

# **TITLE 9**

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## **PUBLIC UTILITIES**

<b>CHAPTER 1</b>	<b>WATER UTILITY REGULATIONS AND RATES</b>
<b>CHAPTER 2</b>	<b>SEWER UTILITY REGULATIONS AND RATES</b>
<b>CHAPTER 3</b>	<b>CABLE TELEVISION</b>

# **CHAPTER 1**

## **Water Utility Rates and Regulations**

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### **Article A            Rates**

<b>9-1-1</b>	<b>Public Fire Protection Service – F1</b>
<b>9-1-2</b>	<b>Private Fire Protection Service – Unmetered – Upf-1</b>
<b>9-1-3</b>	<b>General Service – Metered – Mg1</b>
<b>9-1-4</b>	<b>General Water Service – Unmetered – Ug1</b>
<b>9-1-5</b>	<b>Seasonal Service – Sg-1</b>
<b>9-1-6</b>	<b>Bulk Water – BW-1</b>
<b>9-1-7</b>	<b>Reconnection Charges – R-1</b>
<b>9-1-8</b>	<b>Water Lateral Installation Charge – Cz-1</b>
<b>9-1-9</b>	<b>Building and Construction Water Service – Mz-1</b>
<b>9-1-9 through</b>	
<b>9-1-13</b>	<b>Reserved for Future Use</b>
<b>9-1-14</b>	<b>Occupancy of Public Rights-of-Way By Utilities</b>
<b>9-1-15 through</b>	
<b>9-1-19</b>	<b>Reserved for Future Use</b>

### **Article B            Rules and Regulations**

<b>9-1-20</b>	<b>Compliance with Rules</b>
<b>9-1-21</b>	<b>Establishment of Service</b>
<b>9-1-22</b>	<b>Reconnection of Service</b>
<b>9-1-23</b>	<b>Temporary Metered Supply, Meter and Deposits</b>
<b>9-1-24</b>	<b>Water for Construction</b>
<b>9-1-25</b>	<b>Use of Hydrants</b>
<b>9-1-26</b>	<b>Operation of Valves and Hydrants and Unauthorized Use of Water - Penalty</b>
<b>9-1-27</b>	<b>Refunds of Monetary Deposits</b>
<b>9-1-28</b>	<b>Service Connection</b>
<b>9-1-29</b>	<b>Replacement and Repair of Service Laterals</b>
<b>9-1-30</b>	<b>Abandonment of Service</b>
<b>9-1-31</b>	<b>Charges for Water Wasted Due to Leaks</b>
<b>9-1-32</b>	<b>Thawing Frozen Service Laterals</b>
<b>9-1-33</b>	<b>Curb Stop Boxes</b>

<b>9-1-34</b>	<b>Installation of Meters</b>
<b>9-1-35</b>	<b>Repairs to Meters</b>
<b>9-1-36</b>	<b>Service Piping for Meter Settings</b>
<b>9-1-37</b>	<b>Turning on Water</b>
<b>9-1-38</b>	<b>Sprinkling Restrictions and Emergency Water Conditions</b>
<b>9-1-39</b>	<b>Failure to Read Meters</b>
<b>9-1-40</b>	<b>Complaint Meter Tests</b>
<b>9-1-41</b>	<b>Inspection of Premises</b>
<b>9-1-42</b>	<b>Vacation of Premises</b>
<b>9-1-43</b>	<b>Deposits for Residential Service</b>
<b>9-1-44</b>	<b>Deposits for Nonresidential Service</b>
<b>9-1-45</b>	<b>Dispute Procedures</b>
<b>9-1-46</b>	<b>Disconnection and Refusal of Service</b>
<b>9-1-47</b>	<b>Collection of Overdue Bills</b>
<b>9-1-48</b>	<b>Surreptitious Use of Water</b>
<b>9-1-49</b>	<b>Repairs to Mains</b>
<b>9-1-50</b>	<b>Duty of Water Utility with Respect to Safety of the Public</b>
<b>9-1-51</b>	<b>Handling Water Mains and Service Laterals in Excavation Trenches</b>
<b>9-1-52</b>	<b>Protective Devices</b>
<b>9-1-53</b>	<b>Cross Connection Control</b>
<b>9-1-54</b>	<b>Water Main Extension Rule</b>
<b>9-1-55</b>	<b>Water Main Installations in Platted Subdivisions</b>

## **Article A: Rates**

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### **Sec. 9-1-1 Public Fire Protection Service – F-1.**

Public fire protection service includes the use of hydrants for fire protection service only and such quantities of water as may be demanded for the purpose of extinguishing fires within the service area. This service shall also include water used for testing equipment and training personnel. For all other purposes, the metered or other rates set forth, or as may be filed with the Public Service Commission, shall apply.

The annual charge for public fire protection service to the Village of Fredonia shall be \$139,504. The utility may bill for this amount in equal quarterly installments.

Billing: Same as Schedule Mg-1.

## **Sec. 9-1-2 Private Fire Protection Service – Unmetered - Upf-1,**

This service shall consist of permanent or continuous unmetered connections to the main for the purpose of supplying water to private fire protection systems such as automatic sprinkler systems, standpipes, and private hydrants. This service shall also include reasonable quantities of water used for testing check valves and other backflow prevention devices.

### **Quarterly Private Fire Protection Service Demand Charges:**

2 – inch or smaller connection - \$	24.00
3-inch connection - \$	45.00
4-inch connection - \$	81.00
6-inch connection - \$	150.00
8-inch connection - \$	201.00
10-inch connection - \$	321.00
12-inch connection - \$	450.00
14-inch connection - \$	585.00
16-inch connection - \$	705.00

Billing: Same as Schedule Mg-1.

## **Sec. 9-1-3 General Service – Metered – Mg-1.**

### **Quarterly Service Charges (All Customer Classes)**

5/8-inch meter - \$	17.25	3-inch meter - \$	120.00
3/4-inch meter - \$	17.25	4-inch meter - \$	183.00
1-inch meter - \$	28.50	6-inch meter - \$	309.00
1-1/4-inch meter - \$	42.00	8-inch meter - \$	471.00
1-1/2-inch meter - \$	54.00	10-inch meter - \$	675.00
2-inch meter - \$	78.00	12-inch meter - \$	879.00

### **Plus Volume Charges:**

Residential Customers

All water used per quarter    -\$2.85 per 1,000 gallons

Multi-Family Customers

All water used per quarter    -\$2.75 per 1,000 gallons

Non-Residential Customers

All water used per quarter    -\$2.30 per 1,000 gallons

**Residential Class** includes single-family homes, duplexes, and individually-metered condominiums, apartments, and mobile homes.

**Multi-family Class** includes master-metered multi-family dwelling units such as condominium complexes, apartment buildings, and mobile home parks.

**Nonresidential Class** includes commercial, industrial, and public authority customers. Commercial customers include business entities and institutions, except government entities, that provide goods or services. Churches and parochial schools are not governmental and are classified as commercial. Industrial customers include customers who are engaged in the manufacture or production of goods. Public Authority customers include any department, agency, or entity of local, state, or federal government, including public schools, colleges, and universities.

Billing: Bills for water service are rendered quarterly and become due and payable upon issuance following the period for which service is rendered. A late payment charge of 1 percent per month will be added to bills not paid within 20 days of issuance. This late payment charge shall be applied to the total unpaid balance for utility service, including unpaid late payment charges. This late payment charge is applicable to all customers. The utility customer may be given a written notice that the bill is overdue no sooner than 20 days after the bill is issued. Unless payment or satisfactory arrangement for payment is made within the next 10 days, service may be disconnected pursuant to Wis. Admin. Code Ch. PSC 185.

Combined Metering: For residential customers, volumetric readings from all meters on a single service lateral shall be combined for billing. For nonresidential customers, volumetric readings may be combined for billing if the utility for its own convenience places more than one meter on a single water service lateral. Multiple meters placed for the purpose of identifying water that is not discharged into the sanitary sewer are not considered for utility convenience and may not be combined for billing nonresidential customers. This requirement does not preclude the utility from combining readings where metering configurations support such an approach. Volumetric readings from individually metered separate service laterals may not be combined for billing purposes.

## **Additional Meter Rental Charge – Am-1**

Upon request, the utility shall furnish and install additional meters to:

- A. Water service customers for the purpose of measuring the volume of water used that is not discharged into the sanitary sewer system; and
- B. Sewerage service customers who are not customers of the water utility for the purpose of determining the volume of sewage that is discharged into the sanitary sewer system.

