

REVISED
CITY COUNCIL AGENDA
THURSDAY, DECEMBER 2, 2021, 7:00 P.M.
CITY COUNCIL CHAMBERS
HURLEY BUILDING (205 SALTONSTALL ST)
OR VIA ZOOM: <https://us06web.zoom.us/j/94778466758>

City Council: **Bob Palumbo, Mayor**
 Nick Cutri, Councilmember Ward I
 Dan Unrath, Councilmember Ward II
 Karen White, Councilmember Ward III
 Erich Dittmar, Councilmember Ward IV
 Thomas Lyon, Councilmember-at-Large
 Renée Sutton, Councilmember-at-Large
 James Terwilliger, Councilmember-at-Large
 Steve Uebbing, Councilmember-at-Large

John Goodwin, City Manager
Erin VanDamme, City Clerk
David Hou, Corporation Counsel

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Public Hearings: Proposed Franchise Agreement with Empire Video Service Corporation (Empire Access)**
- 4. Review of Community Core Values:**
As residents, city staff and appointed & elected officials of the City of Canandaigua, our decisions and actions will be guided by these core values: Responsive; Participatory Governance; Caring & Respect; Integrity; Heritage; Stewardship; and Continuous Improvement.
- 5. Approval of Minutes: November 4th and November 18th, 2021**
- 6. Recognition of Guests:**
- 7. Committee Reports:**
Planning Committee, No Meeting, next meeting: January 4, 2022
Finance Committee, No Meeting, next meeting: January 4, 2022
Environmental Committee No Meeting, next meeting: January 18, 2022
Ordinance Committee held No Meeting, next meeting: January 18, 2022

8. Resolutions:

- Resolution #2021-085:** A Resolution Awarding a Ferrous Chloride Supply Contract
- Resolution #2021-086:** A Resolution Awarding a Cake Biosolids Hauling Contract
- Resolution #2021-087:** A Resolution Adopting the 2022 Budget Of The City of Canandaigua
- Resolution #2021-088:** A Resolution Establishing the 2022 Tax Levy Amount and Authorizing the Treasurer to Spread and Collect the Same
- Resolution #2021-089:** A Resolution Authorizing Collection of County Taxes
- Resolution #2021-090:** A Resolution Approving the 2022 Business Improvement District (BID) Budget, Establishing the 2022 BID Charge Levy, and Authorizing the Treasurer to Spread and Collect the Same
- Resolution #2021-091:** A Resolution Authorizing the City Manager to Enter into Contracts with Selected Outside Agencies As Approved in the 2022 Budget
- Resolution #2021-092:** A Resolution Adopting the City of Canandaigua Fee Schedule
- Resolution #2021-093:** A Resolution Establishing the 2022 Water Rates for the City of Canandaigua
- Resolution #2021-094:** A Resolution Approving of a Franchise Agreement to Provide Cable Television Services with Empire Video Services Corporation
- Resolution #2021-095:** A Resolution Reappointing Mary Beer, RN, MPH as Local Health Officer for the City of Canandaigua
- Resolution #2021-096:** A Resolution Recognizing and Thanking James Terwilliger for His Dedicated Service to the City of Canandaigua

9. Ordinances:

- Ordinance #2021-006:** An Ordinance Amending Chapter 519-21, of the Municipal Code, Penalties and Offenses in Parks and Recreation Areas

10. Local Laws:

11. Manager's Report:

12. Appointments:

Board of Assessment Review:

Julio Chavez – 1st Full Term

Planning Commission:

Lindsay (Henehan) Van Deusen – 2nd term

James Hitchcock – 1st Full Term

Zoning Board of Appeals:

Susan Haller – 2nd Term

Transportation Committee:

Katie Labbe

13. Miscellaneous:

2022 City Council & Committee Meeting Schedule

14. Adjournment

RESOLUTION #2021-085

A RESOLUTION AWARDING A FERROUS CHLORIDE SUPPLY CONTRACT

WHEREAS, the Water Resource Recovery Facility (aka Wastewater Treatment Plant) uses ferrous chloride to assist in the treatment of sewage; and

WHEREAS, a bid opening occurred on November 2, 2021, to supply ferrous chloride for 2022 with two one-year mutually agreed upon extensions; and

WHEREAS, five bidders were contacted, but only one bid was received from Slack Chemical Company at a bid price of \$1.47 per gallon; and

WHEREAS, funding for this chemical usage is included in the Proposed 2022 Budget; and

WHEREAS, the Director of Public Works and the City Manager recommend the contract be awarded to Slack Chemical Company, Inc., PO Box 30, 465 S. Clinton Street, Carthage, NY 13619, to supply ferrous chlorine;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute a contract with Slack Chemical Company, Inc., PO Box 30, 465 S. Clinton Street, Carthage, NY 13619 for the purchase of ferrous chlorine during the 2022 calendar year at a unit price of \$1.47 per gallon; and

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to extend this contract for up to two additional, one-year, mutually agreed upon, periods, subject to the funding for those extensions being included in the corresponding adopted City budgets.

ADOPTED this 2nd day of December, 2021

ATTEST:

Erin VanDamme
City Clerk

CITY OF CANANDAIGUA

BID TABULATION

Ferrous Chloride Solution/RFP

Bid Opening: Tuesday, November 2, 2021 at 10:00 AM

<u>BIDDER</u>	<u>Bid Amount</u>
<p>Kemiron Companies Attn. Michelle Bart 4321 West 6th Street Lawrence, KS 66049 785-842-7424 Kwsna.bids@kemira.com</p>	No Bid
<p>G2O Technologies, LLC 9213 Arch Street Pike Little Rock, AR 72206 501-888-1211 bids@g2Otech.com Jessica Piccirilli, Bid Coordinator</p>	No bid
<p>Thatcher Company of New York PO Box 118 Williamson, NY 14589 315-589-9330 wendy.richmond@tchem.com</p>	No bid
<p>PVS Technologies, Inc. 10900 Harper Avenue Detroit, MI 48213 313-921-1200 bids@pvschemicals.com</p>	No Bid
<p>Slack Chemical Company 465 S. Clinton Street PO Box 30 Carthage, NY 13619 800-479-0430 slack@slackchemical.com</p>	<p>Bid Bond Check Rec'd Non-Collusion- yes No Exceptions \$1.47/gallon 3rd party direct ship</p>

RESOLUTION #2021-086

A RESOLUTION AWARDING CAKE BIOSOLIDS HAULING CONTRACT

WHEREAS, the City of Canandaigua opened bids for the hauling of cake biosolids from the Water Resource Recovery Facility (aka Wastewater Treatment Plan) on November 2, 2021; and

WHEREAS, four bidders were connected, but only one bid was submitted by Casella Waste Systems with a unit bid of \$23.63 per wet ton; and

WHEREAS, funding for this service is included in the 2022 Proposed Budget; and

WHEREAS, the Director of Public Works and the City Manager recommend the contract be awarded to Casella Waste Systems to haul cake biosolids;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute a contract with Casella Waste Systems, Inc, 54 Doran Ave, Geneva NY 14456 for the hauling of cake biosolids from the Water Resource Recovery Facility during the 2022 calendar year at a unit price of \$23.63 per wet ton; and

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to extend this contract for up to two additional, one-year, mutually agreed upon, periods, subject to the funding for those extensions being included in the corresponding adopted City budgets.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

CITY OF CANANDAIGUA **BID TABULATION**

HAULING OF CAKE BIOSOLIDS-WWTP

Bid Opening: Wednesday, July 19, 2017 – 2:00pm

BIDDER

Bid Amount

Feher Rubbish Removal PO Box 11009 526 State Fair Blvd Syracuse, NY 13218	\$2,500 Certified Check \$10.25/Per Ton \$10.25/Per Ton + \$1/Per Mile to Alternate Site
We Care Waste & Recycling 9289 Bonta Bridge Road Jordan, NY 13080	No Certified Check \$15.57/Per Ton \$0 to Alternate Site

Potential Tarps on Roll-Offs from Feher

CITY OF CANANDAIGUA

BID TABULATION

WRRF Hauling Cake Biosolids for 2022

Bid Opening: Tuesday, November 2, 2021 at 10:00 a.m.

