CITY OF BATAVIA
100 N. Island Avenue, Batavia, IL 60510
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Committee of the Whole Agenda
Tuesday, August 22, 2017
7:30 PM Council Chambers 1st Floor

1. Roll Call

2. Approve Minutes For June 27, July 11, 18, 25, 2017

   Documents:

   COW 17-06-27M.PDF
   COW 17-07-11M.PDF
   COW 17-07-18M.PDF
   COW 17-07-25M.PDF

3. Items Removed/Added/Changed

4. Matters From The Public (For Items NOT On Agenda)

5. Presentation: MetroNet Inc.

6. Resolution 17-93-R: Approval Of Video Service Franchise Agreement Between The City Of Batavia And CMN-RUS, Inc. (Gary Holm 8/17/17) GS

   Documents:

   RES 17-93-R APPROVAL VIDEO SERVICE FRANCHISE AGRMT WCMN-RUS INC.PDF

7. Resolution 17-94-R: Approval Of Pole Attachment Agreement Between The City Of Batavia And Metro Fibernet, LLC (Gary Holm 8/17/17) GS

   Documents:

   RES 17-94-R POLE ATTACHMENT AGRMT - BATAVIA-METRO FIBERNET LLC.PDF

8. Class B-4 Liquor License – For Buchanan Energy (S) LLC/D.B.A. Bucky's #544 (Exxon) At 2074 W. Main Street. (Chief Eul 8/14/17) GS

   Documents:

   EXXON MOBILE CLASS B-4 LIQ LIC .PDF

9. Resolution 17-95-R: Approval Of First Amendment To Master Services Agreement By And Between The City Of Batavia And Suncast Corp. For The Facility Located At 701 N Kirk Road PU

   Documents:

   RES 17-95-R 1ST AMENDMENT--MSA--COB AND SUNCAST CORP.PDF

10. Resolution 17-96-R: Approval Of Master Services Agreement For 1801 Suncast Lane By And Between The City Of Batavia And Suncast Corp. PU

    Documents:

    RES 17-96-R APPROVAL OF MASTER SERVICES AGREEMENT BY AND BETWEEN THE CITY OF BATAVIA AND SUNCAST CORP FOR 1801 SUNCAST LANE.PDF

11. Resolution 17-101-R: Authorizing Task Order #1 With G4S To Design The Fiber Connection From Bilter Road To Cyrus One Data Center (RB COW 8/15/2017) PU

    Documents:

    RES 17-101-R AUTHORIZE TASK ORDER 1 W G4S.PDF

12. Resolution 17-99-R: Authorization To Purchase Salt Brine Machine From Cargill Deicing Technology For $29,514.00 (Scott Haines 8/17/17) CS

    Documents:

    RES17-99-R SALT BRINE MACHINE.PDF

13. Project Status
14. Other
15. Adjournment

MINUTES
June 27, 2017
Committee of the Whole
City of Batavia

Please **NOTE:** These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

Chair Brown called the meeting to order at 7:30pm.

1. Roll Call

Members Present: **Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, Salvati, Meitzler, Mueller, Uher, Cerone, McFadden**

Members Absent: **Aldermen O'Brien and Callahan**

Also Present: **Mayor Schielke; Chief Eul, Batavia Police Department; Kevin Drendel, Legal Counsel; Laura Newman, City Administrator; Jeff Albertson, Building Commissioner; Scott Buening, Director of Community Development; Chris Cudworth, Communications Coordinator; Drew Rackow, Planner; Rhonda Klecz, Code Compliance Officer; and Jennifer Austin-Smith, Recording Secretary**

2. Items to be Removed/Added/Changed
There were no items to be removed, added or changed.

3. Matters From the Public (For Items NOT on Agenda)
There were no matters from the public.

4. Ordinance 17-48: Dissolving Tax Increment Financing District #2, Jr. High Redevelopment District (SCBuening 6/13/17) CD
Stark summarized the memo for the meeting attendees. Buening explained that once this TIF is terminated you could no longer use TIF funds for street improvements. The City would now have to use the General Fund. Mayor Schielke explained how this TIF was originally formed for the development of a junior high building and other possible developments of multi-family and retail. The land swap with the library changed the development plans and no such developments happened.

Motion: To recommend approval of Ordinance 17-48: Dissolving Tax Increment Financing District #2, Jr. High Redevelopment District
Maker: Cerone
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.
CONSENT AGENDA

5. Ordinance 17-43: Amending the Official Zoning Map – Northwest Corner of Millview and Danforth Drives – City of Batavia, applicant (DMRackow 6/19/17) CD

Stark summarized the memo for the meeting attendees.

Motion: To recommend approval of Ordinance 17-43: Amending the Official Zoning Map – Northwest Corner of Millview and Danforth Drives
Maker: Cerone
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.
CONSENT AGENDA

6. Ordinance 17-44: Amending the Official Zoning Map – 2552 Hunt Lane – City of Batavia, applicant (DMRackow 6/19/17) CD

Stark summarized the memo.

Motion: To recommend approval of Ordinance 17-44: Amending the Official Zoning Map – 2552 Hunt Lane
Maker: Cerone
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.
CONSENT AGENDA

7. Ordinance 17-45: Amending the Official Zoning Map – Randall Road between McKee/Wilson Streets (DMRackow 6/19/17) CD

Motion: To recommend approval of Ordinance 17-45: Amending the Official Zoning Map – Randall Road between McKee/Wilson Streets
Maker: Meitzler
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.
CONSENT AGENDA

8. Approval of Class D-1 Liquor License for Rosati's Pizza (Chf Eul 6/21/17) GS

Motion: To recommend approval of Class D-1 Liquor License for Rosati's Pizza
Maker: McFadden
Second: Cerone
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

9. Approval of Class D-1 Liquor License for Hot Pan (Chf Eul 6/21/17) GS

Motion: To recommend approval of Class D-1 Liquor License for Hot Pan
Maker: Stark
Second: Mueller
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

10. Approval of Class D-1 Liquor License for Aliano's Restaurant (Chf Eul 6/21/17) GS

Motion: To recommend approval of Class D-1 Liquor License for Aliano's Restaurant with the four contingencies
Maker: Uher
Second: Cerone

Comments were made on the motion. Chair Brown asked for the new owners of Aliano's Restaurant to introduce themselves. One owner stated that they have already submitted two certificates as of yesterday. He continued that the restaurant would now be open for lunch. They plan on selling snow cones on the patio during the summer months. They will continue to provide Italian food but will shorten the menu. Chair Brown asked that the City Council meeting be moved to Wednesday, July 5th instead of Monday, July 3rd due to the holiday. There was no objection by the COW to change the meeting date to Wednesday, July 5th.

Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

11. Resolution 17-82-R: Authorize Execution of an Amended and Restated Intergovernmental Agreement with Tri City Ambulance (Laura Newman 6/27/17)

Newman reported that there were some changes to the agreement but it doesn't affect the percentage that we pay. The percentage is still consistent with the relative number of calls that Batavia receives and we feel satisfied that we are being charged an appropriate amount under the agreement. Newman reported that some of the changes are the number of board members will now be seven members, the Tri City Ambulance Board of Directors is authorized to approve contracts for goods and services in excess of ten thousand dollars to improve operations, a statement written in this agreement that the reserve level being maintained for at least three months of operating expenses plus the amount necessary to purchase an additional ambulance, and in the event any party wants to withdraw from the agreement the withdrawing party will receive from Tri City 75% of its share of the reserve funds (previously 100%).

Motion: To recommend approval of Resolution 17-82-R: Authorize Execution of an Amended and Restated Intergovernmental Agreement with Tri City Ambulance
Maker: Wolff
Second: Salvati
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

12. Discussion: Code Enforcement Procedure (Scott Buening 6/21/17) CD

Stark reviewed the memo in which code enforcement procedures, notably photographs and anonymous complaints, were questioned. Buening stated that it is difficult to assess whether photos obtained legally or illegally by trespassing on someone's property. Photos would only be used to determine whether or not there is a violation that is worth pursuing. Buening stated that the City does accept anonymous complaints and questioned why the City should not accept anonymous complaints. He explained that anonymous complaints are typically made because of fear of retaliation. Complaints received, even if anonymous, need to be reviewed to see if there is a violation of the code or not. Staff never assumes that there is a violation. Staff goes to investigate whether or not there is a violation. Buening stated that the procedures that staff has been using over the years have been legal and justifiable and suggests no changes to the process.

The Commission discussed the residence in question. Atac noted that she has received numerous complaints about this house over the years. Atac commented that the house is maintained to a level in which it affects property values in the area and questioned if this is something that should be allowed in the City. Atac stated that the way our code is written, the aesthetics of the front yard are not illegal. She feels that it is unfortunate and the complaints are constant.

Newman noted that there is more than aesthetics to this discussion. There are also illegal structures on the property. She explained that the City has flooding and some are caused by illegal structures in the yard, diverting storm water into their neighbor's yard. Another violation in this case is a swimming pool on the property with no locked enclosure around it. Now the City knows that there is a swimming pool with no locked enclosure and if someone is injured and we choose to take no action that exposes the City to some liability. If violations are brought to our attention, public health and safety issues especially, the City should take care to act upon those. Newman stated that the property owner in question has stated that he is working with the City's Code Compliance Officer, Rhonda Klecz, to resolve the violations that were brought to light.

Kevin Drendel explained that there is a difference between what private individuals could do and what public individuals could do. The fourth amendment applies to public action. The City could not go onto someone's property without permission to take photographs. If a private individual, even if trespassing, takes photographs and gives them to the City and the photographs reveal the likelihood of a code violation it would not be illegal for the City to follow-up on that. It would be different if the City asked a private individual to take such photographs, that would make them an agent of ours and that would not be right.

Rhonda Klecz addressed the Committee. She stated that Mr. Nailer has reached out to her and has removed the swimming pool and is working to bring the structures in compliance. He has gathered information on a shed type structure for inside storage in the backyard. She summarized that he is working towards compliance.

Atac asked for further consideration made on policies when addressing loss in home values due to a particular residence. Several Committee members asked how one could determine a particular house affects property values. Atac recommended that the Committee talk to an expert appraiser. Atac asked that staff research other community policies as well. She stated that other communities are concerned about property values and the beautification of the community and

she would like to see that as a direction Batavia works towards. Mueller stated that there are several residences in Batavia that could be seen as bringing down property values and having only one Code Compliance Officer to handle such issues is a lot. She stated that the focus should remain on the ordinances we have and enforcing the compliance as it is. Atac stated that she has received complaints about numerous residences and this may be something that we would like to look into in the future because this does affect property values.

13. Project Status

Newman reported on the following:

- A follow-up meeting with the branding consultant was conducted. Results of the research were shared, both the live interview and the survey. Brand architecture was discussed at the meeting. Four different ideas were presented but there was no consensus. The Committee requested a couple more weeks to have further discussions to hone in on one of the concepts presented. The consulting firm would also be creating the visual that goes along with this.
    - Within 4-6 weeks there will be a presentation given to the COW including the brand identity, logo, marketing plan, and implementation ideas
    - Salvati shared that he is very happy with the branding consultant's ideas
- The Strategic Planning RFP is due July 7, 2017
- Department Heads mid-year report to the COW will be held on July 25, 2017
- West Side Water Tower is getting washed Thursday of this week
- Chris Cudworth showed the video about pedestrian safety and crosswalks:
    - COW requested to partner with the School District for all students to view
    - Cudworth stated that the video would be further edited for YouTube and other social media purposes
    - A companion piece will be made for bicycle safety and crosswalks

14. Other

Mayor Schielke reported that this would be the third year without a State of Illinois budget. Mayor Schielke stated that, thanks to our City's great finance department, the City of Batavia should be okay during this trying time.

Brown announced that there would be 6:30pm start for the July 11, 2017 meeting.

Brown asked about Storehedge. Newman answered that it is fabricating this week. Newman will ask Bill McGrath to follow-up to ensure that it gets fabricated this week.

Mayor Schielke announced that the desk in the Council Chambers is from the estate of Phil Elfstrom. The former Kane County Board desk would now be used as a place to put information for the public. The City also received a commemorative plaque from the Fabyan Parkway Bridge and unique photographs from his estate.

15. Executive Session: Setting the Price of Land for Sale (SB)

The Cow entered into Executive Session at 9:15pm and exited at 9:27pm.

Motion: To enter into executive session for setting the price of land for sale
Maker: Meitzler
Second: Stark
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

16. Adjournment

Roll call was made. There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 9:28pm; Made by Salvati; Seconded by McFadden. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith

MINUTES
July 11, 2017
Committee of the Whole
City of Batavia

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Chair Brown called the meeting to order at 6:32pm.

1. Roll Call

Members Present: **Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, Salvati, Meitzler, Mueller, Uher (entered at 7:56pm), Cerone, McFadden**

Members Absent: **Aldermen O'Brien**

Also Present: **Mayor Schielke; Chief Eul, Batavia Police Department; Laura Newman, City Administrator; Scott Buening, Director of Community Development; Gary Holm, Director of Public Works; Rahat Bari, City Engineer; Chris Cudworth, Communications Coordinator; Drew Rackow, Planner; Chris Aiston, Economic Development Consultant; Bill McGrath, former City Administrator; Doris Sherer, Historic Preservation Commissioner; and Jennifer Austin-Smith, Recording Secretary**

2. Approve Minutes for May 30, June 6, and June 13, 2017

Motion: To approve minutes for May 30, June 6 and June 13, 2017
Maker: Chanzit
Second: Salvati
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

3. Items to be Removed/Added/Changed
Newman announced that there would be no executive session.

4. Matters From the Public (For Items NOT on Agenda)
Mary Jordan, Batavia resident, addressed the Committee. She stated that her neighborhood has been experiencing issues with loss of power. One time they did not have power for three hours. She had since made a phone call to the City regarding these issues and has not experienced power issues since. Jordan informed the Committee that the white crossbar for the crosswalk by the library would have to be changed. She stated that it is in the middle of the sidewalk. Jordan shared that her last issue is with the land value assessments in Batavia. There are inequities in land value assessments in Windmill Cove. She explained that west of the tree line is paying double than those on the east side. Chanzit suggested that Jordan and her neighbors schedule

hearings with the County's assessor and force a trend in which they would have to change the land value assessments. Jordan was informed that the City Council could not do anything in regards to land value assessments. Chair Brown asked the City Administrator to contact the library regarding the white crossbar.

5. Discussion: Tour of Wilson Street

The Committee began the tour of Wilson Street at 6:45pm and returned from the tour at 7:31pm. Chair Brown informed the meeting attendees that on the tour of Wilson Street the Committee viewed Storehenge, the Thomle building and its incubator business, the El Taco Grande building, the new perch for birds next to the dead tree, and Newsboy Alley. Chris Cudworth distributed a handout titled 'The Story of Storehenge Batavia' to the Committee during the walking tour.

Motion: To direct staff to review the Newsboy Alley Arch project to potentially revive this project
Maker: Chanzit
Second: Atac
Roll Call Vote: **Aye:** Russotto, Atac, Stark, Chanzit, Wolff, Salvati, Brown, Callahan, Meitzler, Cerone, McFadden
Nay: None
12-0 Vote, 2 Absent, Motion carried.

6. CONSENT AGENDA

(The Consent Agenda is made up of items recommended by city staff that requires recommendation to the full City Council by the COW. This agenda is placed as a separate item on the COW agenda. The items on the Consent Agenda are usually minor items, already budgeted, standard non-policy activities or outgrowths of earlier meetings and are voted on as a "package" in the interest of saving time on non-controversial issues. However, any council member may, by simple request, have an item removed and placed on the "regular" agenda.)

a. Ordinance 17-52: Annexing 502 Roberts Lane (SC Buening 6/29/17) CD

Motion: To approve the Consent Agenda as presented
Maker: McFadden
Second: Cerone
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

7. Presentation: 2016 Comprehensive Annual Financial Report (Presented by Brian LeFevre of Sikich, LLC) (PL Colby)

Colby announced that Sikich has been the City's auditor for the past five years. The Committee was given two items titled "Auditor's Communication to the Members of the City Council and Management for the Year Ended December 31, 2016" and "Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2016". Brian LeFevre overviewed the two items with the Committee and announced that the City has received the award for Excellence in Financial Reporting for the ninth consecutive year.

8. Resolution 17-81-R: Authorize Budget Amendment for Electric utilities in the amount of $176,250.00 (Rahat Bari 7/3/17) PU

Motion: To recommend approval of Resolution 17-81-R: Authorize Budget Amendment for Electric utilities in the amount of $176,250.00
Maker: Meitzler
Second: Mueller
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

9. Resolution 17-85-R: Authorizing Task 2 with Schweitzer Engineering Laboratories, Inc. in the amount of $176,250 and Authorize Budget Amendment for the Funding of Telemetry and Communications Equipment at McKee Substation (Rahat Bari 7/3/17) PU

Motion: To waive formal bidding
Maker: Meitzler
Second: Mueller
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

Motion: To recommend approval of Resolution 17-85-R: Authorizing Task 2 with Schweitzer Engineering Laboratories, Inc. in the amount of $176,250 and Authorize Budget Amendment for the Funding of Telemetry and Communications Equipment at McKee Substation
Maker: Meitzler
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

10. Resolution 17-84-R: Authorizing a three year contract with Associated Technical Services, LTD for the 2017-2019 Valve Exercising and Condition Assessment Program in the Amount of $74,100.00 (Jeremy Barkei 7/5/17)

Motion: To recommend approval of Resolution 17-84-R: Authorizing a three year contract with Associated Technical Services, LTD for the 2017-2019 Valve Exercising and Condition Assessment Program in the Amount of $74,100.00
Maker: Cerone
Second: McFadden
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.
CONSENT AGENDA

11. Ordinance 17-49: Variances for 424 Park Street, Amy and Guillermo Arellanes, Applicants (DM Rackow 6/27/17) CD

Stark reviewed the memo for the Committee. Stark commented that this house is in her Ward and she is excited to see these improvements. Wolff commented that using the footprint is only all you can do on those lots and he understand why and what they are doing for the improvements.

Amy Guillermo, applicant, addressed the Committee. She stated that they have lived at that residence for sixteen years and they finally have this opportunity to be able to afford the addition.

Motion: To recommend approval of Ordinance 17-49: Variances for 424 Park Street, Amy and Guillermo Arellanes, Applicants
Maker: Chanzit
Second: Salvati
Voice Vote: 12 Ayes, 0 Nays, 2 Absent
Motion carried.

*****Alderman Uher entered the meeting at 7:56pm.

12. Ordinance 17-50: Amending the Text of the Zoning Code – Schools in O District. Vanguard Gifted Academy, Applicant (DM Rackow 7/6/17) CD

Stark highlighted the memo with the Committee.

Motion: To recommend approval of Ordinance 17-50: Amending the Text of the Zoning Code – Schools in O District. Vanguard Gifted Academy, Applicant
Maker: Wolff
Second: Chanzit
Voice Vote: 12 Ayes, 0 Nays, 1 Absent, 1 Recuse
Motion carried.

13. Ordinance 17-51: Grant of Conditional Use for a School, Public or Private in the Office District. Vanguard Gifted Academy, Applicant (DM Rackow 7/6/17) CD

The Committee discussed the fence requirement and the K-12 requirement. Stark asked why there was a limitation set for K-8 schools. Rackow answered that there was a discussion about the impact during the Plan Commission (PC) public hearing, which led to the limitation to K-8 schools. Stark stated that it seems that the limitation is an overreach of government by stating that since there is a preschool down the road this school can not have the same grades. For competition sake she questioned why we would do that. Callahan asked if there was anything in the code that specifies the need for fencing. Rackow stated that there is nothing specific specified in the code but the conditional use allows for any reasonable condition for the use be included. Rackow explained that since this school is in close proximity to the street the Commission felt that it would be a reasonable condition for safety. Callahan stated that he would like to see something written into the Zoning Code to properly codify fencing requirements.

The applicant explained that they have placed landscaping strategically to prohibit children from going out into the street. She added that they are starting out small, about twenty children, and plan to max out at one hundred children. As they get larger they may find that they would have

to fence out that area as well as the detention pond. At this time, since they are doing a small start they have not planned on fencing the area by the street.

Mary Jordan addressed the Committee. She stated that fencing needs to be done. She is a mother of a gifted child and she understands how they think. Gifted children do need fencing because they do not think. Shannon Holub, Master Teacher, stated that gifted children are unaware of their surroundings for the sake of being inside their minds.

Motion: To recommend to Council approval of Ordinance 17-51: Grant of Conditional Use for a School, Public or Private in the Office District. Vanguard Gifted Academy, Applicant with the inclusion of the fence requirement and exclusion of the K-12 requirement
Maker: Wolff
Second: McFadden
Roll Call Vote: **Aye:** Wolff, Brown, Callahan, Meitzler, Mueller, Uher, McFadden, Atac, Chanzit
Nay: Russotto, Stark, Cerone
9-3 Vote, 1 Absent, 1 Recuse; Motion carried.

Alderman Salvati was the recusal.

14. Ordinance 17-46: Amending the Text of the Zoning Code – Temporary Signs (DM Rackow 7/7/17) CD

Stark reviewed the memo with the Committee. The Committee discussed the permitting process, sign size, real estate signage, and staff time involved for monitoring and processing sign applications.

Alex Finke, Government Affairs Director representing the Realtors Association of Fox Valley, addressed the Committee. He stated that staff did a solid job in bringing the sign ordinance up to constitutional standards. He continued that his legal department reviewed the sign ordinance. Finke stated that the sign ordinance is restrictive and he asks for one small item, giving the ability for people to put up thirty-two square foot signs in non-residential areas without a building permit. It is an unnecessary burden to commerce for realtors and commercial brokers to have to pay $55 and pull a building permit for every sign for every year they put one up. Right now commercial districts they could only put up sixteen square foot signs. They can put up thirty-two square foot signs in industrial districts without a building permit. This is one small change and a chance to get this right. He stated that if in a year or two it is found that this is not working it could always be changed. Finke asked the Committee to raise the sign area up to thirty-two square feet in non-residential areas for the limited duration sign. Outside of this one modest change the sign ordinance is agreeable.

Buening stated that if the City were to allow for thirty-two square foot signs then we would have to allow thirty-two square foot signs for everyone. It doesn't matter if it is a church or realtor, there would not be a permit and there would not be an easy way to track signage. Permits allow for an actual tracking mechanism because there is certain limitations on how many signs they

could have and how large they could be. Without a permit there will no way to limit or govern signage.

Finke stated that the people that break the sign ordinance would probably continue to do so despite the change to the ordinance. This is just a way to take a small step and not affect realtors, and he understands that is not the City's intent.

Buening stated that staff's recommendation is that the Committee approve the sign ordinance and then go back at another meeting to discuss the permit fees. Chanzit commented that a lot of money is made on the moving of property. Chanzit queried if offering no permit fee for signs would attract more brokers to Batavia and thus creating more jobs, filling vacant buildings, and more taxes for the City. Chair Brown asked Alex Finke if the issue is the permitting process or the fee. Finke answered that it is both. He explained that realtors have a labor intensive and document intensive job and adding more paperwork to fill out is also why he is addressing the Committee. Buening stated that an online permitting process is being worked on and should be available next year. Callahan stated that we have a working partnership and questioned why we wouldn't want to work with them in the most agreeable manner. If it does turn into a problem we could then turn to the online permitting process that is in the works for next year. The Committee considered permit fees and staff's need to track signage. Some stated that the people who do things correctly would be paying and those who do not will still be posting signage and not paying the permit fees.

Callahan moved to recommend approval to Council Ordinance 17-46: Amending the text of the Zoning Code Title 10, waiving the sign fee in the commercial and industrial area up to 32 square feet and waiving the permit and permitting fees for one year. Cerone seconded. Discussion was held on the motion. After discussion Chair Brown stated that there is a motion and a second on the floor and suggested that the motion be voted on. He added that if the motion should fail he would suggest that we table this conversation to a future meeting. Callahan stated at that point he would withdraw the motion and request we table it.

Motion: To table this discussion
Maker: Callahan
Second: Uher
Roll Call Vote: **Aye:** Callahan, Meitzler, Mueller, Uher, Cerone, McFadden, Russotto, Atac, Stark, Wolff, Salvati
Nay: Chanzit, Brown
10-2 Vote, 1 Absent, Motion carried.

Brown shared that he did not vote in favor to table the discussion because we are out of compliance and we should have passed the ordinance. Chanzit stated that the rules of order would mean the maker of the motion would have to withdraw their motion. He continued that we are not in compliance right now. Callahan asked when the next City Council meeting was. Staff answered Monday and Buening suggested the discussion be held again in two weeks. Brown asserted that it is obvious that we all need to think about this some more. Stark agreed.

15. Resolution 17-80-R: A Resolution Awarding a Grant Under the Façade Grant Program within the Downtown Historic District, Applicant David Anderson, 215 E. Wilson St. (Laura Newman 6/7/17) GS

Chris Aiston reported that the Historic Preservation Commission (HPC) has approved the Certificate of Appropriateness (COA) for this project. Aiston distributed a copy of the application for the COW members to review. He noted that the last two pages are the bids on the project. He stated that next time he would make sure he includes these documents in the PDF.

Aiston introduced Dave Anderson from Anderson Designs to the Committee. Aiston discussed the project and stated that they are asking for a fifty-fifty matching grant. The project in its entirety is around $40,000 and the grant could go up to $5,000. The grant is focusing on the improvements to the siding, molding and trim, which is roughly $27,000.

Dave Anderson, applicant, addressed the Committee. He stated that he has owned the property since 2002 and a tremendous amount of upgrades have been done to the interior. They would like to enhance the exterior. He stated that he appreciates the time and consideration of the grant.

Motion: To recommend approval of Resolution 17-80-R: A Resolution Awarding a Grant Under the Façade Grant Program within the Downtown Historic District, Applicant David Anderson, 215 E. Wilson St.
Maker: Cerone
Second: McFadden
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

16. Discussion – Batavia Avenue Pedestrian Crossings (Gary Holm 7/7/17) CS

Holm overviewed pedestrian crossing options with the Committee including the HAWK system, an overhead mast arm and advanced signage, road diet, eliminating the flashing light at McKee (encourage pedestrians to cross at Wilson Street), and the elimination of all Batavia Avenue flashing beacon lights. Holm showed the COW a video of the HAWK system and a video of the overhead mast arm installation in Minnesota. Callahan noted that on Chicago Avenue and Harvey in Oak Park there is a HAWK system pedestrian crosswalk. He questioned why Batavia could not be approved for the same.

The Committee discussed the false sense of security the pedestrian crosswalk evokes, accidents, near misses, need for education on crosswalks, promoting walkability in Batavia, stoplight at McKee, road diet, traffic studies, advocacy, hiring a consultant and safety. Mayor Schielke discussed the commonality in the regions with millennials and their usage of cars. He explained that the high school parking lots are filled with cars. He reasoned that car ownership is not going down in the near future. Mayor Schielke stated that if we want to put up a new crosswalk or streetlight we should have strong engineering studies done prior to any change.

Chair Brown opened the floor for public comment.

Mary Jordan addressed the Committee. She suggested no left turn on Batavia Avenue and McKee intersection or to prohibit certain hours for left turns.

Corey Force Clash, Sycamore Lane, stated that one of the challenges is there are no sidewalks. There is no way to get to the wonderful things going on in the downtown. She asked the City to consider what we could do. Lowering speed limits would be a great help and asked that the Committee consider contacting IDOT regarding that. Reducing the speed by 5 to 10 miles an hour would make a big difference if there were an accident. She stated that over by Mill View there is no way to get to the downtown area.

Ellen Catz, 707 Houston Street, stated walkability is an important aspect of Batavia for her and her family. She enjoys both recreational and productive walking in the City. She supports encouraging walking and biking in the community. For her to cross Route 31 from where she lives she has three options: McKee and 31, Houston and 31 and Wilson and 31. Most choose to take the most direct path regardless of safety. She felt that business interest trumped the safety of the crossing at 31 and Houston Street. She feels that both crosswalks are equally dangerous. She supports the new crosswalks on Route 31. She does not think that the answer is to remove the new crosswalks. She suggested the road diet and reduced speed limit to incur safe and legal driving.

Abbey Beck, 332 N Lincoln Street, shared that she uses the McKee Street crosswalk about six times a week. She is a big fan on how the flashing light beacons save her time during her travels. She asked what is the public image you want when it comes to Batavia and walkability. Removing the flashing beacons would remove the only source of pedestrian empowerment on 31 and would give the wrong message on what the City's priorities are in terms of walkability. The flashing beacons are not perfect but at least it tells cars that pedestrians are there and pedestrians have every right to be there. She stated that she is in support of keeping the flashing beacons, improving them with signage and education and is excited to be a part of the conversation moving forward. She stated that it is important to shift the focus of the conversation from blaming pedestrians and blaming common sense and start looking at slowing down traffic and making drivers responsible for pedestrian safety and creating an equal playing field for all forms of transportation. She stated that she is a member of the Batavia Environmental Commission and the Well Batavia Initiative and we have come up with some additional facts and figures to support walkability in Batavia.

Emma Cole, 914 South Harrison, presented on behalf of the Batavia Environmental Commission (BEC) on its official stance on the crosswalks. BEC is very concerned about sustainability and are constantly focused on the future. The truest measure of their success in making Batavia sustainable is people. Do people live here? Are they happy here and living here by choice? The metric you want to monitor is the stock of healthy and happy people within Batavia. They ardently oppose the removal of the Batavia Avenue flashing beacons for the following reasons:

- Pursuit of sustainability and weighing the needs of future residents with our own
    - What do future generations want or need?
- BEC is committed to the Comprehensive Plan
    - Removing the crosswalks are not cohesive to the Comprehensive Plan
- Future generations want walkable towns
- Decrease miles traveled by automobiles in Batavia

    - Air quality
- BEC happily offers their help with the following:
    - Building awareness amongst community members
    - Increasing awareness for drivers on where the signs are and what they mean
    - Increasing education
    - Expanding the Walk Batavia Program to include other resources and encourage walking in Batavia
    - Improving comfort for pedestrians and reinforcing the need for caution
    - More research done (BEC and the Well Batavia Initiative)
    - Logistics (research, paperwork)
    - Volunteers from the BEC would help the Council manage political endeavors to get items passed through the State to achieve proper infrastructure in order to get everyone moving around effortlessly

Sarah Greenhagen, 202 Adams Street, shared that her family choose their house due to the walkability to the library and grocery store. As a physical therapist, she speaks to people on how they could be active in their community. She is also the founder of the Well Batavia Initiative. They held a Well Batavia Expo this year. They are someone you could lean on for health and wellness metrics. We need to start creating structure that makes residents want to walk and be active. Taking away ways pedestrians could get around in the community is not going to improve walkability. She stated that we need to change the culture of the community by changing our built environment (Portland Oregon and Traverse City were given as examples on pedestrian-focused cities). Some examples are stairwells, bicycle paths, walking paths, exercise areas and swimming pools with the focus on these facets in the community on availability and accessibility. Physical activity decreases obesity and type 2 diabetes. Walkability of the community has a positive impact on the price of home values, mental wellness and health. The way to keep people active is to make their environment friendly for them to be active. She asked that the Committee utilize the Well Batavia Initiative as a resource. Making our streets safer should be equal among all users. She wants to ensure that accessibility is open for everyone. Pedestrians are being framed in these situations as a problem. Pedestrians are the key ingredients to a strong and healthy town. We must focus our attention on road design and how to keep everyone safe.

Carmen Hanson, 404 Union, stated that the crosswalks along Batavia Avenue concerned her from the moment they were installed. She explained that people drive too fast along Batavia Avenue and there is the potential that a pedestrian may not be able to visualize all cars in four lanes of traffic. She sees people crossing the street regularly. She understands that we want our town to be more walkable for all but the risks outweigh the benefits. She has seen groups of children and elderly individuals crossing the street with cars that are not slowing down. Crossing the intersection there has some cars that stop but there is always the possibility of more cars coming that you cannot see. She shared that she feels obligated to cross when cars are waiting for her to cross the street and after the one time using the crosswalk she has not used it again. People are familiar with red light means stop and yellow light means caution/yield. These crossings do not feel safe and the risks are too high. She does not think that these crossings are safe unless a driver sees a red light.

Karen Serby, 1408 Holbrook Lane, shared that her family moved here in 2002 from North Aurora for the schools. One of their criteria was to be within a mile of the walking paths and the river. She stated that she did some research and crosswalks alone, without flashing beacons, do increase pedestrian accidents and can give a false sense of security. At McKee it is very dark and it is hard to see the beacons. Both drivers and pedestrians do not seem to know what to do. We need to create safe crossings, not just for the people that live in Batavia but for the people that drive through Batavia. It is a state highway. If the approval was given by IDOT to create a crossing by Houston Street instead of McKee Street that would make more sense to her. Houston Street is more open and it is easier for four lanes of traffic to see pedestrians cross.

Serby asked if accidents have increased at McKee and Route 31 since the crosswalk has been put in place. Chief Eul stated that cars versus pedestrian accidents have increased. Serby stated that she does not see how the crossing is helping. She does want our town to be walkable for all of the benefits a walkable town has. She does not want this to end in a fatality. She suggested either taking it down until a better option is in place, increasing signage, slowing down traffic, or whatever it takes before someone gets killed. She would like to have the Committee explore the option of having a crosswalk at Houston Street explored once again.

Mat Knowles, Commissioner on the Bicycle Commission, addressed the Commission. He stated that an engineering company was worked with and they suggested a road diet, putting an island at Houston Street and the last thing was putting a flashing light at McKee Street. We do need to find an answer because people are not educated and we are having issues there. We need to continue to make people more aware. This is important to us and we have to figure this out. He concluded that the Bicycle Commissioners are here for the Committee's information.

John Gamble addressed the Committee. He stated having a crossing area is better than not have a crossing. The level of response has increased. Drivers have been reacting to pedestrians and vice versa and that is healthy and needs to continue. The more we have the more vehicles and pedestrians get used to the crossing the more it will be safer for all. He challenged the Committee to consider what is our priority and what is the one that we want to go after. All options will need political maneuvering. He asked the Committee to not do away with what has already been done let's make it better.

Holm stated that engineering firms would come back and suggest items that we already know such as the HAWK system, road diet and reducing speeds. Holm asserted that it is time for us to decide on what it is that we want to pursue. After discussion, the Committee directed staff to make a recommendation on what they think we should do to improve the safety in the short term and let the experts come back with their recommendation. The COW wanted to make a commitment to start the conversation on Batavia Avenue and the streetscape in general. We need to build long-term improvements into next year's budget. The COW asked what does staff think we could actually accomplish and come back with recommendation. Holm stated that they would return in the next couple of weeks.

17. Project Status

Newman reported on the following:

- Sierra Trading Company is expected to open first quarter of 2018

- Proposed Bike Path Continuation over the Larsen Becker property
    - Has challenging grading
    - At which point the property is developed hopefully the developer would help cover the cost of the bike path as well
    - Wait until there is development of that property
    - Create a vision for the entire river
        - A consulting firm has been contacted about this
        - Newman will contact the Park District
    - Mayor Schielke suggested increasing safety of the bike path for bicyclists crossing River and Wilson

18. Other

Atac announced that several people have inquired about a traffic safety assessment on the Randall Road corridor. Mayor Schielke stated that the City has no control and explained that it is a KDOT controlled road.