The utility shall charge a meter installation charge of \$12.00 and a quarterly rental fee for the use of this additional meter.

Quarterly Additional Meter Rental Charges:

5/8-inch meter - \$	8.40
3/4-inch meter - \$	8.40
1-inch meter - \$	14.25
1-1/4-inch meter - \$	21.00
1-1/2-inch meter - \$	27.00
2-inch meter - \$	39.00

This schedule applies only if the additional meter is installed on the same service as the primary meter and either:

- A. The additional meter is 3/4-inch or smaller if the metering configuration is the Addition Method; or
- B. The additional meter is 2-inch or smaller for all other metering configurations.

If the additional meter is larger than 2-inch, or larger than 3/4-inch and installed in the Addition Method, each meter shall be treated as a separate account and Schedule Mg-1 rates shall apply.

Billing: Same as Schedule Mg-1.

## **Other Charges**

Payment Not Honored by Financial Institution Charge: The utility shall assess a \$20.00 charge when a payment rendered for utility service is not honored by the customer's financial institution. This charge may not be in addition to, but may be inclusive of, other such charges when the payment was for multiple services.

Billing: Same as Schedule Mg-1.

## **Public Service**

### Metered Service

Water used by the Village of Fredonia on an intermittent basis for flushing sewers, street washing, flooding skating rinks, drinking fountains, etc., shall be metered and billed according to the rates set forth in Schedule Mg-1 for nonresidential customers.

### Unmetered Service

Where it is impossible to meter the service, the utility shall estimate the volume of water used based on the pressure, size of opening, and the period of time the water is used. The estimated quantity shall be billed at the volumetric rates set forth in Schedule Mg-1 for nonresidential customers, excluding any service charges.

Billing: Same as Schedule Mg-1.

## **Sec. 9-1-4 General Water Service – Unmetered Ug-1.**

Service may be supplied temporarily on an unmetered basis where the utility cannot immediately install a water meter, including water used for construction. Unmetered service shall be billed the amount that would be charged to a metered residential customer using 12,000 gallons of water per quarter under Schedule Mg-1, including the service charge for the 5/8-inch meter. If the utility determines that actual usage exceeds 12,000 gallons of water per quarter, an additional charge for the estimated usage shall be made according to the rates under Schedule Mg-1.

This schedule applies only to customers with a 1-inch or smaller service connection. For customers with a larger service connection, the utility shall install a temporary meter and charges shall be based on the rates set forth under Schedule Mg-1.

Billing: Same as Schedule Mg-1.

## **Sec. 9-1-5 Seasonal Service Sg-1**

Seasonal customers are general service customers who voluntarily request disconnection of water service and who resume service at the same location within 12 months of the disconnection, unless service has been provided to another customer at that location in the intervening period. The utility shall bill seasonal customers the applicable service charges under Schedule Mg-1 year-round, including the period of temporary disconnection.

Seasonal Service shall include customers taking service under Schedule Mg-1, Schedule Ug-1, or Schedule Am-1.

Upon reconnection, the utility shall apply a charge under Schedule R-1 and require payment of any unpaid charges under this schedule.

Billing: Same as Schedule Mg-1 unless the utility and customer agree to an alternative payment schedule for the period of voluntary disconnection.

## **Sec. 9-1-6 Bulk Water BW-1**

All bulk water supplied from the water system through hydrants or other connections shall be metered or estimated by the utility. Utility personnel or a party approved by the utility shall supervise the delivery of the water.

Bulk water sales are:

- A. Water supplied by tank trucks or from hydrants for the purpose of extinguishing fires outside the utility's service area;
- B. Water supplied by tank trucks or from hydrants for purpose other than extinguishing fires, such as water used for irrigation or filling swimming pools; or,
- C. Water supplied from hydrants or other temporary connections for general service type applications, except that Schedule Ug-1 applies for water supplied for constructive purposes.

A service charge of \$12.00 and a charge for the volume of water used shall be billed to the party using the water. The volumetric charge shall be calculated using the highest volumetric rate for residential customers under Schedule Mg-1. In addition, for meters that are assigned to bulk water customers for more than 7 days, the applicable service charge in Schedule Mg-1 will apply after the first 7 days.

The water utility may require a reasonable deposit for the temporary use of its equipment under this and other rate schedules. The deposit(s) collected shall be refunded upon return of the utility's equipment. Damaged or lost equipment shall be repaired or replaced at the customer's expense.

Billing: Same as Schedule Mg-1.

## **Sec. 9-1-7 Reconnection Charges – R-1.**



The utility shall assess a charge to reconnect a customer, which includes reinstalling a meter and turning on the valve at the curb stop, if necessary. A utility may not assess a charge for disconnecting a customer.

During normal business hours	\$12.00
After normal business hours	N/A

Billing: Same as Schedule Mg-1.

### **Sec. 9-1-8 Water Lateral Installation Charge – Cz-1.**

The utility shall charge a customer for the actual cost of installing a water service lateral from the main through curb stop and box if these costs are not contributed as part of a subdivision development or otherwise recovered under Wis. Stats. Chapter 66.

Billing: Same as Schedule Mg-1.

### **Sec. 9-1-9 through 9-1-13 Reserved for Future Use.**

## **CHAPTER 9-1-14**

### **OCCUPANCY OF PUBLIC RIGHTS-OF-WAY BY UTILITIES**

#### **(1) General Provisions.**

(a) Purpose and Findings. In the exercise of governmental functions, the Village has priority over all other uses of the public rights-of-way. The Village desires to anticipate and minimize the number of obstructions, degradation, and excavations taking place to regulate the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and are safe for public use, and to ensure that facilities are timely maintained, supported, protected or relocated to accommodate reconstruction or repairs. The taxpayers of the Village bear the financial burden for the upkeep, maintenance and reconstruction of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by persons who locate facilities therein.

The Village finds increased use of the public rights-of-way results in increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds that the above-ground use of public rights-of-way creates special and unique public health, safety, and general welfare concerns for the Village, including, but not necessarily limited to, traffic safety, sight-line and vision triangle issues, break-away design consistent with other public utility pole or structure requirements, public snow plowing and snow storage, property access and public parking, obstruction to municipal Police, Fire, and Rescue Services, and related issues.

The Village finds that delays by occupants of the rights-of-ways in maintaining, supporting, protecting or relocating facilities, if they impact public construction projects, have the potential to significantly increase public works project costs borne by the taxpayers. Moreover, the Village finds that some right-of-way occupants have a history of delays and non-responsiveness.

The Village finds that right-of-way, by definition, is limited in area, use, and availability, and, as a result, requires regulation and limitation of use and occupancy, subject to all applicable state, federal, and constitutional laws and regulations and the provision of all necessary utility services to the public.

The Village finds that occupancy and excavation of its rights-of-way causes costs to be borne by the Village and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life due to excavations in the public right-of-way.

In response to the foregoing facts and findings, the Village hereby adopts this ordinance relating to access to, administration of, and permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein in the future. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the Village a framework within which to regulate and manage the public rights-of-way and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the right-of-way of the Village, as well as to ensure the structural integrity of the public rights-of-way.

(b) Definitions. The following definitions apply in this ordinance. References hereinafter to “sections” are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

“**Applicant**” means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

“**Bridge**” means any bridge or culvert or series of culvert.

“**Degradation**” means the decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

“**Department**” means the Department of Public Works of the Village.

**“Emergency”** means a condition that (1) poses a clear and immediate danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

**“Director of Public Works”** means the Village Director of Public Works or his/her designee.

**“Excavate”** means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

**“Facilities”** means all equipment owned, operated, leased or subleased in connection with the operation of a public service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

**“In”**, when used in conjunction with “right-of-way”, means over, above, within, on or under a right-of-way.

**“Local representative”** means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this ordinance.

**“Municipal Code”** means the Municipal Code of the Village of Fredonia, as amended.

**“Obstruct”** means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**“Permittee”** means any person to whom a permit to occupy, excavate or obstruct a right-of-way has been granted under this ordinance or under Chapter 6, Municipal Code.

**“Person”** means corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

**“Prequalified Contractor”** means a contractor approved by the Department on an annual basis to work in the right-of-way.

**“Public Utility”** has the meaning provided in § 196.01(5), Wis. Stats.

**“Registrant”** means any person who has registered with the Village to have its facilities located in any right-of-way.