BIDDER

Bid Amount

<u>BIDDER</u>	<u>Bid Amount</u>
<p>Casella Waste Systems, Inc. Attn. Tina Dubois 54 Doran Avenue Geneva, NY 14456 315-381-5739 Tina.dubois@casella.com Andrew.holloway@casella.com</p>	<p>Bid Bond Rec'd Non-Collusion- yes No Exceptions \$23.63/wet ton No alternate site</p>
<p>Waste Management Attn. Al Boice 1661 Mt. Read Blvd. Rochester, NY 14606 585-254-3500 Gbradley2@wm.com</p>	<p>No Bid</p>
<p>Silvarole Trucking Co. Inc. 85 Silvarole Drive Rochester, NY 14623 585-272-0741 jenn@silvaroletrucking.com</p>	<p>No Bid</p>
<p>M&T Trucking 7744 Boyde Road Pavilion, NY 14525 585-584-3763 mark@mandttrucking.com</p>	<p>No Bid</p>

RESOLUTION #2021-087

A RESOLUTION ADOPTING THE 2022 BUDGET OF THE CITY OF CANANDAIGUA

WHEREAS, in accordance with Chapter 14 of the City Charter, the City Council of the City of Canandaigua has met and considered the City Manager’s proposed budget for the 2022 fiscal year; and

WHEREAS, a duly noticed public hearing on the proposed 2022 budget was held on November 18, 2021; and

WHEREAS, various changes to the proposed budget were put forward by the City Manager and City Council resulting in the following for the City’s major funds:

Fund	Expenditures & Transfers	Revenues & Transfers	Fund Balance Appropriation
General	\$16,713,593	\$16,331,891	\$684,586
Water	5,153,368	5,407,673	154,304
Sewer	6,522,026	6,069,986	252,040

; and

WHEREAS, City Council reviewed and approved all other funds and reserves;

NOW, THEREFORE, BE IT RESOLVED, that the 2022 budget, a copy of which is on file with the Clerk, is hereby adopted; and

BE IT FURTHER RESOLVED, that said budget, as adopted by the City Council of the City of Canandaigua, shall be effective for the fiscal year commencing January 1, 2022.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

RESOLUTION #2021-088

**A RESOLUTION ESTABLISHING THE 2022 TAX LEVY AMOUNT AND
AUTHORIZING THE TREASURER TO SPREAD AND COLLECT THE SAME**

WHEREAS, the City Council of the City of Canandaigua has adopted the 2022 Budget; and

WHEREAS, said budget calls for a property tax levy of \$5,958,077; and

WHEREAS, said budget also includes a special assessment levy of \$9,000, which is spread and extended upon properties that are within the boundaries of the Parking Lot Assessment District;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Canandaigua that the amount of \$5,958,077 shall constitute a levy of the amount to be raised by taxation in 2022 for the City of Canandaigua, and a warrant to the Treasurer to spread and extend such levy upon the current assessment tax roll, and to collect the same; and

BE IT FURTHER RESOLVED, that the amount of \$9,000 shall constitute a levy of the amount to be raised by the Parking Lot Assessment, and a warrant to the Treasurer to spread and extend such levy upon the properties in the Parking Lot Assessment District.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

RESOLUTION #2021-089

A RESOLUTION AUTHORIZING COLLECTION OF COUNTY TAXES

BE IT RESOLVED, that the Canandaigua City Treasurer is hereby directed to collect from the several persons and corporations named in the Assessment Roll to which this warrant is annexed, the several sums of money mentioned in the column thereof, to wit: the one marked "County Taxes" and set opposite to the name of such persons or corporations respectively, together with your fee thereon, as hereinafter provided; and further

RESOLVED, that upon delivery of said Roll and Warrant, the Treasurer shall mail to each taxpayer against whom any tax shall be charged on such roll, at last known post office addresses, a statement of the amount of such tax, designating the Treasurer's Office in said City, as the place for receiving payment of the taxes from January 2nd to January 31st, both dates inclusive, from nine o'clock in the morning until four o'clock in the afternoon, and any person may pay her/his tax at the time and place designated; and further

RESOLVED, that upon all taxes collected after January 31, 2022 such Treasurer shall collect one per centum; and after the expiration of said last day of February, collection of unpaid taxes shall proceed in the manner provided by the Statutes of the State of New York.

GIVEN UNDER THE HANDS OF THE MAYOR AND CLERK OF THE CITY OF CANANDAIGUA AND THE CORPORATION SEAL THEREOF THIS 2nd DAY OF DECEMBER, 2021.

Bob Palumbo, Mayor

Erin VanDamme, Clerk

RESOLUTION #2021-090

A RESOLUTION APPROVING THE 2022 BUSINESS IMPROVEMENT DISTRICT (BID) BUDGET, ESTABLISHING THE 2022 BID CHARGE LEVY, AND AUTHORIZING THE TREASURER TO SPREAD AND COLLECT THE SAME

WHEREAS, the Downtown Business Improvement District (BID) was established by the City Council on July 9, 1992 by Local Law No. 4; and

WHEREAS, the operation of the BID is governed by the provisions set forth in Article 19-A of the General Municipal Law, Section 980j of which requires that the expense incurred in the operation of the district shall be financed in accordance with the district plan upon which the establishment of the district was based, and that the district charge upon benefited real property shall be imposed as provided in the district plan; and that the charge shall be determined, levied, and collected in the same manner and at the same time and by the same officers as the general municipal taxes are levied and collected; and

WHEREAS, the proposed 2022 BID budget will be accepted by the Board of Directors of the Downtown Canandaigua Business Management Association, Inc. at its meeting of December 15, 2021; and

WHEREAS, the BID's 2022 budget, a summary of which is attached hereto, includes an amount not to exceed \$36,466 in anticipated revenue to be generated by the BID charge;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the proposed 2022 BID budget is hereby approved; and

BE IT FURTHER RESOLVED an amount not to exceed \$36,466 shall constitute a levy of the amount to be raised by the district charge, and a warrant to the Treasurer to spread and extend such levy upon the properties in the Business Improvement District in accordance with the district plan, and to collect the same.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

2022 Proposed BID Budget

Ordinary Income/ Expense

Income:

Fund Raising Income	\$	79,000.00
City Appropriation	\$	92,000.00
BID Assessment	\$	36,466.00

Total Income:	\$	207,466.00
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Expenses:

Advertising	\$	20,000.00
Audit	\$	3,300.00
Bank Fees	\$	500.00
Salaries	\$	79,366.00
Subcontracted Services	\$	38,800.00
Vehicle	\$	4,000.00
Fees and Dues	\$	1,500.00
Insurance	\$	6,200.00
Materials	\$	9,640.00
Meetings	\$	1,000.00
Office Supplies/Printing	\$	3,800.00
Payroll Fees	\$	2,000.00
Payroll Taxes	\$	8,500.00
Postage	\$	500.00
Repairs and Maintenance	\$	1,500.00
Rent	\$	9,360.00
Training	\$	500.00
Travel	\$	500.00
Utilities	\$	6,500.00
Central On Main	\$	10,000.00

Total Expense:	\$	207,466.00
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RESOLUTION #2021-091

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH SELECTED OUTSIDE AGENCIES AS APPROVED IN THE 2022 BUDGET

WHEREAS, the organizations, made a part of this resolution, have agreed to administer and provide individual or group programs for the citizens of the Canandaigua area; and

WHEREAS, said programs complement City goals through public safety, promotion of economic development, personal development, and social enrichment;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the City Manager is authorized to execute contracts with these organizations as required and in accordance with the amounts appropriated in the 2022 Budget.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

Outside Agencies & Contracts

Salvation Army-Phoenix Program
Ontario County - Dog Control Contract
Business Improvement District (BID)
Finger Lakes Television (FLTV) - Public Access
Ontario County Historical Society
Martin Luther King (MLK) Day Celebration
Colony Caregivers
Pathstone
Habitat for Humanity