19. Executive Session: Purchase of Real Estate

This was removed from the agenda.

20. Adjournment

There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 11:39pm; Made by Salvati; Seconded by Stark. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith

MINUTES
July 18, 2017
Committee of the Whole
City of Batavia

Please **NOTE:** These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

Chair Brown called the meeting to order at 7:30pm.

1. Roll Call

Members Present: **Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, Salvati, O'Brien, Callahan, Meitzler, Mueller, Uher, and McFadden**

Members Absent: **Alderman Cerone**

Also Present: **Mayor Schielke; Laura Newman, City Administrator; Gary Holm, Director of Public Works; Wendy Bednarek, Director of Human Resources; Peggy Colby, Director of Finance; and Jennifer Austin-Smith, Recording Secretary**

2. Approve Minutes for June 27, 2017

Motion: To approve minutes for June 27, 2017
Maker: Mueller
Second: Uher
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

3. Items to be Removed/Added/Changed

Newman announced that there would be an executive session for the purpose of potential litigation.

4. Matters From the Public (For Items NOT on Agenda)

Jim Chidester, 318 Church Street, addressed the Committee. He passed out a statement along with photos of his property, his measurements and a letter from the City Engineer, Rahat Bari. Chidester stated that a year ago he came to the City Council to get approval for the garage to be built in front of the house. The City Engineer stated that the lot was too low and it would not be approved unless we agreed to put in and pay for storm sewer all the way around the lot. He agreed to that at his cost. In February he met with Laura Newman, City Administrator, to form a plan so the outside work (driveway and storm sewer) could be done at the same time while we have the necessary equipment on site. The administrator directed him to Rahat Bari, at the engineering department. Mr. Bari and his worker came out and shot grades from the curb to the sidewalk. It was 2%, which they said was adequate. He felt there could be a problem with drainage from the street to the curb so he shot grades from the crown of the street to the curb and

it was 8%. The difference between these two grades will be a problem when it rains and the water will be pushed to the driveway and sidewalk with nowhere to drain. He informed the Engineering Department of this issue and was told that they are only concerned with the grade from approach to street and was sent a letter denying any help with the problem. Jeff Albertson, Building Commissioner, informed him that if the City Engineering Department would not help that he should call Gary Holm, Director of Public Works. Chidester stated that he called Mr. Holm and asked for a meeting to discuss this issue and Mr. Holm refused. Mr. Holm stated that Chidester received a denial letter and therefor he would not meet with him. Chidester stated that he is here asking the City Council for help in resolving this matter. He believes it is the City's responsibility to raise the sidewalk and fix the curb on this property. This is the only property that sits low. He will, as agreed, put in the necessary storm sewer.

Chair Brown asked that the City Administrator get in contact with Mr. Chidester to set up a meeting to take a look into this situation. There was no objection from the Committee. Chair Brown stated that if Mr. Chidester fixes the approach it sounds like it would fix the problem. Holm stated that is correct but Mr. Chidester has always stated that he would like to fix the approach and have the City pay for the materials and that is where the City is objecting because we feel that we do not have to pay for the materials. Chidester asked about what would happen to the curb since it is broken. Holm recommended if he is doing concrete to put in a tool joint about two or three feet back and when the City works on the street years from now the City would saw cut along that joint and if he is doing asphalt to saw cut two or three feet back in the future. Chidester stated that he would work with the City Administrator to resolve this issue. He wants to make a nice looking driveway.

5. Consent Agenda

(The Consent Agenda is made up of items recommended by city staff that requires recommendation to the full City Council by the COW. This agenda is placed as a separate item on the COW agenda. The items on the Consent Agenda are usually minor items, already budgeted, standard non-policy activities or outgrowths of earlier meetings and are voted on as a "package" in the interest of saving time on non-controversial issues. However, any council member may, by simple request, have an item removed and placed on the "regular" agenda.)

a. Ordinance 17-53: Declaring Surplus Property (Scott Haines 7/12/17) CS
b. May Financials

Motion: To approve the Consent Agenda as presented
Maker: O'Brien
Second: Meitzler
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

6. Presentation: Wastewater Treatment Facility Monthly Construction Update PU

Holm reported that they are a little behind on the project due to the storms. Holm showed aerial footage of the property taken by a drone. He explained they have been working to excavate and demolish the building structure and will soon construct the aggregate piers. The storm sewer on

Flynn Street has been completed. At the south end of the sludge dewatering building now has provisions for a temporary dumpster.

Holm stated that he would be bringing to the COW next week a policy for allowing staff approvals for a certain amount for change orders. He noted that with a twenty million dollar project there would be some change orders. Staff will be bringing to the Committee the first change order since there is no policy in place. Staff is looking for authority at the staff level to approve $100,000 and anything over that to approve at the COW so that we could keep the project going. Holm noted that they are not anticipating such large change orders but would like to develop a policy at this time.

The Committee discussed the hours of construction (7am-3:30pm on average), the addition of spare conduits as requested by the City (at least one spare added in the plan), and the materials found when digging. Chair Brown noted that this is Phase One of the 26 million dollar project.

7. Project Status

Newman reported on the following:

- Mid-Year presentations would be moved to the August 1st meeting
- July 25th meeting would have the wage study presentation
- BATV will record the August 2nd Plan Commission meeting, which will have the public hearing for the proposed Campana building project
    - The Plan Commission meeting on August 2nd would begin at 6pm for Zoning Board of Appeals items
- Improving the flow and organization of agendas:
    - Appointments will be put prior to the Consent Agenda
    - Presentations further down on the agenda
    - Developers with professionals that they are paying for their time would be put earlier on the agenda
    - Any other suggestions email Laura Newman

8. Other

Chair Brown asked about sewer that was in imminent danger of failure north of the Wilson Street Bridge along the river and its status. Holm stated that as far as he knows there is no issue. All of the utility structures identified by the study as needing further armory or protection have plans for improvements. Holm stated we are in the process of obtaining permits and it is still an active project.

9. Executive Session: Purchase of Real Estate

Motion: To enter into executive session for the purpose of purchase of real estate
Maker: O'Brien
Second: Salvatti
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

The COW entered into executive session at 8:13pm and exited at 8:27pm.

10. Adjournment

Roll call was made. There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 8:28pm; Made by O'Brien; Seconded by Mueller. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith

MINUTES
July 25, 2017
Committee of the Whole
City of Batavia

Please **NOTE:** These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

Chair Brown called the meeting to order at 7:30pm.

1. Roll Call

Members Present: **Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, Salvati, O'Brien, Callahan, and Cerone**

Members Absent: **Aldermen Meitzler, Mueller, Uher and McFadden**

Also Present: **Mayor Schielke; Laura Newman, City Administrator; Wendy Bednarek, Director of Human Resources; Scott Buening, Director of Community Development; Gary Holm, Director of Public Works; Chris Aiston, Economic Development Consultant; Anthony Isom, Administrative Assistant to the City Administrator; and Jennifer Austin-Smith, Recording Secretary**

2. Items to be Removed/Added/Changed

Agenda items seven, eight and nine were discussed prior to agenda item six. There were no objections from the Committee.

3. Matters From the Public (For Items NOT on Agenda)

There were no matters from the public for items not on the agenda.

4. Resolution 17-83-R: Awarding a Downtown Improvement Grant to John Happel (129 S. Batavia Ave.) GS

Atac summarized the memo. Aiston stated that the applicant is addressing code issues and getting the building market-ready for occupancy. Aiston stated that the applicant is requesting $20,000 or 50% of the cost for the standard improvements or whichever is less. The building was built in 1903 and is a two-story commercial building, mid-block between Main Street and First Street.

John Happel, applicant, shared that the building was purchased a couple years ago and they are looking forward to renovating the whole building completely. It was a perfect location for his wife's art studio that she plans on putting in. The studio will bring people into town from all over the country. They tuck-pointed the exterior and plan on putting a nice porch on the back. The apartments up above are in dire need of renovation.

Chair Brown asked why there are no longer two bids for grant money. Aiston stated that the applicant knows that he needs to provide at least two bids for each component of the project. The lower bid would be subject to the reimbursement. Aiston stated that there is another phase of this project, which is exterior. This would go through the Historic Preservation Commission in 2018 and the possibility of applying for another grant in 2018.

Motion: To recommend to Council approval of Resolution 17-83-R: Awarding a Downtown Improvement Grant to John Happel
Maker: Stark
Second: Callahan
Voice Vote: 10 Ayes, 0 Nays, 4 Absent
Motion carried.

5. Ordinance 17-46: Amending Zoning Code Regarding Temporary Signs (continued) (SCB 7/17/17) CD

Stark stated that on July 11th there was a long discussion on this topic at the COW and the discussion was tabled for further discussion until tonight. Staff has reviewed the feedback from the July 11th meeting and revised the ordinance. Stark noted that the red line agreement is attached to the memo. Callahan stated that at the July 11th meeting the discussion was not tabled. There was a motion and a second on the table, there was no vote on the motion so he tabled his motion. He stated that he would withdraw his motion from the July 11th meeting.

Alex Finke, Representing the Realtors Association, stated that they are not in agreement with all of the proposed amendments. He added that it is better than it was before. He stated that they would be okay with a simple registration so that staff could track the signs as long as it wasn't a building permit that required pre-approval. They would prefer something where a realtor could fill out a form online and fill it in and inform staff. The sign should be able to go up five minutes after submitting the registration. They do not want any slow down in commerce due to pre-approval by staff.

Buening stated that staff's registration is the permit system. He would think that an instantaneous permit would be problematic. There is a legal process to get a sign removed and there is more administrative work to remove a sign if put in the wrong location. He suggested that when people order the sign when they apply for the permit.

Cerone moved to recommend to City Council to approve the ordinance with the amendment that we increase the size of both commercial and industrial to 32 square feet. Stark asked for clarification on the motion. She asked if the ordinance in question is the ordinance as amended. Cerone stated that his motion is to approve the ordinance as Scott Buening has presented with the aforementioned amendment.

Motion: To recommend to Council approval of Ordinance 17-46: Amending the Zoning Code Regarding Temporary Signs as presented by staff with the amendment to increase the size of both commercial and industrial to 32 square feet.
Maker: Cerone
Second: Callahan

Discussion was held on the motion. Wolff stated that allowing larger signage without a permit is a giant step back. We are trying to move forward with this. Cerone stated it is not a step backwards, industrial already allows for 32 square feet signage. Cerone stated that he would like to try this out for a year before we penalize the people who are doing commerce in our City. Cerone asked why don't we add 'currently marketed properties' to the motion. Buening explained that you couldn't add content. He is positive that would be considered content-based and added that he is very knowledgeable about the court case. Buening stated that he wishes there was an easier way to monitor signs. He stated that the only other thing he could suggest is looking into discounting the renewal fees, especially if there is no change to the sign and the content. He noted that staff would have to return with a new ordinance for that. Stark stated that as of today's code you need a permit and questioned why we would take that off. Limited duration signage and permits were discussed. Atac shared that she has experience in the real estate industry and asked staff to pay a lot of attention to the renewals because inventory can stay on the market for a very long time. Renewal fees can really add up and is a sunk cost. Buening agreed that staff should look into a reduced fee for renewals as long as there are no substantive changes to the sign.

Permitting fees was discussed. Newman stated that the permit fee was made to be a proper reflection of the time spent on the permit applications. Brown stated that he feels that we have to support our staff on this. Our staff is not looking for more work to do unless they thought it was justifiable. Brown asserted that Buening is the expert on this and we should support him on this and he will be voting in support of staff's recommendation. Cerone called to question.

Roll Call Vote: **Aye:** Cerone, Russotto, Salvatti, Callahan
Nay: Atac, Stark, Chanzit, Wolff, Brown, O'Brien
4-6 Vote, 4 Absent, Motion failed.

Callahan moved to recommend to City Council approval of Ordinance 17-46: Amending Zoning Code Regarding Temporary Signs with an exemption of sixty days to get a registration process in place. Stark noted that is already in the ordinance as revised and read the ordinance section that reflected that. Callahan modified the motion to include no prior permitting approval. He explained that we are submitting the registration process without having to go through the approval process for them to put the signs in. The staff will be able to get the knowledge that the sign is there, and if it is wrong it would have to be taken down. It accomplishes the goals of identifying those issues which will identify the ability to for the realtors to place their signs and gives staff the ability to track it and if need be they could have the signs removed. Callahan continued that we do have processes for those to be removed just the same as we would for a non-permitted, non-registered sign. The removal process is separate from the permitting process. Chanzit seconded the motion. Buening stated that this is a 'ask for forgiveness rather than permission' situation. He noted that this is not just about realtors. This is about anyone who could put up signs.

The recording secretary was asked to repeat the motion on the table. The motion was repeated and Callahan stated that he would like to reword the motion and withdrew the motion on the table.

Callahan moved to recommend to Council approval of Ordinance 17-46: Amending the Zoning Code Regarding Temporary Signs with a waiver of the pre-approval permitting process prior to installation. Callahan explained that he wants to be able to have commerce not interrupted and have them submit the application to us online but not withhold their ability to install the signs. We still get to look at the signs. We are encouraging behavior that people will support our sign ordinance. Callahan stated that he is open to any wording suggestions. Brown suggested the wording to allow signs to be erected at risk during the process of permit application. Callahan agreed to the suggestion. Newman stated that it is not very risky to install a sign if it could be up during the entire adjudication process. Buening stated that if the City has the authority to remove the sign if it is not in compliance that would help. Salvati suggested the wording subject to City approval after installation and subject to enforcement to compliance. Albertson commented that you can not go onto private property.

Motion: To recommend to Council approval of Ordinance 17-46: Amending the Zoning Code Regarding Temporary Signs with the amendment to allow signs to be erected at-risk during the process of permit application
Maker: Callahan
Second: Salvati

Discussion was held on the motion. O'Brien stated that he fully understands what Callahan is stating, especially in terms of realtors. O'Brien explained that we can't single out realtors so he will have to defer to City staff's recommendation. We are not allowed onto private property to remove the signs and we would be powerless. We would have to litigate and that would just cost us money for the sign. Callahan stated that we are remaining content neutral. We would be investing the same amount of time and energy as if somebody put that sign out there without any permitting process. We are gaining compliance and the ability to track, which is staff's main goal. On the rare occasions that signs are not put up correctly we would remove them through the same process as an unpermitted sign.

Roll Call Vote: **Aye:** Callahan, Cerone, Russotto, Atac, Chanzit, Salvati, O'Brien
Nay: Stark, Wolff, Brown
7-3 Vote, 4 Absent, Motion carried.

6. Discussion: Continued Discussion and Direction Regarding Inclusionary housing Policies (SCB 7/3/17)

The Committee held discussions on agenda items seven through nine since there were people in attendance waiting to speak to those agenda items. Brown suggested that since the time was already late and this discussion should be at least an hour that it be tabled to the next COW meeting. Newman noted that the staff mid-year reviews will be held on August 1st but it could always be added to the agenda. The COW decided to table the discussion.

Motion: To table this discussion
Maker: Stark
Second: Callahan
Voice Vote: 10 Ayes, 0 Nays, 4 Absent

Motion carried.

7. Resolution 17-86-R: Policy for Approval of Contract Change Orders for the Wastewater Treatment Facility Phase I Rehabilitation Project (Gary Holm 7/21/17) PU

O'Brien overviewed the memo. The Committee discussed the change order reports and the contract change. O'Brien stated that he supports this because it moves things along.

Motion: To recommend to Council approval of Resolution 17-86-R: Policy for approval of contract change orders for the wastewater treatment facility Phase I rehabilitation project
Maker: Salvati
Second: Russotto
Voice Vote: 10 Ayes, 0 Nays, 4 Absent
Motion carried.

8. Resolution 17-87-R: Authorizing Change Order No. 1 with Williams Brothers Construction Inc. for the Phase 1 WWTP Rehabilitation Project in the amount of $68,439.00 (Byron Ritchason 7/19/17) PU

Holm noted that the resolution is actually for $68,352 and will have to go on the regular agenda at City Council so that he could change the memo to reflect the actual cost.

Motion: To recommend to Council approval of Resolution 17-87-R: Authorizing Change Order No. 1 with Williams Brothers Construction Inc. for the Phase 1 WWTP Rehabilitation Project in the amount of $68,352.00
Maker: O'Brien
Second: Callahan
Voice Vote: 10 Ayes, 0 Nays, 4 Absent
Motion carried.

9. Presentation: Non-Union Wage Compensation Study (WB)

Bednarek presented on the non-union wage competition study. Her presentation included the following:

- What is the wage compensation study all about
- Geneva Partnership (as a cost savings measure)
- Wage Compensation Steps
- Phase 1
    - Custom survey due back August 2nd
    - Conduct information meeting with employees (July 31)
    - Where possible collect private sector data
- Phase II
    - Gallagher to analyze data and present findings and recommended compensation tools
    - Presentation to and approval by CC (late September/October)
    - Total cost for the study to the City $16,000

Bednarek noted that she would be working with Gallagher with one item of concern from a recruitment perspective. She explained that our current step system is not working in the way that it should in theory work. She is finding, to meet salary demands, we have to meet the steps earlier and three to four years into their career the employees are already maxed out. That is not ideal for the employee or the City.

10. Project Status

Newman reported on the following:

- Curb and gutter removal has begun on Route 25 which is an IDOT project
- Seimens project is on schedule
  - Two more weeks for removal of material
  - Import of clean backfill of portions already excavated and tested this week
- Strategic Planning RFP
  - Had received five proposals and have three interviews.
  - Two interviews are scheduled for tomorrow and one next Wednesday
  - Staff and selected Council members will narrow down the selection to one and then present to the COW
- Plan Commission public hearing for the Campana project will be held on August 2nd at 7pm
  - Will be televised on BATV
- The Science bridge sculpture should be installed next week
- Storehenge installation is scheduled for the second week of August.

11. Other

Callahan shared that on the Route 31 construction, the traffic controllers were on their cell phones and someone should be notified about this. Holm stated that it is an IDOT project and Holm could find out the contact and let Callahan know.

Stark asked about the City of Batavia's waterway project. Holm stated that it should take ten days and they are on day two of the project.

Salvati asked if there were any plans to pursue the Civic's Plus app. Newman stated that staff is investigating this for the 2018 budget.

O'Brien asked about the gas station on Wilson Street. Albertson answered that staff is working with the owner regarding the demolition and how the property would be left once it is all demolished.

12. Executive Session:

a. Sale of Electric Power (LN)
b. Setting the Price of Land for Sale I (SB)
c. Setting the Price of Land for Sale II (SB)

Motion: To enter into executive session for the purpose of sale of electric power and setting the price of land for sale for two items

Maker: Callahan
Second: Cerone
Voice Vote: 10 Ayes, 0 Nays, 4 Absent
Motion carried.

The COW entered into executive session at 9:24pm and exited at 10:05pm.

13. Adjournment

Roll call was made. There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 10:05pm; Made by O'Brien; Seconded by Salvati. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith

CITY OF BATAVIA

DATE: **August 17, 2017**
TO: **Committee of the Whole – GS**
FROM: **Gary Holm**
SUBJECT: **Resolution #17-93-R Approval of Video Service Franchise Agreement between the City of Batavia and CMN-RUS, Inc.**

CMN-RUS, Inc. doing business as MetroNet, Inc. has approached the City of Batavia and desires to enter into a Video Service Franchise Agreement. MetroNet provides fiber optic communication services, including high-speed fiber Internet, full-featured fiber phone, and fiber IPTV with various programming. MetroNet desires to build a fiber optic network throughout the City to service Batavia's citizens.

Attached is MetroNet's franchise application which provides company information and outlines the proposed services that MetroNet plans to offer in Batavia. It should be noted that MetroNet's Initial Franchise Area map, shown as Exhibit A in the application, does not include some subdivisions within the City located west of Randall Rd. According to MetroNet, the subdivisions do not have sufficient density to meet MetroNet's requirements for build-out. That said, MetroNet has stated that they will actively market in the subdivisions and if they receive a sufficient number of pre-commitments, then they will proceed with construction.

Staff has worked with MetroNet to develop the proposed terms and conditions of the franchise agreement. In the summer of 2016 the City approved a franchise agreement with Comcast, Inc. The Comcast agreement was used as the basis for development of the proposed agreement with MetroNet. Highlights of the proposed franchise agreement include:

- Term of the Agreement shall be 10 years with options for future renewals
- MetroNet will be obligated to pay the City a Franchise Fee equal to 5% of Gross Revenues received from operation of the Video Service System
- MetroNet shall provide capacity for two Public, Educational and Government Access (PEG) channels. There is a requirement to provide a third channel if the need is demonstrated.
- At the City's sole discretion, MetroNet will be required to collect a PEG Capital Fee up to $0.90/customer per month to support PEG capital projects

Staff is recommending Resolution 17-93-R Approval of Video Service Franchise Agreement between the City of Batavia and CMN-RUS, Inc.

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-93-R

APPROVAL OF VIDEO SERVICE FRANCHISE AGREEMENT BETWEEN THE CITY OF BATAVIA AND CMN-RUS, INC.

WHEREAS, CMN-RUS, Inc. doing business as MetroNet, Inc. has expressed a desire to construct a fiber optic network with the City of Batavia to provide citizens with communication services including high-speed fiber Internet, full-featured fiber phone, and fiber IPTV; and

WHEREAS, the City has negotiated an agreement with MetroNet, Inc., a copy of which is attached hereto as Exhibit 1, which agreement among other provisions, grants a video service franchise for ten (10) years, provides for the statutory 5% franchise fee, and contains a mechanism for support of the PEG system in Batavia which is one of the most active institutions of its kind in the Chicago area and which is a critical component of the community's communication system; and

WHEREAS, it is in the best interest of the community to have access to competing video and communication services and therefore in the best interest of the City to enter into such video service franchise agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the Council of the City of Batavia, Kane County and DuPage County, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the Video Service Franchise Agreement By And Between The City Of Batavia And CMN-RUS, Inc. doing business as MetroNet, Inc. attached hereto as Exhibit 1.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 5th day of September, 2017.

_____

Jeffery D. Schielke, Mayor

Ald	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Mueller					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____

Ellen Posledni, City Clerk

METRONET™

August 07, 2017

Via Federal Express and Email

The Honorable Jeffrey D. Schielke
Mayor
City of Batavia
100 N. Island Ave
Batavia, IL 60510

RE: CMN-RUS, Inc.; Application for CATV Franchise

Dear Mayor Schielke:

CMN-RUS, Inc. ("CMN") is pleased to file this application for a non-exclusive CATV Franchise ("Application"). CMN is a subsidiary of Metronet Holdings, LLC and an affiliate of Metro Fibernet, LLC. (CMN, MetroNet Holdings, LLC and Metro Fibernet, LLC are collectively referred to herein as "MetroNet"). Since its inception in 2005, MetroNet has constructed and operated fiber-to-the-premises networks that provide 100% fiber based voice, video and Internet services to residential and business customers. MetroNet currently operates in more than 30 communities throughout Indiana and Illinois.

CMN, respectfully requests this non-exclusive franchise to provide video services in the City of Batavia ("Batavia"). Consistent with the video services CMN currently provides in all existing markets, CMN proposes to offer in Batavia a video lineup consisting of over 240 digital channels including an ever expanding HD lineup currently at 128 channels. CMN plans to carry all the local networks and sports channels as well as the popular networks that would be expected in a standard cable television lineup. Our IPTV platform and fiber infrastructure will provide an incredibly clear picture, fast channel changing technology, and a robust video-on-demand library. Due to the capacity of our fiber infrastructure, CMN has the ability to deliver 4K television service as it evolves in the marketplace.

Not only will the 100% fiber network that MetroNet plans to deploy in Batavia support MetroNet's robust video service offerings, it will also support incredibly fast Internet service connections with speeds as high as 1 Gig for residential customers and wide area network services for business customers scalable up to 10 Gigs and beyond. Additionally, MetroNet will offer a full suite of telecommunications services including fully

featured residential phone service and HBPX and PRI business offerings. By deploying these services in Batavia, the City will benefit from increased competition resulting in more consumer choice and potentially lower prices. Batavia will also have the distinction of being a true "Gigabit City" with a world class fiber infrastructure equivalent or better than similar networks deployed in Tokyo, Paris, Hong Kong and Silicon Valley.

As set forth below, CMN has the qualifications to provide high quality video services over a fiber-to-the-premises network pursuant to applicable law and the terms of the proposed franchise. Additionally, CMN is willing to adhere to substantially all of the franchise obligations in the City's current video franchise agreement. CMN's proposed modifications to the City's existing franchise are set forth below along with the practical and legal justifications for why these proposed changes are both necessary and lawful in light of the Illinois law,[1] the Federal Cable Act,[2] the Federal Communications Commission's ("FCC") interpretation of the Federal Cable Act in the Competitive Franchise Order[3] and the United States Appellate Court in upholding the Competitive Franchise Order.[4]

Qualifications

As the state of Indiana has recognized, CMN has the qualifications and technical expertise necessary to provide video services.[5] CMN has nearly 10 years of experience building and operating fiber networks and providing high quality video services over such networks. The core components of both the long haul and local fiber network to be deployed in Batavia will be redundant with diverse fiber paths. CMN will utilize time tested technology throughout its video network in Batavia developed by top tier vendors including Cisco and Microsoft. The fiber network and all video services will be monitored 24 hours a day/7 days a week/365 days a week. The Illinois Commerce Commission has already recognized MetroNet's qualifications and technical expertise to operate communication networks in granting MetroNet its CLEC certification.

MetroNet has the financial and operational resources to successfully complete and operate a comprehensive fiber network in Batavia that will provide high quality video services to residential and business consumers. Due to strong balance sheet and significant equity contributions, MetroNet has the capital available to fund the entire construction of the fiber network in Batavia and to operate such network until it becomes cash flow positive. As set forth in the biographies attached hereto as Exhibit 1, it has an experienced management team and operational staff capable of ensuring the long term

[1] *See,* 220 ILCS §5/21-1101(d)(1).
[2] *See,* 47 USC §541(1).
[3] In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking (2007). ("*Competitive Franchise Order*")
[4] Alliance for Community Media et. al v Federal Communications Commission, 529 F3d 763, at 780-782 (6 Cir 2008). ("*Competitive Franchise Appeal Decision*").
[5] Metronet currently serves over 44,000 customers in Indiana. Video services in Indiana are provided pursuant to Certificates of Franchise to Provide Video Services issued by the Indiana Utility Regulatory Commission.

success of the project and CMN's ability to comply with its obligations under the franchise proposed herein.

As previously stated, CMN will offer a comprehensive video services package in Batavia. A list of channels and service offerings provided in Illinois is attached as Exhibit 2. The channel line-up and features in Batavia will be similar to that set forth in Exhibit 2, with the addition of local broadcast networks and regional sports networks.

In summary, CMN has the financial, operational and technical capabilities to provide video service under the proposed franchise. Providing video services through a fiber to the premises network in Batavia is consistent with CMN's extensive experience in Indiana and Illinois.

Franchise Terms

To assist with expediting the franchise process, CMN has reviewed and is agreeable to enter into a substantially similar franchise to the current agreement between the City and Comcast ("Comcast Franchise"). Our proposed modifications also include a clarification, based on our discussions with the City, that once CMN acquires the franchise, there will be no construction permit fees. Attached as Exhibit 3 are clean and redlined versions of the Comcast Franchise with CMN's requested modifications ("Proposed Franchise"). The most notable changes in the Proposed Franchise are the modification of the "Initial Franchise Service Area" definition and a revised General Service Obligation formula.[6] The definition of "Initial Franchise Service Area" in the Comcast Franchise is based on the fact that Comcast already serves the Batavia market.[7] Because CMN is a new market entrant with no existing facilities, a map setting forth CMN's proposed service footprint will be inserted into the Proposed Franchise to define CMN's Initial Franchise Service Area. This map will be consistent with the one previously presented to the City and demonstrates that CMN intends to initially extend video services to a substantial portion of Batavia. It should be noted that minor changes may be made to the final map after CMN completes a final construction optimization process.

CMN also proposes to modify the General Service Obligation formula. Under the Comcast Franchise, Comcast is required to expand its Cable System to any area within Plainfield where there is a minimum of 30 dwelling units per linear Cable System network mile from the existing Cable System's technically feasible connection point[8]. In the Proposed Franchise this formula has been changed to require CMN to expand its Cable System to any area where 15 Qualified Households have requested Cable Service with 1200 feet of CMN's distribution cable. As more particularly described below, this modified formula better reflects the economic realities of CMN's status a new market entrant.

[6] See page 6 (Sections 4.1 and 4.2) of the Proposed Franchise
[7] See page 3 of the Comcast Franchise
[8] See page 6 of the Comcast Franchise (Section 4.2)

The final change to the Comcast Franchise is set forth in Section 4.6.1 of the Proposed Franchise where clarifying language has been added to require CMN to only provide complimentary Basic Cable Service and a free Standard Installation where it is requested by an eligible governmental entity[9]. It should be noted that this change is more practical in nature and is intended to prevent CMN from having to provide complimentary service to eligible governmental buildings that don't want or need CMN's Basic Cable Service. If services are requested, however, CMN is still obligated to provide them consistent with Illinois law.

Legal and Practical Basis for Differing Extension Requirements

CMN respectfully contends that the modifications highlighted in the Proposed Franchise are lawful. The Cable Act prohibits the provision of exclusive franchises.[10] The FCC and the Federal Courts have recognized that certain obstacles to competition, including unreasonable build-out requirements, may result in the de facto granting of an exclusive franchise and thus may be prohibited under the Cable Act. We explain below.

The Federal Communications Commission, in reviewing the obstacles to consumers being able to enjoy true wire-line video competition, noted that one of the most contentious issues between prospective new entrants and local franchise authorities hindering the deployment of new services was the build-out requirement.[11] Various consumer groups and the U.S. Department of Justice, Anti-trust Division ("DOJ") urged the Commission to address this aspect of the competitive franchising process in order to speed competitive entry.[12] DOJ specifically noted that imposing uneconomical build-out requirements actually results in less efficient competition and the potential for higher prices—thus harming the consumer.[13] The result was the FCC's adoption of the Competitive Franchise Order.

In the Competitive Franchise Order the FCC expressly disagreed "with LFAs [Local Franchise Authorities] and incumbent cable providers who argue that unlimited local flexibility to impose build-out requirements, including universal build-out of an entire franchise area, is essential to promote competition in the delivery of video programming and ensure a choice in providers for every household."[14] To the contrary the FCC noted that "[I]n many cases, build-out requirements may have precisely the opposite effects – they deter competition and deny consumers a choice."[15]

Accordingly, the FCC specifically found that unreasonable build-out requirements could have the effect of preventing competitive franchises thus resulting in "exclusive franchises, in direct contravention of Section 621(a)(1)'s prohibition of exclusive cable

[9] See page 7 (Section 4.6.1) of the Proposed Franchise
[10] 47 USC §541(1).
[11] *Competitive Franchise Order*, at ¶31 (2007).
[12] *Id*.
[13] *Id.*
[14] *Competitive Franchise Order*, at ¶36.
[15] *Id.*

franchises."[16] As the FCC noted "[I]n most cases, incumbent cable operators entered into their franchise agreements in exchange for a monopoly over the provision of cable service. Build-out requirements and other terms and conditions that may have been sensible under those circumstances can be unreasonable when applied to competitive entrants."[17]

On Appeal opponents of the Competitive Franchise Order argued that 47 USC § 541(a)(4)(A) gave the local franchise authority the absolute right to impose a total build-out requirement as long as the provider was given a reasonable time to complete the build-out.[18] The US Court of Appeals disagreed, noting:

> [T]hat is, it is quite possible for an LFA to furnish a cable entrant with "a reasonable period of time to become capable of providing cable service to all households in the franchise area" yet still act unreasonably overall in imposing the build-out requirement on the entrant in the first place. Thus, in light of Congress's patent consideration and rejection of statutory language that would have created a presumption of reasonableness surrounding build-out requirements, we find the FCC to have the better argument. Accordingly, *section 621(a)(4)(A)* is more aptly designated as a limitation on the authority of LFAs, rather than an affirmative bestowal of rights.[19]

It would be impractical and unfair to require CMN to adopt the build-out requirement negotiated by an incumbent after its system was fully built—i.e. matching the incumbent's existing service area and expansion requirements. An incumbent provider's cable system is built over time, in a monopolistic fashion knowing that if the residents wanted anything other than broadcast channels they would be required to subscribe to cable. Even with the advent of satellite TV (Dish and Direct-TV) incumbent providers like Comcast and their predecessors held a distinct advantage knowing that the cost of any remaining build-out was likely to result in an ample return on investment as they were the only wired provider and had an existing customer base in the town to help offset the cost, in addition to having the advantage of being able to offer high speed Internet service which the satellite companies did not. AT&T did not obtain a State Issued Authorization to Provide Video Service until October 25, 2007. Requiring a new provider to build out, in a competitive environment, everywhere the age-old incumbent system currently exists is simply impractical, unfair and inconsistent with Federal Law.

Illinois does have a Level Playing Field Statute, 65 ILCS 5/11-42-11.[20] Accordingly, the City will need to comply with the public hearing and notice requirements contained in the "Level Playing Field Statute", a copy of which is attached as Exhibit 5.[21] By CMN agreeing to the same franchise fee, customer service standards

[16] *Competitive Franchise Order*, at ¶40.
[17] *Competitive Franchise Order*, at ¶48.
[18] *Competitive Franchise Appeal Decision,* at 781.
[19] *Competitive Franchise Appeal Decision,* at 782.
[20] Franchise, Section 2.6.1.
[21] 65 ILCS §5/11-42-11(e)(1-2).

and other provisions of the existing Franchise, compliance with the Level Playing Field statute is assured. Differences based on build-out requirements not being based on building out the incumbent's existing service area are governed by the Competitive Franchise Order and its interpretation of the Federal Cable Act, as affirmed on appeal in the *Competitive Franchise Appeal Decision*. Accordingly, the Illinois Level Playing Field Statute does not preclude the City from granting the attached franchise as requested. Not surprisingly, other governmental entities throughout Illinois, including jurisdictions served by Comcast and AT&T, have agreed to similar formulas for network expansion as that set forth in the General Service Obligation Section of the Proposed Franchise.[22]

Conclusion

CMN looks forward to providing video services to the residents of the City of Batavia using a state-of-the-art fiber platform, similar to what it has done in Indiana and Illinois. If you have any questions or would like to discuss the application in more detail we would be glad to meet with you and go through our history of video service and our plans for Batavia.

We would request that the appropriate actions be taken by the City to start the application process. We would like to begin to provide service as quickly as we are able and thus would like to assure that the franchise approval process is started and moves forward. As the Competitive Franchise Order acknowledges, delays merely stymy competition and we are anxious to bring additional wireline video, broadband and telephone competition to the residents of Batavia.

Thank you for your consideration and if you have any questions please contact me at: John.Campbell@qservicesco.com.