**“Repair”** means to perform construction work necessary to make the right-of-way useable for travel or its intended use according to Department specifications, or to restore equipment to an operable condition.

**“Restore”** means the process by which the excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed to Department specifications.

**“Right-of-Way”** means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane and public sidewalk in which the Village has an interest, including other dedicated rights-of-way for travel purposes.

**“Section”** without reference to the Municipal Code shall mean a subsection within this chapter Chapter 9-1-14.

**“Village”** means the Village of Fredonia, Wisconsin, a municipal corporation.

(c) Administration. The Director of Public Works or his/her designee is responsible for administration of the rights-of-way and the permits and ordinances related thereto.

(2) Registration for Right-of-Way Occupancy.

(a) Each person who has, or seeks to have, facilities located in any right-of-way shall register with the Department and pay the fee set forth in Section (4). Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons who have facilities in the right-of-way pursuant to a franchise or other agreement.

(b) No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or any part thereof in any right-of-way unless that person qualifies as a registrant, is registered with the Department, or is a prequalified contractor.

(c) Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain the parkway in the area of the right-of-way between their property and the street curb or pavement, construct sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this ordinance.

(3) Registration Information. The information provided to the Department at the time of registration, in order to qualify as a registrant, shall include, but not be limited to, the following:

- (a) Each registrant's name, Diggers Hotline registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
  - (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - (c) A certificate of insurance on a form prescribed by the Department.
  - (d) If the registrant is a corporation, an LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Secretary of State.
  - (e) A copy of the registrant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
  - (f) Execution of an indemnification agreement in a form prescribed by the Department.
  - (g) The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.
- (4) Registration Fee. The Department shall charge an annual Registration Fee in an amount of \$50 to recover the costs incurred by the Village for processing and updating registration information.
- (5) Reporting Obligations. It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the registrant of known construction plans will be useful to achieve this objective.
- (a) Every registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the Department. The Department shall make available at the time of registration, if known and approved, the Department's construction and major maintenance plan. The registrant's plan and the Department's plan shall be submitted on a form prescribed by the Department and shall contain the information determined by the Department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:

1. The locations and the estimated beginning and ending dates of all projects planned to be commenced during the next calendar year; and
2. The tentative locations and estimated beginning and ending dates for all projects contemplated for the two years following the next calendar year.

(b) By February 1 of each year, the Department will have available for inspection in its office a composite list of all projects of which the Department has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(c) Thereafter, by February 15, each registrant may change any project in its list and must notify the Department of all such changes in said list. The Department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a registrant may at any time join in a project of another registrant listed by the other registrant or undertake any maintenance project not listed in registrant's plan.

(6) Permit to Install, Excavate, or Otherwise Occupy Right-of-Way Required.

(a) Permit Required. Except as otherwise provided in this ordinance or the Municipal Code, no person shall install facilities, excavate, or otherwise occupy any right-of-way without first having obtained a permit for same from the Department. A copy of any permit issued under this ordinance shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

(b) Permit Application. Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Registration and qualification as a registrant with the Department if required by this ordinance.
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities that are part of applicant's proposed project.
3. Payment of all money due to the Village for all of the following:
  - a. applicable permit fees and costs as set forth below;

- b. subject to Section (6)(b)4, unpaid fees or costs due for prior excavations;
  - c. subject to Section (6)(b)4., any loss, damage, or expense suffered by the Village because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the Village.
- 4. The Department shall not deny an applicant an excavation permit because of a dispute between the Village and the applicant related to Section (6)(b)3.a. or c. if:
  - a. the dispute has been adjudicated in favor of the applicant; or
  - b. the dispute is the subject of any appeal filed by the applicant and no decision in the matter has as yet been rendered.

(7) Installation/Excavation/Occupancy Permit Fee. The Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the Village. This fee shall recover administrative and inspection costs, excavation costs, as well as degradation costs, as defined below. Payment of said fees shall be collected prior to issuance of the permit. However, the Director of Public Works may establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies.

(a) Waiving of Fees. Fees shall not be waived unless the work involved is a direct result of the Director of Public Work's demand that facilities owned by a utility be removed or relocated or unless waived by the Village Board upon review of the Director of Public Work's decision.

(b) Fee Schedule. The minimum fee for each excavation permit for a single address shall be as set forth in section 11.16 of the Municipal Code. The fee for a permit issued after commencing work, except in cases of emergency as determined by the Director of Public Works, shall be double the fees set forth herein. This permit fee shall be in addition to any forfeiture provided elsewhere in the Municipal Code.

For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the Director of Public Works is authorized to assess the actual cost of the Village employee's time engaged in the review and inspection of the anticipated work, multiplied by a factor determined by the respective department to represent the Village's cost for statutory expense, benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.0, plus the cost of mileage reimbursed to Village employees which is attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent (10%) for administration.



(c) Village Exemption. The Village and its contractors shall not pay degradation fees for excavations due to general government functions.

(d) Permit fees paid for a permit that the Department has revoked are not refundable.

(8) Right-of-Way Repair/Restoration.

(a) The Permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.

(b) Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this period it shall, upon notification from the Department, correct all work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done due to circumstances constituting force majeure.

(c) Failure to Repair/Restore. If the Permittee fails to repair/restore the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all work required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the Village, within thirty (30) days of billing, the cost of repairing/restoring the right-of-way.

(9) Inspection.

(a) Notice of Completion. When the work under any permit hereunder is begun and completed the Permittee shall notify the Department.

(b) Site Inspection. Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(c) Authority of Department. At the time of inspection the Village may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The Village may issue an order to the registrant or Permittee for any work that does not conform to applicable Village standards, conditions or codes. The order shall state that failure to correct the violation will

be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant or Permittee shall present proof to the Department that the violation has been corrected. If such proof is not presented within the required time, the Department may revoke the permit pursuant to Section (12).

(10) Ongoing Management Fees. The cost of trimming trees around facilities is an ongoing expense to the Village. Such costs will be determined and a fee to offset costs may be assessed against permit holders in the future.

(11) Compliance with Other Laws. Obtaining a permit to excavate, install and/or occupy the right-of-way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Village, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(12) Revocations, Suspensions, Refusals to Issue or Extend Permits.

(a) The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or Permittee is required to be registered and has not done so.
2. Issuance of a permit or installation of facilities for the requested date or location would interfere with an exhibition, celebration, festival or other event.
3. Misrepresentation of any fact by the applicant or Permittee.
4. Failure of the applicant or Permittee to maintain required bonds and/or insurance.
5. Failure of the applicant or Permittee to complete work in a timely manner.
6. The proposed activity is contrary to the public health, safety or welfare.
7. The proposed activity requires above-ground structures causing safety issues including, but not limited to, sight-line safety, vision triangles, break-away structures, public plowing and snow storage, obstruction to municipal Police, Fire, and Rescue services, and related issues with the use of the right-of-way.

8. The extent to which right-of-way space where the permit is sought is available.
9. The competing demands for the particular space in the right-of-way.
10. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant.
11. The applicability of Village ordinances, or other regulations of the right-of-way, including, but not limited to, Sections 86.16 (prohibiting interference with use of highway by the public) and 182.17 (prohibiting poles in front of residence or occupied business), Wis. Stats., that affect the location, type, height, size and/or use of facilities in the right-of-way.

(b) Discretionary Issuance. The Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or Village ordinances or an order of a court or administrative agency.

(c) Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Village Board. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Village Board may affirm, reverse or modify the decision of the Department.

(13) Work Done Without a Permit.

(a) Emergency Situations. Each registrant shall immediately notify the Village by verbal notice on an emergency phone number provided by the Village of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this ordinance. If the Village becomes aware of any emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Village may take such action it deems necessary to protect public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(b) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates, installs facilities

within or otherwise attempts to occupy a right-of-way shall be subject to a stop-work order or other appropriate legal remedy, and must subsequently obtain a permit, and shall, in addition to any penalties prescribed by the Municipal Code, pay double the normal fee for said permit, pay double all the other fees required by this ordinance or other provisions of the Municipal Codes, deposit with the Department the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this ordinance.

(14) Location of Facilities.

(a) Underground. Unless in conflict with state or federal law, except when existing above-ground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(b) Limitation of Space. The Department may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such determination, the Department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect public health, safety or welfare.

(c) Attachment to Bridges. Whenever an applicant or Permittee under this section requests permission to attach pipes, conduits, cables or wires to any Village bridge structure, the applicant shall pay a fee of \$1,000 upon the granting of such permission to defray administrative expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the Village.