RESOLUTION #2021-092

A RESOLUTION ADOPTING CHANGES TO CITY OF CANANDAIGUA FEE SCHEDULE

WHEREAS, in accordance with the Municipal Code of the City of Canandaigua, various fees pertaining to applications, permits, inspections, and services shall be set by resolution of the City Council, and;

WHEREAS, the City Council has reviewed the proposed changes to the “City of Canandaigua Fee Schedule” as part of its 2022 budget process;

NOW, THEREFORE, BE IT RESOLVED by the Canandaigua City Council that amends the City of Canandaigua Fee Schedule to add or change the fees as outlined in the attached schedule with said fees taking effect January 1, 2022 and all other fees remaining as previously adopted.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

**CITY OF CANANDAIGUA
FEE SCHEDULE CHANGES**

FEE DESCRIPTION	CITY CODE	LAST CHANGED	PROPOSED FEE	CURRENT FEE	NOTES
<u>CLERK/TREASURER</u>					
Dog License	253-16	2011	\$20.00/ Neutered \$30.00/Unneutered	\$15.00/ Neutered \$23.00/Unneutered	
Dog License Late Fee		NEW	\$5.00	NEW	
<u>POLICE</u>					
Fingerprinting (Non-Resident)		NEW	\$25.00	NEW	
Fingerprinting (Resident)		NEW	\$0.00	NEW	
<u>FIRE DEPARTMENT</u>					
Open Burning and Pyrotechnics Permit	714-36	2020	\$100.00	\$75	
Seasonal Tent Inspection 180 Days Max		2020	\$250.00 per Year	Pending P&Z Approval	
Commercial Barbecue Inspections		2020	\$100.00	\$60.00	Included application fee and fire inspection fee
<u>PUBLIC WORKS</u>					
16-Gallon Recycle Box		1990	\$8.00		
Sewer OR Water Connection, Inspection Only		1985	\$150.00	From \$70	
Install Water Service from Water Main to Right-of-Way Line		2013	\$10 - plus time and material charges for required construction	\$65/foot.	Make Consistent with Sewer
Dumpster Farm Usage Fee		2011	\$30 per month per space	Lease Agreements	
<u>PARKS & RECREATION</u>					
Neighborhood Parks					
Pavilions/Buildings - City Residents		2013	\$25 deposit, paid in advance	\$40, paid in advance	Deposit change only
Pavilions/Buildings - Non-Residents		2013	\$25 deposit, paid in advance	\$80, paid in advance	Deposit change only
Summer Day Camp - Youth Grades 1-8		2021	\$125/Week	\$100/week	
Summer Day Camp Family Rate - Youth Grades 1-8		2021	\$50 off per child after 2 children	Previously \$250	

RESOLUTION #2021-093

**A RESOLUTION ESTABLISHING THE 2022 WATER RATES
FOR THE CITY OF CANANDAIGUA**

WHEREAS, the City Council has adopted the 2022 Operating Budget for the Water Fund;
and

WHEREAS, the Water Fund Budget calls for an increase in the water rates in order to meet the financial requirements of the Water Fund in 2022; and

WHEREAS, the City of Canandaigua sells water to residential and commercial water customers within the City and by contract to several town water districts;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the water rates charged for residential and commercial water customers within the City is \$3.806 per 1,000 gallons of water with a minimum quarterly charge of \$42.63 and that said rates shall be in effect for all water consumption billed on or after January 1, 2022; and

BE IT FURTHER RESOLVED, that the water rates charged for suburban customers is \$5.256 per 1,000 gallons of water with a minimum quarterly charge of \$58.916, and that said rates shall be in effect for all water consumption billed on or after January 1, 2022.

ADOPTED this 2nd day of December, 2021

ATTEST:

Erin VanDamme
City Clerk

RESOLUTION #2021-094

A RESOLUTION APPROVING OF FRANCHISE AGREEMENT TO PROVIDE CABLE TELEVISION SERVICES WITH EMPIRE VIDEO SERVICES CORPORATION

WHEREAS, the City Council has been presented with a proposed Franchise Agreement with Empire Video Services Corporation; and

WHEREAS, a public hearing was held on December 2, 2021 on said proposed Franchise Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the Franchise Agreement is approved and that City Manager is hereby authorized to execute the Franchise Agreement and take all other such actions as may be required to institute the cable television franchise contemplated by the Franchise Agreement.

ADOPTED this 2nd day of December, 2021

ATTEST:

Erin VanDamme
City Clerk

CITY OF CANANDAIGUA FRANCHISE AGREEMENT

THIS AGREEMENT, executed in triplicate this _____ and between the City of Canandaigua (hereinafter referred to as the City or the Municipality), by the City Manager acting in accordance with the authority of the duly empowered local governing body (hereinafter referred to as the Council, party of the first part, and Empire Video Services Corporation a corporation organized and existing under the laws of the State of New York, the principal place of business of which is located at 34 Main Street, Prattsburgh, New York 14873 (hereinafter referred to as the Company), party of the second part:

WITNESSETH

WHEREAS, Pursuant to the City Law, the Council has the power on behalf of the Municipality to grant a non-exclusive franchise providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the Municipality and whereas the Council and the Company pursuant to federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the franchise procedures required of municipalities and cable operators in the grant of cable television franchise; and

WHEREAS, The Municipality has conducted negotiations with the Company and has conducted one or more public proceedings on the Company's franchise proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of the Company's technical ability, financial condition, and approval of the Company's plans for constructing and operating the Cable Television System; and

WHEREAS, Following such public proceedings and such further opportunity for review, negotiations and other actions as the Council deemed necessary and that is required by law, the Council decided to grant Company's franchise as provided hereinafter; and

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby made a part of this franchise agreement, and the mutual covenant and agreements herein contained, the parties hereby covenant and agree:

SECTION ONE DEFINED TERMS

Unless the context clearly indicates that a different meaning is intended:

- (a) "Basic Service" means those provided in the lowest priced Service Tier. "Enhanced Basic" will include Basic Service plus the next tier of channels.
- (b) "Council" means the City Council of that municipality known as the City of Canandaigua.
- (c) "Cable Television System" means a facility, consisting of a set of closed transmission paths, including fiber optic wires, and associated signal generation, reception and control equipment that is designed to provide Cable Television Service, said service includes among other things Video Programming, Other Programming Service and/or communications services which is

provided to Subscribers within a community and which is originated by the Company or by any other party.

(d) "Company" means Empire Video Services Corporation its successors and assigns.

(e) "Cable Television Service" means:

(1) The one way transmission to Subscribers of Video Programming, Other Programming Service or other cable and communications services; and/or

(2) Subscriber interaction, if any, which is required for the selection of such Video Programming, Other Programming Service, or other communications services; and/or

(3) Interactive Service

(f) "Franchise" means the permission, license, franchise, grant or authority given hereunder and evidenced by regulation, ordinance, permit, this agreement or by any other license, to conduct and operate a Cable Television System in the Municipality.

(g) "Franchise Fee" means the percentage, as specified in this Franchise agreement, of Company's gross annual revenues earned from all sources within the City payable in exchange for the rights granted pursuant to the franchise.

(h) "FCC" means the Federal Communications Commission, its designee and any successor thereto.

(i) "Gross Annual Revenues" means all revenues, net of Franchise Fees, actually received by and paid to the Company by Subscribers in the Municipality for Cable Television Service purchased by Subscribers on a regular, recurring monthly basis. Gross Annual Revenues shall include the following:

(1) Basic Service fees;

(2) fees charged to Subscribers for any service tier other than Basic Service;

(3) fees charged for premium services;

Gross Revenues shall not include the following:

(1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, the franchise fee, or any sales or utility taxes;

- (2) unrecovered bad debt;
 - (3) credits, refunds and deposits paid to Subscribers;
 - (4) any exclusions available under applicable State law.
- (j) “Other Programming Service” means programming that the Company makes available to Subscribers over the Cable Television System on its pay programming Service Tier, but not including any or all pay per view services, and not including Interactive Services whether or not provided on the pay programming service tier.
- (k) “Video Programming” means programming provided to the Company by, or generally considered comparable to programming provided by, a television station.
- (l) “Person” means an individual, partnership, association, corporation, joint stock company, trust, corporation, or organization of any kind, the successors or assigners of the same.
- (m) “Interactive Service” means the two-way transmission of information over the Cable Television System including but not limited to data transmission.
- (n) “May” is permissive
- (o) “Shall” or “will” are mandatory.
- (p) “Subscriber” means any Person lawfully receiving any Cable Television Service provided over the Cable Television System.
- (q) “Streets” means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, and public grounds and waters within or belonging to the Municipality.
- (r) “Municipality” means City of Canandaigua.
- (s) “NYSPSC” means New York State Public Service Commission.
- (t) “Service Tier” means a category of Cable Television Service provided by the Company over the Cable Television System for which a separate rate is charged for such category by the Company.