Sincerely,

John Campbell

John Campbell
EVP & General Counsel

[22] See Cable Television Franchise Agreement by and between iTV-3, Inc. and the City of Bloomington dated June 10, 2013, pg. 6 (Section 4.1); Franchise Agreement by and between the City of Peoria and iTV-3 dated January 8, 2015, pg. 6 (Section 4.1.2); Cable Television Franchise by and between the Village of Bartonville and Bitwise Communications d/b/a iTV-3 dated February 14, 2013 pg. 5 (Section 3.9); Cable Television Franchise between the City of Champaign, Illinois and iTV-3 dated December 2, 2014 pg. 6 (Section 4.1)

EXHIBIT 1

MANAGEMENT BIOGRAPHIES

Name	Title	Years Experience
Executive Team		
Al P. Cinelli	*Chairman*	**53**
John P. Cinelli	*President*	**22**
Lohn Weber	*EVP and Chief Financial Officer*	**15**
Kevin Stelmach	*EVP and General Manager*	**12**
John Iber	*Vice President of Network Engineering and Operations*	**29**
John M. Campbell	*EVP and General Counsel*	**14**
Keith R. Leonhardt	*Vice President Marketing*	**25**
John Greenbank	*EVP Construction*	**22**
Stacy Jenkins	*Vice President, Construction*	**40**
Robert Thurman	*Vice President, Engineering, Administration*	**24**

Al Cinelli, Chairman

For over a half a century Mr. Cinelli has provided a high level of leadership and vision to a variety of successful enterprises. Currently, Mr. Cinelli serves as Chairman of MetroNet and all of its affiliates. Over his career Mr. Cinelli has successfully incubated multiple communications companies from their inception including nGenx Corporation, MetroNet, Norlight, Inc. and Kentucky Data Link, Inc. which was sold to Windstream as part of a merger valued at $825 Million. Prior to working in the telecommunications industry, Mr. Cinelli served as Vice President and General Counsel of Marion Labs in Kansas City where as part of the senior management team he helped grow that company from $40 Million in revenue to over $1 Billion. Prior to Marion Labs, Mr. Cinelli served as the International General Counsel for American Home Products. Mr. Cinelli holds a Bachelor of Arts in Political Science and Economics from Lafayette College and his Juris Doctorate from Columbia University Law School.

John Cinelli, President

Mr. Cinelli has 22 years of experience successfully managing telecommunications companies. Currently he is President of MetroNet. and Metronet Holdings, LLC. Prior to that, Mr. Cinelli served as President of Q-Comm Corporation, a holding company for multiple telecommunications entities including Kentucky Data Link, Inc. He also served as President of Norlight, Inc., a facilities based CLEC that offered telecommunications services to residential and business customers throughout the Midwest. Norlight and Q-Comm were acquired in 2010 by Windstream Communications as part of an $825 million merger. Mr. Cinelli has a Bachelor of Arts from Tufts University.

Lohn H. Weber, EVP, Chief Financial Officer, and Treasurer

Mr. Weber has overseen and managed the financial operations of multiple telecommunications companies over a span of 15 years. Over the course of his career he has raised over $500 million in debt financing for various companies. Mr. Weber previously served as the CFO of Kentucky Data Link, Inc., a wholesale communications transport provider that grew from no revenues to revenues of $200 million a year under his tenure. He also served as CFO of Q-Comm and its affiliates including Norlight, Norlight Telecommunications, Inc. and Kentucky Data Link, Inc. He is a graduate of the University of Missouri and is a Certified Public Accountant.

Kevin Stelmach, EVP and General Manager

Mr. Stelmach has a 12 year track record of successfully managing high tech companies. He currently oversees the day to day operations of MetroNet. Under his leadership, MetroNet has successfully deployed FTTP networks in 27 plus communities, acquired nearly 50,000 customers, and increased revenues every quarter of his tenure. Prior to joining MetroNet, Mr. Stelmach served as Vice President of Marketing and Sales for nGenX Corporation, a cloud computing company. nGenX was acquired by Q-Comm in 2004. Mr. Stelmach is a graduate of Mid America College.

John Iber, Vice President of Network Engineering and Operations

Mr. Iber has more than 20 years of technology and operations management experience in the telecommunications and video technology sectors. During his carrier he's overseen the successful deployment of numerous large software and hardware installations. Currently Mr. Iber serves as Vice President of Network Engineering and Operations for MetroNet. Prior to that, he served as Chief Operating Officer of nGenx, a cloud hosting company. Mr. Iber has also served as Vice President of Operations for Kentucky Data Link, Inc., and as a Managing Director for Williams International. He holds a Bachelor of Science in Electrical Engineering from Texas A&M University.

John M. Campbell, EVP and General Counsel

Mr. Campbell oversees the business development activities and legal and regulatory affairs of MetroNet. He has 14 years of legal and regulatory experience working for telecommunications companies. Previously, Mr. Campbell served as the senior legal officer of a $60 million national wireless broadband provider. He also gained extensive legal, real estate and regulatory experience serving in various capacities with Sprint Communications Company and its affiliates. He is a graduate of Chicago-Kent College of Law.

Keith R. Leonhardt, Vice President Marketing

Mr. Leonhardt has 25 years of experience in marketing, advertising and communications. He currently serves as the Vice President of Marketing for MetroNet where he oversees the development and monitoring of all marketing and advertising activities. Previously, Mr. Leonhardt owned and operated a consulting and advertising firm serving a diverse national client base. Prior to that, he served as the Senior Bank Marketing Officer for a super-regional bank holding company. Mr. Leonhardt holds a Bachelor of Science in Communications from the University of Evansville, where he has served as an adjunct professor.

John Greenbank, Executive Vice President Construction

Mr. Greenbank is responsible for overseeing all aspects of MetroNet's construction efforts. He has extensive experience in all aspects of building, operating and maintaining fiber networks. Prior to serving with MetroNet, Mr. Greenbank served as President of Kentucky Data Link, Inc., a wholesale fiber transport provider. During his tenure he grew that company from an entity with no fiber assets in 1998 to one with 27,000 fiber route miles by 2012. Before working at Kentucky Data Link, Mr. Greenbank used his vast amount of telecommunications experience while running other small telecom companies since 1980.

Stacy Jenkins, Vice President, Construction

Mr. Jenkins has nearly 40 years of experience designing, engineering, and deploying large scale fiber networks. He currently serves as Vice President of Construction where he helps direct the strategic focus of the company and provides engineering and construction services to MetroNet. Mr. Jenkins has also served as President of Pinpoint Services and President of Adesta Communications (f/k/a. MFS Network Technologies, Inc.) where he built and managed teams developing and deploying over $1.5 Billion of fiber infrastructure over a 25 year period. Mr. Jenkins attended the University of Missouri.

Robert Thurman, Vice President, Engineering, Administration

Mr. Thurman has over 24 years of experience in inside and outside plant engineering and management in the communications and information technology industries. Currently, he is Vice President of Engineering for MetroNet where he oversees outside plant engineering, design, and permitting activities. Previously, Mr. Thurman served as Vice President of Business Development for Pinpoint Services, Inc. and was responsible for new business development activities including sales, marketing, proposal development, and estimating efforts.

EXHIBIT 2

ILLINOIS CHANNEL LINEUP
(See attached)

MetroNet Channel Lineup

Business customers: HBO, Showtime, Cinemax, Starz, Starz Encore, and PPV are not available. Music Choice sold separately.

Number	Channel	Basic	Standard	Preferred	A La Carte
2	PUBLIC EDUCATIONAL GOVERNMENT (PEG)	✔	✔	✔	
4	WYIN - PBS HD (WYINDT)	✔	✔	✔	
5	WMAQ-NBC HD (WMAQDT)	✔	✔	✔	
6	WBBM-CBS HD (WBBMDT)	✔	✔	✔	
7	WLS-ABC HD (WLSDT)	✔	✔	✔	
8	WPWR-MY NETWORK/CW HD (WPWRDT)	✔	✔	✔	
9	WGN HD (WGNDT)	✔	✔	✔	
10	WCPX-ION HD (WCPXDT)	✔	✔	✔	
12	WFLD-FOX HD (WFLDDT)	✔	✔	✔	
13	WTTW-PBS HD (WTTWDT)	✔	✔	✔	
14	C-SPAN (CSPAN)	✔	✔	✔	
15	WGN AMERICA HD (WGNA)	✔	✔	✔	
16	QVC HD (QVCHD)	✔	✔	✔	
17	HSN	✔	✔	✔	
19	WWTO- TBN (WWTODT)	✔	✔	✔	
20	EWTN	✔	✔	✔	
23	WSNS-SPANISH HD (WSNSDT)	✔	✔	✔	
30	BIG TEN NETWORK HD (BIGILHD)		✔	✔	
31	NBC SPORTS NETWORK HD (NBCSH)		✔	✔	
32	ESPN HD (ESPNHD)		✔	✔	
33	ESPN2 HD (ESPN2HD)		✔	✔	
34	ESPN CLASSIC (ESPNCL)		✔	✔	
35	ESPNEWS HD (ESPNNH)		✔	✔	
36	COMCAST SPORTSNET CHICAGO HD (CSNCH)		✔	✔	
37	MLB NETWORK HD (MLBHD)		✔	✔	

Number	Channel	Basic	Standard	Preferred	A La Carte
38	NFL NETWORK HD (NFLHD)		✓	✓	
39	FOX SPORTS 1 HD (FS1HD)		✓	✓	
40	GOLF CHANNEL HD (GOLFHD)		✓	✓	
41	JEWELRY CHANNEL HD (JEWEL)	✓	✓	✓	
42	THE WEATHER CHANNEL HD (WEATHD)		✓	✓	
43	FOX NEWS HD (FNCHD)		✓	✓	
44	CNN HD (CNNHD)		✓	✓	
45	HLN HD (HLNHD)		✓	✓	
46	MSNBC HD (MNBCHD)		✓	✓	
47	CNBC HD		✓	✓	
48	C-SPAN 2 (CSPAN2)	✓	✓	✓	
49	NICKELODEON HD (NICKHD)		✓	✓	
50	DISNEY CHANNEL HD (DISNHD)		✓	✓	
51	CARTOON NETWORK HD (TOONHD)		✓	✓	
52	TV LAND HD (TVLNDHD)		✓	✓	
53	FREEFORM HD (FREFMHD)		✓	✓	
54	TBS HD (TBSHD)		✓	✓	
55	TNT HD (TNTHD)		✓	✓	
56	FX HD (FXHD)		✓	✓	
57	USA NETWORK HD (USAHD)		✓	✓	
58	SPIKE HD (SPIKEHD)		✓	✓	
59	COMEDY CENTRAL HD (CCHD)		✓	✓	
60	SYFY HD (SYFYHD)		✓	✓	
61	TRUTV HD (TRUHD)		✓	✓	
62	LIFETIME HD (LIFEHD)		✓	✓	
63	LMN HD (LMNHD)		✓	✓	
64	LIFETIME REAL WOMEN (LRW)		✓	✓	
65	TCM HD (TCMHD)		✓	✓	
66	HALLMARK CHANNEL HD (HALLHD)		✓	✓	
67	AMC HD (AMCHD)		✓	✓	
68	BRAVO HD (BRAVOHD)		✓	✓	

Number	Channel	Basic	Standard	Preferred	A La Carte
69	ANIMAL PLANET HD (APLHD)		✓	✓	
70	A&E HD (AETVHD)		✓	✓	
71	TLC HD (TLCHD)		✓	✓	
72	HGTV HD (HGTVD)		✓	✓	
73	DISCOVERY CHANNEL HD (DSCHD)		✓	✓	
74	DISNEY JUNIOR HD (DJCHHD)		✓	✓	
75	HISTORY CHANNEL HD (HSTRYHD)		✓	✓	
76	E! HD (EHD)		✓	✓	
77	FOOD NETWORK HD (FOODHD)		✓	✓	
78	TRAVEL CHANNEL HD (TRAVHD)		✓	✓	
79	NATIONAL GEOGRAPHIC HD (NGCHD)		✓	✓	
80	MTV HD (MTVHD)		✓	✓	
81	VH-1 HD (VH1HD)		✓	✓	
82	CMT HD (CMTHD)		✓	✓	
83	QVC2 HD (QVC2HD)	✓	✓	✓	
84	TBN (TRINITY BROADCAST NETWORK) (TBN)	✓	✓	✓	
85	BET HD (BETHD)		✓	✓	
126	WYIN NHK WORLD HD (WYINDT2)	✓	✓	✓	
127	WTTW PBS KIDS (WTTWDT4)	✓	✓	✓	
128	WMAQ-COZI TV (WMAQDT2)	✓	✓	✓	
129	WBBM-DECADES (WBBMDT2)	✓	✓	✓	
130	WLS-LIVE WELL NETWORK HD (WLSDT2)	✓	✓	✓	
131	WLS-LAFF NETWORK (WLSDT3)	✓	✓	✓	
132	WPWR-MOVIES! (WPWRDT2)	✓	✓	✓	
133	WPWR-BUZZ (WPWRDT4)	✓	✓	✓	
134	WGN-ANTENNA TV (WGNDT2)	✓	✓	✓	
135	WGN-THIS TV (WGNDT3)	✓	✓	✓	
136	WSNS-TELEXITOS (WSNSDT2)	✓	✓	✓	
201	WE TV (WE)		✓	✓	
202	OXYGEN HD (OXYHD)		✓	✓	

Number	Channel	Basic	Standard	Preferred	A La Carte
203	FUSION HD (FUSIONH)			✓	
206	GSN (GAME SHOW NETWORK) HD (GSNHD)			✓	
207	EVINE LIVE (EVINE)			✓	
208	C-SPAN 3 (CSPAN3)	✓	✓	✓	
209	FOX BUSINESS HD (FXBHD)		✓	✓	
210	GAC			✓	
211	DAYSTAR HD (DAYHD)	✓	✓	✓	
212	JUCE TV (JUCE)			✓	
213	BYU (BYUTV)			✓	
214	CNBC WORLD (CNBCWLD)		✓	✓	
215	DESTINATION AMERICA HD (DSTHD)			✓	
216	DISCOVERY FAMILY HD (DFCHD)			✓	
217	SCIENCE CHANNEL HD (SCIHD)			✓	
218	INVESTIGATION DISCOVERY HD (IDHD)		✓	✓	
219	AMERICAN HEROES CHANNEL HD (AHCHD)			✓	
220	BBC AMERICA HD (BBCAHD)		✓	✓	
221	DISCOVERY LIFE (DCL)			✓	
222	DIY			✓	
223	COOKING CHANNEL (COOK)			✓	
224	VICELAND HD (VICEHD)			✓	
225	FYI HD (FYIHD)			✓	
227	TEENNICK (TNCK)			✓	
228	NICKTOONS HD (NIKTNHD)			✓	
229	NICK JR. HD (NICJRHD)			✓	
230	BOOMERANG (BOOM)			✓	
231	PBS KIDS SPROUT HD (SPRHD)		✓	✓	
232	DISNEY XD HD (DXDHD)			✓	
233	MTV2 HD (MTV2HD)			✓	
234	NICKMUSIC (NMZK)			✓	
235	BET JAMS (BETJ)			✓	

Number	Channel	Basic	Standard	Preferred	A La Carte
236	TR3S			✓	
237	MTV CLASSIC (MTVCLAS)			✓	
238	CMT MUSIC (CMTMUS)			✓	
239	BET SOUL (BETSOUL)			✓	
240	FXM HD (FXMHD)		✓	✓	
241	HALLMARK MOVIES & MYSTERIES HD (HMMHD)		✓	✓	
242	CHILLER			✓	
243	IFC		✓	✓	
244	OWN HD (OWNHD)		✓	✓	
245	NAT GEO WILD HD (NGWHD)			✓	
246	MUSIC CHOICE PLAY (MCPLAY)	✓	✓	✓	
247	MTV LIVE (MTVLIVE)				HD Elite
248	AXS TV HD (AXSTV)		✓	✓	
250	NFL REDZONE HD (NFLRHD)				Sports
251	ESPNU HD (ESPNUHD)			✓	
252	CBS SPORTS NETWORK HD (CBSSNH)			✓	Sports
253	FCS - ATLANTIC (FCSA)			✓	Sports
254	FCS - CENTRAL (FCSC)			✓	Sports
255	FCS - PACIFIC (FCSP)			✓	Sports
256	BIG TEN NETWORK (ALT 1) (BIGTENO)			✓	
257	BIG TEN NETWORK (ALT 2) (DUPBG10)			✓	
258	NBA TV HD (NBAHD)		✓	✓	Sports
259	FXX HD (FXXHD)		✓	✓	
261	FOX SPORTS 2 HD (FS2HD)		✓	✓	
262	FOX SOCCER PLUS HD (FSPHD)				Sports
263	SPORTSMAN CHANNEL (SPRTMAN)				Sports
264	OUTDOOR CHANNEL HD (OUTHD2)				Sports
265	TVG				Sports
266	COMCAST SPORTSNET CHICAGO PLUS HD (CSNCH2)		✓	✓	
267	INSPIRATION NETWORK (INSP)			✓	

Number	Channel	Basic	Standard	Preferred	A La Carte
268	SUNDANCETV (SUNDAE)		✔	✔	
269	FOX DEPORTES HD (FDEPH)				Sports
270	VELOCITY HD (VELHD)		✔	✔	
271	MAVTV HD (MAVHD)				Sports
272	OUTSIDE TELEVISION HD (OUTSHD)				Sports
273	PAC-12 NETWORK HD (PAC12HD)				Sports
275	WORLD FISHING NETWORK HD (WFNHD)				Sports
277	SEC NETWORK HD (SECHD)			✔	Sports
279	SEC NETWORK HD (ALT) (SECAHD)			✔	Sports
281	MILITARY HISTORY (MILH)			✔	
282	CRIME & INVESTIGATION HD (CINHD)			✔	
284	LONGHORN NETWORK HD (LHNHD)				Sports
285	YES NETWORK HD (YESHD)				Sports
286	HD NET MOVIES (HDNETMV)				HD Elite
288	MGM HD (MGMHD)				HD Elite
301	STARZ ENCORE HD (STZENHD)			✔	
302	STARZ ENCORE ACTION (STZENAC)			✔	
303	STARZ ENCORE SUSPENSE (STZENSU)			✔	
304	STARZ ENCORE WESTERNS (STZENWS)			✔	
305	STARZ ENCORE CLASSIC (STZENCL)			✔	
306	STARZ ENCORE BLACK (STZENBK)			✔	
307	STARZ ENCORE FAMILY (STZENFM)			✔	
401	STARZ HD (STZHD)				Starz
402	STARZ EDGE HD (STZEHD)				Starz
403	STARZ KIDS HD (STZKHD)				Starz
404	STARZ IN BLACK (STZIB)				Starz
405	STARZ CINEMA (STZCI)				Starz
406	STARZ COMEDY HD (STZCHD)				Starz
501	HBO HD (HBOHD)				HBO
502	HBO 2 HD (HBO2H)				HBO

Number	Channel	Basic	Standard	Preferred	A La Carte
503	HBO SIGNATURE HD (HBOSH)				HBO
504	HBO FAMILY HD (HBOFH)				HBO
505	HBO COMEDY HD (HBOCH)				HBO
506	HBO ZONE HD (HBOZH)				HBO
601	CINEMAX HD (MAXHD)				Cinemax
602	MOREMAX HD (MOMAXHD)				Cinemax
603	ACTIONMAX HD (AMAXHD)				Cinemax
604	THRILLERMAX HD (TMAXHD)				Cinemax
605	5 STAR MAX HD (5STRMH)				Cinemax
606	MOVIEMAX HD (MOVMXHD)				Cinemax
607	OUTERMAX HD (OMAXH)				Cinemax
608	CINEMAX SPANISH HD (CMAXHD)				Cinemax
701	SHOWTIME HD (SHOWHD)				Showtime
702	SHOWTIME BEYOND HD (SHWBHD)				Showtime
703	SHOWTIME EXTREME (SHOWX)				Showtime
704	SHOWTIME FAMILY ZONE (FAMZ)				Showtime
705	SHOWTIME NEXT HD (SHWNHD)				Showtime
706	SHOWTIME SHOWCASE (SHOCSE)				Showtime
707	SHOWTIME 2 HD (SHW2H)				Showtime
708	SHOWTIME WOMEN HD (SHWWHD)				Showtime
709	THE MOVIE CHANNEL EXTRA HD (TMCXH)				Showtime
710	THE MOVIE CHANNEL HD (TMCHD)				Showtime
711	FLIX				Showtime
990	INDEMAND PAY-PER-VIEW HD (PPVHD)	✔	✔	✔	
991	PAY-PER-VIEW 1 (IN1)	✔	✔	✔	
992	PAY-PER-VIEW 2 (IN2)	✔	✔	✔	
993	PAY-PER-VIEW 3 (IN3)	✔	✔	✔	
997	PAY-PER-VIEW 7 EN ESPANOL (IN7)	✔	✔	✔	
1001	MUSIC - HIT LIST (MCHIT)	✔	✔	✔	
1002	MUSIC - MAX (MCMAX)	✔	✔	✔	

Number	Channel	Basic	Standard	Preferred	A La Carte
1003	MUSIC - DANCE/EDM (MCEDM)	✔	✔	✔	
1004	MUSIC - INDIE (MCINDIE)	✔	✔	✔	
1005	MUSIC - HIP-HOP AND R&B (MCHPR)	✔	✔	✔	
1006	MUSIC - RAP (MCRAP)	✔	✔	✔	
1007	MUSIC - HIP-HOP CLASSICS (MCHHC)	✔	✔	✔	
1008	MUSIC - THROWBACK JAMZ (MCTJM)	✔	✔	✔	
1009	MUSIC - R&B CLASSICS (MCRBC)	✔	✔	✔	
1010	MUSIC - R&B SOUL (MCRBS)	✔	✔	✔	
1011	MUSIC - GOSPEL (MCGOS)	✔	✔	✔	
1012	MUSIC - REGGAE (MCREG)	✔	✔	✔	
1013	MUSIC - ROCK (MCROK)	✔	✔	✔	
1014	MUSIC - METAL (MCMET)	✔	✔	✔	
1015	MUSIC - ALTERNATIVE (MCALT)	✔	✔	✔	
1016	MUSIC - ADULT ALTERNATIVE (MCAAL)	✔	✔	✔	
1017	MUSIC - ROCK HITS (MCRHT)	✔	✔	✔	
1018	MUSIC - CLASSIC ROCK (MCCRK)	✔	✔	✔	
1019	MUSIC - SOFT ROCK (MCSRK)	✔	✔	✔	
1020	MUSIC - LOVE SONGS (MCLOV)	✔	✔	✔	
1021	MUSIC - POP HITS (MCPHT)	✔	✔	✔	
1022	MUSIC - PARTY FAVORITES (MCPRT)	✔	✔	✔	
1023	MUSIC - TEEN BEATS (MCTB)	✔	✔	✔	
1024	MUSIC - KIDZ ONLY (MCKID)	✔	✔	✔	
1025	MUSIC - TODDLER TUNES (MCTOT)	✔	✔	✔	
1026	MUSIC - Y2K (MCY2K)	✔	✔	✔	
1027	MUSIC - 90'S (MC90S)	✔	✔	✔	
1028	MUSIC - 80'S (MC80S)	✔	✔	✔	
1029	MUSIC - 70'S (MC70S)	✔	✔	✔	
1030	MUSIC - SOLID GOLD OLDIES (MCGLD)	✔	✔	✔	
1031	MUSIC - POP & COUNTRY (MCPC)	✔	✔	✔	
1032	MUSIC - TODAY'S COUNTRY (MCTDC)	✔	✔	✔	

Number	Channel	Basic	Standard	Preferred	A La Carte
1033	MUSIC - COUNTRY HITS (MCHITS)	✔	✔	✔	
1034	MUSIC - CLASSIC COUNTRY (MCCLC)	✔	✔	✔	
1035	MUSIC - CONTEMPORARY CHRISTIAN (MCCCH)	✔	✔	✔	
1036	MUSIC - POP LATINO (MCPLT)	✔	✔	✔	
1037	MUSIC - MUSICA URBANA (MCURB)	✔	✔	✔	
1038	MUSIC - MEXICANA (MCMEX)	✔	✔	✔	
1039	MUSIC - TROPICALES (MCTRP)	✔	✔	✔	
1040	MUSIC - ROMANCES (MCROM)	✔	✔	✔	
1041	MUSIC - SOUNDS OF THE SEASONS (MCSEA)	✔	✔	✔	
1042	MUSIC - STAGE & SCREEN (MCSSC)	✔	✔	✔	
1043	MUSIC - SOUNDSCAPES (MCSSP)	✔	✔	✔	
1044	MUSIC - SMOOTH JAZZ (MCSJZ)	✔	✔	✔	
1045	MUSIC - JAZZ (MCJAZ)	✔	✔	✔	
1046	MUSIC - BLUES (MCBLU)	✔	✔	✔	
1047	MUSIC - SINGERS & SWING (MCSWG)	✔	✔	✔	
1048	MUSIC - EASY LISTENING (MCCMP)	✔	✔	✔	
1049	MUSIC - CLASSICAL MASTERPIECES (MCELS)	✔	✔	✔	
1050	MUSIC - LIGHT CLASSICAL (MCLTC)	✔	✔	✔	
9000	PFVOD				

EXHIBIT 3

PROPOSED FRANCHISE AGREEMENT

VIDEO SERVICE FRANCHISE AGREEMENT
BY AND BETWEEN
The
CITY OF BATAVIA
And
CMN-RUS, Inc.

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Batavia, Illinois (hereinafter, the "City") and CMN-RUS, Inc. , (hereinafter, "Grantee") this day of , 2017 (the "Effective Date").

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future video service related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Video Service System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act, the Illinois Cable and Video Competition Act (220 ILCS 5/21-100 et seq. as amended and/or extended), the Illinois Cable and Video Customer Protection Law (220 ILCS 5/22-501 et seq.) and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act and Cable and Video Competition Act shall be deemed to be preempted and superseded.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Operator" means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. For purposes of this Agreement, any reference to Cable Operator shall include Video Service Operator.

"Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. For purpose of this Agreement, Cable Service or Service includes Video Service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems. For purposes of this Agreement, Cable System shall include Video Service System.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

“City” means the City of Batavia, Illinois or the lawful successor, transferee, designee, or assignee thereof.

“Customer” or “Subscriber” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Video Service System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean CMN-RUS, Inc. .

“Gross Revenue” means the Video Service revenue received by the Grantee from the operation of the Video Service System in the Franchise Area to provide Video Services, calculated in accordance with generally accepted accounting principles. Video service revenue includes monthly Basic Video Service, video service programming regardless of

Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Video Service delivered over the Video Service System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001),* and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.,* 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area set forth in Exhibit A.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

"Public, Educational and Governmental (PEG) Access Channel" shall mean a video Channel designated for non-commercial use by the City, the public, and/or educational institutions such as public or private schools, but not "home schools," community colleges, and universities.

"Public, Educational and Government (PEG) Access Programming" shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

"Public Way" shall mean, pursuant and in addition to the City's Right of Way Ordinance (Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended), the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. Public Way shall not include any real or personal City property that is not specifically described in this definition and shall not include City buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

"Qualified Household" shall mean any single family residential home where a resident has agreed in writing to Grantee's standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Video Service from Grantee.

"Standard Installation" means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Video Service System).

"Video Programming" or "Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

"Video Service" means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and that is provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in subsection (d) of 47 U.S.C. 332 or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

"Video Service Provider" means the provider of Video Service and Video Programming using the public rights-of-way for the installation or construction of facilities for transmission of the Video Service and Video Programming.

"Video Service System" means the system of facilities in the public right-of-way used to provide Video Service and Video Programming.

SECTION 2: Grant of Authority

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, and Resolution No. _____ approving and authorizing the execution of this Agreement, the City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee the right to construct and operate a Video Service System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Video Service System, and to provide such services over the Video Service System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the

provision of Video Services. In the event this Franchise expires without being renewed or terminated, the terms and conditions described herein shall continue to apply on a month-to-month basis, as long as negotiations continue in good faith and until such time when the franchise is renewed.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, including the Grantee's obligation to secure a Pole Attachment Agreement with the City through its Municipal Electric Utility, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Video Service System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new video service franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

2.6.3. During the term of this Franchise Agreement and any extension or renewal thereof, no application fee or security fund shall be required of the Grantee for any permit required by the City, provided that Grantee shall have timely made all payments to the City pursuant to Section 5.1 of this Franchise Agreement.

2.6.4. Provided that appropriate vehicle safety markings have been deployed, Grantee's vehicles shall be exempt from parking restrictions of the City while used in the course of installation, repair and maintenance work on the Video Service System. This exemption shall not apply to fire lanes and designated handicapped parking locations.

SECTION 3: Construction and Maintenance of the Video Service System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title 7, Chapter 4, entitled "Construction of Utility Facilities in Rights of Way," of the Batavia Code of Ordinances of 1986, as amended. Upon approval of this Agreement, Grantee shall not be obligated to pay the City fees for any construction permits related to the construction of the Video Service System.

3.2. Aerial and Underground Construction. At the time of Video Service System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Video Service Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Video Service System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Undergrounding and Beautification Projects.

3.3.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the City shall not be considered to be public or private funds.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Video Service System has been designed to provide, and, upon completion of construction, will be capable of providing, Video Service to residential Customers

throughout the Initial Franchise Service Area. After completion of construction, the Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Video Service System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Video Service available beyond the Initial Franchise Service Area to every residential household within the Franchise Area where a minimum of fifteen (15) Qualitied Households have requested Video Services within 1200 feet of the Grantee's distribution cable (e.g. a Standard Installation). .

4.2.1. The Grantee may elect to provide Video Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Programming. The Grantee agrees to provide video programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Educational	Arts, Culture and Performing Arts	News & Information

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City based on a significant number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the City shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or extension of the Video Servcie System is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary Basic Video Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the City become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the City to the City on an annual basis. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.8. Customer Service Obligations. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.,* and enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* as amended from time to time.

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Video Service System to provide Video Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due

until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the City to increase the Franchise Fee above five percent (5%), the City shall hold a public hearing and determine if the City should collect the additional amount. Following the determination, the City shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Video Service Operator granted a Video Service Franchise by the City pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the City approves the amendment by ordinance; and (c) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Video Service Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Video Service Operators or Video Service Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. Grantee agrees to maintain its books in accordance with GAAP.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Video System

design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq*.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Transfer of Video Service System or Franchise or Control of Grantee

6.1. Neither the Grantee nor any other Person may transfer the Video Service System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Metronet Holdings, LLC.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition to granting of any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy

or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the City's consent thereto in the manner described in Section 6 above.

SECTION 7: Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the City certificates of insurance in accordance with Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Video Service System within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity. The Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental Access ("PEG") Programming through two (2) Channels (the "Channels") on the Grantee's Video Service System. Unless otherwise agreed to by the City and the Grantee to the extent required by applicable law, the Channels shall be carried on the Grantee's basic digital service tier. The City's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. The City may request, and Grantee shall provide, a third PEG Channel upon one hundred eighty (180) days advance written notice by the City and sufficient proof that the current Channels are inadequate for all programming offered. "Sufficient proof" shall include a verified program log of all original,

non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing Channels for the prior six month period during the times of noon to midnight. In the event that eighty percent (80%) of the programming on the Channels meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a third Channel. Any cost for the activation of the third Channel shall be paid for by the City. The Grantee agrees to submit a cost estimate to activate the third channel within a reasonable period of time following the City's request. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time. In the event no agreement is reached, the Grantee shall not be obligated to activate the third Channel.

8.2. Rules and Procedures for Use of the PEG Access Channels. The City shall be responsible for establishing, and thereafter enforcing, rules for the noncommercial use of the PEG Access Channels and to promote the use and viewership of the Channels.

8.3. Allocation and Use of the PEG Access Channel. The Grantee does not relinquish its ownership of a Channel by designating it for PEG use. However, the PEG Access Channels are, and shall be, operated by the City. The City shall adopt rules and procedures under which Grantee may use the PEG Access Channel for the provision of Video Programming if a PEG Access Channel is not being used for its designated purpose(s) pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531.

8.4. Editorial Control. Grantee shall not exercise any editorial control over any use of the PEG Access Channels except as permitted by 47 U.S.C. §531(e).

8.5. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Video Service Service to receive PEG Access Programming originated from Schools and/or City facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the City determines that it wants to change or upgrade a location from which PEG Access Programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure within a reasonable period of time, the Grantee will implement any necessary system changes within a reasonable period of time.

8.6. PEG Signal Quality. Provided the PEG signal feed is delivered by the City to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Video Service System set forth in this Agreement.

8.7. PEG Capital Support. At its sole discretion, the City may designate reasonable PEG access capital projects to be funded by the City as set forth herein. The City shall send written notice to Grantee of the City's desire for Grantee to collect as an external charge a PEG Capital Fee of up to ninety cents ($0.90) per customer per month to be

passed on to each Subscriber pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge over a period of twelve (12) months, unless some other period is mutually agreed upon in writing. Grantee shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment and the Grantee shall have the opportunity to review and make recommendations upon the City's plan prior to collecting and paying to the City the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, as long as any funds remaining at the end of the term of this Agreement shall be credited to PEG Capital obligations in the subsequent Franchise. Further, if the City chooses to borrow – from itself or a financial institution – funds for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one-hundred twenty (120) days of the City's written request.

8.7.1. For any payments owed by Grantee in accordance with this Section 8.7 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the PEG Capital Fee liability otherwise accruing under this section.