(15) Relocation and Protection of Facilities. A registrant shall promptly and at its own expense maintain, support, protect or relocate its facilities in the right-of-way whenever the Village, or its agent, acting in its governmental capacity, requests such action to allow for public work in the right-of-way. The Village, or its agent, shall issue a due date for the work to the local representative of not less than seventy-two (72) hours, which due date shall be reasonable and based upon the actions to be undertaken by the registrant. If requested, the registrant shall restore the right-of-way following the completion of the work. If a registrant fails to perform the actions required herein by the due date, in addition to all other available legal remedies available to the Village, the registrant shall be subject to forfeitures as provided in §11.40.010, Municipal Code. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from a right-of-way which has been vacated in favor of a nongovernmental entity unless the reasonable costs thereof are first paid to the person therefore.

(16) Village Right to Self-Help. In the event that a registrant does not proceed to maintain, support, protect or relocate its facilities as ordered in (15), the Village may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days of the date mailing to the registrant.

(17) Abandoned Facilities.

(a) Discontinued Operations. A registrant who has determined to discontinue its operations in the Village must either:

1. Provide information satisfactory to the Department that the registrant's obligations for its facilities under this ordinance have been lawfully assumed by another registrant; or
2. Submit to the Department a proposal and instruments for dedication of its facilities to the Village. If a registrant proceeds under this clause, the Village may, at its option:
  - a. accept the dedication for all or a portion of the facilities; or
  - b. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above-ground level; or
  - c. require the registrant to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the Department waives this requirement in writing.

(b) Abandoned Facilities. Facilities of a registrant who fails to comply with Section (17)(a)1., and which, for two (2) years, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

(c) Public Utilities. This Section (17) shall not apply to a public utility, as defined in § 96.01(5), Wis. Stats., that is required to comply with § 196.81, Wis. Stats.

(18) Reservation of Regulatory and Police Powers. The Village, by the granting of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, or by registering a person under this ordinance, does not surrender, in any manner or to any extent lose, waive, impair or lessen the lawful powers and rights which it now has or

which may be hereafter granted to the Village under the Constitution and statutes of the state of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee, by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this ordinance, agrees that all lawful powers and rights, regulatory powers, or otherwise as are or the same may be from time to time vested in or reserved to the Village, shall be in full force and effect, and permittee is subject to the regulatory and police powers of the Village to adopt and enforce general ordinances and ordinances necessary to the health, safety and welfare of the public, and is deemed to agree to comply with all applicable general ordinances and ordinances enacted by the Village pursuant to such powers.

(19) Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(20) Penalty. Except as otherwise provided herein, and in addition to all other legal remedies available to the Village, any person who violates this ordinance or fails to comply with the provisions hereof shall be subject to forfeitures as provided in §11.40.010, Municipal Code.

## **Sec. 9-1-15 through 9-1-19 Reserved for Future Use.**

## **Article B: Rules and Regulations**

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### **Sec. 9-1-20 Compliance with Rules.**

All persons now receiving water service from this water utility, or who may request service in the future, shall be considered as having agreed to be bound by the rules and regulations as filed with the Public Service Commission of Wisconsin.

### **Sec. 9-1-21 Establishment of Service.**

- (a) Application for water service may be made in writing on a form furnished by the water utility. The application will contain the legal description of the property to be served, the name of the owner, the exact use to be made of the service, and the size of the service lateral and meter desired. Note particularly any special refrigeration, fire protection, or water-consuming air-conditioning equipment.

- (b) Service will be furnished only if
  - (1) The premises have a frontage on a properly platted street or public strip in which a cast iron or other long-life water main has been laid, or where the property owner has agreed to and complied with the provisions of the water utility's filed main extension rule.
  - (2) Property owner has installed or agrees to install a service lateral from the curb stop to the point of use that is not less than 6 feet below the surface of an established or proposed grade and meets the water utility's specifications, and
  - (3) Premises have adequate piping beyond metering point.
- (c) The owner of a multi-unit dwelling has the option of being served by individual metered water service to each unit. The owner, by selecting this option, is required to provide interior plumbing and meter settings to enable individual metered service to each unit and individual disconnection without affecting service to the other units. Each meter and meter connection will be treated as a separate water utility account for the purpose of the filed rules and regulations.
- (d) No division of the water service of any lot or parcel of land shall be made for the extension and independent metering of the supply to an adjoining lot or parcel of land. Except for duplexes, no division of a water service lateral shall be made at the curb for separate supplies for two or more separate premises having frontage on any street or public service strip, whether owned by the same or different parties. Duplexes may be served by one lateral provided (1) individual metered service and disconnection is provided and (2) it is permitted by local ordinance.
- (e) Buildings used in the same business, located on the same parcel, and served by a single lateral may have the customer's water supply piping installed to a central point so that volume can be metered in one place.
- (f) The water utility may withhold approval of any application where full information of the purpose of such supply is not clearly indicated and set forth by the applicant property owner.

## **Sec. 9-1-22 Reconnection of Service.**

- (a) Where the water utility has disconnected service at the owner's request, a reconnection charge shall be made when the customer requests reconnection of service. See Schedule R-1 for the applicable rate
- (b) A reconnection charge shall also be required from customers whose services are disconnected (shut off at curb stop box) because of nonpayment of bills when due. See Schedule R-1 for the applicable rate.
- (c) If reconnection is requested for the same location by any member of the same household, or, if a place of business, by any partner of the same business, it shall be considered as the same customer.

## **Sec. 9-1-23 Temporary Metered Supply, Meter and Deposits.**

An applicant for temporary water service on a metered basis shall make and maintain a monetary deposit for each meter installed as security for payment for use of water and for such other charges which may arise from the use of the supply. A charge shall be made for setting the valve and furnishing and setting the meter. See Schedule BW-1 for the applicable rate.

### **Sec. 9-1-24 Water for Construction.**

- (a) When water is requested for construction purposes or for filling tanks or other such uses, an application shall be made to the water utility, in writing, giving a statement of the amount of construction work to be done or the size of the tank to be filled, etc. Payment for the water for construction may be required in advance at the scheduled rates. The service lateral must be installed into the building before water can be used. No connection with the service lateral at the curb shall be made without special permission from the water utility. In no case will any employee of the water utility turn on water for construction work unless the contractor has obtained permission from the water utility.
- (b) Customers shall not allow contractors, masons, or other persons to take unmetered water from their premises without permission from the water utility. Any customer failing to comply with this provision may have water service discontinued and will be responsible for the cost of the estimated volume of water used.

### **Sec. 9-1-25 Use of Hydrants.**

- (a) In cases where no other supply is available, permission may be granted by the water utility to use a hydrant. No hydrant shall be used until the proper meter and valve are installed. In no case shall any valve be installed or moved except by an employee of the water utility.
- (b) Before a valve is set, payment must be made for its setting and for the water to be used at the scheduled rates. Where applicable, see Schedule BW-1 for deposits and charges. Upon completing the use of the hydrant, the customer must notify the water utility to that effect.

### **Sec. 9-1-26 Operation of Valves and Hydrants and Unauthorized Use of Water - Penalty.**

Any person who shall, without authority of the water utility, allow contractors, masons, or other unauthorized persons to take water from their premises, operate any valve connected with the street or supply mains, or open any fire hydrant connected with the distribution system, except for the purpose of extinguishing fire, or who shall wantonly damage or impair the same, shall be subject to a fine as provided by municipal ordinance. Utility permission for the use of hydrants applies only to such hydrants that are designated for the specific use.



## **Sec. 9-1-27 Refunds of Monetary Deposits.**

All money deposited as security for payment of charges arising from the use of temporary water service on a metered basis, or for the return of a hydrant valve and fixtures if the water is used on an unmetered basis, will be refunded to the depositor on the termination of the use of water, the payment of all charges levied against the depositor, and the return of the water utility's equipment.

## **Sec. 9-1-28 Service Connection.**

- (a) No water service shall be laid through any trench having cinders, rubbish, rock or gravel fill, or any other material which may cause injury to or disintegration of the service lateral, unless adequate means of protection are provided by sand filling or such other insulation as may be approved by the water utility. Service laterals passing through curb or retaining walls shall be adequately safeguarded by provision of a channel space or pipe casing not less than twice the diameter of the service connection. The space between the service lateral and the channel or pipe casing shall be filled and lightly caulked with an oakum, mastic cement, or other resilient material and made impervious to moisture.
- (b) In backfilling the pipe trench, the service lateral must be protected against injury by carefully hand tamping the ground filling around the pipe. There should be at least 6 inches of ground filling over the pipe, and it should be free from hard lumps, rocks, stones, or other injurious material.
- (c) All water supplies shall be of undiminished size from the street main into the point of meter placement. Beyond the meter outlet valve, the piping shall be sized and proportioned to provide, on all floors, at all times, an equitable distribution of the water supply for the greatest probable number of fixtures or appliances operating simultaneously.