- (u) "Access Channels" means channels) set aside for public, educational, or governmental uses with no charge for public usage. Access channels designed for public use shall be available on a nondiscriminatory basis.

- (v) "Reasonable Notice" shall be written notice addressed by either party at its principal office within the City of such other office as the Company has designated to the City as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than ten (10) business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice.

- (w) "Transfer" means the disposal by the Company, directly or indirectly, by gift, assignment, voluntary sales, merger consolidation or otherwise twenty percent (20%) cumulatively over the term of the Franchise of such interests to a corporation, partnership, limited partnership, trust or association or Person or groups of Persons acting in concert.

**SECTION TWO
GRANT OF FRANCHISE**

Municipality hereby grants to the Company the non-exclusive right to construct, erect, operate and maintain a Cable Television System within the Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality by erecting, installing, constructing, repairing, replacing reconstructing, maintaining and retaining in, on, under upon, and across any and all said Streets such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as is deemed necessary or useful by the Company, subject to the Company's obligation to provide efficient Cable Television Service and to the reasonable exercise of Municipal police powers as provided below. Additionally, the Municipality hereby grants to the Company the rights to use any and all easements granted for or dedicated to compatible uses, such as electric, gas, telephone or other utility transmissions for the purposes of erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across such easements such items of the Cable Television System as is deemed necessary or useful by the Company in order to provide Cable Television Service including any other associated communications services such as transmission of data information. Upon request by the Company, the Municipality hereby agrees to assist the Company in gaining access to and using said easements.

**SECTION THREE
APPROVAL OF COMPANY BY MUNICIPALITY**

Pursuant to any applicable procedures stated in Section 626 of the Cable Communications Policy Act and those procedures provided in the rules and regulation of the NYSPSC, to the extent such rules are not inconsistent with the applicable provisions of said Section 626, the Council of the Municipality, after affording the public adequate notice and opportunity for comment and having determined that the

Company is likely to satisfy cable-related community needs, hereby grants this franchise The Council, in a public proceeding affording due process, finds that the proposed Franchise complies with NYSPSC franchise standards, considered and approved the Company's technical ability, financial condition, and character and in proceedings complying with the requirements of due process has found the Company's plan for constructing and operating the Cable Television System to be adequate and feasible.

SECTION FOUR TERM AND THE RIGHTS ARISING HEREUNDER

Part 1:

The Franchise herein granted and the rights arising hereunder are for a term of ten (10) years from the date of commencement of this franchise. The date of commencement shall be the date of final approval of this agreement by the NYSPSC.

Part 2:

At the end of the term of this franchise or any renewal thereof, if said agreement shall not be renewed by the Municipality, the Company shall have the right in addition to and not in lieu of all other rights granted by the Cable Policy Act, in its sole discretion, to sell the assets of said system to the Municipality or any other party for no less than the fair market value of the system valued as an on-going business concern.

Part 3:

The Company shall provide at least sixty days' notice to the Municipality prior to completion of a transaction that results in the sale, transfer, or assignment of the Franchise. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Company, without the prior consent of the Municipality, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Company in the Franchise or Cable Television System to secure indebtedness. Within thirty (30) days of receiving a request for review covered by this Section, the Municipality shall notify the Company in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Municipality has not taken action on the Company's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Municipality shall be deemed given.

SECTION FIVE REVOCATION

Part 1:

The Municipality may revoke this franchise and all right of the Company hereunder in any of the following events or for any of the following reasons:

- (a) Company fails after thirty days prior to written notice from the Council to substantially comply or to take reasonable steps to comply with a material provisions or material provisions of this agreement.
- (b) Company is adjudged a bankrupt; or
- (c) Company attempts or does practice a material fraud or deceit in its securing of the franchise, provided however, that an innocent misrepresentation shall not be grounds for revocation.
- (d) Failure to complete technical rebuilds and upgrades as provided for in this agreement;
- (e) Reporting fraudulent information to Municipality or displaying gross negligence in the preparation, transmission or maintenance of information required under this agreement;
- (f) Intentional failure to timely pay taxes or fees due the Municipality under this agreement.
- (g) Company defaults in the performance of any substantial material provision of this agreement.

Part 2:

Notwithstanding the above, no revocation provided for in this section shall be effective unless and until the Council shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date thereof, which resolution shall not be adopted without thirty days prior written notice to the Company and an opportunity for the Company to be fully and fairly heard on the adoption of such resolution. If the revocation as proposed by such resolution depends on a finding of fact, such finding of fact shall be made by Council only after an administrative hearing providing the Company with a fair opportunity to be heard, including the right to introduce evidence and the right to the production of evidence and to question witnesses and the expiration of the time to appeal and the final determination of such appeal. A transcript shall be made of such hearing with the right of the Company to appeal such final decision as available by law or federal or state regulation.

Part 3:

If the franchise and right thereunder are revoked the Municipality hereby agrees that the Company shall have the right to sell the same to the Municipality or to any other party and that the purchase price for the same, in the sole discretion of the Company, shall be no less than in equitable price which for purposes of this agreement shall be in the fair market value of the Cable Television System valued as an on-going business venture.

**SECTION SIX
INDEMNIFICATION AND INSURANCE**

Part 1:

Company alone is liable for damages, actions or claims arising out of its operation of its Cable Television System in the Municipality.

Part 2:

Company indemnifies the Municipality and holds the latter harmless from all liability, damage, cost or expenses arising from claims of injury to Persons or damage to property occasioned by reason of any conduct undertaken in the Municipality by the Company as a result of its operation of its Cable Television System in the Municipality.

Part 3:

Company shall obtain and maintain in force throughout the term of this agreement, an insurance policy against claims arising out of Company's operation of its Cable Television System in the Municipality. At the minimum this policy shall be in the amount of \$3 million in the aggregate, \$2 million for each occurrence and, \$1 million products/completed operations coverage, and in a form reasonably satisfactory to the City Attorney.

Part 4:

Company shall not be held liable for and shall not indemnify the Municipality from and against any legal action or claim arising out of any programming the Company is required by federal or state law to transmit over its system or over which it is prohibited from exercising editorial control of content.

Part 5:

Company shall not be held liable for and shall not indemnify Municipality for any legal action or claim attributable to the negligence, misfeasance or malfeasance of Municipality, its employees, or agents.

**SECTION SEVEN
USE OF EXISTING POLES**

Company hereby agrees that when and wherever reasonably feasible and economical, it shall enter into agreements with telephone or electric or other utilities for the use of said utilities' poles whereby said utilities shall provide use of access to said poles of Company of the Company's lines and other equipment.

Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole(s) of utilities is not economically reasonable or otherwise possible, the Company may erect or authorize or permit others to erect any poles or any other facilities within the Streets of the Municipality

pursuant to the issuance by the Municipality of any necessary authorizations which shall not be unreasonably withheld.

SECTION EIGHT RELOCATION OF PROPERTY

Part 1:

Whenever a public utility franchise operating within the Municipality shall require the relocation or reinstallation of any property of the Company in or on any of the Streets of the Municipality, it shall be the obligation of the Company, at Company's expense, on written notice of such requirement to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the Municipality or the public utility.

Part 2:

The Company shall, on request of a Person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expense of any such temporary removal, raising or lowering of wires or other property shall be paid in advance to the Company by the Person requesting the same. The Company shall be given in such cases not less than five (5) working days prior to written notice in order to arrange for the changes required.