8.7.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.8. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or underutilized PEG Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation by the City upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG Access Channel with text messaging, or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on a PEG Access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 3.1 of this Franchise Agreement and Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended, to enforce the Grantee's compliance with the City's requirements regarding "Construction of Utility Facilities in Rights Of Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the City.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The Grantee 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 (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Video Service System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:	To the Grantee:
City of Batavia	CMN-RUS, Inc.
100 North Island Avenue	8837 Bond Street
Batavia, Illinois 60510	Overland Park, KS 66214
ATTN: City Administrator	ATTN: Legal Department

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Video Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

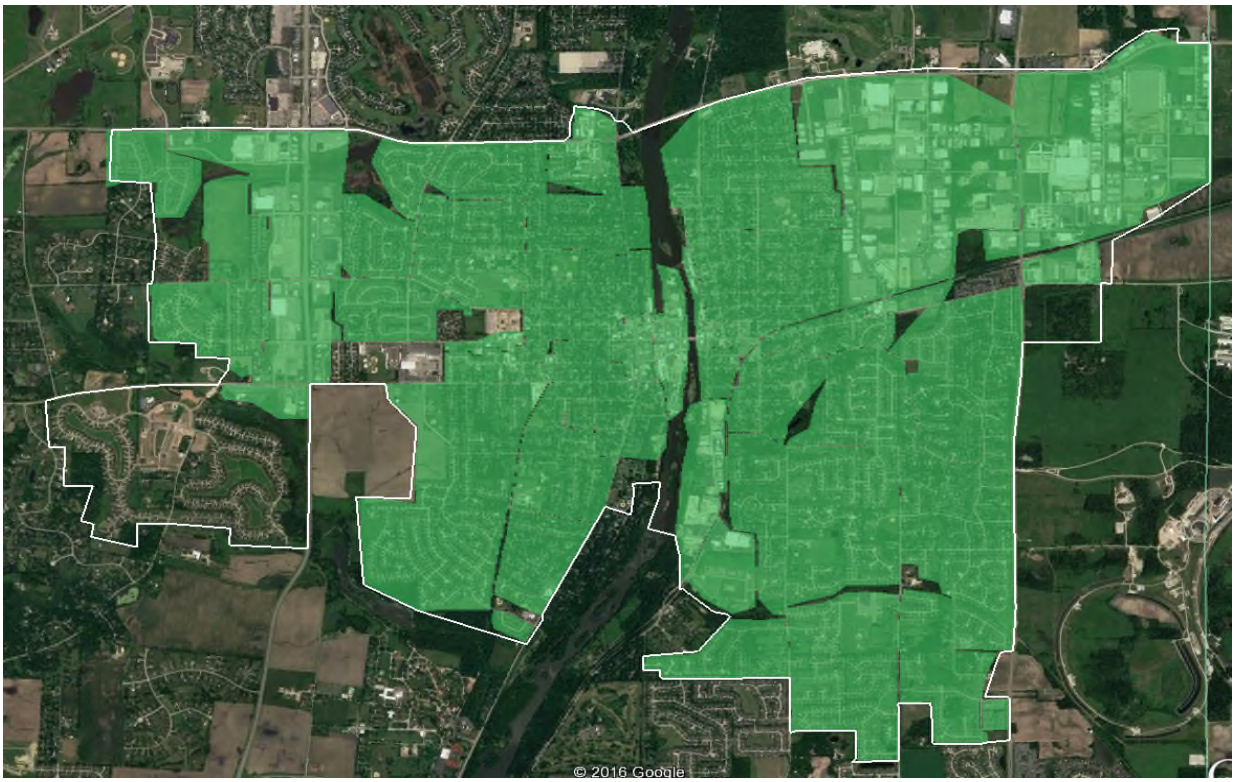
10.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Batavia:	**For CMN-RUS, Inc.**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

EXHIBIT A

EXHIBIT A



Legend

Green – Subject to final network design optimization, areas that Grantee will buildout as part of the Initial Franchise Area

Notes

Upon the completion of final network design optimization, Grantee shall provide Grantor with a final map to incorporate into this Exhibit A. The final map may be different from the map set forth above based on actual engineering data, but shall not be substantially different.

For avoidance of doubt, if Grantee is unable to obtain rights to use private property on reasonable terms, Grantee will be able to buildout those areas even if they are colored green on the above map.

VIDEO SERVICE FRANCHISE AGREEMENT
BY AND BETWEEN
The
CITY OF BATAVIA
And
CMN-RUS, Inc.

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Batavia, Illinois (hereinafter, the "City") and CMN-RUS, Inc. , (hereinafter, "Grantee") this day of , 2017 (the "Effective Date").

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future video service ~~cable~~ related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Video Service ~~Cable~~ System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act, the Illinois Cable and Video Competition Act (220 ILCS 5/21-100 et seq. as amended and/or extended), the Illinois Cable and Video Customer Protection Law (220 ILCS 5/22-501 et seq.) and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act and Cable and Video Competition Act shall be deemed to be preempted and superseded.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Operator" means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. For purposes of this Agreement, any reference to Cable Operator shall include Video Service Operator.

"Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other

Programming Service. For purpose of this Agreement, Cable Service or Service includes Video Service.

"Cable System" or "System," has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems. For purposes of this Agreement, Cable System shall include Video Service System.

"Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"City" means the City of Batavia, Illinois or the lawful successor, transferee, designee, or assignee thereof.

"Customer" or "Subscriber" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission or successor governmental entity thereto.

"Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Video Service ~~Cable~~ System.

"Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

"Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

"Grantee" shall mean CMN-RUS, Inc. .

"Gross Revenue" means the Video ~~Cable~~ Service revenue received by the Grantee from the operation of the Video Service ~~Cable~~ System in the Franchise Area to provide Video ~~Cable~~ Services, calculated in accordance with generally accepted accounting principles. Video~~Cable~~ service revenue includes monthly Basic Video ~~Cable~~ Service, video service ~~cable~~ programming ~~service~~ regardless of Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Video ~~Cable~~ Service delivered over the Video Service ~~Cable~~ System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001),* and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.,* 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area set forth in Exhibit A.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

"Public, Educational and Governmental (PEG) Access Channel" shall mean a video Channel designated for non-commercial use by the City, the public, and/or educational institutions such as public or private schools, but not "home schools," community colleges, and universities.

"Public, Educational and Government (PEG) Access Programming" shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

"Public Way" shall mean, pursuant and in addition to the City's Right of Way Ordinance (Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended), the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. Public Way shall not include any real or personal

City property that is not specifically described in this definition and shall not include City buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

"Qualified Household" shall mean any single family residential home where a resident has agreed in writing to Grantee's standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Video ~~Cable~~ Service from Grantee.

"Standard Installation" means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Video Service ~~Cable~~ System).

"Video Programming" or "Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

"Video Service" means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and that is provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in subsection (d) of 47 U.S.C. 332 or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

"Video Service Provider" means the provider of Video Service and Video Programming using the public rights-of-way for the installation or construction of facilities for transmission of the Video Service and Video Programming.

"Video Service System" means the system of facilities in the public right-of-way used to provide Video Service and Video Programming.

SECTION 2: Grant of Authority

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, and Resolution No. _____ ~~16-106-R~~ approving and authorizing the execution of this Agreement, the City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee the right to construct and operate a Video Service ~~Cable~~ System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Video Service ~~Cable~~ System, and to provide such services over the Video Service ~~Cable~~ System as may be lawfully allowed.~~,~~

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the provision of Video Service ~~Cable~~ Service. In the event this Franchise expires without being renewed or terminated, the terms and conditions described herein shall continue to apply on a month-to-month basis, as long as negotiations continue in good faith and until such time when the franchise is renewed.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, including the Grantee's obligation to secure a Pole Attachment Agreement with the City through its Municipal Electric Utility, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Video Service ~~Cable~~ System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new video service ~~cable television~~ franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

2.6.3. During the term of this Franchise Agreement and any extension or renewal thereof, no application fee or security fund shall be required of the Grantee for any permit required by the City~~Village~~, provided that Grantee shall have timely made all payments to the City pursuant to Section 5.1 of this Franchise Agreement.

2.6.4. Provided that appropriate vehicle safety markings have been deployed, Grantee's vehicles shall be exempt from parking restrictions of the City while used in the course of installation, repair and maintenance work on the Video Service

~~Cable~~ System. This exemption shall not apply to fire lanes and designated handicapped parking locations.

SECTION 3: Construction and Maintenance of the Video Service ~~Cable~~ System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title 7, Chapter 4, entitled "Construction of Utility Facilities in Rights of Way," of the Batavia Code of Ordinances of 1986, as amended. Upon approval of this Agreement, Grantee shall not be obligated to pay the City fees for any construction permits related to the construction of the Video Service System.

3.2. Aerial and Underground Construction. At the time of Video Service ~~Cable~~ System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Video Service ~~Cable~~ Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Video Service ~~Cable~~ System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Undergrounding and Beautification Projects.

3.3.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the City shall not be considered to be public or private funds.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Video Service ~~Cable~~ System has been designed to provide, and, upon completion of construction, will be capable of providing, Video ~~Cable~~ Service to residential Customers throughout the Initial Franchise Service Area. After completion of construction, the Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Video Service ~~Cable~~ System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Video ~~Cable~~ Service available beyond the Initial Franchise Service Area to every residential household within the Franchise Area where a minimum of fifteen (15) Qualitied Households have requested Video ~~Cable~~ Services within 1200 feet of the Grantee's distribution cable (e.g. a Standard Installation). .

4.2.1. The Grantee may elect to provide Video ~~Cable~~ Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Programming. The Grantee agrees to provide video ~~cable~~ programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Educational	Arts, Culture and Performing Arts	News & Information

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City based on a significant number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the City shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or extension of the Video Servcie ~~Cable~~ System is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary Basic Video ~~Cable~~ Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the City become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the City to the City on an annual basis. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.8. Customer Service Obligations. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.,* and enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* as amended from time to time.

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Video Service ~~Cable~~ System to provide Video ~~Cable~~ Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed

from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the City to increase the Franchise Fee above five percent (5%), the City shall hold a public hearing and determine if the City should collect the additional amount. Following the determination, the City shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Video Service ~~Cable~~ Operator granted a Video Service ~~Cable~~ Franchise by the City pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the City approves the amendment by ordinance; and (c) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Video Service ~~Cable~~ Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Video Service ~~Cable~~ Operators or Video Service ~~Cable~~ Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. Grantee agrees to maintain its books in accordance with GAAP.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the

confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Video ~~Cable~~ System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq*.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Transfer of Video Service ~~Cable~~ System or Franchise or Control of Grantee

6.1. Neither the Grantee nor any other Person may transfer the Video Service ~~Cable~~ System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Metronet Holdings, LLC.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition to granting of any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the City's consent thereto in the manner described in Section 6 above.

SECTION 7: Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the City certificates of insurance in accordance with Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Video Service ~~Cable~~ System within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity. The Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental Access ("PEG") Programming through two (2) Channels (the "Channels") on the Grantee's Video Service ~~Cable~~ System. Unless otherwise agreed to by the City and the Grantee to the extent required by applicable law, the Channels shall be carried on the Grantee's basic digital service tier. The City's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. The City may request, and Grantee shall

provide, a third PEG Channel upon one hundred eighty (180) days advance written notice by the City and sufficient proof that the current Channels are inadequate for all programming offered. “Sufficient proof” shall include a verified program log of all original, non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing Channels for the prior six month period during the times of noon to midnight. In the event that eighty percent (80%) of the programming on the Channels meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a third Channel. Any cost for the activation of the third Channel shall be paid for by the City. The Grantee agrees to submit a cost estimate to activate the third channel within a reasonable period of time following the City’s request. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time. In the event no agreement is reached, the Grantee shall not be obligated to activate the third Channel.

8.2. Rules and Procedures for Use of the PEG Access Channels. The City shall be responsible for establishing, and thereafter enforcing, rules for the noncommercial use of the PEG Access Channels and to promote the use and viewership of the Channels.

8.3. Allocation and Use of the PEG Access Channel. The Grantee does not relinquish its ownership of a Channel by designating it for PEG use. However, the PEG Access Channels are, and shall be, operated by the City. The City shall adopt rules and procedures under which Grantee may use the PEG Access Channel for the provision of Video Programming if a PEG Access Channel is not being used for its designated purpose(s) pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531.

8.4. Editorial Control. Grantee shall not exercise any editorial control over any use of the PEG Access Channels except as permitted by 47 U.S.C. §531(e).

8.5. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee’s Video Service ~~Cable~~ Service to receive PEG Access Programming originated from Schools and/or City facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the City determines that it wants to change or upgrade a location from which PEG Access Programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City’s plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure within a reasonable period of time, the Grantee will implement any necessary system changes within a reasonable period of time.

8.6. PEG Signal Quality. Provided the PEG signal feed is delivered by the City to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Video Service ~~Cable~~ System set forth in this Agreement.

8.7. PEG Capital Support. At its sole discretion, the City may designate reasonable PEG access capital projects to be funded by the City as set forth herein. The City shall send written notice to Grantee of the City's desire for Grantee to collect as an external charge a PEG Capital Fee of up to ninety cents ($0.90) per customer per month to be passed on to each Subscriber pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge over a period of twelve (12) months, unless some other period is mutually agreed upon in writing. Grantee shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment and the Grantee shall have the opportunity to review and make recommendations upon the City's plan prior to collecting and paying to the City the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, as long as any funds remaining at the end of the term of this Agreement shall be credited to PEG Capital obligations in the subsequent Franchise. Further, if the City chooses to borrow – from itself or a financial institution – funds for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one-hundred twenty (120) days of the City's written request.

8.7.1. For any payments owed by Grantee in accordance with this Section 8.7 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the PEG Capital Fee liability otherwise accruing under this section.

8.7.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.8. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or underutilized PEG Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation by the City upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG Access Channel with text messaging, or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on a PEG Access Channel. Unused time shall not include periods of time where

programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be

delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 3.1 of this Franchise Agreement and Title 7, Chapter 4 of the Batavia Code of Ordinances of 1986, as amended, to enforce the Grantee's compliance with the City's requirements regarding "Construction of Utility Facilities in Rights Of Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the City.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The Grantee 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 (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Video Service ~~Cable~~ System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:	To the Grantee:
City of Batavia	CMN-RUS, Inc.
100 North Island Avenue	8837 Bond Street
Batavia, Illinois 60510	Overland Park, KS 66214
ATTN: City Administrator	ATTN: Legal Department

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and

directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Video ~~Cable~~ Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Batavia:	**For CMN-RUS, Inc.**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

EXHIBIT A

CITY OF BATAVIA

DATE: **August 17, 2017**
TO: **Committee of the Whole – GS**
FROM: **Gary Holm**
SUBJECT: **Resolution #17-94-R Approval of Pole Attachment Agreement between the City of Batavia and Metro Fibernet, LLC**

Metro Fibernet, LLC has approached the City with a desire to construct a fiber optic network. The network will bring communication services including high-speed fiber Internet, full-featured fiber phone, and fiber IPTV with various programming to the citizens of Batavia. The network will be partially constructed using Batavia Electric poles.

City Staff has worked with Metro Fibernet, LLC representatives to develop a comprehensive pole attachment agreement. The agreement is based on a sample document provided by the American Public Power Association (APPA) as well as a pole attachment agreement that the City previously approved with WOW! Communications. The agreement reflects the City's updated policies and practices related to safety, construction, permitting, and rates. The agreement also requires improved tracking of infrastructure assets and provides guidelines related to maintenance, transfer and abandonment of facilities.

Staff is recommending Resolution 17-94-R Approval of Pole Attachment Agreement between the City of Batavia and Metro Fibernet, LLC

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-94-R

APPROVAL OF POLE ATTACHMENT AGREEMENT BETWEEN THE CITY OF BATAVIA AND METRO FIBERNET, LLC

WHEREAS, Metro Fibernet, LLC proposes to construct a fiber optic cable system throughout the City of Batavia; and

WHEREAS, in order to provide such fiber optic system Metro Fibernet, LLC will need to attach such cables, wires and equipment to poles which are owned by the City of Batavia and used in the operation of the City of Batavia's electric transmission and distribution system; and

WHEREAS, the City of Batavia is prepared to execute a Pole Attachment Agreement with Metro Fibernet, LLC to permit Metro Fibernet, LLC to attach its cables, wires and equipment to poles in the City of Batavia's electric distribution system; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Pole Attachment Agreement with Metro Fibernet, LLC in the form attached hereto as Exhibit 1

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 5th day of September, 2017.

_____

Jeffery D. Schielke, Mayor

Ald	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Mueller					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____

Ellen Posledni, City Clerk

POLE ATTACHMENT AGREEMENT

This Pole Attachment Licensing Agreement (the "Agreement") dated _____ is made between the City of Batavia, Illinois, ("City") and Metro Fibernet, LLC ("the Licensee").

Recitals

A. Licensee proposes to install and maintain Communications Facilities and associated equipment, Licensee s Attachments, on City's Poles to provide Communications Services; and

B. City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on City's Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and

C. Therefore, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

Article 1 —Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1.1 **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC'), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state, or local authority with jurisdiction over City Facilities.

1.3 **Attaching Entity:** means any public or private entity, including Licensee that, pursuant to a license agreement with City, places an Attachment on City's Pole or within City's Conduit System to provide Communications Service.

1.4 **Attachment(s):** means Licensee's Communications Facilities that are placed directly on City's Poles, are Overlashed onto an existing Attachment or are placed within City's Conduit System, but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole.

1.5 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.6 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City Facilities and equipment.

1.7 **Communications Facilities:** means wire, line or wireless facilities, including but not limited to, fiber optic, copper, and/or coaxial cables, wireless antennas, receivers or transceivers, including any and all associated equipment, utilized to provide Communications Service.

1.8 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.

1.9 **Conduit System:** means City's conduits, innerduct, manholes, handholes, vaults, pull-

boxes, and trenches.

1.10 **Innerduct:** means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

1.11 **Licensee:** means Metro Fibernet, LLC, a Nevada limited liability company, its authorized successors and assignees.

1.12 **Licensee's Attachments:** means Licensee's Communications Facilities and associated equipment to be attached to City's Poles.

1.13 **Make-Ready Work:** means all work that City reasonably determines to be required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of City Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit System clearing, but does not include Licensee's routine maintenance.

1.14 **Occupancy:** means the use or reservation of space for Attachments on a City Pole or portion of City's Conduit System.

1.15 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communications Facility.

1.16 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to City Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point (see Appendix D Specifications).

1.17 **Permit:** means written or electronic authorization (see Appendix C) by City for Licensee to make or maintain Attachments to specific City Poles or spans of the Conduit System pursuant to the requirements of this Agreement. Licensee's attachments made prior to the Effective Date and authorized by City (Existing Attachments) shall be deemed Permitted Attachments hereunder.

1.18 **Pole:** means a pole owned or controlled by City that is used for the distribution of electricity and/ or Communications Service and is capable of supporting Attachments for Communications Facilities.

1.19 **Post-Construction Inspection:** means the inspection by City or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.20 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or City to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole or within a span of the Conduit System. Such work includes, but is not limited to, field inspection and administrative processing.

1.21 **Reserved Capacity:** means capacity or space on a Pole or within a portion of the Conduit System that City has identified and reserved for its own future City requirements at the time of the Permit grant, including the installation of communications circuits for operation of City's electric system.

1.22 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.23 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.24 **City Facilities:** means all personal property and real property owned or controlled by City, including Poles, Conduit System, and related facilities.

Article 2—Term of Agreement

2.1. This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of ten (10) years (the "Initial Term'), and shall automatically renew for subsequent five (5) year terms, each a "Renewal Term." Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given least ninety (90) calendar days prior to the end of the then-current term.

2.2 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities, as provided for in Article 16.

Article 3—Scope of Agreement

3.1 **Grant of License.** Subject to the provisions of this Agreement, City grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to City's Poles and to install its Communications Facilities within City's Conduit System.

3.2 **Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement.

3.3 **Permit Issuance Conditions.** City will issue one or more Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

3.4 **Reserved Capacity.** Access to space on City Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future electric service use. At the time of Permit issuance, City shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future electric use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, City may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for City's future City service. If reclaimed for City's use, City may at such time also install associated facilities, including the attachment of communications lines for internal City operational or governmental communications requirements. City shall give Licensee the option to

remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for core City service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third party Attachments) shall be determined in accordance with Article 9. Licensee shall not be required to bear any of the costs or rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.

3.5 **No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.

3.6 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or within any specific portion of the Conduit System.

3.7 **City's Rights over Poles.** The parties agree that this Agreement does not in any way limit City's right to locate, operate, maintain, or remove its Poles or Conduit System in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.

3.8 **Expansion of Capacity.** City will take reasonable steps to expand Pole/Conduit System Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend, or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for City's own service requirements

3.9 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding its Poles or Conduit System into which City has previously entered, or may enter in the future, with others not party to this Agreement.

3.10 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use City's Poles or Conduit System after the termination of this Agreement.

3.11 **Overlashing.** The following provisions apply to Overlashing:

3.11.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 6. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to removal or, at City's discretion, imposition of an Unauthorized Attachment fee, as specified in Appendix A, Item 3.

3.11.2 Make Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

3.12 **Enclosures.** Licensee shall not place Pedestals, Vaults, and/or other Enclosures on or within four (4) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for City to set a replacement Pole.

Article 4—Fees and Charges

4.1 **Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

4.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within forty-five (45) calendar days after City issues the invoice.

4.3 **Billing of Attachment Fee.** City shall invoice Licensee for the per-pole Attachment Fee annually. City will submit to Licensee an invoice for the annual rental period not later than January 30, of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on December 31, 2017 and the charges for that year shall be prorated, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year. The invoice shall contain charges calculated by means of the formula contained on Exhibit A based upon the total number of City's Poles on which Licensee was issued and/or holds Permit(s) for Attachments during the previous annual rental period, including any previously authorized and valid Permits.

4.4 **Billing of Conduit Usage Fees.** The parties agree that issues relating to conduit installation and usage are complex and differ individually. Therefore the parties will negotiate reasonable permit fees for installation and usage of conduits on a case-by-case basis.

4.5 **Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole or portion of Conduit System is not used or abandoned by City.

4.6 **Late Charge.** If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to City at the rate of one and one-half (1.5%) per month, or the maximum interest allowed by law, whichever is greater, on the amount due.

4.7 **Payment for Work.** Licensee will be responsible for payment to City for all work that City or City's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities.

4.8 **Advance Payment.** At its sole discretion, City may require that Licensee pay in advance all reasonable costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

4.9 **True-Up.** Whenever City, in its reasonable discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay City for the difference in cost, provided that City documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that City's actual cost of the activity is less than the amount Licensee paid in advance, City shall promptly refund to Licensee the difference.

4.10 **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, including but not limited to Make Ready Work, miscellaneous (such as joint trench work) and or inspection charges, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. City shall bill its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region. If Licensee was required to perform work and fails to perform such work, necessitating completion of the work by City, City may either charge an additional ten percent (10%) of its costs or assess the penalty specified in Appendix A.

4.11 **Work Performed by City.** Wherever this Agreement requires City to perform any work, City, at its reasonable discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

4.12 **Default for Nonpayment.** Subject to Articles 22 and 32 of this Agreement, Nonpayment of any amount due under this Agreement beyond sixty (60) days shall constitute a material default of this Agreement.

Article 5—Specifications

5.1 **Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

Licensee shall exercise commercially reasonable efforts to avoid damage to City's poles and facilities and the facilities and attachments of third parties.

5.2 **Tagging.** Licensee shall Tag all of its Communications Facilities as specified in Appendix D and/or applicable federal, state, and local regulations upon installation of such Facilities. Within one year of the execution of this Agreement, Licensee shall also tag any untagged Communications Facilities owned by Licensee that were on City Poles or in its Conduit System on the effective date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

5.3 **Interference.** Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use City's Poles or Conduit System, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities or third-party facilities.

5.4 **Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by City's facilities in the event of a contact with such facilities.

5.5 **Violation of Specifications.** If Licensee's Communications Facilities, or any part of them, are installed, used, or maintained in a manner that is not in compliance with this Agreement, and Licensee has not corrected such noncompliance within thirty (30) calendar days from receipt of written notice of the violation(s) from City, City, at its option, may correct such conditions. If an Attachment is out of compliance as a result of a change in standards after such Attachment was attached, then Licensee will not be required to correct such noncompliance until the next time Licensee modifies the Attachment. City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of City's service obligations, or present an immediate threat to the physical integrity of City Facilities, City may perform such work and/or take such action as it reasonably deems necessary without first giving written notice to Licensee. As soon as practicable afterward, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by City in taking action pursuant to this Paragraph, and Licensee shall indemnify City against any liability, costs, and expenses, including reasonable attorney's and expert fees, arising out of or relating to any such work.

5.6 **Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on City's Poles or within City's Conduit System.

5.7 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension to such Permit(s), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon

written application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If City uses the space for its own needs or makes it available to other parties, then from the date that City or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

5.8 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (Nonfunctional Attachment) as provided in this Paragraph 4.8. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that removal is necessary to accommodate City's or another Attaching Entity's use of the affected Pole(s) or portion of the Conduit System, in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until City notifies Licensee that removal is necessary to accommodate City's or another Attaching Entity's use of the affected Pole(s). Licensee shall give City notice of any Nonfunctional Attachments as provided in Article 15.

Article 6—Private and Regulatory Compliance

6.1 **Necessary Authorizations.** Before Licensee occupies any of City's Poles or any portion of City's Conduit System, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Communications Facilities on public or private property. City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Communications Facilities. Licensee shall defend, indemnify, and reimburse City for all losses, costs, and expenses, including reasonable attorney's fees, that City may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on City's Poles or within its Conduit System or to provide particular services.

6.2 **Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.

6.3 **Non-Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of City's Poles or to any portion of City's Conduit System, or any easement granted to or owned by the City, to the extent that Licensee's Attachment would result in a forfeiture of City's rights. Any Permit that would result in forfeiture of City's rights shall be deemed invalid as of the date that City granted it. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from City. If Licensee does not remove its Communications Facilities in question within thirty (30) days of receiving written notice from City, City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify City for liability, costs, and expenses, including reasonable attorney's fees, that may accrue during Licensee's challenge.

6.4 **Effect of Consent to Construction/Maintenance.** Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 7—Permit Application Procedures

7.1 **Permit Required.** Licensee shall not make any Attachments to any of City's Poles or within any City Conduit System without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless updates or upgrades are required by Applicable Standards, or unless City notifies Licensee to the contrary, Licensee shall not be required to obtain Permits for Attachment(s) existing as of the effective date of this Agreement. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. Licensee shall provide City a list of all such pre-existing Attachments within six (6) months of the effective date of this Agreement.

7.2 **Permits for Overlashing.** As set out in Paragraph 2.11, Permits are required for any Overlashing allowed under this Agreement and Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing. Any Overlashing shall take place within the communications space on a pole as indicated on Appendix G.

7.3 **Professional Certification.** Unless otherwise waived in writing by City, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Communications Facilities can be and were installed on the identified Poles or within specified portions of the Conduit System in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City may require the Licensee's professional engineer to conduct a post-construction inspection

that the City will verify by means that it deems to be reasonable.

City, at its reasonable discretion, may waive the requirements of this Paragraph 6.3.

7.4 **City Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix D, City will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, the Permit application process shall be consistent with the following timeline:

7.4.1 **Review Period.** City shall review and respond to properly executed and complete Permit Applications for routine installations as promptly as is reasonable with a goal of providing a response during normal circumstances of within forty-five (45) days of receipt. For Permit Applications seeking Attachments to 50 or more Poles, the City will have an additional 15 working days to review. The City's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make-Ready Work.

7.4.2 Upon receipt of City's Make-Ready estimate, Licensee shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.

7.4.3 City will complete routine Make-Ready Work within ninety (90) days of receipt of payment. If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the number of Poles, seasonal weather conditions, the City shall identify those factors in the Make-Ready estimate and the parties shall agree upon a reasonable timeframe for completion.

7.4.4 City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters, or other emergency situations.

7.5 **Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s)

Article8—Make-Ready Work/Installation

8.1 **Estimate for Make-Ready Work.** If City determines that it can accommodate Licensee's request for Attachment(s), including Overlashing of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

8.2 **Payment of Make-Ready Work.** Upon completion of the Make-Ready Work, City shall invoice Licensee for City's actual cost of such Make-Ready Work. Alternatively, City, at

its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. In such case, upon completion, Licensee shall pay City's actual cost of Make-Ready Work. The costs of the work shall be itemized in accordance with Paragraph 3.10 and trued up in accordance with Paragraph 3.9.

8.3 **Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by City and/or a contractor authorized by City to perform such work.

8.4 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, City will endeavor to include such work in its normal work schedule. If Licensee requests that the Make-Ready Work be performed on a priority basis or outside of City's normal work hours, Licensee will pay any resulting increased costs. Nothing in this Agreement shall be construed to require City to perform Licensee's work before other scheduled work or City service restoration.

8.5 **Notification of Make-Ready Work.** Before starting Make-Ready Work, City shall notify all Attaching Entities of the date and location of the scheduled work and shall afford all such entities an opportunity to make any modifications to their existing Attachments in connection with the Make- Ready Work.

8.6 **Written Approval of Installation Plans Required.** Before making any Attachments to City's Poles or Conduit System, including Overlashing of existing Attachments, Licensee must obtain City's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.

8.7 **Licensee's Installation/Removal/Maintenance Work.**

8.7.1 All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City's Poles, Conduit System, or other Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 18.

8.7.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

Article9—Transfers

9.1 **Required Transfers of Licensee's Communications Facilities.** If City reasonably determines that a transfer of Licensee's Communications Facilities is necessary, City will, at its option, either require Licensee to perform such transfer at its own expense within thirty (30) calendar days after receiving notice from City, or perform the transfer itself, using its personnel, and/or contractors. If Licensee fails to transfer its Facilities within thirty (30) calendar days after receiving such notice from City, City shall have the

right to transfer Licensee's Facilities using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. City shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply in emergency situations. In emergency situations, City shall provide such advance notice as is practical, given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days following the occurrence. Irrespective of who owns Facilities that are Overlashed on to Licensee's Attachments, Licensee is responsible for the transfer of such Facilities and the costs of doing so.

Article 10—Modifications and/or Replacements

10.1 Licensee's Action Requiring Modification/Replacement. If any Pole or Conduit to which Licensee desires to make Attachment(s) has insufficient capacity, or otherwise cannot support or accommodate the additional facilities in accordance with all Applicable Standards, City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide adequate Pole or Conduit space, including, but not limited to, replacement of the Pole and/or rearrangement or transfer of City's Facilities, as well as the facilities of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities existing Attachments. If Licensee elects to go forward with the necessary changes, City may proceed with Make-Ready Work. Licensee shall pay to City the actual cost of the Make-Ready Work, performed by City, in accordance with Paragraph 3.10. City, in its reasonable discretion, may require advance payment. Licensee shall also be responsible for obtaining and furnishing to City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.

10.2 Treatment of Multiple Requests for Same Pole or Conduit. If City receives Permit Applications for the same Pole or Conduit from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification of the Pole or Conduit or replacement of the Pole, City will allocate among such licensees the applicable costs associated with such modification or replacement.

10.3 Guying. The use of guying to accommodate Licensee's Attachments shall be provided by, and at the expense of, Licensee and to the satisfaction of City, as specified in Appendix D. Licensee shall not attach its guy wires to City's anchors without prior written permission of City. If permission is granted, charges may apply.

10.4 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated to City and/or Licensee and/or other Attaching Entity on the following basis:

10.4.1 If City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole.

Licensee shall not be responsible for costs associated with the rearrangement or transfer of Licensee's Communications Facilities, unless and to the extent the rearrangement or transfer is necessary in connection with City's reacquisition of Reserved Capacity from Licensee. Prior to making any such modification or replacement, City shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. Should Licensee decide to do so, it must seek City's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Communications Facilities, Licensee shall pay its fair share of the costs incurred by City in making the space on the Poles accessible to Licensee.

10.4.2 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. At the time Licensee submits a Permit Application to City, Licensee shall submit evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by the transfer or rearrangement of their Facilities. City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.2.

10.4.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.

10.4.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), City shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Communications Facilities.

10.5 City Not Required to Relocate. Nothing in this Agreement shall be construed to require City to relocate its Attachments or to modify or replace its Poles for the benefit of Licensee.

Article 11—Abandonment or Removal of City Facilities

11.1 Notice of Abandonment or Removal of City Facilities. If City desires at any time to abandon, remove, or underground any City Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such City's Facilities. Notice may be limited to thirty (30) calendar days if City is required to remove or abandon its City Facilities as the result of the action of a third party

and the lengthier notice period is not practical. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the thirty (30) or ninety (90) day period as applicable, Licensee has not yet removed and/or transferred all of its Communications Facilities and has not entered into an agreement to purchase City's Facilities pursuant to Paragraph 10.2, City shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee' s expense. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

11.2 **Option to Purchase Abandoned Poles.** Should City desire to abandon any Pole, City may, in its sole discretion, grant Licensee the option of purchasing such Pole at the price of $1.00 per pole. Licensee must notify City in writing within thirty (30) calendar days of the date of City's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole within forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. Nothing in this Agreement shall be construed as requiring City to sell Licensee Poles that City intends to remove or abandon.

11.3 **Underground Relocation.** If City moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days after receipt of notice from City and must either relocate its affected Facilities underground with City or find other means to accommodate its Facilities. If Licensee does not remove its Attachments within sixty (60) days, City shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Licensee's failure to remove its Facilities as required under this Paragraph 10.3 shall subject Licensee to the penalty provisions of Appendix A.

Article 12—Removal of Licensee's Facilities

12.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles or portions of Conduit System at its own expense. If Licensee fails to remove such Facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by City, City shall have the right, but not the obligation, to remove or transfer such Facilities at Licensee's expense.

Article 13—Termination of Permit

13.1 **Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) or portion of the Conduit System covered by the Permit.

13.2 **Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment(s) and remove its Communications Facilities from the affected Pole(s) or segment of the Conduit System, provided, however, that before commencing any such removal,

Licensee must obtain City's written approval of Licensee's plans for removal, including the name of the person or entity performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from City's Facilities within thirty (30) calendar days, City shall have the right, but not the obligation, to remove or transfer Licensee's Attachments at Licensee's expense.

Article 14—Inspection of Licensee's Facilities

14.1 **Inspections.** City may conduct an inventory and inspection of Attachments at any time. All Attachments found out of compliance with Applicable Standards will be addressed in accordance with Paragraph 4.5 above. If City finds that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.

14.2 **Notice.** City will give Licensee reasonable advance written notice of such inspections, except in those instances in which safety considerations justify the need for such inspection without delay.

14.3 **No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability, whether assumed under this Agreement or otherwise existing.

14.4 **Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish to City annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by City.

Article 15—Unauthorized Occupancy or Access

15.1 **Penalty Fee.** If any of Licensee's Attachments are found occupying any Pole or segment of the Conduit System for which no Permit has been issued, City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee, as specified in Appendix A, Item 3. If Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification of it, City shall have the right, but not the obligation, to remove such Communications Facilities at Licensee's expense.

15.2 **No Ratification of Unauthorized Use.** No act or failure to act by City with regard to any un- authorized use shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously unauthorized Attachment shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 16—Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the

following information to City, using the reporting form contained in Appendix E:

16.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and service drops, for which no Permit was required.

16.2 All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.

16.3 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

Article 17—Liability and Indemnification

17.1 **Liability.** City reserves to itself the right to maintain and operate its Poles and Conduit System in the manner that will best enable it to fulfill its service requirements. Licensee agrees to use City's Poles and Conduit System at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of facilities damaged by the gross negligence or willful misconduct of City; provided, however, that the aggregate liability of City to Licensee, in any fiscal year, for any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communications Facilities (including special, indirect, punitive, or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year, as calculated based on the number of Attachments under Permit at the time of the occurrence, as set forth in Appendix A, Item 1.

17.2 **Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall defend, indemnify, and hold harmless City and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers Compensation Laws or under any plan for employees disability and death benefits), and expenses (including reasonable attorney's fees of City and all other costs and expenses of litigation) (Covered Claims) arising in any way, including any act, omission, failure, negligence, or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, or contractors, of Licensee's Communications Facilities, except to the extent of City's gross negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

17.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use

of television or radio broadcast programs and other program material, and infringement of patents;

17.2.2 Cost of work performed by City that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer, or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes City to perform on Licensee's behalf;

17.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, or contractors, pursuant to this Agreement;

17.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, or contractors, of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.