## **Sec. 9-1-29 Replacement and Repair of Service Laterals.**

- (a) The service lateral from the main to and through the curb stop will be maintained and kept in repair and, when worn out, replaced at the expense of the water utility. The property owner shall maintain the service lateral from the curb stop to the point of use.
- (b) If an owner fails to repair a leaking or broken service lateral from the curb to the point of metering or use within such time as may appear reasonable to the water utility, the water will be shut off and will not be turned on again until the repairs have been completed.

## **Sec. 9-1-30 Abandonment of Service.**

If a property owner changes the use of a property currently receiving water service such that water service will no longer be needed in the future, the water utility may require the abandonment of the water service at the water main. In such case, the property owner may be

responsible for all removal and/or repair costs, including the water main and the utility portion of the water service lateral.

### **Sec. 9-1-31 Charges for Water Wasted Due to Leaks.**

See Wis. Admin. Code PSC 185.35 or Schedule X-4, if applicable.

### **Sec. 9-1-32 Thawing Frozen Service Laterals.**

See Wis. Admin. Code PSC 185.88 or Schedule X-4, if applicable.

### **Sec. 9-1-33 Curb Stop Boxes.**

The curb stop box is the property of the water utility. The water utility is responsible for its repair and maintenance. This includes maintaining, through adjustment, the curb stop box at an appropriate grade level where no direct action by the property owner or occupant has contributed to an elevation problem. The property owner is responsible for protecting the curb stop box from situations that could obstruct access to it or unduly expose it to harm. The water utility shall not be liable for failure to locate the curb stop box and shut off the water in case of a leak on the owner's premises.

### **Sec. 9-1-34 Installation of Meters.**

Meters will be owned, furnished, and installed by the water utility or a utility-approved contractor and are not to be disconnected or tampered with by the customer. All meters shall be so located that they shall be protected from obstructions and permit ready access for reading, inspection, and servicing, such location to be designated or approved by the water utility. All piping within the building must be supplied by the owner. Where additional meters are desired by the owner, the owner shall pay for all piping. Where applicable, see Schedule Am-1 for rates.

### **Sec. 9-1-35 Repairs to Meters.**

- (a) Meters will be repaired by the water utility, and the cost of such repairs caused by ordinary wear and tear will be borne by the water utility.
- (b) Repair of any damage to a meter resulting from the carelessness of the owner of the premises, owner's agent, or tenant, or from the negligence of any one of them to properly secure and protect same, including any damage that may result from allowing a water meter to become frozen or to be damaged from the premises of

hot water or steam in the meter, shall be paid for by the customer or the owner of the premises.

### **Sec. 9-1-36 Service Piping for Meter Settings.**

When the original service piping is installed for a new metered customer, where existing service piping is changed for the customer's convenience, or where a new meter is installed for an existing unmetered customer, the owner of the premises at his/her expense shall provide a suitable location and the proper connections for the meter. The meter setting and associated plumbing shall comply with the water utility's standards. The water utility should be consulted as to the type and size of the meter setting.

- (a) Meters will be repaired by the water department and the cost of such repairs caused by ordinary wear and tear will be borne by the utility.
- (b) Repair of any damage to a meter resulting from the carelessness of the owner of the premises, his agent, or tenant, or from the negligence of any of them to properly secure and protect same, including any damage that may result from allowing a water meter to become frozen or to be injured from the presence of hot water or steam in the meter, shall be paid for by the consumer or the owner of the premises.

### **Sec. 9-1-37 Turning on Water**

The water may only be turned on for a customer by an authorized employee of the water utility. Plumbers may turn the water on to test their work, but upon completion must leave the water turned off.

### **Sec. 9-1-38 Sprinkling Restrictions and Emergency Water Conditions.**

Where the municipality has a policy regarding sprinkling restrictions and/or emergency water conditions, failure to comply with such may result in disconnection of service.

See Wis. Admin. Code PSC 185.37.

### **Sec. 9-1-39 Failure to Read Meters.**

- (a) Where the water utility is unable to read a meter, the fact will be plainly indicated on the bill, and either an estimated bill will be computed or the minimum charge applied. The difference shall be adjusted when the meter is again read, that is, the bill for the succeeding billing period will be computed with the gallons or cubic feet in each block of the rate schedule doubled, and

credit will be given on that bill for the amount of the bill paid the preceding period. Only in unusual cases shall more than three consecutive estimated or minimum bills be rendered.

- (b) If the meter is damaged (see Surreptitious Use of Water) or fails to operate, the bill will be based on the average use during the past year, unless there is some reason why the use is not normal. If the average use cannot be properly determined, the bill will be estimated by some equitable method.
- (c) See Wis. Admin. Code PSC 185.33.

### **Sec. 9-1-40 Complaint Meter Tests.**

See Wis. Admin. Code PSC 185.77.

### **Sec. 9-1-41 Inspection of Premises**

During reasonable hours, any officer or authorized employee of the water utility shall have the right of access to the premises supplied with service for the purpose of inspection or for the enforcement of the water utility's rules and regulations. Whenever appropriate, the water utility will make a systematic inspection of all unmetered water taps for the purpose of checking waste and unnecessary use of water.

See Wis. Stat. 196.171.

### **Sec. 9-1-42 Vacation of Premises.**

When premises are to be vacated, the water utility shall be notified, in writing, at once, so that it may remove the meter and shut off the water supply at the curb stop. The owner of the premises shall be liable for prosecution for any damage to the water utility's property. See "Abandonment of Service" in Schedule X-1 for further information.

### **Sec. 9-1-43 Deposits for Residential Service.**

See Wis. Admin. Code PSC 185.36.

## **Sec. 9-1-44 Deposits for Nonresidential Service.**

See Wis. Admin. Code PSC 185.361.

## **Sec. 9-1-45 Dispute Procedures.**

See Wis. Admin. Code PSC 185.39.

## **Sec. 9-1-46 Disconnection and Refusal of Service.**

See Wis. Admin. Code PSC 185.37.

The following is an example of a disconnection notice that the utility may use to provide the notice to customers.

### DISCONNECTION NOTICE

Dear Customer:

The bill enclosed with this notice includes your current charge for water utility service and your previous unpaid balance.

You have 10 days to pay the water utility service arrears or your service is subject to disconnection.

If you fail to pay the service arrears or fail to contact us within 10 days allowed to make reasonable deferred payment arrangement or other suitable arrangement, we will proceed with disconnection action.

To avoid the inconvenience of service interruption and an additional charge of (amount) for reconnection, we urge you to pay the full arrears IMMEDIATELY AT ONE OF OUR OFFICES.

If you enter into a Deferred Payment Arrangement with us and have failed to make the deferred payments you agreed to, your service will be subject to disconnection unless you pay the entire amount due within 10 days.

If you have a reason for delaying the payment, call us and explain the situation.

PLEASE CALL THIS TELEPHONE NUMBER (telephone number), IMMEDIATELY IF:

1. You dispute the notice of delinquent amount.

2. You have a question about your water service utility arrears.
3. You are unable to pay the full amount of the bill and are willing to enter into a deferred payment agreement with us.
4. There are any circumstances you think should be taken into consideration before service is discontinued.
5. Any resident is seriously ill.

Illness Provision: If there is an existing medical emergency in your home and you furnish the water utility with a statement signed by either a licensed Wisconsin physician or a public health official, we will delay disconnection of service up to 21 days. The statement must identify the medical emergency and specify the period of time during which disconnection will aggravate the existing emergency.

Deferred Payment Agreements: If you are a residential customer and you are unable to pay the full amount of the water utility service arrears on your bill, you may contact the water utility to discuss arrangement to pay the arrears over an extended period of time.

This time payment agreement will require:

1. Payment of a reasonable amount at the time the agreement is made.
2. Payment of the remainder of the outstanding balance in monthly installments over a reasonable length of time.
3. Payment of all future water utility service bills in full by the due date.