SECTION NINE UNDERGROUND FACILITIES

Where, in any place within the Municipality all of the electric and telephone utilities shall be located underground, it shall be the obligation of the Company to locate or to cause its property to be located underground within such places. The Company shall have an affirmative obligation to relocate aerial lines underground at the same time as electric and telephone utilities are so required. If the Company shall in any instance be unable to locate or relocate any part of its property underground, then the City Manager of the Municipality, on being apprised of the facts thereof, shall permit such property to remain above the ground even though other facilities in the area may be placed underground. However, any such permission shall be on such conditions as the City Manager of the Municipality may reasonably require to protect the public health and safety.

With respect to the construction of new underground facilities wherein the Company is extending its lines, such construction shall be completed at the same time as electric and telephone utilities unless the Company is prevented from undertaking such construction by the property owner. In the event of a technical impediment to simultaneous utility-cable construction, the Company shall notify the city manager and undertake best efforts to overcome such impediment toward the goal of simultaneous construction.

SECTION TEN USE AND INSTALLATION

Part 1:

The Company or any Person authorized by the Company to erect, construct or maintain any of the property of the Company used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of the Company in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to member of the public. All Cable Television System equipment shall conform to those standards of the National Electrical Code of the National Council of Fire Underwriters which exists at the time said equipment is installed or replaced.

Part 2:

The Company agrees to make its best efforts to locate all Cable Television Systems equipment so as to cause the least possible interference reasonably to be expected with the usual use of the Streets and so as to cause reasonably minimal interference with the rights of property owners abutting said Streets, and in no event to substantially and regularly interfere with the usual public travel on any Street of the Municipality.

Part 3:

Whenever the Company shall cause or any Person on its behalf shall cause any injury or damage to public property or Street, by or because of the installation, maintenance or operation of the Cable Television System equipment, such injury or damage shall be repaired or replaced and restored to serviceable condition by the Company as soon as reasonably possible upon notice to the Company from the Municipality in such fashion as directed by the City Manager of the Municipality unless ordinances of the Municipality shall make other provisions thereof and the Municipality notifies the Company of said other provisions. The Company is hereby granted the authority to trim trees upon and overhanging the Streets of an abutting private property in the Municipality to the minimum extent necessary to prevent the branches from coming in contact with the wires, cables and other equipment of the Company's Cable Television System upon no less than five (5) days notification to City Manager of the Municipality.

Part 4:

The City or its designee shall have the right to inspect at any time all construction or installation work performed subject to the provisions of this Franchise and to make such tests as it shall deem necessary to ensure compliance with the terms of this Franchise and all other applicable law. The Company shall cooperate fully with the City during all inspections and tests and shall provide access to all equipment records, and other materials and information necessary for such inspections and tests. The City agrees that no such inspections or tests shall be conducted so as to interfere with the normal construction, installation, or operation of the cable system.

**SECTION ELEVEN
REMOVAL AND ABANDONMENT OF PROPERTY**

No portion of the Cable Television System in the Franchise Area shall be abandoned by the Company without the written consent of the Municipality. If the use of any part of the Company's Cable Television System occupying the Streets of the Municipality is discontinued for any reason for a continuous and uninterrupted period of twelve months, the Company shall on being given thirty (30) days prior written notice thereafter by the City Manager of the Municipality provided no such notice sent without prior vote of the Council directing the forwarding of said notification, remove that portion of its Cable Television System from the Streets of the Municipality which has remained unused and which the Municipality for good cause shown and articulated in said notice deems necessary to remove to protect the public health and safety. The cost and expense of said removal shall be borne by the Company, and said Streets shall be placed in as nearly as good condition as before the installation of said system as is reasonable. In the event the Company shall fail to timely remove the unused portion of said system and after an additional thirty (30) days written notice from the City Manager of the Municipality to the Company, the said portion of the system shall be deemed abandoned and the Municipality may remove or cause to move said portions of the Cable Television System from the Streets of the Municipality which it deems necessary in order to protect the public health and safety.

Notwithstanding the above, the Municipality may in its sole discretion and consistent with its obligation to protect the public health and safety permit any and all such abandoned equipment to be left in place.

**SECTION TWELVE
OPERATION AND MAINTENANCE**

The Company shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the Cable Television System shall be performed in a safe, thorough and reliable manner. The Company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest possible time. The Company shall maintain knowledgeable agents accessible during normal business hours via local or toll-free telephone number(s). On such occasions when a significant number (more than 20%) of Company's Subscribers are required to exchange existing subscriber-premises equipment for replacement equipment, then the Company shall temporarily establish a suitable location in Municipality for the conduct of said exchange. The Company shall provide customers upgrading service and requiring new conversion equipment the option to pick up such equipment from the Company for self-installation. The Company's telephone shall be so operated that complaints or requests for repairs because of malfunctions of the Cable Television System may be given so that the same may be repaired as quickly as possible after notice of such malfunction. The Company shall make its best efforts to remedy said malfunction no later than twenty-four (24) hours after notice of the malfunction except or unless such malfunction shall affect a substantial portion of the Company's Television System or the malfunction shall have been caused by storm, fire, lightning, explosion, major equipment or computer failure, civil commotion or other similar catastrophe which is or are beyond and

reasonable control of the Company, in which case all due diligence to repair the problem as quickly as possible will be undertaken by the Company.

When planned system maintenance, either system-wide or per channel, will require more than one (1) hour to complete, the Company will, as a general rule subject to change based on reasonable circumstances, effect the maintenance between the hours of 12:00a.m. and 6:00 a.m.

If the system as a whole, fails in reasonable totality for more than four (4) hours, each Subscriber in Municipality shall be compensated automatically for such loss of service by a credit to Subscriber's monthly bill. However, it is expressly understood and agreed by the Municipality and the Company that no compensation for any such failure shall be required by this paragraph if such failure is the result of:

- a) an Act of God;
- b) a power failure caused by a third-party provider;
- c) system maintenance during the above-prescribed hours;
- d) system reconstruction and/or upgrading as required by this Agreement; or
- e) an event beyond the reasonable control of Company.

The Company shall perform all system tests and maintenance procedures as required and in accordance with tests and procedures as specified by the FCC, New York State Commission on Cable Television, and the National Cable Television Association's (NCTA) testing procedures. Results of such tests and the Company's corrective action plan (listing corrective action needed and timetable for completion) be submitted to the City within thirty days from completion of tests.

SECTION THIRTEEN CONSTRUCTION SCHEDULE

Company shall comply with the requirements for construction of cable television plant and provision of Cable Television Services as set forth in Section 895.5 of the NYSpsc Rules, as from time to time may be amended, supplemented or changed.

Per 16 NYCRR 895.1(b), Company shall provide a full description of the system proposed for construction, which shall indicate the specific geographical areas to be wired, and the location of all trunk and feeder plant. The description shall indicate anticipated stages of completion of construction at six-month intervals for the entire franchise area and a specific schedule showing that significant construction will be accomplished and cable television service will be available to a significant number of subscribers within five years after the effective date of the certificate of confirmation of the franchise.

SECTION FOURTEEN RATES

Company shall provide sixty (60) days notification to the Municipality and Subscribers of rate increases.

Company shall provide to the Municipality and each Subscriber a complete schedule of all residential a la carte rates and charges for all residential services provided by Company in the Municipality at least once each year throughout the term of this agreement.

The Municipality and the Company acknowledge that rates and charges imposed by the Company for Cable Television Service shall be subject to regulation in accordance with Federal law. Should a change in the governing law occur with respect to rate regulation during this Franchise agreement, Municipality and Company agree to negotiate in good faith.

Cable Television Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides. Company shall not discriminate against individuals or classes of individuals in the establishment and application of its rates and charges for service or in the provision of service. This prohibition is not intended to prevent the offering of sales promotions or other discounts to all Subscribers similarly situated, in a non-discriminatory manner. Nothing in this paragraph shall preclude the Company from pricing its services in any legal manner it shall so determine to any group or class of Subscribers when Cable Television Service is offered in direct competition by another party operating in Municipality.