17.3 Procedure for Indemnification.

17.3.1 City shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City, City shall give the notice to Licensee no later than thirty (30) calendar days after City receives written notice of the action, suit, or proceeding.

17.3.2 City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent, that Licensee is materially prejudiced by such failure.

17.3.3 Licensee will have the right at any time, by notice to City, to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to City. City agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, City shall have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by City with respect to the claim.

17.3.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any third- party claim without Licensee's prior written consent.

17.4 Environmental Hazards. Licensee represents and warrants that its use of City's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about City's Poles/ Conduit System or transport to City's Poles/Conduit System any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous

or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under, or adjacent to City's Poles/Conduit System only to the extent attributable to Licensee's use of City's Poles or Conduit System. Should City's Poles be declared to contain Hazardous Substances, City, Licensee, and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity's individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of space occupied by each Attaching Entity plus its share of the common space, including the NESC safety space. For City, such percentage shall be equal to the space above the NESC safety space plus its share of the common Space. If the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

17.5 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

17.6 If City brings an action in a court of competent jurisdiction and is granted a final and appealable order to enforce this Agreement, Licensee shall pay City's reasonable attorney's fees and costs.

Article 18—Duties, Responsibilities, and Exculpation

18.1 **Duty to Inspect.** Licensee acknowledges and agrees that City does not warrant the condition or safety of City's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City's Poles or Conduit System and/ or premises surrounding the Poles or Conduit System, prior to commencing any work on City's Poles or within City's Conduit System or entering the premises surrounding such Poles or Conduit System.

18.2 **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

18.3 **DISCLAIMER. CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES**

WITH REGARD TO CITY'S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.4 **Duty of Competent Supervision and Performance.** The parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City Facilities. The parties understand and intend that energy generated, stored, or transported by City Facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of City; and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

18.5 **Requests to De-energize.** If City de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in accordance with Paragraph 3.9, for all costs and expenses that City incurs in complying with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.

18.6 **Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of City, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting there from and shall notify City immediately.

18.7 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on City's Poles or within City Conduit System by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 19—Insurance

19.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in

force and effect all insurance policies as described below:

19.1.1 **Workers Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Illinois law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

19.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than $5,000,000 general aggregate, $5,000,000 products/completed operations aggregate, $5,000,000 personal injury, $5,000,000 each occurrence.

19.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than $1,000,000 each occurrence, $1,000,000 aggregate.

19.1.4 **Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than $6,000,000 each occurrence, $6,000,000 aggregate.

19.1.5 **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings, and other improvements, including all equipment, fixtures, and City structures, fencing, or support systems that may be placed on, within, or around City Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as extended coverage insurance or self-insure such exposures.

19.2 **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the state of Illinois and have an "A" or better rating in Bests Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverage of the type that Licensee is required to obtain under this Article 18 with the same limits.

19.3 **Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance (Certificate) and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. The policies shall contain a provisions that the City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. City, its Council members, agencies,

officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed $100,000, or such greater amount as expressly allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to City upon request.

19.4 **Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease Licensee's exposure to risk.

19.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

19.6 **Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 20—Authorization Not Exclusive

City shall have the right to grant, renew, and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 21—Assignment

21.1 **Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld; except that Licensee may, without the prior consent of the City, assign all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate of Licensee; (ii) a purchaser of all or substantially all of Licensee's assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Licensee is participating. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. For the purposes of the Section, "Affiliate"

means, any entity that controls or is controlled by Licensee, or is under common control with Licensee.

21.2 **Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by City.

21.3 **Sub-licensing.** Without City's prior written consent, Licensee shall not sublicense or lease to any third party, including but not limited to, allowing third parties to place Attachments on City's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on City's Poles or within City's Conduit System. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Paragraph 20.3.

Article 22—Failure to Enforce

Failure of City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 23 Issue Resolution Process

23.1 **Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.

23.2 **Initial Meeting.** At either party s written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

23.3 **Executive Meeting.** If ninety (90) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.

23.4 **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person

meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 24.

23.5 **Confidential Settlement.** Unless the parties otherwise agree in writing, and subject to Illinois State laws to which the City is subject, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

23.6 **Business as Usual.** During any dispute resolution procedure or lawsuit, the Utilities will continue providing services to each other and performing their obligations under this Agreement.

Article 24—Termination of Agreement

24.1 City shall have the right, pursuant to the procedures set out in this Article 23, to terminate this entire Agreement, or any Permit issued under it, whenever Licensee is in default of any material term or condition of this Agreement, including, but not limited to, the following circumstances:

24.1.1 Construction, operation, or maintenance of Licensee's Communications Facilities in violation of law, or in aid of any unlawful act or undertaking; or

24.1.2 Construction, operation, or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental authority or any private holder of easements or other rights, or violation of any other agreement with City; or

24.1.3 Construction, operation, or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18.

24.2 City will notify Licensee in writing of any defaults by Licensee under this Agreement. Licensee shall begin to take corrective action to cure any such defaults within fifteen (15) calendar days, and if such cure cannot be reasonably completed in fifteen (15) days, Licensee will have sixty (60) days to complete such cure before City will undertake any remedies under this Article 23.

24.3 If Licensee contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.

24.4 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct a default in a timely manner or fails to give the required confirmation, City may immediately terminate the Permit(s) granted under this Agreement for those Poles that are the subject of the default. In the event of termination of this Agreement or any of Licensee's rights, privileges, or authorizations, City may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, from any or all of City's Poles or portions of City's Conduit System. In such instance, Licensee shall remain liable to City for all fees and charges accrued pursuant to the terms of this Agreement.

Article 25—Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both parties.

Article 26—Notices

26.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to City, at:

City Clerk, City of Batavia, 100 N Island Ave. Batavia, Il 60510, with a copy to:

City Administrator, City of Batavia 100 N. Island Ave. Batavia, Il 60510

If to Licensee, at:

Metro Fibernet, LLC
Attn: President or General Manager
3701 Communications Way
Evansville, IL 47715

With a copy to:

Metro Fibernet, LLC
Attn: General Counsel, Legal Department
8837 Bond St.
Overland Park, Kansas 66214

or to such other address as either party, from time to time, may give the other party in writing.

26.2 The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Permits application and approval process and necessary transfer or pole modifications.

26.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of $100 per incident, and shall eliminate City's liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

Article 27—Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning attachments of Licensee's Communications Facilities on City's Poles or within City's Conduit System within the geographical service area covered by this Agreement. Unless

otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between City and Licensee are superseded and of no further effect.

Article 28—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 29—Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the state of Illinois. Venue for any matter arising under this Agreement shall be in the Circuit Court for Kane County, Illinois.

Article 30—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 31 - Performance Bond/Security Fund

During the entire term of this Agreement, Licensee will maintain a bond to guarantee the payment of all the sums that may become due from Licensee to City under the terms of this Agreement. At the time this Agreement becomes effective, Licensee agrees to furnish a bond to City in the amount of $10,000.00 for the initial 1 to 500 City Poles affected by placement of any Attachments or Communication Facilities. Licensee shall increase said bond by $10,000.00 for each additional group (or partial group) of 500 City Poles in excess of the initial 500 City Poles affected by placement of the Attachments or Communication Facilities. The required bond amount shall at all times be equal to or in excess of the amount determined as aforesaid for the number of City Poles covered by Permits hereunder. The bond shall be in a form and with a surety acceptable to City.

Article 32—Force Majeure

32.1 If either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause either not attributable to the negligence or fault of, or beyond the reasonable control of, the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

32.2 City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that Licensee present City with a written description of such force majeure

within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due City under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

CITY OF BATAVIA

BY:_____
Jeffery D. Schielke

Title: Mayor

METRO FIBERNET LLC

BY: _____

Title: _____

Attested: _____
Ellen Posledni

Title: City Clerk

CITY

STATE OF ILLINOIS

:

ss County of Kane

I, the undersigned, a Notary Public in and for the state of [Insert State], hereby certify that on the ____day of_____, 2____, personally appeared before me Jeffery D. Schielke, Mayor to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Notary Public in and for the State of Illinois, residing at Batavia, Illinois

Seal here

LICENSEE

STATE OF [INSERT STATE]

:

ss County of_____

I, the undersigned, a Notary Public in and for the State of_____, hereby certify that on the _____day of_____, 2____, personally appeared before me [NAME]_____, [TITLE]_____to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Notary Public in and for the State of Illinois, residing at

_____, Illinois

APPENDICES

Appendix A

Fees and Charges

Effective Date / /

1. Annual Pole Attachment Fee:

Twenty-one and eighty-four-one-hundredth dollars ($21.84) per attachment/per year, for the period from January 1, 2017 through December 31, 2017, and will be recalculated each year.

The pole rental charge shall be calculated according to the following formula:

Annual Pole Attachment Fee = (Installed Cost of New Pole) multiplied by
(Handy Whitman Ratio) multiplied by
(Annual Carrying Charge) multiplied by
(Space Utilization Factor)

The Handy Whitman Ratio is defined as the ratio of Handy Whitman Index for the Average age of pole divided by the present day Handy Whitman Index.

The Annual Carrying Charge is defined as the Annual Depreciation Expense plus the Annual Return on Investment plus the Annual Operating and Maintenance Expense plus the Administration and General Expense.

The Space Utilization Factor is defined as follows,

[(space occupied) + ((0.66) x (unusable space/number of attaching entities)]/pole height

Number of attaching entities would include electric, electric and one communication company attachment would equal 2. Electric and two communication companies attaching would equal 3, and so on.

The Annual Pole Attachment Charge will be half on Joint Owned Poles.

As an example, the 2017 pole charges shall be calculated as follows, using the following variables:

VARIABLES (change annually):

Annual Depreciation Expense	0.033
Annual Return on Investment	0.075
Annual Operating & Maintenance Expense	0.0291

Annual Administration & General Expense	0.0294
Current Year Handy Whitman Index	584
Average Year of Origin Handy Whitman Index	240
Replacement Cost of Pole	$1,332.81
Number of Solely Owned Poles on System	1000
Number of Jointly Owned Poles on System	1000

CALCULATED VARIABLES

Annual Carrying Charges	0.1665
Handy Whitman Ratio	0.41096
Average Cost of Pole	$ 547.73
Revenue Requirement of Pole	$ 91.20
Space Utilization Factor	0.2395
Annual Rental Fee Per Pole for 2017	$ 21.84
Annual Rental Fee Per Joint Owned Pole for 2017	$ 10.92

2. Non-Recurring Fees:

One-time License Agreement Fee	$250.00
Permit Application Fee (1–50 Poles)	$ 250.00 per Permit Application
Permit Application Fee (51 or more	$ 500.00 per Permit Application
Make Ready Work Charges	See Article 3 of Agreement
Miscellaneous Charges	See Article 3 of Agreement [or Attach Specific Fee Schedule for Work Performed for the Licensee]
Inspection Fees	See Article 3 of Agreement

[NOTE: Permit application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.]

3. **Unauthorized Attachment Penalty Fee:**
5 x annual attachment fee, per occurrence.

4. **Failure To Timely Transfer, Abandon, or Remove Facilities Penalty:**
1/5 annual attachment fee per day, per pole, first 30 days; after the initial 30 days the penalty shall be equal to the annual attachment fee per day, per pole.

Conduit Fees and Charges

2. Non-Recurring Fees:

One-time License Agreement Fee	$250.00

Permit Application Fee (1–100 feet of	$250.00 per Permit Application
Make Ready Work Charges	See Article 3 of Agreement
Miscellaneous Charges	See Article 3 of Agreement
Inspection Fees	See Article 3 of Agreement

[NOTE: Permit application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.]

3. **Unauthorized Conduit Usage Penalty Fee:**
3 x annual license conduit fee, per occurrence.

4. **Failure to Timely Transfer, Abandon or Remove Facilities Penalty:**
1/5 annual conduit license fee per day, per linear foot, first 30 days; after the initial 30 days the penalty shall be equal to the annual conduit license fee per day, per linear foot.

Appendix B
Pole Attachment Permit Application Process

The following procedure is to be followed by each Licensee'seeking to make new Attachments on City's Poles, or overlashing to existing pole tenant facilities on City's Poles. Note that no entity may make any Attachments to City's Poles or overlash to existing pole tenant facilities on City's Poles without having first entered into a binding Pole Attachment Licensing Agreement with City. Third parties seeking to overlash to an existing pole tenant facility must also have a written overlash agreement with the pole tenant to be overlashed. The overlash agreement must be provided to the City at the time of application.

1. Licensee shall submit a written request to perform a Pre-Construction Inspection. The request must include a preliminary route description. Licensee shall have a professional engineer or City-approved employee or contractor, participate in a Pre-Construction Inspection, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work. Appendix F to this Agreement contains the minimum design review information that an applicant must provide and a worksheet for determining the minimum specifications that the proposed Attachment must meet.

2. Following the Pre-Construction Inspection, Licensee shall submit a completed Permit Application (Appendix C) that includes: route map, information required in Appendix F, installation plans, recommendations on Make-Ready Work and a pole-loading analysis stamped by a professional engineer. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Section 1.2 of Agreement) and specifications (Appendix D).

3. At the attacher's expense, the City will review the recommendations from the inspection and the pole-loading analysis, and discuss any issues with the Licensee.

4. Upon receipt of written authorization, City will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by City and agreed to by the Licensee.

5. Upon completion of the Make-Ready Work, the City will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.

6. Unless waived in writing by the City, the Licensee's professional engineer, City-approved employee, or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within ninety (90) calendar days after installation is complete. The City will verify the inspection by means that it deems to be reasonable.

Appendix C
Application for Permit

Application for Permit

Application Date: _/___/___

To: City of Batavia Attn. Electric Department, 200 N Raddant Rd. Batavia, Il 60510

Desire to: □ Attach to City Pole(s) □ Remove Attachment from City Pole(s)

□ Overlash to existing facility attached to City Pole(s)

Permit No. _____ Superseded Permit No. _____

Number of Poles this permit_____ Sheet 1 of_____

Licensee Name _____

Address_____

Contact Person: Phone _____ Title _____

City
Contact Person: Phone _____ Title _____

Narrative Description of proposed activity:

_____

_____

_____

_____

_____

Application for Permit

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement dated_____, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s). Also, attached is documentation as required by Appendix F of the Agreement. If applicable, the engineer's name, state registration number and phone number are:

Name _____Phone_____

Registration #

Permission is hereby granted to Licensee to attach and/or vacate poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by City and agreed to by the Licensee.

SUBMITTED:

APPROVED:

Licensee_____City _____

By _____By _____

Title _____Title _____

Date _____Date _____

Appendix D
Specifications for Licensee's Attachments to City Poles

Licensee, when making Attachments to City Poles, will adhere to the following engineering and construction practices.

A. Attachments

All Attachments shall be made in accordance with the Applicable Standards, as defined in Paragraph 1.2 of this Agreement.

B. Clearances

1. **Attachment and Cable Clearances:** Licensee's Attachments on City Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code ("NESC") and in drawings and specifications City may from time to time furnish Licensee. (See Drawings A-01 to A-11.)
2. **Service Drop Clearance:** From the pole to the home/building the parallel minimum separation between City's service drops and communications service drops shall be twelve (12) inches, per NESC 235C1b (exception 3). (see drawing A-5)
3. All other drop clearances at the midspan must conform to NESC table 235-6.

   Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are: (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of twelve (12) inches of separation must be maintained between all telecommunication cables that meet NESC rule 230E1 (includes common phone, CATV, and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

   NESC table 235-6 requires:

   - 12" from neutral (by exception #16)
   - 30" from supply lines carrying 0 to 8.7 kV (secondary)
   - 30" plus 0.4" per kV in excess of 8.7 (primary)
4. **Vertical Risers:** All Risers, including those providing 120/240 volt power for Licensee's equipment enclosure, shall be placed on the quarter faces of the Pole and must be installed in conduit with weatherhead (if possible), attached to the Pole with stand-off brackets. A two-(2) inch clearance in any direction from cable, bolts, clamps, metal supports, and other equipment shall be maintained. (See Drawings A-02 and A-04.)
5. **Climbing Space:** A clear Climbing Space must be maintained at all times on the face of the Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the City Pole. Licensee's cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces. (See Drawing A-09.)

6. **Pedestals and Enclosures:** Every effort should be made to install Pedestals, vaults and/or Enclosures at a minimum of four (4) feet from Poles or other City Facilities, or the distance specified by the City, whichever is greater.

C. Down Guys and Anchors

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the City's Poles by Licensee's Attachments. Anchors must be guyed adequately.
2. Anchors and guy wires must be installed on each City Pole where an angle or a dead-end occurs. Licensee shall make guy attachments to Poles at or below its cable Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of City.
3. Licensee may not attach guy wires to the anchors of City or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on a City Pole until all required guys and anchors are installed. No Attachment may be modified, added to or relocated in such a way as will materially increase the stress or loading on City Poles until all required guys and anchors are installed.
5. Licensee's down guys, if needed, shall be bonded, to the vertical ground wires of City's Pole, in accordance to NESC rule 92C. If there is no vertical ground present at the pole, the connections to the system neutral are to be made by the City as an item of Make-Ready Work. City will determine if guys should be grounded or insulated.

D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the [state], certifying that Licensee's aerial cable design fully complies with the NESC and City's Construction Standards and any other applicable federal, state or local codes and/or requirements.
2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of City's Facilities and other Attaching Entities' facilities that exist on the Poles without regard to the condition of the existing facilities.

E. Miscellaneous Requirements

1. **Cable Bonding:** Licensee's messenger cable shall be bonded according to NESC rule 92C1 as a minimum, or at every pole with a vertical ground, as determined by the City. If no ground exists on a pole to be bonded, Licensee shall install a Pole ground in accordance with the attached detail drawing. (See Drawings A-03 to A-04.)
2. **Customer Premises:** Licensee's service drop into customer premises shall be protected as

required by the most current edition of the NEC.

3. **Communication Cables:** All Communications cables/wires not owned by City shall be attached within the Communications space that is located 40 inches below the lowest City conductors. See Drawings A-01 through A-11.)
4. **Riser Installations:** All Licensee's Riser installations shall be in City-approved conduit materials and placed on stand-off brackets. Ground wires may be attached directly to Pole. (See Drawings A-02 to A-04.)
5. **Tagging:** All Licensee's cables shall be identified with a band-type communications cable tag or other identification acceptable to City at each Attachment within twelve (12) inches of the Pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Licensee name, emergency contact number and cable type. At the discretion of City, Tags shall be color-coded to permit identification of Attaching Entity by observation from the ground. [NOTE: This provision may be removed if tagging will not be required.]

F. City Construction Drawings and Specifications

1. Refer to the attached City Construction Drawings, and obtain additional construction specifications from City in accordance with its requirements.
2. Apply the City's construction drawings and specifications in accordance with the NESC, NEC and any other federal, state or local code requirements.

G. Distributed Antennas/. Non-cable system equipment. Distributed antenna systems or equipment not related to Franchisee's cable system, including but not limited to "wi-fi boosters" are not permitted under this Agreement and shall require a separate license agreement with the City.

Appendix E
Distribution Line Minimum Design Review Information and Suggested Worksheet

The following guidelines are provided, and corresponding information must be submitted with each Permit application for Pole Attachments on City's system. City may direct that certain Attachments do not require the submittal of Design Review Information. These Attachments are noted at the end of this section.

Each Permit application must include a report from a professional engineer registered to practice in the state of Illinois, and experienced in electric City'system design, or a City-approved employee or contractor of Licensee. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain City's compliance with NESC Class B construction for the loading district as outlined in the NESC Section 25.
City may or may not require that all of the following information be submitted at the time of the Permit application. The applicant shall have performed all required calculations and be ready to provide the detailed information below within fifteen (15) calendar days of notice. Applicant shall keep copies of the engineering data available for a period of twenty (20) years.

In determining compliance, the following minimum conditions shall be used in the calculations for pole strength:

1. All single-phase lines shall be assumed to have been reconductored to 1/0 AAC Poppyconductor for both phase and neutral. [If the City's standard size conductor is larger, enter the larger size here.] If a larger conductor size exists, the larger size shall be used in the calculations.

2. All three-phase lines shall be assumed to have been to 477 AAC Cosmos_conductor for three (3) phases and neutral.
3. All pole lines shall assume a secondary/service conductor, installed from pole to pole, of #4/0 AWG triplex cable, with an ACSR messenger.
4. or pole strength calculations, all poles shall be as they actually exist, or be considered Class 4 for calculations.
5. All line angles or dead ends shall be guyed and anchored. Transverse pole strength shall not be assigned to attaching pole users for line angles, i.e., pole should be viewed as being void of other cables, conductors, wires, or guys and considering only the applicant's wires/cables for guying calculations.
6. Points of attachment shall be as they actually exist on the poles.
7. For a City-approved joint use of anchors, the Licensee shall utilize guy insulators in its guys.

6. Lessee shall comply with any NESC and/or City'safety factors, whichever are more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following confirmations: (NESC Heavy, Grade C construction for Distribution – 12.47 kV and Grade B for Transmission – 34.5kV and higher)All pertinent pole data will be collected and evaluated using 0Calc software to determine pole loading factors, and will be submitted with MetroNet's pole application.

Required permits that have been obtained (insert n/a if not applicable):

_____ (y/n) U.S. Corp of Engineers.

_____ (y/n) Highway—state, county, city.

_____ (y/n) Railroad.

_____ (y/n) Local zoning boards, town boards, etc.

_____ (y/n) Joint-use permits, if required.

_____ (y/n) Notified other pole users of contacts or crossings.

Confirm that you have:

_____ (y/n) Obtained appropriate franchise(s).

_____ (y/n) Obtained pole/anchor easements from landowners.

_____ (y/n) Obtained crossing and overhang permits.

_____ (y/n) Obtained permit to survey R/W.

_____ (y/n) Completed State of Department of Transportation requirements.

_____ (y/n) Placed permit number on plans.

_____ (y/n) Complied with Underground Facility Location requirements.

_____ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon the latest edition of the NESC and the latest editions of the requirements of the State of Illinois.

It is Licensee's responsibility to obtain all necessary permits and provide the City with a copy of each.

The engineer for the Permit applicant shall provide for each Pole(s) the following information:

Project ID

Pole number _____ [if pole tag missing, contact City]

Pole class _____ [existing—i.e., 4, 3, 2...]

Pole size _____ [existing—i.e., 35, 40...]

Pole type _____ [Southern Yellow Pine, Douglas Fir...]

Pole fore span _____ [feet]

Pole fore span direction _____ [degrees from Magnetic North]

Pole back span _____ [feet]

Pole back span direction_____ [degrees from Magnetic North]

Calculated bending
moment at ground level _____ [ft–lbs]

Existing:

Power phase condition_____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power neutral condition _____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power sec condition _____ quantity of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ feet above ground line

Power service #1_____ qty of _____ size @_____ ft above ground line
@____°____’____”

Power service #2_____ qty of _____ size @_____ ft above ground line

@____°____’____”

Power service #3_____ qty of _____ size @_____ ft above ground line

@____°____’____”

Telco #1 cables _____ qty of _____ dia @ _____ ft above ground line

Telco service #1 _____ qty of _____ size @ _____ ft above ground line

@____°____’____”

Telco service #2 _____ qty of _____ size @ _____ ft above ground line

@____°____’____”

CATV #2 cables _____ qty of _____ dia @ _____ ft above ground line

CATV service #1 _____ qty of _____ size @ _____ ft above ground line

@____°____’____”

CATV service #2 _____ qty of _____ size @ _____ ft above ground line

@____°____’____”

User #3 cables _____ qty of _____ dia @ _____ ft above ground line

User #4 cables _____ qty of _____ dia @ _____ ft above ground line

User #5 cables _____ qty of _____ dia @ _____ ft above ground line

User #6 cables _____ qty of _____ dia @ _____ ft above ground line

Equipment #1 Type _____ qty of _____ size @ _____ ft above ground line

Equipment # Type _____ qty of _____ size @ _____ ft above ground line

Equipment #1 Type _____ qty of _____ size @ _____ ft above ground line

Equipment #1 Type _____ qty of _____ size @ _____ ft above ground line

Proposed:

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction____°____’____”,_____°____’____”

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction____°____’____”,_____°____’____”

Equipment #1 type _____ qty of _____ size @_____ ft above ground line

Equipment #2 type _____ qty of _____ size @_____ ft above ground line

AGL = Above Ground Level

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Calculated pole bending moment at ground level:_____[ft–lbs] Pole breaking bending moment at ground level:_____[ft–lbs] Calculated transverse safety factor:_____[ratio should be greater than 1.00]

Proposed loading data [provide similar data for each cable proposed]

A. **Weight data (cable and messenger)**

1. Vertical weight, bare =_____[#/ft]

B. **Tension data (final tensions on messenger)**

1. NESC maximum load for area of construction:_____[lbs]
2. 60° F, NO wind:_____[lbs]

Permit applicant’s engineer shall provide for each transverse guy, or dead end to which guys and/or anchors are attached, the following information:

Pole number

Calculated cable messenger tension under NESC maximum loading conditions___[lbs]

If connection is:

A dead end, is it a single or double?_____[S, D] A change in tension, what is change?_____[lbs]

A line angle, what is angle change? _____[degrees] What is tension change at angle?_____[lbs]

For each dead end:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each change in tension:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each line angle:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each anchor:

Anchor distance to nearest anchor_____[feet]

Calculated anchor tension_____[lbs]

Rated anchor strength_____[lbs]

Soil composition_____[sandy, loam, clay, rock]

For each dead end:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each change in tension:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each line angle:

Point of attachment for guy hook_____[feet AGL] Anchor distance from pole_____[feet]

Calculated guy tension_____[lbs]

Rated guy working strength_____[lbs]

For each anchor:

Anchor distance to nearest anchor_____[feet]

Calculated anchor tension_____[lbs]

Rated anchor strength_____[lbs]

Soil composition_____[sandy, loam, clay, rock]

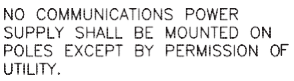
Appendix F
Field Data Summary Sheet Instructions

Column	Instructions
City Pole Number	If a Pole stencil is not in place, it may be left for City if the accompanying sketch is adequate to determine the Location.
Communication Company's Plan Sheet Pole Number	This must correspond with the plan sheet or Pole Sketch Pole identification number.
Pole Height and Class	List the present Pole height and class and list the proposed Pole height and class if it is necessary for City to replace the Pole for clearance, etc.
Guy Attachments guyed.	All unbalanced loading on Poles must be Attachments to City's anchors will not be allowed.
Attachment Height	Communications Company attachment height above ground level. List guy lead in feet.
Inches Below City	The number of inches Communications Company is to be attached below City while maintaining clearance as required in Item #4.
Span Length attachment.	List the back span length for each
Inches Sag	List the messenger sag for the design listed on the cover sheet at 60 degrees Fahrenheit.

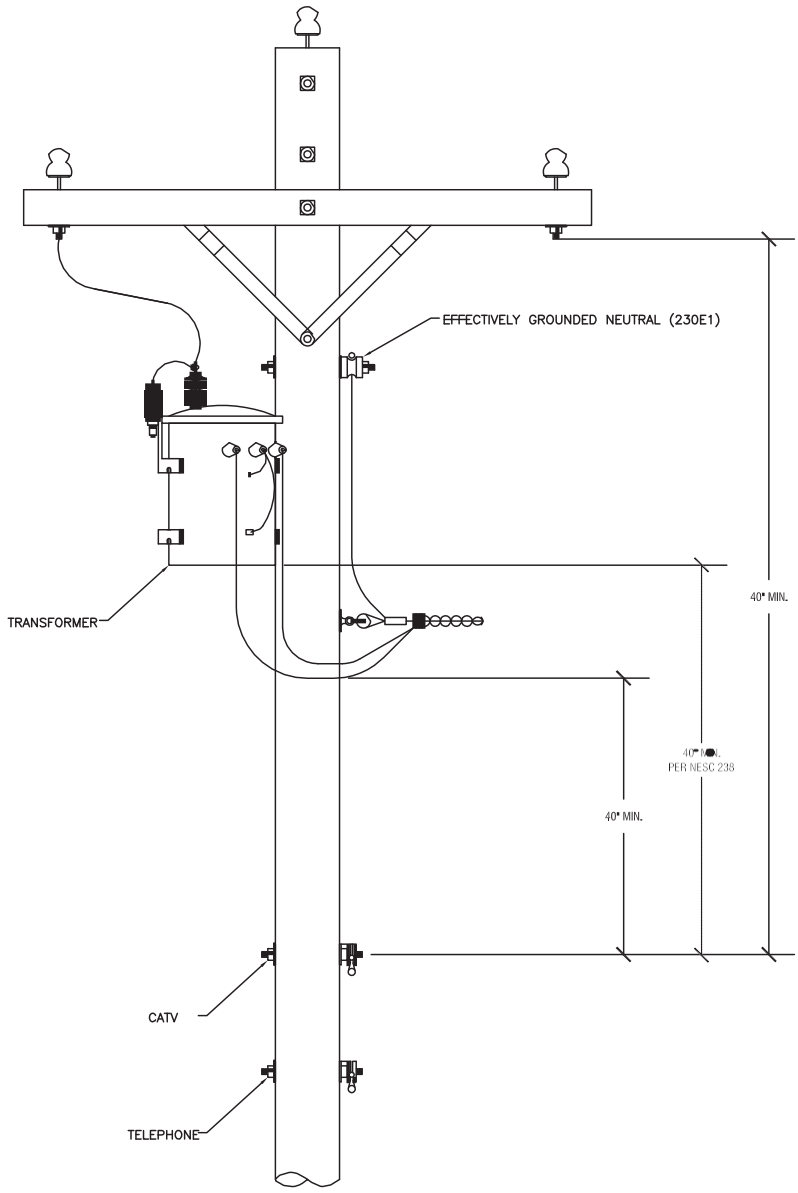
Ground Clearance	List the ground clearance at the low point of the back span. Must not be less than the *National Electrical Safety Code* (latest edition).

Appendix G
Drawings

Drawing A-01 — Overhead Minimum Clearances

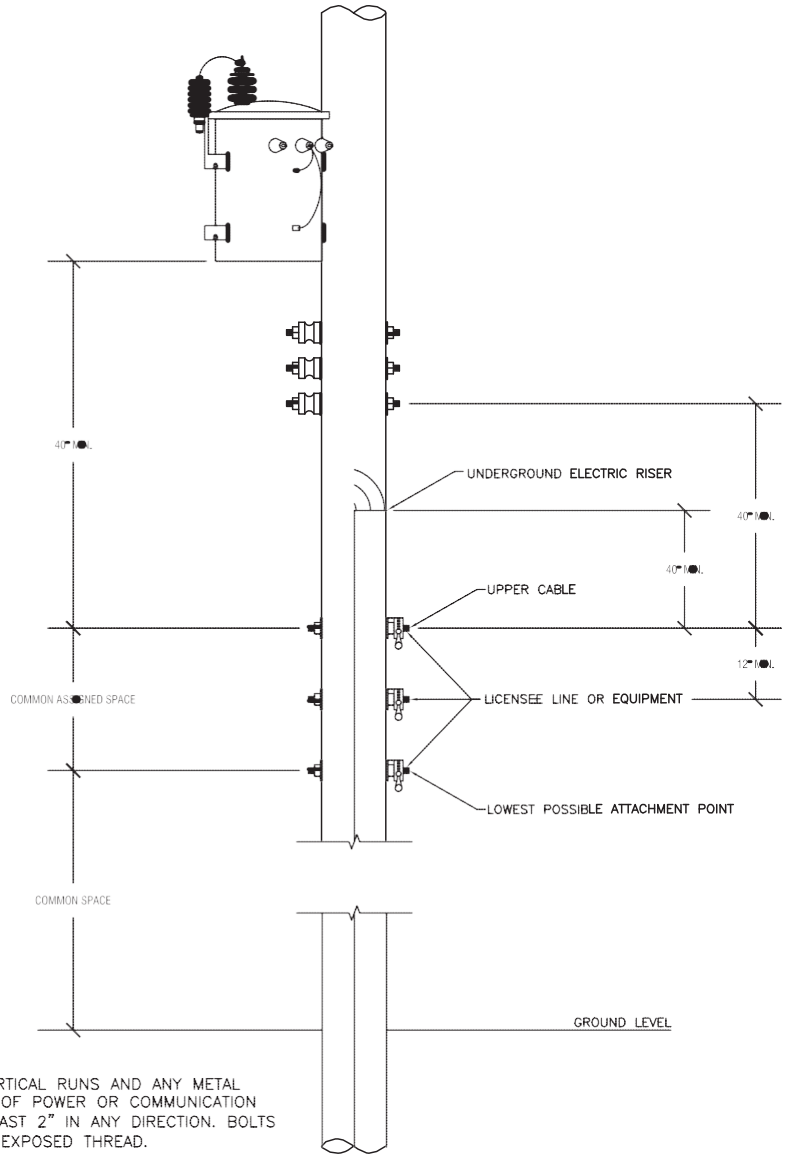


LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.



	A	03/15/2013
POLE ATTACHMENTS		
OVERHEAD MINIMUM CLEARANCES		
NTS		A-01

Drawing A-02 — Overhead Minimum Clearances



NOTE 1:
1. SEPARATION BETWEEN VERTICAL RUNS AND ANY METAL PARTS OR THROUGH BOLTS OF POWER OR COMMUNICATION EQUIPMENT SHALL BE AT LEAST 2" IN ANY DIRECTION. BOLTS SHALL HAVE LESS THAN 2" EXPOSED THREAD.

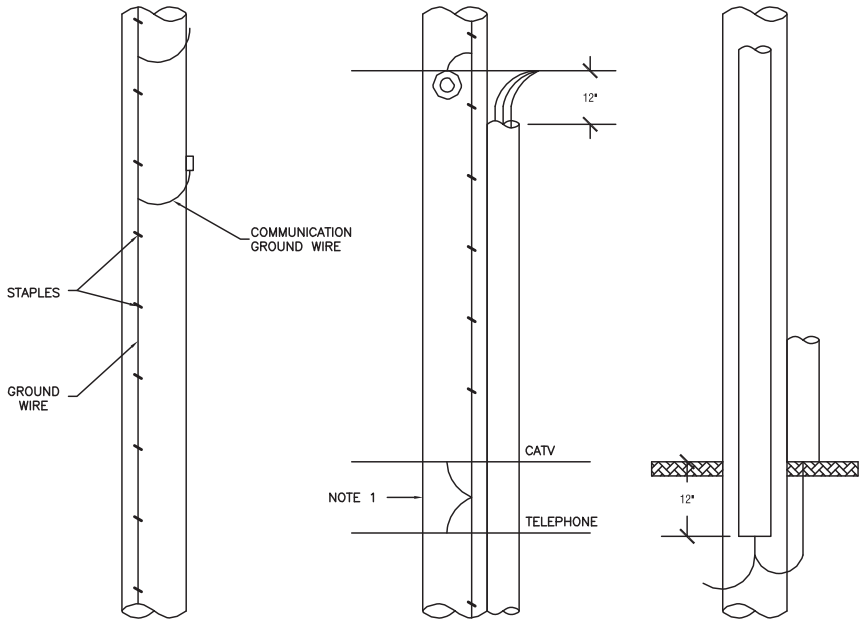
2. NO COMMUNICATION EQUIPMENT SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

3. THE ABOVE CLEARANCES MAY HAVE TO BE INCREASED TO ALLOW FOR CODE CLEARANCE REQUIREMENT IN MID SPAN.

4. LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENTS CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

	A	03/15/2013
POLE ATTACHMENTS		
OVERHEAD MINIMUM CLEARANCES		
NTS		A-02

Drawing A-03—Grounding Connections



NO COMMUNICATION EQUIPMENT SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

NOTE 1:

1. LICENSEE SHALL BOND TO UTILITY POLE GROUND WHEREVER UTILITY HAS A DOWN GROUND ON THE POLE. IF THE GROUND IS UNDER THE METAL U-GUARD, CONTACT UTILITY TO MAKE THE GROUND CONNECTION.