In any situation where you are unable to resolve billing disputes or disputes about the grounds for proposed disconnection through contacts with our water utility, you may make an appeal to the Public Service Commission of Wisconsin by calling (800) 225-7729.

(WATER UTILITY NAME)

## **Sec. 9-1-47 Collection of Overdue Bills.**

An amount owed by the customer may be levied as a tax as provided in Wis. Stat. 66.0809.

## **Sec. 9-1-48 Surreptitious Use of Water.**

When the water utility has reasonable evidence that a person is obtaining water, in whole or in part, by means of devices or methods used to stop or interfere with the proper metering of the water utility service being delivered, the water utility reserves the right to estimate and present immediately a bill for unmetered service as a result of such interference, and such bill shall be

payable subject to a 24-hour disconnection of service. If the water utility disconnects the service for any such reason, the water utility will reconnect the service upon the following conditions:

- a) The customer will be required to deposit with the water utility an amount sufficient to guarantee the payment of the bills for water utility service.
- b) The customer will be required to pay the water utility for any and all damages to water utility equipment resulting from such interference with the metering.
- c) The customer must further agree to comply with reasonable requirements to protect the water utility against further losses.

See Wis. Stat. 98.26 and 943.20

### **Sec. 9-1-49 Repairs to Mains.**

The water utility reserves the right to shut off the water supply in the mains temporarily to make repairs, alterations, or additions to the plant or system. When the circumstances will permit, the water utility will give notification, by newspaper publication or otherwise, of the discontinuance of the water supply. No credit will be allowed to customers for such temporary suspension of the water supply.

See Wis. Admin. Code PSC 185.87.

### **Sec. 9-1-50 Duty of Water Utility with Respect to Safety of the Public.**

It shall be the duty of the water utility to see that all open ditches for water mains, hydrants, and service laterals are properly guarded to prevent accident to any person or vehicle, and at night there shall be displayed proper signal lighting to insure the safety of the public.

### **Sec. 9-1-51 Handling Water Mains and Service Laterals in Excavation Trenches.**

Contractors must call Digger's Hotline and ensure a location is done to establish the existence and location of all water mains and service laterals as provided in Wis. Stat. 182.0175. Where water mains or service laterals have been removed, cut, or damaged during trench excavation, the contractors must, at their own expense, cause them to be replaced or repaired at once. Contractors must not shut off the water service laterals to any customer for a period exceeding 6 hours.

### **Sec. 9-1-52 Protective Devices.**

- a) Protective Devices in General: The owner or occupant of every premise receiving water supply shall apply and maintain suitable means of protection of the premise supply and all appliances against damage arising in any manner from the use of the water supply, variation of water pressure, or any interruption of water supply. Particularly, such owner or occupant must protect water-cooled compressors for refrigeration systems by means of high and/or low pressure safety cut out devices. There shall be likewise be provided means for the prevention of the transmission of water ram or noise of operation of any valve or appliance through the piping of their own or adjacent premises.
- b) Relief Valves: On all “closed systems” (i.e., systems having a check valve, pressure regulator, reducing valve, water filter, or softener), an effective pressure relief valve shall be installed at or near the top of the hot water tank or at the hot water distribution pipe connection to the tank. No stop valve shall be placed between the hot water tank and the relief valve or on the drain pipe. See applicable plumbing codes.
- c) Air Chambers: An air chamber or approved shock absorber shall be installed at the terminus of each riser, fixture branch, or hydraulic elevator main for the prevention of undue water hammer. The air chamber shall be sized in conformance with local plumbing codes. Where possible, the air chamber should be provided at its base with a valve for water drainage and replenishment of air.

## **Sec. 9-1-53 Cross Connection Control.**

- (a) **Definition.** A cross connection shall be defined as any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the Village water system, and the other from a private source, water of unknown or questionable safety, or steam gases, or chemicals, whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
- (b) **Cross Connections Restricted.** No person, firm or corporation shall establish or maintain or permit to be established or maintained any unprotected cross connection. Cross connection shall be protected as required in SPS 382, Wisconsin Administrative Code.
- (c) **Inspections.** The water utility shall inspect or arrange for an inspection of residential, office type, and Village owned property served by the public water system for cross connections every ten (10) years or when the meter is replaced; whichever occurs first. These properties shall be inspected during the year that ends in the same number as the property address. Other commercial, industrial, and public authority properties shall hire their own inspector every two years and submit the results to the Village. These properties shall be inspected during an even number year if their street address is an even number and during an odd number year if their street address is an odd number. Any unprotected cross connections identified by the inspection shall be promptly corrected. Failure to promptly correct an unprotected cross connection shall be sufficient cause for



the water utility to discontinue water service to the property, as provided under Section (e) of this ordinance.

- (d) **Right of Entry.** The Village of Fredonia Director of Public Works or his authorized representative shall have the right to request entry at any reasonable time to examine any property served by a connection to the public water system of the Village of Fredonia for cross connections. Refusing entry to such utility representative shall be sufficient cause for the water utility to discontinue water service to the property as provided under Section (e) of this ordinance. If entry is refused, such representative may obtain a special inspection warrant under S. 66.119, Wisconsin statutes.
- (e) **Discontinuance of Service.** The Fredonia Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this ordinance exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice and opportunity for hearing under Chapter 68, Wisconsin Statutes, except as provided in Section (f). Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this ordinance.
- (f) **Emergency Discontinuance.** If it is determined by the Fredonia Water Utility that a cross connection or an emergency endangers public health, safety or welfare and required immediate action, and a written finding to that effect is filed with the Clerk of the Village of Fredonia and delivered to the customer's premises, service may be immediately discontinued. The customer shall have an opportunity for hearing under Chapter 68, Wisconsin Statutes, within ten (10) days of such emergency discontinuance.
- (g) **Provision of Requested Information.** The water utility may request an owner, lessee, or occupant of property served by a connection to the public water system to furnish the water utility with pertinent information regarding the piping systems on the property. Refusing to provide requested information shall be sufficient cause for the water utility to discontinue water service to the property, as provided under Section (e) of this ordinance.
- (h) **State Code Adopted.** The Village of Fredonia adopts by reference the State Plumbing Code of Wisconsin, being Chapter SPS 382, Wisconsin Administrative Code.
- (i) **Section Not to Supersede Other Ordinances.** This section does not supersede the State Plumbing Code and any Village plumbing ordinances but is supplementary to them.

## **Sec. 9-1-54 Water Main Extension Rule.**

Water mains will be extended for new customers on the following basis:

- a) Where the cost of the extension is to immediately be collected through assessment by the municipality against the abutting property, the procedure set forth under Wis. Stat. 66.0703 will apply, and no additional customer contribution to the utility will be required.
- b) Where the municipality is unwilling or unable to make a special assessment, the extension will be made on a customer-financed basis as follows:
  - 1. The applicant(s) will advance as a contribution in aid of construction the total amount equivalent to that which would have been assessed for

- all property under paragraph A.
2. Part of the contribution required in paragraph B.1. will be refundable. When additional customers are connected to the extended main within 10 years of the date of completion, contributions in aid of construction will be collected equal to the amount which would have been assessed under paragraph A. for the abutting property being served. This amount will be refunded to the original contributor(s). In no case will the contributions received from additional customers exceed the proportionate amount which would have been required under paragraph A., nor will it exceed the total assessable cost of the original extension.
- c) When a customer connects to a transmission main or connecting loop installed at utility expense within 10 years of the date of completion, there will be a contribution required of an amount equivalent to that which would have been assessed under paragraph A.