SECTION FIFTEEN SERVICE TO PUBLIC FACILITIES

Notwithstanding any contrary provision in Section 14, the Company shall provide service outlet(s) to the following: schools, firehouses, city hall, police station, volunteer ambulance squad, Wood Library and city sponsored service center, and/or visitors center, and the Academy () as agreed to herein or as may be reasonably requested by the Municipality provided such institution is no further than one hundred fifty feet (150') from the feeder of the Cable Television System. The "Enhanced Basic" level of service for programming shall be provided without charge thereafter.

Return-line (upstream) transmission capability will be provided by the Company within one year of the effective date of this agreement or at the request of the Access Advisory Board (whichever is later) for City Hall, the Fire Station, and the Community College of the Finger Lakes (modulation equipment will be made available). Both a free service drop and return line shall be provided for the Academy (high school) consistent with the development of this facility and barring unusually expensive construction requirements.

SECTION SIXTEEN ADDITIONAL SUBSCRIBER SERVICE

Part 1:

Payment for Cable Television Service rendered to Subscribers is due and payable in advance on the first of each month and is delinquent when thirty (30) days have elapsed from the due date without there having been full payment to the Company. A late charge will be added to all bills paid later than thirty (30) days from said due date, or as prescribed by the rules and regulations of NYSPSC

Part 2:

The Company shall have the right to disconnect delinquent Subscribers, as that term is used above in Part 1 of this section, where:

- (a) At least five days have elapsed after written notice of discontinuance has been served personally upon a Subscriber; or
- (b) At least eight days have elapsed after mailing to the Subscriber written notice of discontinuance addressed to such Person at the premises where the service is rendered or the recorded billing address; and
- (c) As further prescribed in the rules and regulations of the NYSPSC

Part 3:

Notice of the Company procedures for reporting and resolving complaints will be given to each Subscriber at the time of the initial subscription to the Cable Television System services and thereafter to all Subscribers as required by federal or state law.

Part 4:

The Company shall offer to and shall notify in writing, the Subscribers of the availability of locking program control devices which enable the Subscriber to limit program reception in the Subscriber's residence. Any Subscriber requesting such device may be charged and shall pay the Company upon the receipt of the same, in full on a one time basis, the actual cost to the Company for the manufacture, purchase and installation of such device plus fifteen percent (15%) above such cost. The notice provided by the Company shall be given to new Subscribers at the time of installation and thereafter to all Subscribers as required by the federal or state law.

Part 5:

The Company shall provide annually by January 31 a report of the previous year's activities of the system business office, that shall include:

- a) Total number of new installations and disconnections within Municipality;
- b) Logged reports, as required by Part 596.6 of the New York State Commission on Cable Television Regulations, of substandard visual reception on cable channels and system outages in Municipality that are the fault of the system and not due to subscriber-owned equipment or third-party facilities;

- c) Quarterly averages of telephone abandonment rates and call-waiting (on-hold) times as may be available on a system-wide basis; and
- d) Such other available and documentable information as requested by the Municipality needed to assess the performance of the Company in its business office operations.
- e) Any valid reporting requirements may be satisfied with system-wide statistics, except for reporting requirements related to Franchise Fees and customer complaints.

Part 6:

The Municipality and the Company, at the discretion of the Municipality, may hold performance evaluation sessions no more frequently than annually. Prior to any evaluation session, upon request of the Municipality, the Company will conduct a Subscriber survey. The Company and Municipality will mutually agree on the cost of said survey. The Municipality shall determine the type, form and method of the survey with the Company's advice and consent and within mutually acceptable cost parameters. The results of the survey will be made available to the City for the evaluation session. All such evaluation sessions shall be open to the public. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance, compliance with this Franchise and applicable law, customer service and compliant response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise Fees, penalties, free or discounted services, applications of new technologies and judicial, NYS PSC and FCC filings.

The Company shall notify its Subscribers of all evaluation sessions by announcement on at least one channel of its cable communications system between the hours of seven p.m. (7:00 p.m.) and nine p.m. (9:00 p.m.), for five (5) consecutive days preceding each session.

During review and evaluation the Company and the City shall fully cooperate with each other and shall provide such information and documents as each may reasonably need to perform its review.

Part 7:

The Administrator for the Municipality for this franchise shall be City Manager of the City of Canandaigua.

SECTION SEVENTEEN FRANCHISE FEES

Part 1:

For a Franchise Fee the Company will pay to the Municipality on a semi-annual basis throughout the term of this agreement five (5) percent of all gross annual revenues as collected by Company from its operations in the Municipality during each annual period.

Part 2:

This Franchise Fee is in addition to and shall not be offset against the costs incurred by the Company in complying with the public access provisions of this agreement.

Part 3:

The Franchise Fee herein provided shall be paid semi-annually on or before August 30 and or before February 28. All fees shall be accompanied by a revenue statement verifying revenues for the previous period and signed by a CPA.

Part 4:

Upon reasonable notice (generally more than 48 hours) and during normal business hours, the Municipality shall have the right to inspect all books, records, maps, plans and financial information that pertain to the Company's operations in the Municipality and which will not generally be considered confidential in nature. To the extent such information is not maintained in the aforementioned form, or locally, the Company shall be given a reasonable period of time to prepare such for presentation.

**SECTION EIGHTEEN
COMPLIANCE AND CONFLICT WITH STATE AND FEDERAL LAWS**

Part 1:

Company may apply to Municipality for a temporary waiver of any provision of this agreement or for an extension of time to comply with a provision of this agreement. The Municipality may grant such waiver or extension for good cause shown. The Municipality may require the submission of any information by Company necessary to support the latter's request for the waiver extension.

Part 2:

Should any provision of this agreement be held invalid by a court or regulatory agency, the remaining provisions of this agreement shall remain in full force and effect.

Part 3:

The Company and the Municipality shall comply with all laws, rules, and regulations of the federal government and of the State of New York and the regulations of both concerning this agreement and regarding the installation, construction, maintenance and operation of the Company's Cable Television System, and the provision of the Cable Television Service, provided said state laws are not in conflict with, are not preempted, superseded, or suspended by federal law, regulations or orders.

Part 4:

The parties agree to amend to their mutual satisfaction any provision of this agreement that becomes invalid and unenforceable during the term of this agreement because of a change in law or regulation,

within one year of this change. In the interim, the parties agree to comply with the provisions of the new law or regulation.

Part 5:

Nothing contained herein shall be construed to prohibit the Company from requesting a waiver of any state or federal rule or regulation or of any provision contained in this agreement provided a copy of such request shall be served upon the Municipality.

Part 6:

The Company shall file requests for all necessary operating authorizations with the NYSPSC and the FCC within sixty (60) days of this Franchise being awarded.

Part 7:

The Municipality reserves the right to adopt in addition to the provisions contained in this Franchise agreement and existing applicable ordinances, such additional regulations as it shall find necessary and lawful in the exercise of its police powers to protect the public health and safety; provided, however that such regulations are reasonable and not in conflict with state or federal law, rule, regulation or order.

Part 8:

The Company shall not refuse to hire or employ and shall neither bar nor discharge from employment, and shall not discriminate against any Person in compensation or in terms, conditions, or privileges or employment because of age, race, creed, color, natural origin or sex.

**SECTION NINETEEN
SEVERABILITY**

If any provision of this Franchise agreement shall be held invalid, void, unenforceable or illegal, by a court or a regulatory agency of competent jurisdiction, the remaining provisions of such Franchise shall remain in full force and effect.

**SECTION TWENTY
NOTICE**

All notices required or permitted herein shall be in writing and shall be deemed delivered when mailed in the United States mail, postage pre-paid and sent certified, return receipt requested or on the date of delivery when sent by express mail, and in other cases when addressed to:

Empire Video Services Corporation
34 Main Street
Prattsburgh, NY 14873

When to Municipality:

City Manager
City of Canandaigua
2 North Main Street
Canandaigua, NY 14424

SECTION TWENTY-ONE PUBLIC ACCESS CHANNELS AND SERVICES

The Company shall make available channel capacity for non-commercial, video programming for public educational and governmental (“PEG”) access use in accordance with Section 895.4 of the NYPSC regulations and will comply with the minimum standards set forth therein.