2. IF NO POLE GROUND EXISTS INSTALL A POLE DOWN GROUND ON THE POLE. PROTECT THE POLE GROUND WITH A GROUND WIRE MOULDING. TOP OF GROUND ROD SHALL BE AT LEAST 6" BELOW GRADE.

3. BOUND WIRE SHALL BE #6 BARE COPPER OR LARGER. IF BOND WIRE IS UNSUPPORTED MORE THAN 12" LONG, STAPLE TO POLE.

4. WHEN COMMUNICATION'S ARE UNDERGROUND, THE POWER IS OVERHEAD AND IT IS REQUIRED THAT THE COMMUNICATIONS GROUND BE INTERCONNECTED TO THE POWER SUPPLY GROUND, THE CONNECTION SHALL BE MADE BELOW GRADE.

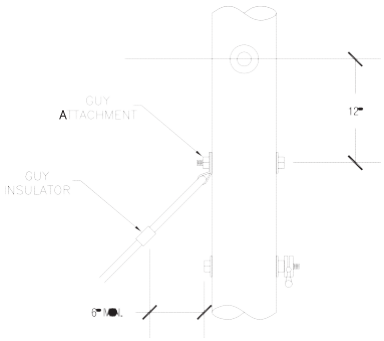
5. IN NO CASE SHALL LINCENSEE GROUND BE CONNECTED TO GUYS/ANCHORS.

6. IF A NEUTRAL ISOLATION DEVICE IS INSTALLED ON THIS POLE THE ATTACHER MUST CONTACT UTILITY FOR SPECIAL GROUNDING INSTRUCTIONS.

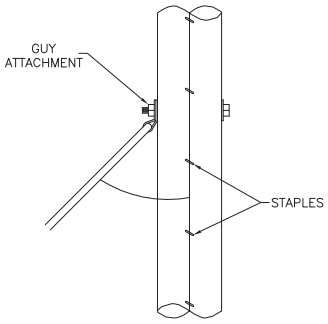
7. LICENSEE'S MESSENGER CABLE SHALL BE BONDED TO UTILITY'S POLE GROUND WIRE AT EACH POLE THAT HAS A GROUND WIRE.

	A	03/15/2013
POLE ATTACHMENTS		
GROUNDING CONNECTIONS		
NTS		A-03

Drawing A-04 — Guy Wire Requirements



INSULATED GUY OPTION



GROUNDED GUY OPTION

CONTACT UTILITY TO DETERMINE
IF GUYS ARE TO BE INSULATED OR
GROUNDED.

NOTE 1:

1. LICENSEE SHALL BE RESPONSIBLE FOR PROCURING AND INSTALLING ALL ANCHORS AND GUY WIRES TO SUPPORT THE ADDITIONAL STRESS PLACED ON UTILITY'S POLES BY LICENSEE'S ATTACHMENTS.

2. ANCHORS AND GUY WIRES MUST BE SET ON EACH UTILITY POLE WHERE THERE IS A TURN OR ANGLE AND ON ALL DEAD—END UTILITY POLES.

3. LICENSEE MAY NOT PLACE GUY WIRES ON THE ANCHORS OF UTILITY OR THIRD PARTY USER WITHOUT PRIOR WRITTEN CONSENT OF ALL ATTACHING ENTITIES AND ANCHOR OWNERS.

4. NO ATTACHMENT MAY BE INSTALLED ON A UTILITY POLE UNTIL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED, NOR MAY ANY ATTACHMENT BE MODIFIED OR RELOCATED IN SUCH A WAY AS WILL MATERIALLY INCREASE THE STRESS OR LOADING ON UTILITY POLES UNTEL ALL REQUIRED GUYS AND ANCHORS ARE INSTALLED.

5. LICENSEE'S DOWN GUYS SHALL NOT BE BONDED TO GROUND OR NEUTRAL WIRES OF UTILITY'S POLE AND SHALL NOT PROVIDE A CURRENT PATH TO GROUND GROM THE POLE GROUND OR POWER SYSTEM NEUTRAL. IF PERMITTED OR REQUIRED BY THE UTILITY, GROUNDED GUYS SHOULD BE INSTALLED.

6. ON JOINTLY USED STRUCTURES, GUYS THAT PASS WITHIN 12" OF SUPPLY CONDUCTORS, AND ALSO PASS WITHIN 12" OF COMMUNICATION CABLES, SHALL BE PROTECTED WITH A SUITABLE INSULATING COVERING WHERE THE GUY PASSES THE SUPPLY CONDUCTORS, UNLESS THE GUY IS EFFECTIVELY GROUNDED OR INSULATED WITH A STRAIN INSULATOR AT A POINT BELOW THE LOWEST SUPPLY CONDUCTOR AND ABOVE THE HIGHEST COMMUNICATION CABLE.

NO COMMUNICATION EQUIPMENT SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

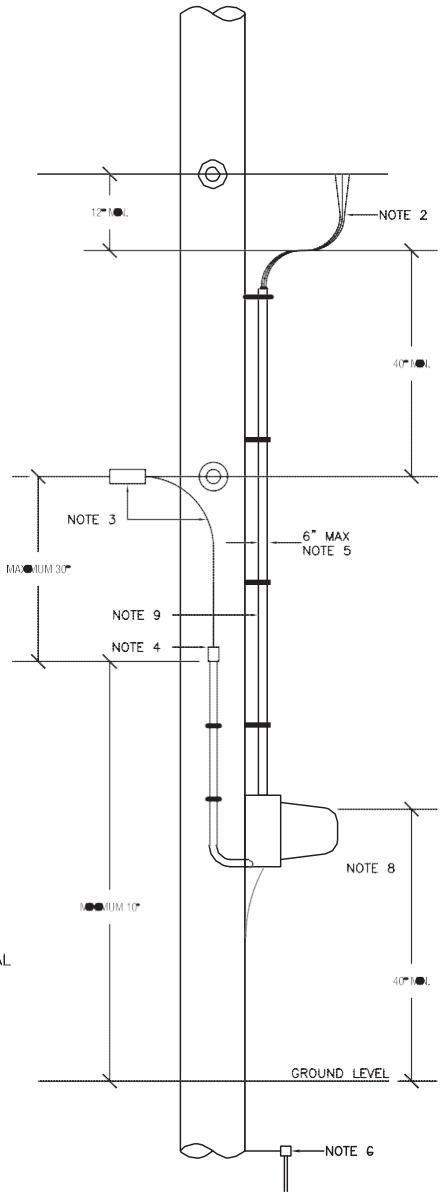
LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

	A	
POLE ATTACHMENTS		
GUY WIRE REQUIREMENTS		
NTS		A-04

Drawing A-05 – Power Service

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.



NOTE 1:
1. THIS INSTALLATION SHALL COMPLY WITH ALL APPLICABLE ELECTRICAL CODES AND STATE, CITY, VILLAGE, TOWN, AND UTILITY REQUIREMENTS.

2. SERVICE ENTRANCE CONDUCTORS SHALL EXTEND 30" BEYOND WEATHERHEAD AND HAVE 600 VOLT RATED INSULATION.

3. COMMUNICATION POWER SUPPLY CABLE.

4. COMMUNICATION POWER SUPPLY.

5. 6" MAXIMUM BETWEEN SERVICE ENTRANCE CONDUIT AND COMMUNICATIONS CABLE, IF POSSIBLE.

6. GROUNDING SHALL BE IN ACCORDANCE WITH NATIONANL ELECTRIC CODE ARTICLE 250. TOP OF ROD TO BE 6" BELOW GRADE.

7. LOCATION OF ALL LICENSEE EQUIPMENT IS TO BE APPROVED BY UTILITY AND SHALL BE RELOCATED BY LICENSEE IF INCORRECT.

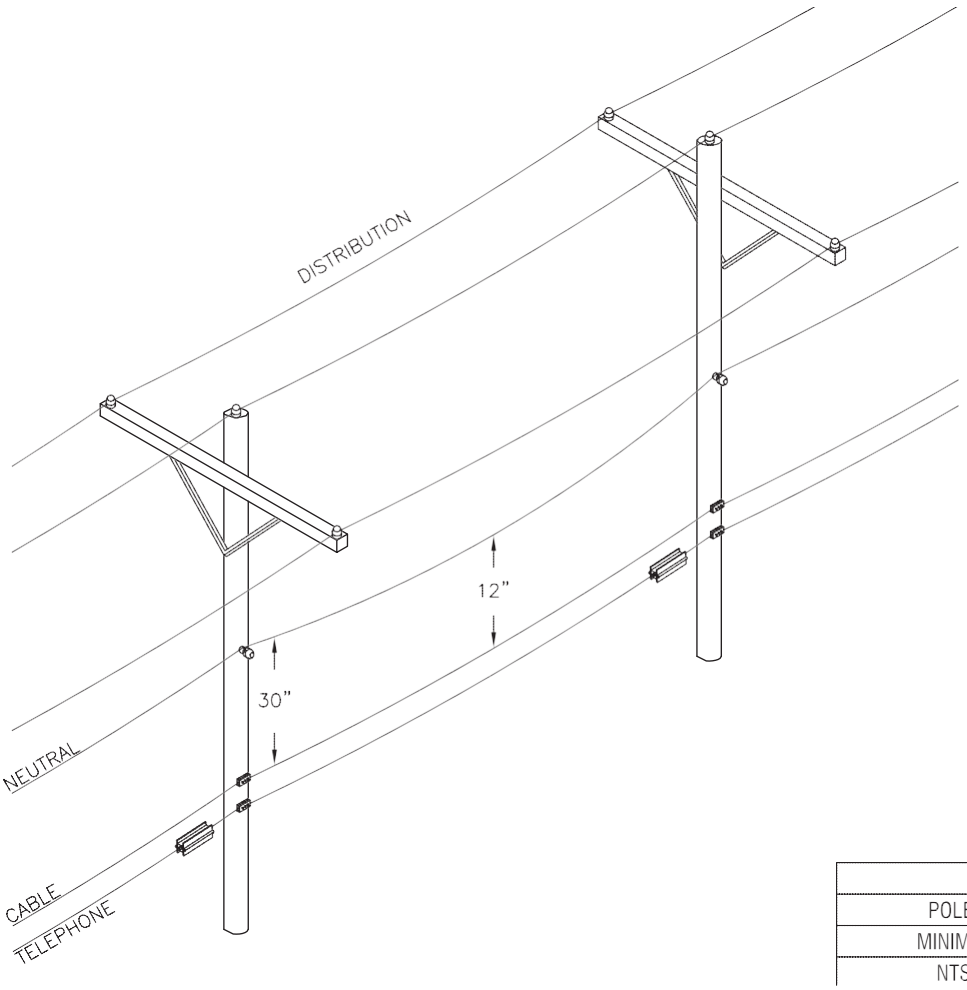
8. PROOF OF COMPLIANCE SHALL BE APPROPRIATELY CERTIFIED. INSTALL DISCONNECT AND OVERCURRENT PROTECTION WITH METER.

9. ALL RISERS ON POLES WILL BE PLACED IN RIGID STEEL OR ALUMINUM METALLIC CONDUIT ON THE QUARTER FACES OF THE POLE.

10. THIS SERVICE DETAIL APPLIES TO ALL COMMERICAL USERS REQUIRING POWER FOR POLE MOUNTED DEVICES.

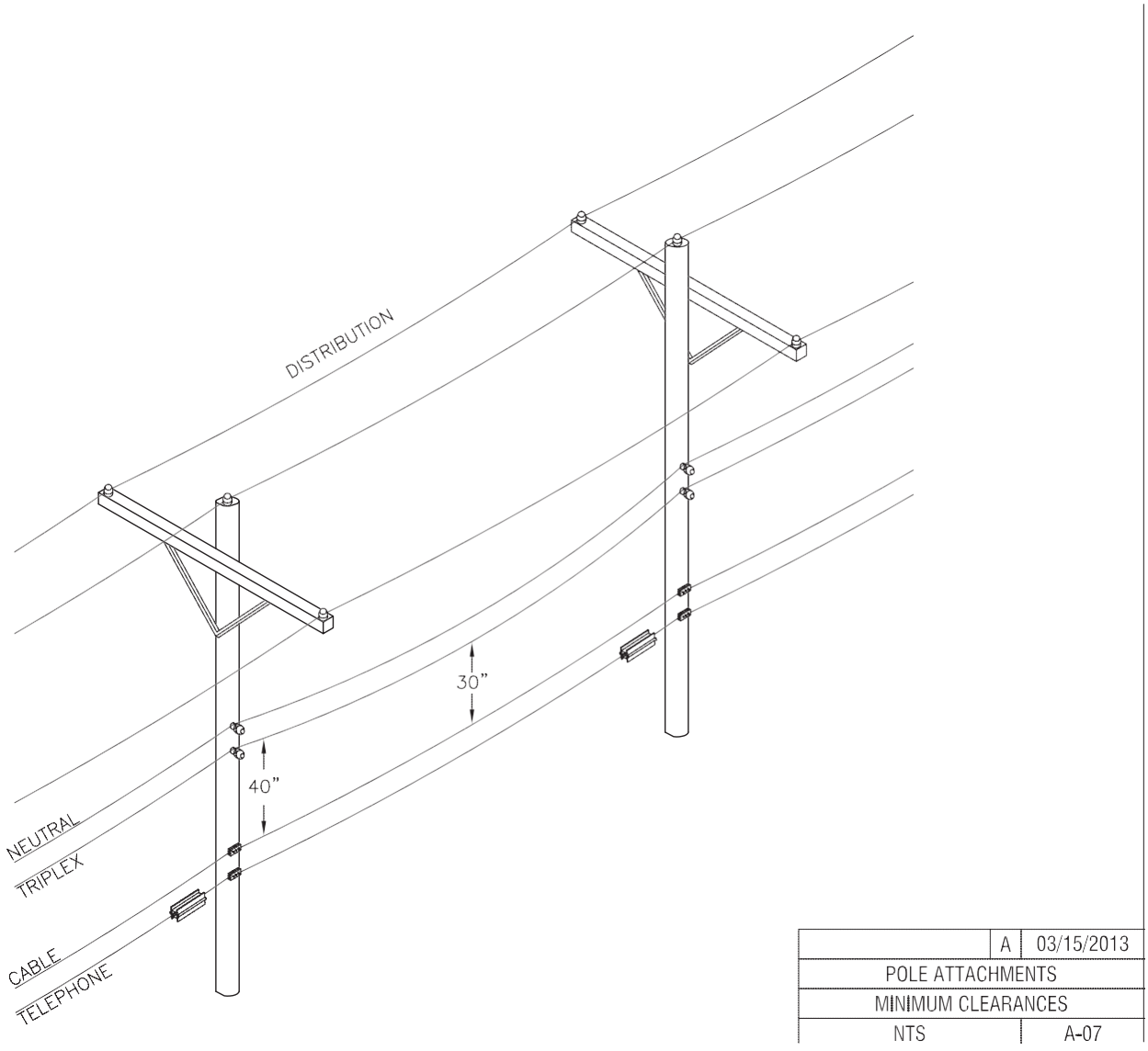
	A	03/15/2013
POLE ATTACHMENTS		
POWER SERVICE		
NTS		A-05

Drawing A-06—Minimum Clearance at Pole/Midspan from Neutral



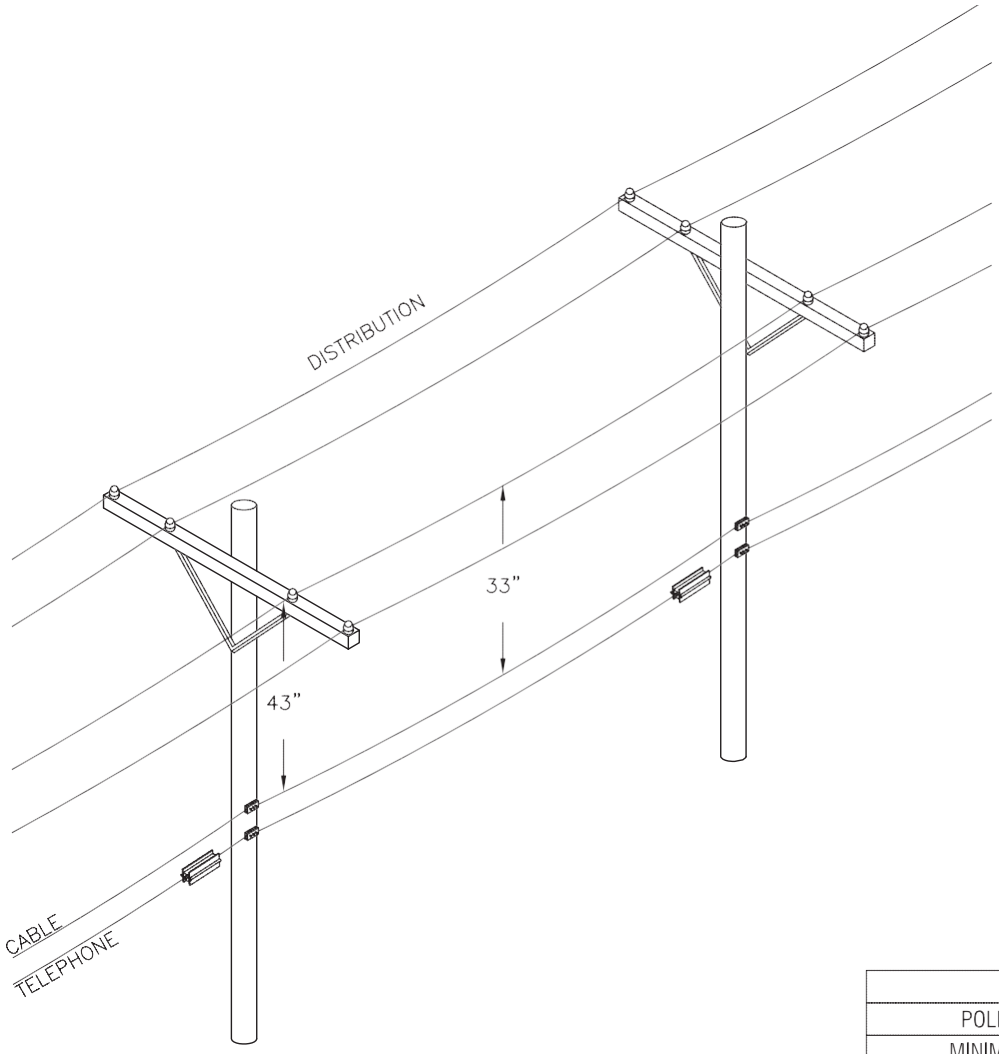
	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-06

Drawing A-07 — Minimum Clearance at Pole/Midspan from Secondary



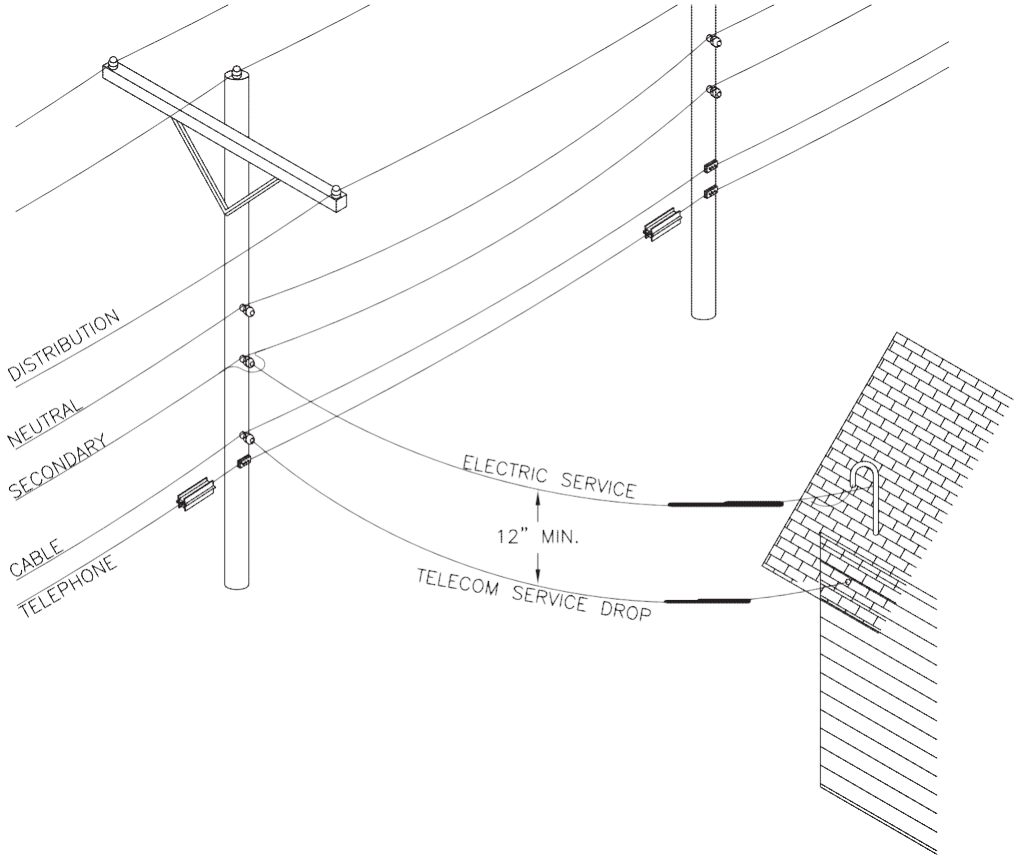
	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-07

Drawing A-08—Minimum Clearance at Pole/Midspan from Primary



	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-08

Drawing A-09—Midspan Service Drop Clearance from Electric Service

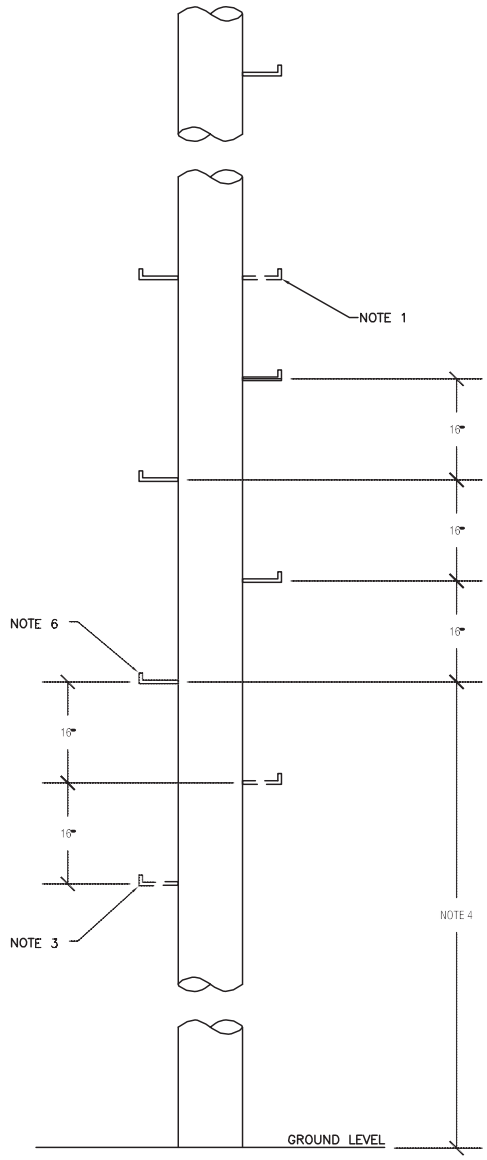


	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCE SERVICE AND ROADWAY		
NTS		A-09

Drawing A-10 — Pole Step Requirements

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.



POLE STEPS MUST BE AUTHORIZED BY THE UTILITY BEFORE INSTALLATION.

NOTE 1:
1. AN ADDITIONAL STEP SHALL BE PLACED OPPOSITE A STEP LOCATED WHERE WORK IS FREQUENTLY PERFORMED.

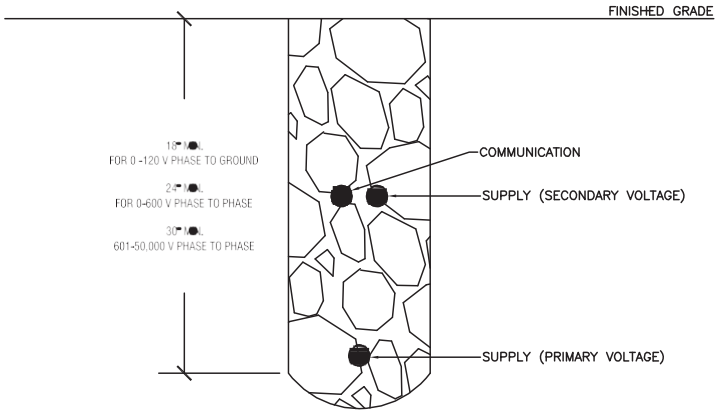
2. WHERE POLE IS SET CLOSE TO A BUILDING WITH AN ACCESSIBLE ROOF USE DETACHABLE STEPS FROM THE ROOF LEVEL UP TO A LEVEL 8 FT. ABOVE THE ROOF.

3. USE DETACHABLE POLE STEPS WHERE STEPS ARE REQUIRED BELOW THE 8 FT. LEVEL.

4. LOCATED LOWEST HOOK POLE STEP 8 FT. ABOVE THE GROUND ON DISTRIBUTION POLES AND 8 FT. ABOVE THE GROUND ON JOINT POLES.

	A	03/15/2013
POLE ATTACHMENTS		
POLE STEP REQUIREMENTS		
NTS		A-10

Drawing A-11 – Joint Trench Requirements



DIRECT BURIED SEPARATION

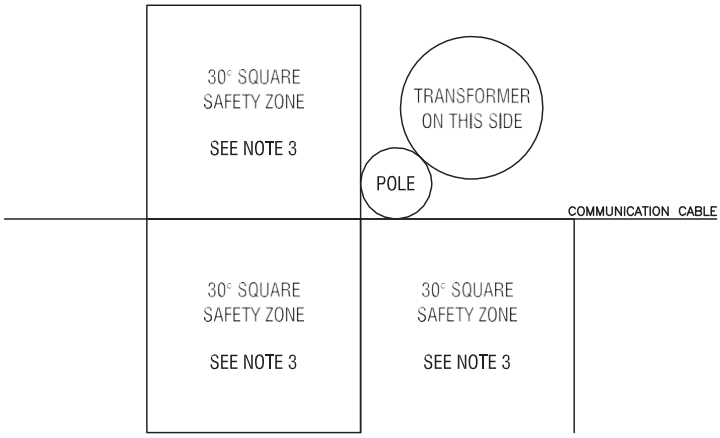
)TE 1:
COMMUNICATIONS EQUIPMENT SHALL MEET REQUIREMENTS OF NESC 345D.

COMMUNICATIONS CABLES SHALL BE RANDOM LAID WITH PRIMARY AND SECONDARY CABLES
S SPECIFIED IN NESC 354D.

THE BONDING CONDUCTOR REQUIRED NESC SHALL BE PROVIDED AS PART OF THE
)MMUNICATIONS PEDESTAL INSTALLATION. A COMMUNICATIONS BONDING CONDUCTOR CLAMP
SUFFICIENT LENGTH FOR ROUTING INTO THE SUPPLY PEDESTAL/TRANSFORMER
:UTRAL CONNECTOR SHALL BE PROVIDED.

INSTALLATION MAY BE BY PLOWING, TRENCHING, OR BACKHOE AS CONDITIONS WARRANT.

	A	03/15/2013
POLE ATTACHMENTS		
JOINT CABLE INSTALLATION		
NTS		A-11



NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

NOTE 1:
1. FOR NEW CABLE INSTALLATIONS LOCATE CABLE ON THE SAME SIDE OF THE POLE AS UTILITY'S LOWEST CONDUCTOR.

2. STANDOFF BRACKETS TO MOUNT CABLE TO POLE ARE NOT ALLOWED WITHOUT APPROVAL OF UTILITY.

3. CLIMBING AND WORKSPACE THROUGH THE COMMUNICATION SPACES SHALL EXTEND FROM 40" BELOW THE LOWEST COMMUNICATION CABLE TO THE TOP OF THE POLE.

4. ON TRANSFORMER POLES THE COMMUNICATION SERVICE DROPS SHALL BE LOCATED SO THAT THEY ORIGINATE FROM THE MESSENGER ON THE SIDE OF THE POLE OPPOSITE THE TRANSFORMER.

5. MINIMUM CLEARANCES FOR CLIMBING AND WORKING SPACE SHALL BE FOLLOWED AS PER NESC SECTION 236.

	A	03/15/2013
POLE ATTACHMENTS		
CLIMBING SPACE REQUIREMENTS		
NTS		A-15

CITY OF BATAVIA

MEMO TO: City Council
Government Services

FROM: Daniel Eul
Chief of Police

DATE: August 3, 2017

SUBJECT: Class B-4 Liquor License Application for Buchanan Energy (S) LLC/DBA Bucky's #544 (Exxon), located at 2074 W. Main Street.

The Batavia Police Department conducted an investigation and background check (Report #17-13442) to determine whether the corporation (Buchanan Energy (S) LLC) d.b.a Bucky's #544 located at 2074 W. Main Street and the corporate officer (Owner Steve Buchanan) might be suitable to receive a Class B-4 Liquor License in the City of Batavia. We have found no problems which would preclude the corporation or corporate officer from receiving a Class B-4 Package Liquor Sales at Gas Stations, beer and wine only, as of this date.

I would ask that this be put on the COW agenda of Tuesday, August 22, 2017 and then the City Council Agenda on September 5, 2017 for final approval.

Should you have any questions in this regard, please contact me.

PC: Liquor File
Deputy Chief Autenrieth
Detective Doggett
Cheryl Shimp

CITY OF BATAVIA

DATE: **August 18, 2017**
TO: **Committee of the Whole - PU**
FROM: **Gary Holm**
SUBJECT: **Resolution #17-95-R Approval of First Amendment to Master Services Agreement by and between the City of Batavia and Suncast Corp. for the facility located at 701 N. Kirk Road**

In 2014 the City of Batavia executed a Master Services Agreement (MSA) with Suncast Corp. for their facility located at 701 N. Kirk Rd. The MSA specifies that all power supplied above a certain baseline be charged to Suncast at a market-based rate. Suncast's 2013 electric consumption was used to establish the baseline. The purpose of the incentive was to promote manufacturing growth and electric consumption.

In 2016/17 Suncast constructed a new 350,000 s.f. addition to their facility on Suncast Ln. The addition was constructed to allow for new manufacturing. To date one new manufacturing line has been added and more are planned for the future.

As part of the negotiations between the City and Suncast related to the Suncast Ln facility expansion, it was decided by both parties that the original MSA for the Kirk Rd facility needed to be amended. The First Amendment modifies the original MSA as follows:

- Extends the term of market-based rates until 2030
- Specifies that market-based rates during the period from 2024 until 2030 shall follow the ordinance in place at that time
- Specifies that the baseline electric calculation shall be based on both the Kirk Rd and Suncast Ln facilities
- Includes new termination language should Suncase cease operations at either the Kirk Rd or Suncast Ln facility

We recommend Resolution #17-95 Approval of First Amendment to Master Services Agreement by and between the City of Batavia and Suncast Corp. for the facility located at 701 N. Kirk Road

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-95-R

APPROVAL OF FIRST AMENDMENT TO MASTER SERVICES AGREEMENT BY AND BETWEEN THE CITY OF BATAVIA AND SUNCAST CORP. FOR THE FACILITY LOCATED AT 701 N. KIRK ROAD

WHEREAS, the City of Batavia owns and operates an electric utility; and

WHEREAS, the City previously executed a Master Services Agreement with Suncast Corporation, an Illinois Corporation, located within the City.

WHEREAS, Both the City and Suncast have agreed that it is in the best interest of the electric utility and its customers to amend the Master Services Agreement to incentivize manufacturing growth at Suncast's 1801 Suncast Lane location

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the First Amendment to the Master Services Agreement by and between the City of Batavia and Suncast Corp. in the form attached hereto as Exhibit 1.

CITY OF BATAVIA, ILLINOIS RESOLUTION 17-95-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 5th day of September, 2017.

_____

Jeffery D. Schielke, Mayor

Ald	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Vacant					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 13 aldermen										

ATTEST:

_____

Ellen Posledni, City Clerk

FIRST AMENDMENT TO MASTER SERVICES AGREEMENT

BY AND BETWEEN

THE CITY OF BATAVIA ILLINOIS AND SUNCAST COROPORATION

This FIRST AMENDMENT to the MASTER SERVICES AGREEMENT is dated as of September 5, 2017 ("Effective Date") and is by and between City of Batavia, Illinois ("City"), and Suncast Corporation, an Illinois Corporation ("Customer") (each individually a "Party," or collectively, the "Parties").

Modify RECITALS to state:

WHEREAS, City owns and operates a municipal utility chartered and existing under the laws of the State of Illinois, with City's principal place of business at 100 N. Island Avenue in Batavia, Illinois; and

WHEREAS, Customer is a corporation organized under the laws of the State of Illinois with locations at 1801 Suncast Lane and 701 N. Kirk Road within the City of Batavia; and

WHEREAS, Customer maintains its corporate headquarters and conducts manufacturing operations at 701 N. Kirk Rd. in Batavia ("Facility"); and

WHEREAS, the Parties have agreed to establish an annual energy consumption baseline of 61,509,600 kilowatt-hours for the combined energy use at both the 701 N. Kirk Rd. Facility and the 1801 Suncast Lane location; and

WHEREAS, Customer intends to expand its 1801 Suncast Lane location to facilitate new warehouse and manufacturing operations; and

WHEREAS, the Parties entered into a Master Services Agreement ("MSA") dated January 1, 2014 for the 701 N. Kirk Rd. Facility and now desire to modify the terms and conditions of that MSA for delivery of power from the City to the Customer; and

NOW THEREFORE, in consideration of the above premises, and mutual covenants and agreements herein contained, the Parties hereby agree to modify the 701 N. Kirk Rd. Facility MSA as follows:

ARTICLE 1

The definition of "Baseline Energy" shall be revised to state:

"Baseline Energy" means the combined energy used and billed to Customer for both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location up to and including 61,509,600 kilowatt-hours annually.