## **Sec. 9-1-55 Water Main Installations in Platted Subdivisions.**

- a) Application for installation of water mains in regularly platted real estate development subdivisions shall be filed with the utility.
- b) If the developer, or a contractor employed by the developer, is to install the water mains (with the approval of the utility), the developer shall be responsible for the total cost of construction.
- c) If the utility or its contractor is to install the water mains, the developer shall be required to advance to the utility, prior to the beginning of the construction, the total estimated cost of the extension. If the final costs exceed estimated costs, an additional billing will be made for the balance of the cost due. This balance is to be paid within 30 days. If final costs are less than estimated, a refund of the overpayment will be made by the water utility.
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## **Chapter 2**

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### **Sewer Utility Regulations and Rates**

#### **Article A General Provisions**

- 9-2-1 Definitions**
- 9-2-2 Management of Sewer Utility**
- 9-2-3 Authority of Sewer Utility**
- 9-2-4 Condemnation of Real Estate**
- 9-2-5 Title to Real Estate and Personal Property**
- 9-2-6 Notification to Users**
- 9-2-7 through**
- 9-2-9 Reserved for Future Use**

#### **Article B User Rules and Regulations**

- 9-2-10 User Rules and Regulations**
- 9-2-11 Regulation of Plumbers**
- 9-2-12 Regulation of Users**
- 9-2-13 Excavations**
- 9-2-14 Tapping of Mains**
- 9-2-15 Installation of Building Sewer**
- 9-2-16 Sewer Service Charges**
- 9-2-17 Septic Tank and Holding Tank Disposal**
- 9-2-18 Control Manholes**
- 9-2-19 Metering of Waste**
- 9-2-20 Waste Sampling**
- 9-2-21 Analysis**
- 9-2-22 Pretreatment**
- 9-2-23 Submission of Information**
- 9-2-24 through**
- 9-2-29 Reserved for Future Use**

**Article C Miscellaneous Rules and Regulations**

**9-2-30 Mandatory Hookup**

**9-2-31 Maintenance of Services**

**9-2-32 Penalty for Improper Use**

**9-2-33 Damage Recovery**

**9-2-34 Penalties**

**9-2-35 Septic Tanks and Holding Tanks Prohibited**

**9-2-36 Vacating of Premises and Discontinuance of Service**

**9-2-37 Extension of the Sewer System**

**9-2-38 Interceptors; Traps**

**9-2-39 Right to Reject Connections**

**9-2-40 Adoption of Other Rules**

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## Article A: General Provisions

### Sec. 9-2-1 Definitions.

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(a) The following definitions are applicable to this Chapter:

- (1) **Ammonia Nitrogen ( $NH_3N$ )**. One (1) of the oxidation states of nitrogen in which nitrogen is combined with hydrogen in molecular form as  $NH_3$  or ionized form as  $NH_4^+$ . Quantitative determination of ammonia nitrogen shall be made in accordance with procedures set forth in "Standard Methods."
- (2) **Approving Authority**. Means the Village Board of the Village of Fredonia or its duly authorized deputy, agent or representative.
- (3) **Board**. Means the Village Board of the Village of Fredonia.
- (4) **Biochemical Oxygen Demand (BOD)**. Means the quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter. Quantitative determination of BOD shall be made in accordance with procedures set forth in "Standard Methods."
- (5) **Building Drain (Sanitary)**. Means that part of the lowest horizontal piping of a drainage system which receives the discharge of wastewaters from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.
- (6) **Building Sewer**. Means a sewer intended to receive either wastewater or storm water.
- (7) **Combined Sewer**. Means a sewer intended to receive both wastewater and storm water.
- (8) **Compatible Pollutant**. Means biochemical oxygen demand, suspended solids, pH or fecal coliform bacteria, plus additional pollutants identified in the discharge permit for the publicly owned treatment works receiving the pollutants if such works were designed to treat such additional pollutants and, in part, does remove such pollutants to a substantial degree.
- (9) **Composite Sample (24 Hours)**. The combination of individual samples taken at intervals of not more than one (1) hour.
- (10) **Chlorine Requirement**. Means the amount of chlorine, in milligrams per liter, which must be added to sewage to produce a specified residual chlorine content in accordance with procedures set forth in "Standard Methods."
- (11) **Discharger**. Means any person, municipality or other entity that discharges anything, without limitation, directly or indirectly into a sewerage system or any part thereof.
- (12) **Domestic Wastewater**. Means water-carried wastes normally discharging into the sanitary sewers from dwellings (including apartment houses and hotels), office buildings, factories and institutions, free from storm water and industrial wastes.
- (13) **Easement**. Means an acquired legal right for the specific use of land owned by others.
- (14) **Effluent**. Means wastewater, water or other liquid after some degree of treatment flowing out of any wastewater treatment facility.

- (15) **Existing Sewer.** Means any sanitary sewer of the sewerage system for which construction approval was not granted prior to its construction by the Utility. Existing sewers may occur through annexations, public dedications of private sewers or sewerage systems or construction undertaken in violation of this Chapter.
- (16) **Fixed Charge.** Means the charges for the cost of debt retirement associated with the construction, erection, modification or rehabilitation of the wastewater treatment works, along with the cost to treat infiltration/inflow, administrative costs, billing costs and partial costs of sewer cleaning and general maintenance. Fixed charges are based upon the size of the water meter(s) serving the user.
- (17) **Floatable Oil. (FOG)** Means oil, fat or grease in a physical state such that it will separate by gravity from wastewater.
- (18) **Flow Proportional Sample.** A sample taken that is proportional to the volume of flow during the sampling period.
- (19) **Garbage.** Means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of food.
- (20) **Ground Garbage.** Means the residue from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than one-half (1/2) inch in any dimension.
- (21) **Grease.** Means a group of substances including fats, waxes, free fatty acids, calcium and magnesium soaps, mineral oils and certain other nonfatty materials as analyzed for in accordance with "Standard Methods."
- (22) **Grit.** Means the heavy suspended mineral matter in wastewater such as, but not limited to, sand, gravel and cinders.
- (23) **Groundwater.** Means subsurface water occupying the zone of saturation from which wells and springs are fed. In a strict sense, the term applies only to water below the water table.
- (24) **Incompatible Pollutant.** Means any pollutant which is not a compatible pollutant.
- (25) **Industrial User.**
- a. Means any nongovernmental, nonresidential users of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under the following divisions:
    1. Division A – Agriculture, Forestry and Fishing
    2. Division B – Mining.
    3. Division D – Manufacturing.
    4. Division E – Transportation, Communications, Electric, Gas and Sanitary Services.
    5. Division I – Services.
  - b. A user in one (1) of the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

- c. An industrial user would be classified as a “high volume” user if metered water consumption exceeds 100,000 gallons per quarter.
- (26) **Industrial Wastes; Industrial Wastewater.** Means the wastes dischargeable to sanitary sewers from industrial manufacturing processes, trade or business or from the development, recovery or processing of natural resources, as distinct from sanitary or normal domestic wastewater.
- (27) **Infiltration.** Means the water unintentionally entering sanitary sewers, building drains and building sewers from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. (Infiltration does not include, and is distinguished from, inflow.)
- (28) **Infiltration/Inflow.** Means the total quantity of water from both infiltration and inflow distinguishing the source.
- (29) **Inflow.** Means the water discharged into the sanitary sewers, building drains and building sewers from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, unpolluted cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff, street wash waters or drainage. (Inflow does not include, and is distinguished from, infiltration.)
- (30) **Interceptor.** Means any sewer which receives the flow from a number of sanitary sewer outlets.
- (31) **Normal Sewage.** Means sanitary sewage in which BOD<sub>5</sub>SS, P, and NH<sub>3</sub>N concentrations do not exceed normal concentrations of:
- A five (5) day, twenty (20) degree centigrade BOD of not more than two hundred (200) mg/l.
  - A suspended solids content of not more than two hundred fifty (250)mg/l.
  - A phosphorous content of not more than twelve (12)mg/l.
  - An ammonia nitrogen content of not more than thirty (30)mg/l.
- (32) **NPDES Permit.** Permit issued under the National Pollutant Discharge Elimination System.
- (33) **Operation and Maintenance Costs.** All costs associated with the operation and maintenance of the wastewater treatment facilities, as well as the costs associated with periodic equipment replacement necessary for maintaining the capacity and performance of the wastewater treatment facilities, including, but not limited to, the following:
- Wages and salaries and employee-related expenses of operating maintenance, clerical, laboratory and supervisory personnel, together with fringe benefits and premiums paid on such wages and salaries for the State of Wisconsin worker’s compensation coverage.
  - Electrical power.
  - Chemicals, fuel and other operating supplies.
  - Repairs to and maintenance of the equipment associated therewith.
  - Sewer system maintenance.
  - Premiums for insurance providing coverage against liability for the injury to persons and/or property and hazard insurance.