Finger Lakes TV (FLTV) will be provided a broadcast input interface connection that meets all current broadcast format standards.

This connection will be installed within FLTV master control facilities located on the ground floor of Finger Lakes Community College (FLCC). Installation will be completed by the Company, in partnership with FLTV and FLCC staff.

FLTV will manage all content broadcast on said PEG channel in similar fashion to our current broadcast channel.

The Company will provide FLTV a standard cable TV service. This service will be installed within FLTV master control facilities located on the ground floor of FLCC. Installation will be completed by the Company, in partnership with FLTV and FLCC staff.

The Company will provide an annual allocation of \$10 for each of the Companies Cable TV Subscribers within the Municipality for the FLTV annual budget for equipment services and station operations, managed by FLTV staff and their advisory board, in addition to the standard franchise fee.

The Company will provide an annual report of PEG channel viewership to Finger Lakes TV. This report should provide information about viewership days and times.

SECTION TWENTY-TWO CABLE COMPANY COMPETITION

In the event another cable company shall receive a franchise from the Municipality and a “double-build” situation exists, each company shall proceed in a professional manner and will not inhibit the operation,

maintenance, and/or construction processes of the other company. If a problem should arise, either company may contact the City Manager and file a complaint under this provision.

**SECTION TWENTY-THREE
MISCELLANEOUS**

The Municipality will agree to negotiate with the Company any favorable modifications granted to any other franchisees servicing the Municipality.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

Attest:

**City of Canandaigua, New York
A Municipal Corporation:**

City Clerk

City Manager

Empire Video Services Corporation

Witness

Chief Operating Officer

RESOLUTION #2021-095

**A RESOLUTION REAPPOINTING MARY BEER, RN MPH AS
LOCAL HEALTH OFFICER FOR THE CITY OF CANANDAIGUA**

WHEREAS, in an effort to comply with the Shared Services Initiative Ontario County and the City of Canandaigua identified an opportunity to share and coordinate the services of Mary Beer, RN MPH, the Public Health Director of Ontario County, to act as the Local Health Officer for the City of Canandaigua; and

WHEREAS, on December 7, 2017 via Resolution #2017-146, the Canandaigua City Council appointed Mary Beer as the Local Health Officer for with a term beginning January 1, 2018 and ending December 31, 2021; and

WHEREAS, the term is expiring and the City and County are desirous of continuing to share and coordinate the service of Mary Beer as the Local Health Officer for another four (4) year term;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Canandaigua hereby authorizes the City Manager to execute a successor shared services agreement with Ontario County; and

BE IT FURTHER RESOLVED, the City Council of the City of Canandaigua hereby re-appoints of Mary Beer, RN MPH as the Local Health Officer for a four (4) year term with annual reviews beginning January 1, 2022 and ending on December 31, 2025.

ADOPTED this 2nd day of December, 2021

ATTEST:

Erin VanDamme
City Clerk

INTERMUNICIPAL AGREEMENT FOR HEALTH OFFICER

THIS AGREEMENT (this “Agreement”) is entered into this ___ day of _____, 201 , by and between the **CITY OF CANANDAIGUA**, a New York municipal corporation, having its principal office at 2 North Main St., Canandaigua, New York 14424 (“ Ontario County”), and the **COUNTY OF ONTARIO**, a New York municipal corporation, having its principal office at, 20 Ontario Street, Canandaigua, New York 14424 (“Ontario County”). The City of Canandaigua and Ontario County are sometimes referenced to in this Agreement individually as a “County” or collectively as the “Parties.”

WHEREAS, In an effort to comply with the Shared Services Initiative Ontario County and the City of Canandaigua have identified an opportunity to share and coordinate the services of Mary Beer, RN MPH, the Public Health Director of Ontario County, to act as the Local Health Officer for the City of Canandaigua ; and

WHEREAS, The City of Canandaigua wishes to have appointed Mary Beer RN MPH, the Ontario County Public Health Director as the Local Health Officer; and

WHEREAS, the Ontario County Public Health Director, Mary Beer, RN MPH agrees to act at the Local Health Officer for the City of Canandaigua, thereby eliminating the need for the City to appoint and pay a local health officer; and

WHEREAS, Part BBB of Chapter 59 of the Laws of 2017 specifically authorizes cooperating municipalities to enter into shared services agreements; and

WHEREAS, The Parties wish to enter into a Shared Services Agreement providing for the appropriate services,

NOW THEREFORE, in consideration of the terms and conditions herein contained, and pursuant to New York Public Health Law §320, it is mutually agreed upon between Ontario County and the City of Canandaigua as follows:

1. Description of Services.

(a). Ontario County shall provide its Health Officer, Mary Beer, RN MPH, and the City of Canandaigua shall designate her as its Health Officer. The said Health Officer shall be the enforcement agent for the City of Canandaigua for its Ordinances and the Sanitary Laws of the State of New York.

(b). The Local Health Officer shall investigate complaints of public health nuisances arising within the City of Canandaigua.

(c). When necessary to resolve public health nuisances within the City of Canandaigua, the Local Health Officer will present facts and recommendations to the

City Board for its enforcement action. Authority for resolution and enforcement will remain with the City.

(d). The payment of costs to abate a public health nuisance, when necessary, shall be a City cost.

2. Requirements.

- a. City of Canandaigua Resolution # 2021-095 adopted on December 2, 2021 authorizes the City to participate in the Shared Services Agreement.
- b. Resolution # _____ adopted on _____ by the Ontario County Board of Supervisors authorizes the County to participate in the Shared Services Agreement.

3. Representations.

- a. City of Canandaigua will not be required to pay any sum for the services of the Health Director. Any savings and/or reimbursement realized will be retained by City of Canandaigua.

4. Release, Defense and Indemnification.

- a. *City of Canandaigua.* City of Canandaigua agrees to the fullest extent of the law that, except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of Ontario County, it shall release from liability, and shall provide defense for and defend, protect, hold harmless, and indemnify, Ontario County, its officers, employees and agents from, against, and in respect of any and all claims, losses, liabilities, demands, costs, judgments, damages (whether special, consequential, or otherwise), settlements, fees, attorneys' fees, losses, penalties, interest and any other expenses which may be suffered or incurred by anyone relating to the Work, arising directly or indirectly out of the performance or failure to perform hereunder by City of Canandaigua and its officers, employees and agents or third parties under the direction or control of City of Canandaigua.
- b. *Ontario County.* Ontario County agrees to the fullest extent of the law that, except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of City of Canandaigua, it shall release from liability, and shall provide defense for and defend, protect, hold harmless, and indemnify, City of Canandaigua, its officers, employees and agents from, against, and in respect of any and all claims, losses, liabilities, demands, costs, judgments, damages (whether special, consequential, or otherwise), settlements, fees, attorneys' fees,

losses, penalties, interest and any other expenses which may be suffered or incurred by anyone relating to the Work, arising directly or indirectly out of the performance or failure to perform hereunder by Ontario County and its officers, employees and agents or third parties under the direction or control of Ontario County.

5. Insurance.

- a. In the event that either Party is self-insured for liability and/or workers' compensation purposes at the time of entry into this Agreement, they shall furnish evidence of their self-insurance in the form of a certification by the County Attorney within ten (10) days of the request for evidence of such insurance. In the event City of Canandaigua purchases insurance, it shall keep in full force and affect Commercial General Liability insurance coverage in the amount of \$1 million combined single limit each occurrence, \$1 million general aggregate, \$1 million products/completed operations, \$1 million personal and advertising injury, statutory workers compensation, employer's liability and disability benefits and furnish to Ontario County evidence of the coverage provided and name Ontario County as an additional insured.

- 6. Notice.** Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either Party hereto:

To Ontario County:
County Administrator
20 Ontario St.
Canandaigua, New York 14424

To City of Canandaigua:
City Manager
2 North Main St.
Canandaigua, NY 14424

7. Miscellaneous Provisions.

- a. **Entire Agreement.** This Agreement shall constitute the entire agreement of the Parties, and shall supersede any previous oral or written understandings. Furthermore, it may only be amended by a writing signed by the parties.
- b. **Choice of Law.** This Agreement shall be governed and construed under the laws of the State of New York without reference to choice of law rules and principles.