ARTICLE 2 – No Revisions

ARTICLE 3 – Shall be revised as follows:

Modify Term to state:

Term. Subject to the provisions described in Section 4.7, the Term of the MSA shall be extended until December 31, 2030. Notwithstanding the previous sentence, and upon reasonable notice, and with City's consent, such consent not to be unreasonably withheld, Customer may opt to take their entire electric service at the 701 N. Kirk Rd. under City's applicable Bundled Service retail rate in effect at the time of the conversion, in which case the MSA shall be deemed terminated on the date Customer begins service under such City retail rate.

Modify 3.1.01:

3.1.01 Delivery Period. Subject to the provisions described in Section 4.7, the Delivery Period shall commence as of the Effective Date of the MSA and on the date(s) as defined in any Transaction confirmation(s) and shall terminate on the date(s) as defined in the Transaction confirmations(s) but no later than December 31, 2030.

ARTICLE 4 – Shall be revised as follows:

Add:

4.2.01.4 Subject to reconciliation as further described in Section 4.2.03 and Appendix B, for Baseline Energy utilized by the Facility between January 1, 2024 and December 31, 2030, the Customer bill shall be calculated by applying the Bundled Service rate and PPAF currently in effect for the applicable rate class.

Modify 4.2.01.5:

4.2.01.5 Agreement Expiration. Subject to the provisions described in Section 4.7, commencing January 1, 2031, all power utilized by the Facility shall revert to Bundled Service at the appropriate rate per the Ordinance in place at that time.

Modify 4.2.02.1:

4.2.02.1 Subject to reconciliation as further described in Section 4.2.03 and Appendix B, Increased Energy Consumption (that is, for net energy consumption at the Facility in excess of 61,509,600 KWH annually) between January 1, 2014 and December 31, 2023 shall be calculated and billed using rates which are market-based in accordance with terms and conditions as set forth in the original MSA. Increased Energy Consumption between January 1, 2024 and December 31, 2030 shall be calculated and billed using market-based rates in accordance with the City's then current Market Based Rate Ordinance with the intent of providing Customer with the most cost-effective means of meeting its electric energy requirements. To meet this intent, the Customer shall have the option, but not the obligation, to execute Transaction(s) with the City. The City and Customer may work with each other to identify potential Energy Transaction(s) that both parties may choose to execute. Prior to, and as a condition of, execution of any Transaction(s), the Customer shall provide the City with a good faith estimate in spreadsheet format of its load and projected load growth for the duration of the contemplated Transaction(s). The City shall share its expected load changes and any potential purchases and sales that it needs to make. The Parties shall then discuss and agree on any desired Transaction(s). The City shall have the right, but not the obligation, to obtain a price for any desired Transaction(s) and present to Customer upon receipt. Customer shall have the obligation to obtain pricing from three or more qualified energy providers for any desired Transaction(s). The Customer shall specify the type (fixed or variable), the

desired price and the term of the Transaction(s) that it wishes to purchase and provide the City a written Confirmation of the same. The City shall have the right, but not the obligation, to supply the Customer utilizing resources from its existing portfolio for hours that are to be billed for Day Ahead or Real Time pricing. For periods when Customer is soliciting longer term fixed price products, Customer shall inform the City of the term, type of product, and price ("Offer") that Customer is willing to pay. The City shall have the right, but not the obligation to accept the Offer proposed by Customer and enter into a Transaction(s) with the Customer provided that such Transaction(s) meet the terms specified by the Customer. In addition, the City has sole discretion to determine which Transaction(s) to enter into on behalf of the City's Retail Load other than Customer. To the extent that Customer wants to make a purchase from a supplier that is not yet registered to do business with the City, such supplier must agree to the terms and conditions specified by the City and enter into a supply agreement (EEI Agreement) with the City prior to the City making any purchase for the benefit of Customer. The Parties agree that the City has no obligation to purchase from a supplier who will not comply with the City's standard EEI terms & conditions.

Modify 4.2.03.1

4.2.03.1 On December 31 of each year the total annual energy used and billed to Customer at both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location shall be calculated. Within 60 days of December 31 of each year, a balancing charge or credit for any energy and its equivalent demand shall be applied to the applicable Customer bill. Such balancing charge or credit shall be calculated as described in Appendix B.

Modify 4.2.03.4:

4.2.03.4 The difference between the annualized average cost per kWh for Bundled Service, as calculated under 4.2.03.2, and the annualized average cost per kWh for market-based power, as calculated under 4.2.03.3, shall be applied to each kWh under or over the Baseline Energy amount of 61,509,600 kWh in accordance with the procedures described in Appendix B. A tax charge or credit shall be applicable to the net charge or credit.

Add 4.7:

4.7 Effect of Ceasing Manufacturing Operations at Suncast Lane Location:. If the Customer ceases manufacturing operations at the Suncast Lane location prior to December 31, 2023, then this First Amendment to the MSA shall be deemed null and void and the Recitals and Term of the original MSA for 701 N. Kirk Rd. shall be reinstated. If the Customer ceases manufacturing operations at the Suncast Lane location on or after January 1, 2024, then the MSA and all Amendments for 701 N. Kirk Rd. shall be deemed terminated.

ARTICLE 5 through 9 inclusive – No Revisions

ARTICLE 10 – Shall be revised as follows:

10.1 Notices. Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or mailed, postage prepaid, to the representative of the other Parties designated in this Article 9. Any such notice, demand, or request shall be deemed to be given (i) when received by facsimile or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

Notices and other communications by City to Customer shall be addressed to:

Suncast Corporation
_____.

701 N Kirk Rd.
Batavia, IL 60510
Phone:
Electronic:
Facsimile:

With a copy to:

Phone:
Facsimile:
Electronic:

Notices and other communications by Customer to City shall be addressed to:

Laura Newman
City Administrator
100 N. Island Ave. City IL 60510
Phone: (630) 454-2000
Electronic: lnewman@cityofbatavia.net
Facsimile: (630) 454-2001

With a copy to:
Gary Holm
Director of Public Works
City of Batavia
200 N. Raddant Rd. Batavia IL 60510
Phone: (630) 454-2309
Electronic:
gholm@cityofbatavia.net
Facsimile: (630) 454-2351

Invoices/Payments:

Peggy Colby
Finance Director
Phone: (630) 454-2030
Electronic: pcolby@cityofbatavia.net
Facsimile: (630) 454-2001

Scheduling:
Bob Rogde
Senior Engineer
City of Batavia
200 N. Raddant Rd. Batavia IL 60510
Electronic: rrogde@cityofbtavia.net
Phone: (630) 454-2357
Facsimile: (630) 454-2351

Any Party may change its representative by written notice to the other Parties.

ARTICLE 11 through 19 inclusive – No Revisions

APPENDIX B

ANNUAL RECONCILIATION OF ENERGY AND EQUIVALENT DEMAND

Starting each January 1st, and continuing throughout each year:

- Electric bills will be issued in accordance with the City's current Bundled Service rate (unless otherwise modified by the Master Services Agreement or this Amendment) for the 701 N Kirk Rd Facility based on readings from the electric meters that existed at that Facility prior to the 2014 expansion (referred to herein as the 701 bundled meters)
- Electric bills will be issued in accordance with the City's current market-based rate (unless otherwise modified by the Master Services Agreement or this Amendment) for the 701 N Kirk Rd Facility based on readings from the electric meter installed at the Facility as part of the 2014 expansion (referred to herein as the 701 market meter)

and

- Electric bills will be issued in accordance with the City's current market-based rate for the 1801 Suncast Ln location based on readings from the meters at that location (referred to herein as the 1801 meters)

For the purpose of reconciliation, energy consumption at both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location will be combined and calculated in total on an annual basis. All combined energy consumption below 61,509,600 kilowatt-hours (Baseline Energy) will be charged at the City's current Bundled Service rate (unless otherwise modified by the 701 N Kirk Road Master Service Agreement or this Amendment). All energy consumed at both locations in excess of the Baseline Energy will be charged at the City's current market-based rate (per the applicable Master Service Agreement and/or Amendment for each location). Energy consumption will be reconciled at the end of each year as follows:

- The calculation of Baseline Energy shall first be accounted for using only the 701 bundled meters. If the total consumption recorded by the 701 bundled meters is equal to or in excess of the Baseline Energy, then 1) any energy in excess of the Baseline Energy will be reconciled to the City's current market-based rate at 701 N Kirk Road (unless otherwise modified by the Master Service Agreement or this Amendment) and 2) no additional reconciliation will be required for the 701 market meter or the 1801 meters.
- The calculation of Baseline Energy shall first be accounted for using only the 701 bundled meters. If the total consumption recorded by the 701 bundled meters is less than the Baseline Energy, then reconciliation shall occur according to one of the following:
    1. the difference between the Baseline Energy and the actual consumption recorded by the 701 bundled meters shall be deducted from the 701 market meter and reconciled to the City's current Bundled Service rate at 701 N Kirk Road (unless otherwise modified by the Master Service Agreement or this Amendment). If applicable, any remaining energy consumption recorded by the 701 market meter shall remain at the current market-based rate at 701 N Kirk road (unless otherwise modified by the Master Service Agreement or this Amendment) and no reconciliation will be required for the 1801 meters.
    2. If the total energy consumption measured by the 701 bundled meters plus the 701 market meter is less than the Baseline Energy, then all energy recorded at 701 N

Kirk Road shall be reconciled to the City's current Bundled Service rate (unless otherwise modified by the Master Service Agreement or this Amendment). In addition, the difference between the Baseline Energy and all energy recorded at 701 N Kirk Road shall be deducted from the 1801 meters and reconciled to the City's current Bundled Service rate at 1801 Suncast Lane. If applicable, any remaining energy consumption recorded by the 1801 meters shall be remain at the City's current market-based rate.

CITY OF BATAVIA

DATE: **August 18, 2017**
TO: **Committee of the Whole - PU**
FROM: **Gary Holm**
SUBJECT: **Resolution #17-96-R Approval of Master Services Agreement for 1801 Suncast Lane by and between the City of Batavia and Suncast Corp.**

In 2016/17 Suncast constructed a new 350,000 s.f. addition to their facility located at 1801 Suncast Ln. The addition was constructed to allow for new manufacturing. To date one new manufacturing line has been added and more are planned for the future.

As part of the negotiations between the City and Suncast related to the facility expansion, it was decided by both parties to enter into a Master Services Agreement to provide for the following:

- Market-based electric rates, in accordance with the current Ordinance, for annual energy consumption above a baseline value that has been established for both of Suncast's facilities located in Batavia (Kirk Rd and Suncast Ln)
- Term of the Agreement extends until 2030
- Reimbursement of on-site electric infrastructure costs to support the expanded manufacturing capabilities of the facility. Reimbursement will occur over a period of five years.
- Specifies that the MSA be terminated if Suncast ceases operations at the facility.

We recommend Resolution #17-95 Approval of First Amendment to Master Services Agreement by and between the City of Batavia and Suncast Corp. for the facility located at 701 N. Kirk Road

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-96-R

APPROVAL OF MASTER SERVICES AGREEMENT FOR 1801 SUNCAST LANE BY AND BETWEEN THE CITY OF BATAVIA AND SUNCAST CORP.

WHEREAS, the City of Batavia owns and operates an electric utility; and

WHEREAS, Suncast Corp. has expanded their facility located at 1801 Suncast Lane to provide for additional manufacturing capabilities

WHEREAS, Both the City and Suncast have agreed that it is in the best interest of the electric utility and its customers to enter into a Master Services Agreement to further incentivize manufacturing growth

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the Master Servcies Agrement by and between the City of Batavia and Suncast Corp. for the facility located at 1801 Suncast Lane attached hereto as Exhibit 1

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 5th day of September, 2017.

_____

Jeffery D. Schielke, Mayor

Ald	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Vacant					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____

Ellen Posledni, City Clerk

MASTER SERVICES AGREEMENT FOR 1801 SUNCAST LANE DATED AS OF SEPTEMBER 5, 2017 BY AND BETWEEN THE CITY OF BATAVIA ILLINOIS AND SUNCAST COROPORATION

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APPENDIX A

APPENDIX B

MASTER SERVICES AGREEMENT

RECITALS

This AGREEMENT is dated as of September 5, 2017 ("Effective Date") and is by and between City of Batavia, Illinois ("City"), and Suncast Corporation, an Illinois Corporation ("Customer") (each individually a "Party," or collectively, the "Parties").

RECITALS

WHEREAS, City owns and operates a municipal utility chartered and existing under the laws of the State of Illinois, with City's principal place of business at 100 N. Island Avenue in Batavia, Illinois; and

WHEREAS, Customer is a corporation organized under the laws of the State of Illinois with locations at 1801 Suncast Lane and 701 N. Kirk Road within the City of Batavia; and

WHEREAS, Customer intends to expand its 1801 Suncast Lane location to facilitate new warehouse and manufacturing operations; and

WHEREAS, Customer intends to continue operating its corporate headquarters and manufacturing facility at 701 N. Kirk Road ("Facility"); and

WHEREAS, on January 1, 2014 the Parties entered into a Master Services Agreement which specified terms and conditions for delivery of power from the City to Suncast for the 701 N. Kirk Road Facility; and

WHEREAS, the Parties desire to enter into a new and separate Master Services Agreement to specify terms and conditions for delivery of power from the City to Suncast for the 1801 Suncast Lane location; and

WHEREAS, the two Master Services Agreements shall remain independent and be administered separately except that the Parties have agreed to establish an annual energy consumption baseline of 61,509,600 kilowatt-hours for the combined energy use at both the 701 N. Kirk Rd. Facility and the 1801 Suncast Lane location; and

WHEREAS, City is the actual scheduling agent for the City's Retail Load, which shall include the Customer's bundled and market-based load at the 1801 Suncast Lane location and 701 N. Kirk Road Facility. City shall include Customer's load with City's scheduled Retail Load in PJM and will provide all other services necessary to provide firm electric service to Customer; and

NOW THEREFORE, in consideration of the above premises, and mutual covenants and agreements herein contained, the Parties hereby agree as follows:

ARTICLE 1- DEFINITIONS

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement. This Agreement includes certain capitalized terms that are not explicitly defined herein. Such capitalized terms shall have the meanings specified in the "PJM Related Documents," as the same are in effect from time to time, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in a "PJM Related Document", the definition in this Agreement shall control for purposes of this Agreement.

"Administrative Fee" has the meaning set forth in Section 3.12.

"Agreement" means this Master Services Agreement, including the Appendices and Related Documents as amended, modified or supplemented from time to time.

"Baseline Energy" means the combined energy used and billed to Customer for both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location up to and including 61,509,600 kilowatt-hours annually.

"Batavia Hub" means the Batavia, Illinois group of nodes at which PJM calculates individual LMPs, for which the individual LMP values are averaged to create a single pricing reference for Batavia's Retail Load.

"Billing Period" means the calendar month which shall be the standard period for all payments and metering measurements under this Agreement, unless otherwise specifically required by PJM or the entity providing meter reading services.

"Bundled Service" means electric service provided as a package by the City to the Customer at the Metering Point including all generation, transmission, distribution, ancillary and other services necessary to deliver and measure useful electric energy and power.

"Business Day" means a day ending at 5:00p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by the North American Electric Reliability Council; provided, that, with respect to any payment due hereunder, a "Business Day" means a day ending at 5:00p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Chicago, Illinois are authorized by Law to close; and, provided further, that with respect to any notices for scheduling to be delivered pursuant to any Section hereof, a "Business Day" shall be a day other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by PJM.

"Capacity Credit" means the type, form and amount of generating capability required to service Retail Load as set forth by PJM in the Related Documents, but does not include any entitlement to any transmission Congestion Rights or to the output of the Capacity Resource.

"Capacity Resource" means a generating unit or resource eligible to sell the capacity product from such generating unit or resource in the PJM market in accordance with PJM Market Rules and Procedures.

"Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, attorneys' fees and

court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Congestion Costs" means the effect on transmission line loadings as reflected in the cost of transmission (whether positive or negative) associated with either increasing the output of a Generation Resource or serving an increment of Retail Load at each bus when the transmission system serving that bus is operating under constrained conditions.

"Congestion Rights" means the mechanism employed by PJM to allocate, using financial rights, Congestion Costs between a Generation Resource and the Retail Load (whether set forth in the PJM OATT or elsewhere).

"Confirmation" means the written confirmation of a Transaction signed by both Parties.

"Contract Hourly Quantity" means the hourly quantity as set forth in the Transaction confirmation(s) for the applicable Billing Period.

"Control Area" means the geographic territory in which generation and Retail Load is balanced, as operated by PJM.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P and/or Moody's.

"Customer" has the meaning set forth in the preamble to this Agreement.

"Day Ahead Hourly LMP" has the meaning set forth in the Market Rules and Procedures.

"Delivery Period" means the period as defined in Section 2.2.

"Delivery Points" means the point or points where City's 138 kV system connects to the ComEd transmission grid and where PJM will deliver and City will accept the Firm Energy.

"Distribution Fee" means a charge which is intended to cover the cost of carrying energy from the Delivery Point to the customer's premises.

"Eastern Prevailing Time" means the prevailing time in the Eastern Time Zone.

"EEI Agreement" means a master electric trading contract in the form published by the Edison Electric Institute.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Event of Default" means those events by the defaulting party set forth in this Agreement.

"Facility" has the meaning set forth in the Recitals to this Agreement.

"Federal Funds Rate" means, for the relevant determination date opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Such interest shall be calculated commencing on the date Performance Assurance in the form of cash is received by a Party but excluding the date Performance Assurance in the form of cash is returned to a Party

"FERC" means the Federal Energy Regulatory Commission.

"Firm Energy" means Energy that City shall sell and deliver and Customer shall purchase and receive unless relieved of their respective obligations without liability by Force Majeure, but only to the extent that, and for the period during which, either City's or Customer's performance is prevented by Force Majeure.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, or an assumption that forms a basis for this Agreement that proves to be different than what has been assumed, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided.

"Full Requirements Service" means those services described in Section 2.1 of this Agreement.

"Generation Resource" means the generation assets of City.

"Good Utility Practice" means any of the practices, methods, techniques and standards (including the practices, methods, techniques and standards approved by a significant portion of the electric power generation industry, PJM and/or NERC) that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made and having due regard for, among other things, contractual obligations, applicable laws and equipment manufacturer's recommendations, could have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather to be a range of possible practices, methods, techniques or standards.

"Hourly Market Price" means either the Day Ahead Hourly LMP price or the Real Time Hourly price for the Batavia Hub, to be defined by PJM, for the applicable hour and currently published at pjm.org/markets/energy-market/day-ahead and pjm.org/markets/energy-market/real-time, respectively.

"Increased Energy Consumption" means any energy used and billed to the Customer representing use at the 701 N. Kirk Road Facility in excess of 61,509,600 kilowatt-hours annually.

"kW" means Kilowatt

"kWh" means Kilowatt-hour

"Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form and

from a bank acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

"LMP" means locational marginal price.

"Market Rules and Procedures" means the market rules, manuals and procedures adopted by PJM, as may be amended from time to time, and as administered by PJM to govern operations within PJM.

"Metering Point" has the meaning set forth in Section 2.2.03

"Monthly Payment" means the monthly charges set out in Article 4 of this Agreement.

"Moody's" means Moody's Investors Service, Inc. and its successors.

"MW" means Megawatt.

"MWH" means Megawatt-hour.

"NERC" means the North American Electric Reliability Council.

"Network Integration Transmission Service or NITS" means firm transmission service as set forth in the PJM OATI that provides for open access to the transmission systems within PJM and for the delivery of Firm Energy to the Delivery Points.

"NI HUB" means PJM Interconnection's Northern Illinois Hub which is a group of nodes located in the Commonwealth Edison control area in northern Illinois where PJM calculates individual LMPs.

"Party(ies)" means Customer or City or any or both of them, as the context requires.

"Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security reasonably acceptable to City.

"Point of Demarcation" has the meaning set forth in section 2.2(d).

"PJM" means PJM Interconnection, LLC, the Transmission Provider for the Control Area, which is organized and operating pursuant to the PJM OATT and any PJM Related Documents.

"PJM Charges" mean the charges described in Section 3.5.

"PJM Related Documents" means either collectively or individually, the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement, the PJM Reliability Assurance Agreement, Customer Account Manager, Declaration of Authority and any other applicable PJM Market Rules and Procedures.

"Retail Load" means City's end use customers' requirements located within the franchised service territory that City has a statutory or contractual obligation to serve.

"S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).

"Term" is defined in Section 3.1.

"Transaction" means a purchase of electric energy, capacity credits, congestion rights or other similar products by City from one or more parties that shall be agreed to in writing by City and such party or parties.

"Transmission Provider" means any entity or entities transmitting or transporting the Firm Energy and Ancillary Services to the Retail Load at the Delivery Points on behalf of Customer or by City as agent for Customer.

ARTICLE 2 – INCORPORATION OF RECITALS

The Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference.

ARTICLE 3- TERM, ELECTRIC SERVICE, DELIVERY PROVISIONS

3.1 Term. The Term of this Agreement shall begin as of the Effective Date and extend until December 31, 2030. If the Customer ceases to operate at the 1801 Suncast Lane location, then this Agreement shall be deemed terminated on the final date of operations. Notwithstanding the previous sentences, and upon reasonable notice, and with City's consent, such consent not to be unreasonably withheld, Customer may opt to take their entire electric service at the 1801 Suncast Lane location under City's applicable bundled retail rate in effect at the time of the conversion, in which case this Agreement shall be deemed terminated on the date Customer begins service under such City retail rate.

3.2 Electric Service and Delivery.

3.2.01 Delivery Period. The Delivery Period shall commence as of the Effective Date and on the date(s) as defined in any Transaction confirmation(s) and shall terminate on the date(s) as defined in the Transaction confirmations(s) but no later than December 31, 2030.

3.2.02 Electric Service Construction. During the Construction Period the City shall construct certain electric infrastructure required to facilitate new warehouse and manufacturing operations at the 1801 Suncast Lane location as futher described in Appendix A. The cost of electric infrastructure required to facilitate new warehouse and manufacturing operations shall be the responsibility of the Customer and will be eligible for reimbursement by the City subject to the requirements of this Section. The City agrees to reimburse the cost of required infrastructure as a financial incentive for the Customer to construct new warehouse and manufacturing operations. Said reimbursement shall be provided annually by issuing a credit to the Customer's electric bill equal to twenty percent (20%) of the final required infrastructure cost for a period of five (5) years. Said reimbursement credit shall commence as of one year after the Effective Date. The total value of the credit provided by the City shall equal the total cost of the infrastructure required to facilitate new warehouse and manufacturing operations as described in Appendix A. The cost for other electric infrastructure improvements at the 1801 Suncast Lane location that are not necessary to facilitate new warehouse and manufacturing operations and not specifically identified in Appendix A, such as upgrading the electrical service that existed prior to the start of construction, shall not be eligible for reimbursement and shall be the sole cost of the Customer. The cost for any future electric infrastructure improvements, not specifically identified in Appendix A, that would be used to support new warehouse and/or

manufacturing operations at the 1801 Suncast Lane location shall be the sole cost of the Customer.

3.2.03 Metering Points. The Parties agree that Metering Points shall be on the primary side of the transformers serving the 1801 Suncast Lane location. Whenever City seeks to change the physical capacity or the voltage at a Metering Point, City shall notify Customer of such desired change, in writing, as far in advance as is practical, but not later than twelve (12) months prior to the proposed effective date of the change. The notice shall state the location of the Metering Point and the nature of the work to be done. In no event shall City be obligated to permit a change to a Metering Point the operation of which would violate Good Utility Practice.

3.2.04 Point of Demarcation. For purposes of this Agreement, the Point of Demarcation shall not be the Metering Point. The Point of Demarcation shall be defined as the low side point of connection of the 34 kV transformer(s) serving the Facility. All equipment and appurtenances commencing at the low side bus and continuing into the Facility shall be owned and maintained by the Customer. All equipment and appurtenances commencing at the low side bus and continuing to the Distribution System, including the transformers, shall be owned and maintained by City.

ARTICLE 4 - SALE AND PURCHASE

4.1 Full Requirements Service. Pursuant to the terms of this Agreement, City agrees to provide, sell and deliver and Customer agrees to pay for all of the capacity and electric energy required to serve the 1801 Suncast Lane location. Customer's obligation shall be take or pay in regards to any Transactions pursuant to this agreement. As an arranger of Full Requirements Service, Batavia is solely responsible to undertake such actions with respect to PJM that are necessary to arrange for the supply of Full Requirements Service for the Retail Load in each hour. Batavia shall arrange for Full Requirements Service regardless of changes in Customer's load arising from daily fluctuations, increased or decreased usage, extreme weather and similar events.

4.2 Cost-Effectiveness. The intent of both Parties is to provide Customer with the most cost-effective means of meeting its electric energy requirements at the 1801 Suncast Lane location.

4.3 Market-Based. Subject to reconciliation, as further described in Section 4.9 and Appendix B, the cost of energy consumption at 1801 Suncast Lane shall be calculated and billed using rates which are market-based in accordance with the City's current Market-Based Rate Ordinance as modified by the City from time to time. Both Parties acknowledge that energy consumption at 1801 Suncast Lane may not meet the minimal requirements set forth in the City's current Market-Based Rate Ordinance; however, Both Parties agree that market-based rates shall be provided as a financial incentive for the Customer to construct new warehouse and manufacturing operations.

From time to time, but no less than once each month at a time and place agreed to by the Parties, Customer shall provide to Batavia a good faith estimate in spreadsheet format of its load and load growth for a minimum of a one month period. Batavia and Customer will then work with each other to identify the type of transaction (fixed or variable) as well as the term

and other aspects of the Energy Transaction. In addition to discussing Customer's load and procurement options, Batavia shall share its expected load changes and any potential purchases and sales that it needs to make. The Parties will then discuss and agree on the Energy Transaction(s) desired. Batavia and Customer agree to make all reasonable efforts to match Energy Transaction(s) to their respective loads and load projections. Both parties agree that purposefully contracting for excessive or insufficient transactions which result in an advantage of one of the parties shall be prohibited. Batavia shall have the right but not the obligation to obtain a price for such Energy Transaction(s) and present to Customer upon receipt. Customer shall have the right to also obtain pricing from one or more qualified energy providers for any Energy Transaction. The Customer shall specify the type (fixed or variable), the desired price and the term of the Energy Transaction(s) that it wishes to purchase and provide Batavia a written Confirmation of the same. Batavia shall have the right to supply the Customer utilizing resources from its existing portfolio for hours that are to be billed for Day Ahead or Real Time pricing. For periods when Customer is soliciting longer term fixed price products, Customer will inform Batavia of the term, type of product, and price ("Offer") that Customer is willing to pay. Batavia will have the right, but not the obligation to accept the Offer proposed by Customer and enter into an Energy Transaction(s) with the Customer provided that such transactions meet the terms specified by the Customer. In addition, Batavia has sole discretion to determine which Energy Transaction(s) to enter into on behalf of Batavia's Retail Load other than Customer. To the extent that Customer wants to make a purchase from a supplier that is not yet registered to do business with Batavia, such supplier must enter into a supply agreement (EEI Agreement) with Batavia prior to Batavia making any purchase for the benefit of Customer.

Batavia shall pass through to Customer pursuant to Section 5.2 all applicable PJM and Transmission Provider charges and credits for Firm Energy to supply Customer's load obligation at the Delivery Points.

4.4 Bundled Service. Unless otherwise specified by the reconciliation procedures described in Section 4.9 and Appendix B, the cost of energy consumption at 1801 Suncast Lane shall be calculated to be equivalent to the City's current bundled rates for the applicable rate class.

4.5 Contract Amount. Customer shall purchase from Batavia the Contract Hourly Quantity as defined in one or more written Energy Transaction confirmations. In the event there is no written Energy Transaction confirmation, Customer shall pay the PJM Batavia Hub Day Ahead Price for all scheduled quantities and at the PJM Batavia Hub Real Time Price for all unscheduled quantities. Any amounts that are scheduled in excess of the Customer's actual load shall be sold back to the market at the PJM Batavia Hub Real Time price and netted (positive or negative) to Customer on its next monthly invoice. The payments between the parties shall be netted for the Billing Period, such that the party obligated to pay the larger aggregate amount shall pay the other party an amount equal to the excess of the larger aggregate amount over the smaller aggregate amount. If Customer does not provide a schedule for a given day, the prior day's schedule shall be deemed to apply for the following days until such schedule is revised by Customer.

As the Contract Hourly Quantity is intended to reflect Customer's Retail Load characteristics, to the extent that Customer experiences a change in its Retail Load obligation that would cause it to consistently vary from the Contract Hourly Quantity, Batavia and Customer agree to meet to discuss whether changes may be made to address how Customer's changed Retail

Load obligation can be met under this Agreement; provided however, neither Party shall be required to accept a change with which it, in its sole judgment, disagrees.

4.6 Capacity Credits. Batavia shall fulfill its Capacity Credit obligations on behalf of its Retail Load in accordance with applicable PJM rules and requirements. Customer may enter into appropriate market transactions to hedge its capacity costs.

The Customer shall be required to fulfill its Capacity Credit obligations in accordance with applicable PJM rules and requirements for the entire duration in which the 1801 Suncast Lane location directly impacts the Capacity Credit obligations of Batavia. The Customer acknowledges that these obligations may extend beyond the time in which the 1801 Suncast Lane location is operated in Batavia. The Customer agrees to pay for any necessary capacity charges as part of final settlement for the 1801 Suncast Lane location.

4.7 Transmission Service. Transmission Service shall be provided by City in accordance with City's Network Integration Transmission Service Agreement with PJM ("NITSA").

4.8 Renewable Portfolio Standards. If City is required by law to meet applicable state or federal renewable portfolio supply standards, City shall invoice and Customer shall pay its pro rata share of costs associated with such compliance, except and to the extent that the Transactions or other Customer purchases of renewable energy credits are utilized to fulfill such obligations with regard to the Firm Energy supplied to Customer, in which case Customer shall not be obligated to pay City any such costs. Consistent with the commercial intent of this Agreement, City will make good faith efforts to minimize the cost to Customer of such compliance, including, if applicable, the purchase of renewable attributes or carbon credits owned, held or arranged for by Customer as part of or in a manner similar to Transactions.

4.9 Reconciliations (True-ups).

4.9.01 On December 31 of each year the total annual energy used and billed to Customer at both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location shall be calculated. Within 60 days of December 31 of each year, a balancing charge or credit for any energy and its equivalent demand shall be applied to the applicable Customer bill. Such balancing charge or credit shall be calculated as described in Appendix B.

4.9.02 The annualized average cost per kWh for Bundled Service shall be calculated as follows: total charges for electric services before tax based on the City's then current Bundled Service rate for the applicable rate class divided by the total kWh consumed at the 1801 Suncast Lane location. Total charges shall include charges/credits for energy, electric base, demand, load factor credit, power factor penalty and the average annual purchased power adjustment factor or for the equivalent of such categories if they change during the term of the agreement. Total kWh shall be the annual total kWh of energy consumed at 1801 Suncast Lane.

4.9.03 The annualized average cost per kWh for market-based power shall be calculated as follows: total market charges before tax based on the City's then current Market-Based Rate Ordinance divided by the total kWh consumed at the 1801 Suncast Lane location. Total market charges shall include charges for energy, demand, administration, distribution,

power factor penalty, capacity and PJM (or equivalent) transmission related charges and any other market charges implemented during the term of this agreement. Total kWh shall be the annual total kWh of energy consumed at 1801 Suncast Lane.

4.9.04 The difference between the annualized average cost per kWh for Bundled Service, as calculated under 4.9.02, and the annualized average cost per kWh for market-based power, as calculated under 4.9.03, shall be applied as a charge as applicable in accordance with the reconciliation procedures outlined in Appendix B. A tax charge shall also apply as applicable.

4.10 Additional Incentives. Customer agrees that, due to the other incentives provided within this Agreement, it shall not be eligible for any further incentive payments under the Economic Incentive Electric Rate program, as modified from time to time by the City.

4.11 City Franchise Fee. The City's franchise fee shall be paid for all electricity, both bundled rate and market-based, per the applicable provision of the City Municipal Code.

4.12 Power Factor Penalty. The City's Power Factor Penalty shall be paid per the applicable provision in the City Municipal Code.

4.13 Distribution Charge and Administrative Fee. Customer shall pay City a Distribution Charge of $4.91 per kw/month. Customer shall pay City a fixed monthly Administrative Fee of $8,000.00. Once per Calendar Year City shall, at its option, adjust the Distribution Charge and Administrative Fee to the extent the City can reasonably demonstrate to Customer that such costs to serve Customer have changed.

4.14 Rights and Remedies Associated with Transactions. In cooperation and consultation with Customer, City shall use commercially reasonable efforts to pursue available remedies under any EEI Agreement applicable to a Transaction utilized to serve Customer. To the extent the City obtains payments associated with rights and remedies under such an agreement, including early termination or default payments applicable to service provided to Customer, City shall pass through or credit such payments for the benefit of Customer in a manner consistent with the commercial intent of this Agreement. For clarity, to the extent City incurs charges or payments associated with provision of any Transaction for the Customer, and such charges or payments are not due to a City Event of Default, such charges or payments shall be passed through to Customer in accordance with Sections 4.2.01 and other applicable provisions of this Agreement.

ARTICLE 5 BILLING FOR UTILITY SERVICE

5.1 Billing for Utility Service. In each month during the Delivery Period, City shall calculate all charges due under this Agreement, including pass through of PJM Charges and any taxes (including Illinois State Tax), fees and levies in accordance with the applicable ordinance. Because quantities determined under this Article 5 may be estimated, quantities used in calculations shall be subject to adjustment to reflect actual quantities, whether positive or negative, in subsequent months' calculations. Because there

may be various Transactions on a month by month basis, the billing may include fixed and or variable rates. Such charges shall be billed in accordance with Section 5.4 below.

5.2 Pass Through of Charges. City shall pass through to Customer the charges for energy, capacity, operating reserves, and PJM Charges set forth in this Agreement on an open-book, fully transparent basis. To the extent that either Party pays or is required to pay for any service or charge that is the responsibility of the other Party, then the paying Party shall be reimbursed for such costs by the responsible Party either through cash payment or by credit against other amounts owed to the responsible Party by the paying Party in accordance with this Section.

5.3 Taxes, Fees and Levies. Customer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Full Requirements Service. All Full Requirements Service delivered by City to Customer hereunder shall be for use by Customer.

5.4 Payment.

5.4.01 Invoice and Payment Date. Customer shall pay City any amounts due and payable hereunder on or before the twentieth (20^{th}) day after the date of invoice, or if such day is not a Business Day, then on the next Business Day. City reserves the right to issue invoices on a weekly or any other time basis in a manner consistent with PJM.

5.4.02 Payment Method and Interest. All invoices may be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. If all or any part of any amount due and payable pursuant to this Agreement shall remain unpaid thereafter, a late payment penalty shall thereafter accrue and be payable to City in accordance with the applicable Ordinance for bundled rates.

