades 9-12 is being offered.

Village Managers Report by Village Manager Zegarelli

- The Full Water Supply Project is in its final phase.
- FEMA made a designation for the October snow storm.
- Leaf pickup has been completed.
- Village Taxes were due by January 3, 2012.
- Alarm Permit renewals will be sent out later this month.
- Several projects are out to bid.
- Con Edison will be completing their work on the gas main in the Tree Streets.

Public Comments

There were no public comments.

Public Hearing – Cable Franchise Agreement – Cablevision

Upon motion by Trustee Sullivan, seconded by Trustee Mayer, the Board voted unanimously to open the public hearing.

Mr. Robert Hock, Director of Government Affairs for Cablevision gave a synopsis of the proposed renewal agreement.

Ms. Ann Cargill of 345 North State Road asked what a PEG grant was and stated she had a petition signed by almost all the residents of her building requesting a cable discount for seniors. She further stated discounts were offered in other communities.

The Board had general discussion regarding school district cable access and requested an agreement be drafted. They further discussed discounted rates for Senior Citizens.

Village Attorney Pozin stated the Village was part of cable consortium and neither Verizon nor Cablevision was willing to give a Senior discount.

Mr. Hoch stated he was not aware of any discounts in Westchester or Rockland Counties and that perhaps some customers were grandfathered in from previous franchise agreements.

The Board requested the owner of North Hill and HUD be contacted regarding installing FIOS for a fairer marketplace.

Upon motion by Trustee Mayer, seconded by Deputy Mayor Venditti, the Board voted unanimously to close the public hearing.

The Board had general discussion regarding installing a third cable access point at another location and stated hopefully a discount could be found for the seniors.

FY 2010-2011 Financial Statement Presentation by Susan Barosi of O'Connor, Davies, Munns and Dobbins

Ms. Susan Barosi stated they performed the audit back in September and that the Village had good management controls and had a healthy fund balance.

Mr. Chris Kopf reviewed the General Fund audit.

Election Resolution for Annual Village Election 2012

Upon motion by Deputy Mayor Venditti, seconded by Trustee Sullivan, the Board voted unanimously to approve the following resolution as amended:

BE IT RESOLVED that the annual Village Election will be held in the Village of Briarcliff Manor at the Youth Center (5 Van Lu Van Road) in said Village on Tuesday, March 20, 2012 between the hours of 6:00am and 9:00pm during which the polls will be open.

BE IT FURTHER RESOLVED that the polling places for the Village of Briarcliff Manor, will be designated as follows, the Village's Single Election District (Towns Voting districts #15, #16, #17, #19, #26, #27 and #29) will vote in the Briarcliff Manor Youth Center located at 5 Van Lu Van Road.

Budget Transfer – Leaf Pickup

Upon motion by Trustee Sullivan, seconded by Trustee Mayer, the Board voted unanimously to approve the following resolution:

BE IT RESOLVED that the Board of Trustees does hereby authorize the following budget transfers for FY 2011-2012:

From: A1990.499 GF Contingency \$20,211.72

To: A8090.102 Overtime for Leaf Pickup \$20,211.72

Budget Amendment – Storm Insurance Recovery

Upon motion by Trustee Mayer, seconded by Deputy Mayor Venditti, the Board voted unanimously to approve the following resolution:

BE IT RESOLVED that the budget for Fiscal Year 2011-2012 is hereby amended as follows:

Increase Revenue – Insurance Recovery
(H0101.2680) by \$42,338.52

Increase Expenses – Storm Capital Expenditures
(H1640.201.08460) by \$42,338.52

Fire Department Memberships

The Board thanked the applicants for volunteering.

Upon motion by Deputy Mayor Venditti, seconded by Trustee Sullivan, the Board voted unanimously to approve the following resolution:

BE IT RESOLVED, that the Board of Trustees of the Village of Briarcliff Manor hereby approves the membership of **Glenn C. Oldhofd** to the Briarcliff Manor Fire Company.

BE IT RESOLVED, that the Board of Trustees of the Village of Briarcliff Manor hereby approves the membership of **Daniel Williams** to the Briarcliff Manor Fire Company.

BE IT RESOLVED, that the Board of Trustees of the Village of Briarcliff Manor hereby approves the membership of **Andrew P. Uyterlinde** to the Briarcliff Manor Fire Company.

Authorize Village Manager to Execute a Settlement Agreement with a DPW Employee

Upon motion by Trustee Sullivan, seconded by Trustee Mayer, the Board voted unanimously to approve the following resolution:

WHEREAS, the Village of Briarcliff Manor brought disciplinary charges against a DPW Employee on September 15, 2011; and

WHEREAS, pursuant to Civil Service Law Section 75, hearings were held regarding these charges; and

WHEREAS, following the Hearing Officer's preliminary decision regarding the employee's guilt or innocence regarding the charges, the Village and the employee entered into a settlement agreement dated January 4, 2012 fully settling the charges.

NOW THEREFORE, BE IT RESOLVED THAT, the Board of Trustees hereby ratifies and approves the terms of the stipulation of agreement dated January 4, 2012 and authorizes the Village Manager to implement its terms.

Minutes

The November 16, 2011 minutes were tabled to the next meeting.