- c. **Gender and Number.** The use of one gender in this Agreement shall include all others, and the use of the singular shall include the plural and vice-versa.
- d. **Descriptive Headings.** The descriptive headings of the various provisions of this Agreement are included for convenience only, and they are not intended to affect the meaning or construction of any of the provisions of this Agreement.
- e. **Assignment.** This Agreement may not be assigned by either Party without the other's prior written consent.
- f. **Separability.** If any provision of this Agreement is determined to be invalid or unenforceable, that shall not affect the validity or enforceability of the remaining portions of this Agreement. Any such invalid or enforceable provision shall be modified so as to give effect to the original intent of the parties to the maximum extent possible.
- g. **Clauses Required by Law.** The Parties hereto understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been inserted and shall have the full force and effect of law.
- h. **Counterparts.** This Agreement may be executed in multiple counterparts, and the counterparts, when combined, shall form and constitute a complete agreement. The parties further agree that facsimile signatures shall be acceptable to bind the parties.

8. Term.

- a. The term of this Agreement shall commence on January 1, 2022 and conclude on **December 31, 2025. Extension of the Agreement shall be made by Agreement of the Parties in writing within 60 days of the expiration date and if required, duly approved by the County's Board of Supervisors. Either party may terminate this Agreement upon 30 days written notice to the other.**
- b. In an effort to monitor the terms and outcomes of this Agreement, Mary Beer will conference with City Representatives at least once per year to ensure continuity of operations, ensure needs are met and future recommendations are considered.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seal the day and year first above written.

COUNTY OF ONTARIO

CITY OF CANANDAIGUA

by: _____
Christopher DeBolt
County Administrator

by: _____
John D. Goodwin
City Manager

STATE OF NEW YORK)
:ss.:
COUNTY OF ONTARIO)

On the ___ day of _____, in the year 20__ before me personally appeared **Christopher DeBolt**, known to me to be the person who executed the within instrument, who being duly sworn by me did depose and say that he has a business address at _____ in the City of _____, County of Ontario, State of New York; that he is the County Administrator of the County of Ontario, the Municipality described in said instrument; that, by authority of the Board of Supervisors of said Municipality, he is authorized to execute the foregoing instrument on behalf of the Municipality for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said Municipality, as the act and deed of said Municipality.

Notary Public

STATE OF NEW YORK)
:ss.:
COUNTY OF ONTARIO)

On the ___ day of _____, in the year 20__ before me personally appeared **John D. Goodwin**, known to me to be the person who executed the within instrument, who being duly sworn by me did depose and say that he has a business address at 2 North Main Street in the City of Canandaigua, County of Ontario, State of New York; that he is the City Manager of the City of Canandaigua, the Municipality described in said instrument; that, by authority of the Board of Trustees of said Municipality, he is authorized to execute the foregoing instrument on behalf of the Municipality for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said Municipality, as the act and deed of said Municipality.

Notary Public

RESOLUTION #2021-096

A RESOLUTION RECOGNIZING AND THANKING JAMES TERWILLIGER FOR HIS DEDICATED SERVICE TO THE CITY OF CANANDAIGUA

WHEREAS, since 2004, James P. Terwilliger (Jim) has served the City of Canandaigua with distinction as a member of City Council; and

WHEREAS, Jim has been an active community volunteer serving the Canandaigua community for nearly his entire life, having designed the first flag for the City of Canandaigua (adopted June 13, 1957), served as a member of the Board of Trustees for Granger Homestead, as a member and Treasure of the Wood Library Board of Trustees, an Advisory Board Member (Audit Committee) for Thompson Health Systems, President and Treasurer of Canandaigua Lake Pure Waters (aka Canandaigua Lake Watershed Association) and currently serving on the Board of Directors for the Fort Hill Performing Arts Center; and

WHEREAS, Jim has served as the Chair of the City Council’s Finance Committee for 16 years (2006-2022) and as the City Council President for 12 years (2010-2022) and by means of Jim’s calm, cool and collected disposition, regardless of the topic, consistently facilitated the City Council to govern the City with civility and decorum; and

WHEREAS, Jim’s financial aptitude and leadership has been an asset that has aided the full City Council to sustain the strong fiscal health of the City of Canandaigua while ensuring the provision of essential services and improving the overall quality of life in the community; and

WHEREAS, it would be impossible to completely describe the impact that Jim Terwilliger has had on the City of Canandaigua and its residents, yet, it is not difficult to recognize him as one of the finest examples of a true public servant; and

NOW, THEREFORE, BE IT RESOLVED, that the Canandaigua City Council, on behalf of the residents of the City, recognize and thank Jim Terwilliger for his dedicated service to the City of Canandaigua.

ADOPTED this 2nd day of December, 2021.

ATTEST:

Erin VanDamme
City Clerk

ORDINANCE #2021-006

**AN ORDINANCE AMENDING CHAPTER 519-21, OF THE
MUNICIPAL CODE, PENALTIES AND OFFENSES IN
PARKS AND RECREATION AREAS.**

WHEREAS, the City of Canandaigua City Council adopted an ordinance prohibiting the smoking and vaping of cannabis in public, which carries a civil penalty of twenty-five dollars or community service not to exceed twenty hours, consistent with the New York Penal Law; and

WHEREAS, the smoking of cigarettes, cigars, pipes, or any other form of tobacco in, on, or within any City parks, in the Kershaw Swim Beach area, or within any park waters is prohibited and constitutes disorderly conduct under Chapters 519-7(H) and 519-16(K) of the Municipal Code; and

WHEREAS, pursuant to Chapter 519-21, violations of Chapter 519 are subject to a fine not exceeding \$250 or imprisonment in the County Jail of Ontario County for not more than 15 days, or both such fine and imprisonment; and

WHEREAS, City Council has determined that Chapter 519-21 should be amended to make the penalties for smoking tobacco in City parks and recreation areas to be same as the penalties for smoking and vaping of cannabis in public;

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Canandaigua, that:

Sec. 1 Chapter 519-21, entitled “Penalties and Offenses” is hereby amended as follows (*new language shown in italics, omitted language shown with strikethrough*):

**Chapter 519
Parks and Recreation Areas**

Section 519-21: Penalties and Offenses.

Any person who shall violate any of the provisions of this chapter or of any rules or regulations promulgated pursuant to this chapter, *except for violations for smoking tobacco under Chapter 519-7(H) or Chapter 519-16(K)*, shall, upon conviction, be punishable by a fine not exceeding \$250 or imprisonment in the County Jail of Ontario County for not more than 15 days, or both such fine and imprisonment. *Any person who shall violate Chapters 519-7(H) or 519-16(K) for smoking tobacco in parks and recreation areas shall be subject to a civil penalty of twenty-five dollars or community service not to exceed twenty hours.* In addition, any person who shall violate any of the provisions of this chapter or any rules or regulations promulgated pursuant to this chapter shall be suspended from use of City park facilities for a period of 90 days.

Sec. 2 This ordinance shall be effective thirty (30) days following its enactment.

ADOPTED this ___ day of _____, 2021

ATTEST:

Erin VanDamme
City Clerk

2022 CITY COUNCIL & COMMITTEE MEETING DATES

City Council Meetings-7:00PM

Hurley Building

January	3
February	3
March	3
April	7
May	5
June	2
July	7
August	4
September	1
October	6
November	3
November	17
December	1

Special Committees

TBA

Budget Workshops

6 – 9:00PM- Hurley Building

November 1	November 22 (if needed)
November 10	November 29 (if needed)
November 15	

Planning Committee & Finance Committee Meeting

7 – 9:00PM – Hurley Building

(1st Tuesday of the Month)

January	4	July	5
February	1	August	2
March	1	September	6
April	5	October	4
May	3	November	-
June	7	December	-

Environmental Committee & Ordinance Committee Meeting

7 – 9:00PM- Hurley Building

(3rd Tuesday of the Month) *4th Tuesday

January	18	July	19
February	15	August	16
March	15	September	27*
April	19	October	18
May	17	November	-
June	21	December	-