5.4.03 Billing Disputes. If a Party, in good faith, disputes a PJM invoice, the disputing Party shall immediately notify the other Party of the basis for the dispute and, if the invoice has not yet been paid, pay all of such invoice no later than the due date. Upon resolution of the dispute, any required payment or refund shall be made within two (2) Business Days of such resolution along with any accrued interest from and including the due date to but excluding the date paid. If Customer, in good faith, disputes an invoice from City, Customer shall immediately notify City of the basis for the dispute and, if the invoice has not yet been paid, pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment or refund shall be made within seven (7) Business Days of such resolution. Any overpayment by Customer shall be subject to interest on refunds as provided in Section 17.9.

ARTICLE 6 - CONGESTION MANAGEMENT

The Parties agree to work together to manage congestion risk in a manner consistent with the commercial intent of this Agreement. City shall manage congestion risk on behalf of its Retail Load in accordance with applicable PJM rules and requirements. Customer may enter into appropriate market transactions to hedge its congestion risks.

ARTICLE 7 - CREDITWORTHINESS

7.1 Financial Information. If requested by City, the Customer shall deliver within 120 days following the end of each fiscal year, a summary audit report indicating that the customer has the financial ability to enter into and fully honor the transactions contemplated herein. In all cases the reports statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. Any financial information provided by Customer is acknowledged to be proprietary, privileged and/or confidential, and disclosure of the financial information would cause competitive harm to the customer and shall be held in the strictest confidential manner and not disclosed to any party without the written consent of Customer. If the City receives a Freedom of Information Act ("FOIA") as to which a response would include said reports as a responsive document, the City agrees to take the following actions: 1) Deny said FOIA request (in a timely manner) citing the relevant sections of FOIA relating to proprietary information and other applicable sections of FOIA, 2) Notify the Customer within twenty four (24) hours of receipt of the request of said FOIA and allow Customer (and Customer's attorney) to fully participate in the formulation of any responses to the Attorney General, States Attorney or a Court with jurisdiction over the FOIA request, 3) and cooperate in the defense against any and all attempts to disclose said reports up through and including appeals to the Supreme Court (if required to exhaust all attempts to deny said request).

7.2 Credit Assurances. If at any time City has reasonable grounds to believe that Customer's creditworthiness or performance under this Agreement has become unsatisfactory, City may provide Customer with written notice requesting Performance Assurance in a reasonable amount determined by City in a commercially reasonable manner. Upon receipt of such notice Customer shall have five (5) Business Days to remedy the situation by providing such Performance Assurance to City. In the event that Customer fails to provide such Performance Assurance or other credit assurance acceptable to City within five (5) Business Days of receipt of notice, then an Event of Default under Article 7 shall be deemed to have occurred and City shall be entitled to the remedies set forth in Article 7.

7.3 Interest Rate on Cash Amounts Held as Collateral. For Performance Assurance in the form of cash that is held by a party pursuant to this Article 7, the interest rate will be the Federal Funds Rate minus 0.25% as from time to time in effect.

ARTICLE 8- DEFAULT AND REMEDIES

8.1 Customer Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder with respect to Customer:

8.1.01 The failure to make, when due, any payment required pursuant to this Agreement (other than payments disputed under Section 5.4) if such failure is not remedied within three (3) Business Days after written notice;

8.1.02 Any representation or warranty made Customer herein is false or misleading in any material respect when made or when deemed made or repeated if such false or misleading representation or warranty is not remedied within ten (10) Business Days after written notice;

8.1.03 The failure by Customer to provide Performance Assurance as set forth in this Agreement.

8.1.04 The failure by Customer to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above) and such failure is not cured within a reasonable time after notice of such failure from City, not to exceed sixty (60) days;

8.1.05 Customer files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it. (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due; or

8.1.06 Customer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

8.2 City Events of Default.

8.2.01 City fails to pass through an appropriate credit or payment due under an applicable Transaction to Customer if such failure is not remedied within three (3) Business Days after written notice;

8.2.02 Any representation or warranty made herein is false or misleading in any material respect when made or when deemed made or repeated if such false or misleading representation or warranty is not remedied within ten (10) Business Days after written notice;

8.2.03 City fails to enter into, and/or materially perform its obligations under a Transaction requested by Customer in accordance with Article 3 above and such failure is not cured within a reasonable time after notice of such failure from Customer, not to exceed sixty (60) days;

8.2.04 City fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above).

8.3 Remedies for an Event of Default

8.3.01 In the event of a Customer Default per Section 8.1, City shall have the right to impose such remedies as may be provided in accordance with the applicable ordinance, and the City may have the option of terminating this Agreement in addition to any other remedy available in law. In the event of a City Default per Section 8.2, Customer shall have the right to seek available remedies at law (including those available under the City municipal code) or in equity.

8.3.02 In the event City ceases to be in the business of providing electric utility services under Illinois law, Customer shall have the right to obtain electric service from an Alternative Retail Electric Supplier in accordance with applicable law.

ARTICLE 9 - CURTAILMENT, TEMPORARY INTERRUPTIONS AND FORCE MAJEURE

9.1 Curtailment. If PJM, in its sole discretion, determines there is a shortage of Energy requiring City to curtail Firm Energy deliveries to Customer, then upon being notified by PJM or City of such requirement to curtail, Customer will institute procedures which will cause a corresponding curtailment of the use of Energy by its retail load. It is the express intention of this provision that any curtailment of Energy be required only as a result of a bulk transmission event, as determined by PJM. Such curtailment shall fall equitably on all end use loads within the affected PJM control area and the load served by City. If upon notification of a requirement to curtail Energy deliveries to its retail load, Customer fails to institute such procedures, City shall be entitled to limit deliveries of Firm Energy to Customer in order to effectuate reductions in Energy deliveries equivalent to the reduction which would have been effected had Customer fulfilled its curtailment obligation hereunder during the period in which PJM determines that any shortage exists, and, in such event, City shall not incur any liability to Customer in connection with any such action so taken by City. The City and Customer agree that if a required curtailment results in Customer's annual Baseline Energy to be less than 61,509,600 kilowatt-hours, then Customer shall be given credit towards the Baseline Energy calculation for curtailed energy as if it were actually used. The credit shall be calculated by multiplying the total hours of curtailment by the average hourly energy consumption at both the 701 N. Kirk Rd. Facility and the 1801 Suncast Lane location throughout a forty-eight (48) hour period immediately preceding the curtailment event.

9.2 Temporary Interruptions. City will use reasonable diligence in undertaking its obligations under this Agreement to furnish Firm Energy to Customer, but City does not guarantee that the supply of Firm Energy furnished to Customer will be uninterrupted, or that voltage and frequency will be at all times constant. Temporary interruption of Firm Energy deliveries hereunder shall not constitute a breach of the obligations of City under this Agreement, and City shall not in any such case be liable to Customer for damages resulting from any such temporary interruptions of service.

9.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of

its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

9.4 Force Majeure Exceptions. Force Majeure shall not be based on (i) the loss of Customer's Retail Load; (ii) Customer's inability economically to use the Full Requirements Service; or (iii) City's ability to resell the Full Requirements Service at a price greater than the pricing set forth herein.

9.5 Transmission Curtailment. Either Party may raise a claim of Force Majeure based in whole or in part on curtailment by PJM unless (i) such Party has contracted for firm transmission with a Transmission Provider for the services to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff.

ARTICLE 10 NOTICES. REPRESENTATIVES OF THE PARTIES

10.1 Notices. Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or mailed, postage prepaid, to the representative of the other Parties designated in this Article 10. Any such notice, demand, or request shall be deemed to be given (i) when received by facsimile or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

Notices and other communications by City to Customer shall be addressed to:

Suncast Corporation
_____.

701 N Kirk Rd.
Batavia, IL 60510
Phone:
Electronic:
Facsimile:

With a copy to:

Phone:
Facsimile:
Electronic:

Notices and other communications by Customer to City shall be addressed to:

Laura Newman
City Administrator
100 N. Island Ave. City IL 60510
Phone: (630) 454-2000
Electronic: lnewman@cityofbatavia.net
Facsimile: (630) 454-2001

With a copy to:
Gary Holm
Director of Public Works
City of Batavia
200 N. Raddant Rd. Batavia IL 60510
Phone: (630) 454-2309
Electronic:
gholm@cityofbatavia.net
Facsimile: (630) 454-2351

Invoices/Payments:
Peggy Colby
Finance Director
Phone: (630) 454-2030
Electronic: pcolby@cityofbatavia.net
Facsimile: (630) 454-2001

Scheduling:
Bob Rogde
Senior Engineer
City of Batavia
200 N. Raddant Rd. Batavia IL 60510
Electronic: rrogde@cityofbtavia.net
Phone: (630) 454-2357
Facsimile: (630) 454-2351

Any Party may change its representative by written notice to the other Parties.

10.2 Authority of Representative. The Parties' representatives designated in Section 10.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are authorized officers of their respective entities and such amendment, modification or waiver is made pursuant to Article 17.

10.3 Customer Schedule Change. If Customer chooses to change its operating schedule, then Customer shall provide a minimum forty-eight (48) hours' notice by calling (630) 454-2357 or (630) 454-2350 or sending a facsimile to (630) 454-2351 or e-mail correspondence to City at rrogde@cityofbatavia.net with a copy to gholm@cityofbatavia.net.

ARTICLE 11- LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES

11.1 Limitation on Consequential, Incidental and Indirect Damages. To the fullest extent permitted by law, neither customer nor company, nor their respective officers, directors, agents, employees, members, parents or affiliates, successor or assigns, or their respective officers, directors, agents, or employees, successors or assigns, shall be liable to the other party or their respective members, parents, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this agreement. The provisions of this section 11.1 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this agreement.

11.2 Indemnification. Each Party shall indemnify and hold harmless the other Party from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages to any person or destruction of any property arising in any manner directly or indirectly by reason of the acts of such Party's authorized representatives while on the premises of the other Party under the rights of access provided herein.

Customer shall indemnify and hold harmless City from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages to any individual, firm or corporation constituting part of the Retail Load arising in any manner directly or indirectly by reason of a failure, interruption, curtailment, or deficiency in City's supply of Full Requirements Service.

City assumes no responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by Customer; and Customer agrees to protect, indemnify and save harmless City from any and all claims, demands, or actions for injuries to person or property by any person, firm or corporation in any way resulting from, growing out of, or arising in or in connection with (a) the construction, maintenance or operation of Customer's system or other property, or (b) the use of, or contact with, Energy delivered hereunder after it is delivered to Customer and while it is flowing through the lines of Customer, or is being distributed by Customer, or is being used by Retail Load.

If any Party intends to seek indemnification under this Section 11.2 from any other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within fifteen (15) days of the commencement of, or actual knowledge of, such Claim. Such Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

11.3 <u>Independent Contractor Status</u>. Nothing in this Agreement shall be construed as creating any relationship among Customer and City other than that of

independent contractors for the sale and purchase of Full Requirements Service. No Party shall be deemed to be the agent of any other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship among the Parties is intended to be created hereby.

11.4 Title; Risk of Loss. Title to and risk of loss related to the Full Requirements Service shall transfer from City to Customer at the Delivery Points. City warrants that it will deliver Full Requirements Service to Customer free and clear of all Claims or any interest therein or thereto by any person arising prior to the Delivery Points.

ARTICLE 12- REPRESENTATIONS AND WARRANTIES

12.1 City and Customer represent and warrant to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has, or will upon execution of this Agreement promptly seek, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, including, but not limited to any organizational documents, charters, by-laws, indentures, mortgages or any other contracts or documents to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) This Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming bankrupt; and

(f) There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially and/or adversely· affect its ability to perform its obligations under this Agreement.

12.2 City represents and warrants to Customer that:

(a) Except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality under federal or state law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order

for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; and

(b) It will have all necessary infrastructure in place to service Customer as set forth in this Agreement.

12.3 Customer represents and warrants to City that:

Customer shall provide and maintain suitable protective devices on its equipment to prevent any loss, injury or damage that might result from single phasing conditions or any other fluctuations or irregularity in the supply of Energy. City shall not be liable for any loss, injury or damage resulting from a single phasing condition or any other fluctuation or irregularity in the supply of Energy which could have been prevented by Customer's use of such protective devices.

ARTICLE 13- ASSIGNMENT

13.1 General Prohibition Against Assignments. Except as provided in Section 13.3 below, no Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Parties' written consent, which consent shall not be unreasonably withheld or delayed.

13.2 Exceptions to Prohibition Against Assignments. A Party may, without the other Party's prior written consent, (and without relieving itself from liability hereunder) (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an Affiliate of such Party (which Affiliate shall be of equal or greater creditworthiness); or (iii) transfer or assign this agreement to any person or entity succeeding by merger or by acquisition to all or substantially all of the assets whose creditworthiness is equal to or higher than that of the assigning Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

13.3 Consent to Assignment. City agrees that, if requested by Customer, City shall sign a consent to a collateral assignment of this Agreement to Customer's lender(s) typical for project finance.

ARTICLE 14- CONFIDENTIALITY

14.1 Confidential Information. To the extent permitted by law, all Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Parties' prior written consent.

14.2 Disclosure. Notwithstanding the foregoing, Confidential Information may be disclosed

(a) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Full Requirements Service to be delivered pursuant to this Agreement,

(b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order,

(c) as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction and

(d) to third parties in connection with merger, acquisition/disposition and financing transactions provided that any such third party shall have signed a confidentiality agreement with the disclosing party containing customary terms and conditions that protect against the disclosure of the Confidential Information and that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance.

14.3 Notice. In the event that a Party ("Disclosing Party") is requested or required to disclose any Confidential Information pursuant to subsections 14.2 (a) and (b) above, and subject to the requirements of the Illinois Freedom of Information Act, the Disclosing Party shall provide the other Party with prompt written notice of any such request or requirement, so that the other Party may seek an appropriate protective order, other confidentiality arrangement or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, in the opinion of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.

14.4 Remedies. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition, to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Parties from and against any Claims, threatened or filed, and any losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above. The Parties hereby acknowledge that any breach of the terms and provisions of this Article 14 shall cause irreparable harm to the other Party for which there will be no adequate remedy at law and that therefore, the non-breaching Party shall be entitled to injunctive relief without bond in addition to any and all other relief the non-breaching Party may be entitled to pursuant to the terms and provisions of this Agreement and any applicable statute or the common law.

Notwithstanding the above provisions, City shall be permitted to communicate with PJM any necessary information with regard to implementation of this Agreement, and will make all reasonable efforts to ensure that Confidential Information remains confidential.

ARTICLE 15- REGULATORY AUTHORITIES

Each Party shall perform its obligations hereunder in accordance with applicable law, rules and regulations. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

ARTICLE 16- DISPUTE RESOLUTION AND STANDARD OF REVIEW FOR PROPOSED CHANGES

16.1 Resolution by Officers of the Parties. In the event of any dispute among the Parties arising out of or relating to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution who shall meet within ten (10) days after notice is given by either Party. If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution to the dispute then, the Parties, may, upon mutual agreement of the parties, agree to binding arbitration before a single arbitrator. If the parties fail to select an arbitrator within thirty (30) days after mutual agreement to submit a matter to arbitration, the arbitrator shall be named in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties shall share equally the services and expenses of the arbitrator and each shall pay its own costs, expenses, and attorneys' fees. Fees and expenses of the court reporter shall be paid in equal parts by the Parties hereto.

16.2 Waiver of Trial by Jury. In the event the Parties do not mutually agree to binding arbitration, City and Customer each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement any course of conduct, course of dealing, statements (whether oral or written) or actions of City and Customer related hereto and expressly agree to have any disputes arising under or in connection with this Agreement be adjudicated by a judge of the court in the State of Illinois or federal court sitting in the State of Illinois having jurisdiction without a jury.

ARTICLE 17- GENERAL PROVISIONS

17.1 Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties thereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party hereto.

17.2 No Dedication of Facilities. Any undertakings or commitments by one Party to the other under this Agreement shall not constitute the dedication of generation facilities or the transmission system or any portion thereof of either Party to the public or to the other Party, except for their obligation. Whenever at Customer's request City's facilities are relocated solely to suit Customer's convenience, Customer shall reimburse City for the entire cost incurred in making such change.

17.3 Waivers. The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

17.4 Interpretation. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State of Illinois, without giving effect to its conflict of laws provisions.

17.5 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

17.6 Modification. No modification to this Agreement will be binding on any Party unless it is in writing and signed by all Parties.

17.7 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

17.8 Headings. Article and Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

17.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party invoices evidencing the quantities of Full Requirements Service. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments to such invoice and the payments thereof will be made promptly and shall bear interest calculated in accordance with Federal Funds Rate minus 0.25% as from time to time in effect from the date the overpayment or underpayment was made until paid provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of the twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.10 Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least one (1) year such records as may be needed to afford a clear history of the Full Requirements Service supplied pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended.

17.11 Survival. The provisions of Article 10 shall survive for one year after the termination of this Agreement hereof, and any Section of this Agreement that specifies by

its terms that it survives termination, shall survive the termination or expiration of this Agreement.

17.12 Cooperation to Effectuate Agreement. Each Party shall cooperate to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties. Customer and City each shall exercise reasonable diligence to use and provide any service furnished under this Agreement with a view to securing the efficiency of their respective apparatus and systems in keeping with Good Utility Practice in the area, shall coordinate their respective systems' relaying and fusing so as to preclude unnecessary interruptions, shall maintain their respective facilities and equipment at all times in a safe operating condition in accordance with Good Utility Practice, shall operate their respective facilities and equipment in such manner as not to interfere with the service to customers of either party, and shall coordinate maintenance that may adversely affect the operation of their respective facilities and equipment.

ARTICLE 18 - RULES OF CONSTRUCTION

Terms used in this Agreement but not listed in this Article or defined in Article 1 shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

The masculine shall include the feminine and neuter.

The words "include", "includes" and "including" are deemed to be followed by the words "without limitation."

References to contracts, agreements and other documents and instruments shall be references to the same as amended, supplemented or otherwise modified from time to time.

The Appendices attached hereto are incorporated in and are intended to be a part of this Agreement; provided, that in the event of a conflict between the terms of any Appendices and the Terms of this Agreement, the Terms of this Agreement shall take precedence.

References to laws and to terms defined in, and other provisions of, laws shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

References to a person or entity shall include its successors and permitted assigns and, in the case of a governmental authority, any entity succeeding to its functions and capacities.

References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement.

Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular ·part of the same.

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE 19- ENTIRE AGREEMENT

The Parties agree that this Agreement, including the Appendices attached hereto and Related Documents, sets forth the terms under which City will supply Full Requirements Service to Customer during the Delivery Period and constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral (including without limitation any preliminary term sheet) (but excluding the assumptions on which this Agreement is based), among the Parties concerning this Agreement.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

City of Batavia, Illinois

By: _____
Jeffery D. Schielke. Mayor

Suncast Corporation

By:_____
Thomas Tisbo, President

Attested thereto:

_____
Ellen Posledni, City Clerk

APPENDIX A

ELECTRIC SYSTEM INFRASTRUCTURE IMPROVEMENTS

The following work is required to facilitate expansion of warehouse and manufacturing capabilities as well as work required to upgrade the existing electrical service:

- **Project 35 kV XFMR-Suncast New addition :**
  Installation of conduit by directional boring and installation of cable and transformer for new underground 35kV service.
  Installation of conduit by directional boring and new fiber optic underground service.
  Installation of risers and switch at existing overhead 35kV line.
- **Project 15kV XFMR replacement-Suncast Existing:**
  Removal of cable and transformer for existing underground 15kV service.
  Installation of conduit by trench and backfill for new underground 35kV service.
  Installation of cable and transformer for new underground 35kV service.
  Installation of new overhead 35kV line (extension). Installation of new pole and riser.
- **Gravel backfill due route relocation:**
  Relocation of conduit at the west side of new addition due future loading docks.
  Gravel backfill required for new underground 35kV service.
- **Material HDPE 6" & 2" conduit:**
  Additional material required to complete loop with replaced 15kV transformer at existing service.
- **HDD - parking pot hole :**
  Due longer horizontal directional boring on the west side additional pot hole was required.

DESCRIPTION	THORNE CONTRACT	COB MATERIAL	PROJECT TOTAL
Project 35 kV XFMR-Suncast New addition	$172,981.31	$132,620.69	$305,602.00
15kV XFMR replacement-Suncast Existing	$75,718.13	$92,402.54	$168,120.57
Gravel backfill due route relocation	$4,788.91		$4,788.91
Material HDPE 6" & 2" conduit	$2,663.00		$2,663.00
HDD - parking pot hole	$2,642.92		$2,642.92

Sub-Total for Work Needed to Facilitate New 35 kV Service =	$305,602.00
Sub-Total for Work Needed to Upgrade Existing 15 kV Service =	$178,215.40

APPENDIX B

ANNUAL RECONCILIATION OF ENERGY AND EQUIVALENT DEMAND

Starting each January 1st, and continuing throughout each year:

- Electric bills will be issued in accordance with the City's current Bundled Service rate (unless otherwise modified by the Master Services Agreement or this Amendment) for the 701 N Kirk Rd Facility based on readings from the electric meters that existed at that Facility prior to the 2014 expansion (referred to herein as the 701 bundled meters)
- Electric bills will be issued in accordance with the City's current market-based rate (unless otherwise modified by the Master Services Agreement or this Amendment) for the 701 N Kirk Rd Facility based on readings from the electric meter installed at the Facility as part of the 2014 expansion (referred to herein as the 701 market meter)

and

- Electric bills will be issued in accordance with the City's current market-based rate for the 1801 Suncast Ln location based on readings from the meters at that location (referred to herein as the 1801 meters)

For the purpose of reconciliation, energy consumption at both the 701 N. Kirk Road Facility and the 1801 Suncast Lane location will be combined and calculated in total on an annual basis. All combined energy consumption below 61,509,600 kilowatt-hours (Baseline Energy) will be charged at the City's current Bundled Service rate (unless otherwise modified by the 701 N Kirk Road Master Service Agreement or this Amendment). All energy consumed at both locations in excess of the Baseline Energy will be charged at the City's current market-based rate (per the applicable Master Service Agreement and/or Amendment for each location). Energy consumption will be reconciled at the end of each year as follows:

- The calculation of Baseline Energy shall first be accounted for using only the 701 bundled meters. If the total consumption recorded by the 701 bundled meters is equal to or in excess of the Baseline Energy, then 1) any energy in excess of the Baseline Energy will be reconciled to the City's current market-based rate at 701 N Kirk Road (unless otherwise modified by the Master Service Agreement or this Amendment) and 2) no additional reconciliation will be required for the 701 market meter or the 1801 meters.
- The calculation of Baseline Energy shall first be accounted for using only the 701 bundled meters. If the total consumption recorded by the 701 bundled meters is less than the Baseline Energy, then reconciliation shall occur according to one of the following:
    1. the difference between the Baseline Energy and the actual consumption recorded by the 701 bundled meters shall be deducted from the 701 market meter and reconciled to the City's current Bundled Service rate at 701 N Kirk Road (unless otherwise modified by the Master Service Agreement or this Amendment). If applicable, any remaining energy consumption recorded by the 701 market meter shall remain at the current market-based rate at 701 N Kirk road (unless otherwise modified by the Master Service Agreement or this Amendment) and no reconciliation will be required for the 1801 meters.

CITY OF BATAVIA

DATE: August 17, 2017
TO: Committee of the Whole - PU
FROM: Rahat Bari, City Engineer/Engineering Manager
SUBJECT: Resolution 17-101-R Authorizing Execution of Task order #1 with G4S Secure Integration LLC to design a 192 count Fiber Connection from Eola Road, North of I-88 to Cyrus one Data Center.

The City of Batavia owns and operates a fiber optic Utility. In late 2016 and early 2017, the City installed additional fibers through Fermi Lab to Eola Road and FerryRoad/Bilter Road Intersection with the intention of connecting the City's fiber network to a major Data Center at the intersection of I-88 and Eola Road intersection. This is a location where a larger number of service providers can be connected within one place. A larger "menu" of providers and services can be obtained more economically than trying to connect to a single provider at a time.

CyrusOne LLC is the owner and operator of the Data Center located at the intersection of I-88 and Eola Road. The City has already executed a Non-Disclosure Agreement with Cyrus-One so that discussion can take place to design the connection from Bilter Road to CyrusOne owned Data Center. Staff has contacted G4S to help the city to design the route, obtain permits from Nicor, DuPage County and the City of Aurora. G4S has submitted a proposal of $19,730.57 to complete this work under Task Order #1 as th City has an Master Services Agreement (MSA) with G4S.

In addition to design and permit fees, the city will have to pay fees to Nicor for crossing their land and Indefeasible right of use (IRU) fee to Illinois State Toll Highway Authority (ISHTA). Those fees are estimated at $18,000 and $45,504 respectively. This resolution does not include those fees at this point as we do not know the exact amount yet. Staff will bring those back to the committee once those fees are due to get the work completed. Staff 's target is to complete design in 2017, bid the construction contract in late 2017 and perform the construction in Early 2018. The construction work will be budgeted in 2018. This work was anticipated in 2017 hence it is a budgeted item and no budget amendment is yet necessary to complete the design work. However, Nicor and ISHTA fees were not anticipated hence a budget amendment may be required if those fees are due in 2017 otherwise those fees will be budgeted in 2018 budget.

Staff is recommending Resolution 17-101-R approving Task 1 with G4S Secure Integration LL for the not-to-exceed amount of $19,730.57.

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-101-R

AUTHORIZING EXECUTION OF TASK ORDER #1 WITH G4S SECURE INTEGRATION LLC

WHEREAS, the City of Batavia owns and operates a fiber optic utility; and

WHEREAS, in connection therewith, it is necessary and appropriate to improve the fiber optic system; and

WHEREAS, CyrusOne, Inc owns and operated a major Data Center at the intersection of I-88 and Eola Road; and

WHEREAS, the City is pursuing opportunity to connect to the Data Center owned by CyrusOne; and

WHEREAS, G4S Secure Integration LLC has the expertise to design the connection from Eola Eola Road, North of I-88 to Cyrus one Data Center; and

WHEREAS, G4S Secure Integration LLC has submitted a Cost proposal of $19,730.57 to perform the design work; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized execute a Task Order #1, attached hereto as Exhibit 1, with G4S secure integration LLC.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 5th day of September, 2017.

_____

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Mueller					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____

Ellen Posledni, City Clerk

EXHIBIT 1

EXHIBIT "A"

TASK ORDER NO. 2

REGARDING GENERAL AGREEMENT BETWEEN CITY OF BATAVIA

AND

G4S Secure Integration LLC

Project Description: Designing a route for a 192 fiber from the City of Batavia handhole on Eola Road, North of I-88 to the CyrusOne Data Center on Diehl Road

Scope of Services: Attached project proposal by G4S Seure Integration LLC.

Time of Performance: Work to be completed by December 31, 2017.

Estimated Fee for Services: Not to Exceed $19,730.57

Proposed: _____ Date:

Approved: _____ Date:
City of Batavia

G4S Secure Integration

565 Willowbrook Centre Parkway, Willowbrook, IL 60527 T 630-739-0546 F 630-739-6346

City of Batavia
CyrusOne Data Center Tie-in Design
Batavia, IL
Work Order 17-001
July 10, 2017

SCOPE OF WORK:

This work shall consist of the designing a route for a 192 fiber from the City of Batavia handhole on Eola Rd, north of I-88 to the CyrusOne Data Center on Diehl Rd. The specific scope is as follows.

- Design access with from existing Batavia handhole, located on the west side of Eola Road and north of I-88.
- Design 1-1.25" HDPE 485 LF south from handhole along Eola Rd to ISTHA I-88 ROW
- Prepare Nicor Gas line/easement crossing
- Design 1-1.25" HDPE 1,600 LF along I-88 on ISTHA ROW to ISTHA handhole 6412+80
- Prepare ISTHA Conduit lease from I-88 ISTHA handhole 6412+80 to handhole 201+39
- Design 1-1.25" HDPE 1,075 LF along Diehl Rd from ISTHA HH 201+39 to CyrusOne Demark MH
- Coordinate and Design Access to Cyrus One Building

The quote assumes the following:

1. Actual hours will be invoiced based on MSA rates
2. A bond is not included in this quote.
3. Estimated City of Aurora and DuPage County permit fees are included.
4. Estimated cost to prepare a permit or encroachment grant of Nicor are included.
5. Estimated cost of a survey of the Nicor crossing is included as an optional item.
6. Nicor crossing fee and the ISTHA IRU fee are not included in the pricing below. They are estimated as follows.

Estimated Nicor Crossing Fee	$ 18,000.00
ISTHA Conduit 20 Year IRU	$ 45,504.00

PRICING:

Description	**ISTHA**
Nicor Easement Research	$ 2,692.05
Nicor Permit or Grant	$ 4,109.31
Route Design	$ 12,365.72
DuPage & Aurora Permits	$ 563.50
Not To Exceed Cost	$ 19,730.57

Optional Additional	
Nicor Field Survey	$ 4,466.78

Optional Not to Exceed Cost	$ 24,197.36

ACCEPTANCE:

G4S Technology LLC

By: _____

Name Christopher Roberts

Title: Regional Manager

Date: 7/10/17

City of Batavia

By: _____

Name: _____

Title: _____

Date: _____

City of Batavia
Description: Batavia CyrusOne Data Ctr Tie-in
Location: Eola at Diehl Rd
Work Order: 17-001
Date Updated: 1/10/17

Position	Unit	Hourly Rate	Quantity	Cost	Hourly Rate	Overtime Quantity	Cost	Hourly Rate	Double Time Quantity	Cost
Fiber Optic Maintenance and Management										
Project Manager	HR	$ 107.11	20	$ 2,142.20	$ 107.11	0	$ -	$ 107.11	0	$ -
Superintendent	HR	$ 86.71		$ -	$ 86.71	0	$ -	$ 86.71	0	$ -
OSP Inspector	HR	$ 67.84	95	$ 6,444.80	$ 101.76	0	$ -	$ 101.76	0	$ -
CADD Technician	HR	$ 55.60	64	$ 3,558.40	$ 55.60	0	$ -	$ 55.60	0	$ -
Foreman	HR	$ 93.85		$ -	$ 140.77	0	$ -	$ 187.69	0	$ -
Equipment Operator	HR	$ 121.39		$ -	$ 164.24	0	$ -	$ 207.08	0	$ -
Fiber Splicer	HR	$ 86.71		$ -	$ 130.06	0	$ -	$ 173.41	0	$ -
Laborer	HR	$ 94.36		$ -	$ 130.06	0	$ -	$ 165.76	0	$ -
	Total Labor and Equipment Cost			$ 12,145.40			$ -			$ -
										$ 12,145.40

Description	Hourly Rate	Quantity	Cost
Bucket Truck	$ 25.51		$ -
Splicing Machine	$ 10.20		$ -
OTDR	$ 10.20		$ -
Splicing Trailer	$ 15.31		$ -
Manhole Kit	$ 5.11		$ -
3" Pump	$ 7.65		$ -
Air Compressor	$ 30.60		$ -
Mini-Excavator	$ 30.60		$ -
Directional Boring Machine	$ 72.43		$ -
Water Truck	$ 36.72		$ -
Dump Truck	$ 30.60		$ -
Pickup Truck	$ 13.77	16	$ 220.32
Equipment Trailer	$ 18.87		$ -
Reel Cart	$ 5.61		$ -
Mid-Assist Capstan	$ 17.35		$ -
Total Labor and Equipment Cost			$ 220.32

	Unit	Total	Unit Rate	Cost	15%	Total
Material and permits						
Easement Reshearch	Hr	1	$2,340.9100	$ 2,340.91	$ 351.14	$ 2,692.05
Nicor Easement Survey (Optional)	Hr	1	$3,884.1600	$ 3,884.16	$ 582.62	$ 4,466.78
Nicor Easement	Hr	1	$3,573.31	$ 3,573.31	$ 536.00	$ 4,109.31
Dupage County Permit	LS	1	$100.00	$ 100.00	$ 15.00	$ 115.00
City of Aurora	LS	1	$390.00	$ 390.00	$ 58.50	$ 448.50
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
				$ -		
Shipping - 2.5% of Total Material Cost	LS		$ 257.21	$ -		
		Sub Total		$10,288.38		
		Sales Tax		$0.00		
		Material Markup @ 15%		$1,543.26		
		Material Total		$ 11,831.64		$ 11,383.14

Total Cost	**$ 24,197.36**

City of Batavia Option 1



CITY OF BATAVIA

DATE: August 17, 2017
TO: Committee of the Whole - CS
FROM: Scott A. Haines, Street Superintendent
SUBJECT: Resolution 17-99-R: Authorization to Purchase Salt Brine Machine from Cargill Deicing Technology for $29,514.00

Summary

The Street Division is recommending the purchase of new salt brine machine from Cargill Deicing Technology of North Olmsted, Ohio, for $29,514.00

Background

A salt brine machine would allow staff to produce salt brine in advance of and during the winter season, as needed. Salt brine would be stored in our existing poly tanks at Public Works. Salt brine application to the road surface is a proactive approach called anti-icing. Staff would apply the brine during normal workdays with the primary goal of preventing the bond of snow and ice to our roadways, which reduces the amount of granular salt that must be applied after the plowing operation has been completed.

The unit we are proposing to purchase produces salt brine at a rate of 2,400 gallons/hour, has salinity control for accurate concentration, is rugged and portable for inside or outside, and is easy to operate and clean. We've looked into other systems but feel this model will enable us to get a true salt brine program started. There are a couple add-on features we may want to consider adding in a few years, but we are interested in the basic unit to get started. The budget contains $30,000 for this expense, and the proposed unit falls within the budgeted amount.

Proposal

The proposal from Cargill Deicing Technology is a NJPA Cooperative Contract Quote. Staff believes the NJPA process is cost-effective, but it is not officially recognized by Illinois purchasing law, so City Council will need to waive formal bidding.

Staff Recommendation:

Staff recommends the purchase of a salt brine machine for an amount not to exceed $29,514.00

Recommended Committee Action:

Approve Resolution 17-99-R, authorizing the purchase of a salt brine machine for an amount not to exceed $29,514.00 from Cargill Deicing Technology of North Olmsted, Ohio

Recommended City Council Action:

Motion 1: Waive formal bidding and purchase salt brine machine

Motion 2: Approve Resolution 17-99-R, authorizing the purchase of a salt brine machine for an amount not to exceed $29,514.00 from Cargill Deicing Technology of North Olmsted, Ohio

CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-99-R

AUTHORIZING THE PURCHASE OF A SALT BRINE MACHINE FROM CARGILL DEICING TECHNOLOGY FOR AN AMOUNT NOT TO EXCEED $29,514.00

WHEREAS, the City of Batavia has determined that it has the need for a salt brine machine; and

WHEREAS, funds have been included in the 2017 budget for this purchase;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That the Mayor and City Clerk are authorized to purchase a salt brine machine from Cargill Deicing Technology for an amount not to exceed $29,514.00.

PRESENTED to the City Council of the City of Batavia, Illinois, on the 5th day of September, 2017.

PASSED by the City Council of the City of Batavia, Illinois, on the 5th day of September, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, on the 5th day of September, 2017.

_____
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Mueller					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: 0 Ayes 0 Nays 0 Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

_____
Ellen Posledni, City Clerk