Upon motion by Trustee Mayer, seconded by Trustee Sullivan, with one abstention by Deputy Mayor Venditti, the Board voted to approve the minutes of December 21, 2011.

Adjournment

The Board wished everyone a Happy New Year.

Upon motion by Deputy Mayor Venditti, seconded by Trustee Sullivan, the Board voted unanimously to adjourn the meeting at 8:55pm.

Respectfully Submitted By,

Christine Dennett
Village Clerk

Special Meeting
Board of Trustees
January 11, 2012
7:15 p.m.

A Special Meeting of the Board of Trustees of the Village of Briarcliff Manor, New York was held in the Village of Briarcliff Manor Village Hall, 1111 Pleasantville Road, Briarcliff Manor, New York on the 11th day of January, 2012 commencing at 7:15 p.m.

Present

William Vescio, Mayor
David Venditti, Deputy Mayor
Lori Sullivan, Trustee

Also Present

Philip Zegarelli, Village Manager/Deputy Village Clerk

Absent

Anthony Capasso, Trustee
Robert Mayer, Trustee

Upon motion by Trustee Sullivan, seconded by Deputy Mayor Venditti, the Board voted unanimously to open the Special Meeting.

CONFIRM THE VILLAGE MANAGER'S AUTHORIZATION TO ALLOW VILLAGE COUNSEL TO COMMENCE LEGAL PROCEEDINGS REGARDING THE DAMAGES IN THE VICINITY OF 440 CENTRAL DRIVE

Upon motion by Trustee Sullivan, seconded by Deputy Mayor Venditti, the Board voted unanimously to approve the following resolution as amended:

BE IT RESOLVED, that the Board of Trustees hereby confirms the Village Manager's authorization to allow Village Counsel, Wormser, Kiely, Galef & Jacobs LLP to commence and maintain such legal proceedings in connection with all damages sustained by the Village of Briarcliff Manor as a result of any responsible parties' damage to the Village owned water main in the vicinity of 440 Central Drive in April 2011, including, but not limited to, against Frank Scanga, Karen Scanga, General Improvements, Inc., Dripless Plumbing and Heating LLC, Donal Hegarty, "John Does 1 to 10" and any other parties who may ultimately be determined to be involved with the matter, and they are authorized to take such legal actions as shall be necessary in connection therewith.

Upon motion by Trustee Sullivan, seconded by Deputy Mayor Venditti, the Board voted unanimously to close the Special Meeting at 7:21pm.

Respectfully submitted,

Philip Zegarelli, Village Manager/Deputy Village Clerk

Special Meeting
Board of Trustees
January 18, 2012
7:20 p.m.

A Special Meeting of the Board of Trustees of the Village of Briarcliff Manor, New York was held in the Village of Briarcliff Manor Village Hall, 1111 Pleasantville Road, Briarcliff Manor, New York on the 18th day of January, 2012 commencing at 7:20 p.m.

Present

William Vescio, Mayor
David Venditti, Deputy Mayor
Anthony Capasso, Trustee

Also Present

Philip Zegarelli, Village Manager/Deputy Village Clerk

Absent

Robert Mayer, Trustee
Lori Sullivan, Trustee

Upon motion by Deputy Mayor Venditti, seconded by Trustee Capasso, the Board voted unanimously to open the Special Meeting.

AWARD OF BID – Pocantico Lake Water Main Repair

Upon motion by Trustee Capasso, seconded by Deputy Mayor Venditti, the Board voted unanimously to approve the following resolution:

WHEREAS the aftereffects of Hurricane Irene caused a section of the Pocantico Lake Water Main (a/k/a the “1888 Water Transmission Main”) to be severed at the Pocantico River Bed and thereby disrupting a vital water source for the VBM and its outside water consumers; and,

WHEREAS the Pocantico Lake Water Main was the primary, now the backup transmission main for VBM’s Catskill water source and is to be a backflow line to provide emergency water supply to both the Villages of Tarrytown and Sleepy Hollow; and

WHEREAS the VBM received 11 bids for the emergency repair and/or partial replacement of that section of the Pocantico Lake Water Main damaged by Hurricane Irene; and

WHEREAS upon review of the bids by VBM staff and consultants, it was determined that the lowest bidder is also the lowest responsible and qualified

bidder; and

WHEREAS the VBM has determined that the emergency repair and/or partial replacement of the main is a Type II Action for State Environmental Quality Review Act purposes under NYCRR Title 6, §617.5(c)(1), (2), (11), &/or (33)

NOW, THEREFORE, Be It Resolved that the bid for the Pocantico Lake Water Main Repair (VM-1112-6) is hereby awarded to Joken Development Corp. as the lowest responsible bidder per their proposal of \$201,850 and that such costs shall be funded from available funds in the VBM's Water Fund and otherwise offset by available funding previously applied for by the VBM through FEMA and/or SEMO; and

BE IT FURTHER RESOLVED that the Village Manager is hereby authorized and directed to execute and expedite a contract with Joken Development Corp for said project.

Upon motion by Deputy Mayor Venditti Venditti, seconded by Trustee Capasso, the Board voted unanimously to close the Special Meeting at 7:25pm.

Respectfully submitted,

Philip Zegarelli, Village Manager/Deputy Village Clerk