- g. Rents and leasing costs.
  - h. Operation, licensing and maintenance costs for trucks and heavy equipment.
  - i. Consultant and legal fees.
  - j. Replacement.
- (34) **Parts per Million.** A weight-to-weight ratio; the parts-per-million value multiplied by the factor 8.34 shall be equivalent to pounds-per-million gallons of water.
- (35) **Phosphorus (P).** Total phosphorus in wastewater, which may be present in any of three (3) principal forms: orthophosphate, polyphosphates and organic phosphates. Quantitative determination of total phosphorus shall be made in accordance with procedures set forth in "Standard Methods."
- (36) **Person.** Means any individual, firm, company, association, society, corporation or group.
- (37) **pH.** Means the logarithm (to the base ten(10)) of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.
- (38) **Pollution.** Means the placing of any noxious or deleterious substance in any navigable waters of the United States in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or aquatic life or property, or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (39) **Pretreatment.** Means treatment of wastewaters by dischargers before introduction into the sewerage system.
- (40) **Private Sewer.** Means a sewer which is not owned by the Village or Utility.
- (41) **Properly Shredded.** Means having processed solid materials to such a degree that all particles will be carried freely under flow conditions normally prevailing in sanitary sewers with no particle greater than one and one-half (1 ½) inch in any dimension.
- (42) **Public Sewer.** Means any sewer provided by or subject to the jurisdiction of the Village of Fredonia. It shall also include sewers within or outside the Village boundaries that serve one (1) or more persons and ultimately discharge into the Village sanitary sewer system, even though those sewers may not have been constructed with Village funds.
- (43) **Replacement.** Means expenditures for processing and installing equipment, accessories and appurtenances necessary during the useful life of the treatment works to maintain its designated capacity and performance.
- (44) **Residential Equivalent Connection.**
- a. Means the amount of sewage contributed to the system from a single-family residence based on the following criteria which will be recomputed each year:  

$$\text{Flow} = \frac{\text{Amount of water sold to residential units (Gal. Per. Year)}}{\text{Total number residential units}}$$
  - b. Residential equivalent connections will be used to establish user charges for typical residential users not serviced by a water meter.



- (45) **Sanitary Sewage.** Means a combination of water-carried wastes from residences, business buildings, institutions and industrial plants (other than industrial wastes from such plants), together with such ground, surface and storm waters as may be present.
- (46) **Sanitary Sewers.** Means those sewers which receive domestic wastewater and industrial wastes without the intentional admixture of storm water. These sewers are owned by the Village and are located in easements to the Village or public rights-of-way.
- (47) **Scum.** Means the layer or film of extraneous or foreign matter that rises to the surface of a liquid and is formed there, a residue deposited on a container or channel at the water surface or a mass of matter that floats on the surface of wastewater.
- (48) **Segregated Domestic Wastes.** May be defined as wastes from nonresidential sources resulting from normal domestic activities. These activities are distinguished from industrial, trade and/or process discharge wastes.
- (49) **Sewer.** Means a pipe or conduit for the transportation of domestic wastewater, industrial wastes and/or storm water.
- (50) **Sewer Lateral.** Means the portion of the sewage system located between building and sanitary sewer.
- (51) **Sewer Service Charge.** Total charge for debt retirement, operation, maintenance and replacement.
- (52) **Sewage System.** Means all facilities, including sewers and appurtenances for collecting, transporting, pumping, treating and disposing of wastewater.
- (53) **Shall** is mandatory; **may** is permissible.
- (54) **Singular and Plural.** When permitted by the context, use of the singular shall be construed to include the plural and of the plural to include the singular.
- (55) **Slug.** Means any discharge of water, wastewater or industrial waste which, in concentration of any given constituent or in rate of flow, exceeds, for any continuous fifteen (15) minute period, five (5) times the average concentration of that constituent or rate for a twenty-four (24) hour period or normal operation of the discharger.
- (56) **Standard Methods.** Means the latest edition of the **Standard Methods for the Examination of Water and Wastewater** prepared, approved and published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation. "Standard Method" definition of terms shall be applicable unless context implies that a dictionary, legal or other definition is intended.
- (57) **Storm Sewers.** Means those sewers which carry storm water but exclude domestic wastewater and industrial wastes.
- (58) **Storm Water.** Means not only storm water (water from snow, rain, sleet, hail, flood or other natural causes) but also roof water, overflow water (from tank, cistern, well or sump pump) and other surface water. (Storm water does not include, and is distinguished from, industrial and domestic wastewater).
- (59) **Suspended Solids (SS) or Total Suspended Solids (TSS).** Means total suspended matter that either floats on the surface of, or is in suspension in, water,

wastewater or other liquids and is removable by laboratory filtration as prescribed in the "Standard Methods."

- (60) **Toxic Substance.** Means any substance, whether gaseous, liquid or solid, which, when discharged to the sewerage system in sufficient quantities, interferes with any wastewater treatment process, or constitutes a hazard to human being or animals, or inhibits aquatic life in the receiving waters of the effluent from the wastewater treatment facility.
- (61) **Unmetered User.** Means a user who is not connected to the municipal water system and thereby does not have his private waste supply metered.
- (62) **Unpolluted Water.** Means water not containing any pollutants limited or prohibited by the effluent standards in effect or water whose discharge will not cause any violation of receiving water quality standards.
- (63) **User.** Means any person discharging domestic wastewater or industrial wastes into the collection system.
- (64) **User Charge.** A service charge levied on users of the wastewater collection and treatment facilities for operation, maintenance and replacement costs of said facilities.
- (65) **User Charge System.** That system which generates operation, maintenance and replacement (O, M & R) revenues equitably for providing each user category with services.
- (66) **Utility.** Means the Village of Fredonia Sewer Utility.
- (67) **Village.** Shall mean the Village of Fredonia, Ozaukee County, Wisconsin.
- (68) **Village Board.** Means the Village Board of the Village of Fredonia as defined in Sec. 61.24, Wis. Stats.
- (69) **Wastewater; Waste.** Means industrial wastes or domestic wastewater or both, whether treated or untreated, which enters the sanitary sewerage system.
- (70) **Wastewater Treatment Works.** Means an arrangement of devices and structures for the storage, treatment, recycling and reclamation of wastewater, liquid industrial wastes and sludge. These systems include interceptor sewers, outfall sewers, wastewater collection systems, individual systems, pumping, power and other equipment and their appurtenances; any works that are an integral part of the treatment process or are used for ultimate disposal of residues from such treatments; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal or industrial wastes.
- (71) **Watercourse.** Means a natural or artificial channel for the passage of water, either continuously or intermittently.
- (72) **WPDES Permit.** Wisconsin Pollutant Discharge Elimination System Permit. General provision are stated in Chapter NR 205 of the Wisconsin Administrative Code. The discharge limitations are as established by the current permit issued by the Wisconsin Department of Natural Resources.
- (73) **CBOD.** The test measures the oxygen required for the biochemical degradation of organic material (carbonaceous demand) and the oxygen used to oxidize inorganic material such as sulfides and ferrous iron. Use of a HACH nitrification inhibitor prevents oxidations of certain forms of nitrogen (nitrogenous demand).

- (74) **COD.** A measure of oxygen consuming capacity of inorganic and organic matter present in wastewater. COD is expressed as the amount of oxygen consumed from a chemical oxidant in mg/l during a specific test. Results are not necessarily related to the BOD because the chemical oxidant may react with substances that bacteria do not stabilize.

### **Sec. 9-2-2 Management of Sewer Utility.**

The management, operation and control of the Sewer Utility of the Village is vested in the Board of said Village; all records, minutes, written procedures thereof and financial records shall be kept by the Village Clerk-Treasurer of the Village.

### **Sec. 9-2-3 Authority of Sewer Utility.**

The Sewer Utility of The Village shall have the power to construct sewer lines for public use and shall have the power to lay sewer pipes in and through the alleys, streets and public grounds within the Village boundaries, and generally to do all such work as may be found necessary or convenient in the management of the sewer system. The Village Board, its officers, agents and employees are empowered to enter upon any land for the purpose of inspection or supervision in the performance of their duties under this Chapter, without liability therefore; and the Village Board shall have power to purchase and acquire for the Utility all real and personal property which may be necessary for construction of the sewer system or for any repair, remodeling or addition thereto.

### **Sec. 9-2-4 Condemnation of Real Estate.**

Whenever any real estate or any easement therein, or use thereof, shall, in the judgment of the Village Board, be necessary to the sewer system, and whenever, for any cause, an agreement for the purchase thereof cannot be made with the owner thereof, the Board shall proceed with all necessary steps to take such real estate easement, or use by condemnation in accordance with the Wisconsin Statutes and the Uniform Relocation and Real Property Acquisition Policy Act of 1970, if federal funds are used.

### **Sec. 9-2-5 Title to Real Estate and Personal Property.**

All property, real, personal and mixed, acquired for the construction of the sewer system and all plans, specifications, diagrams, papers, books and records connected therewith said sewer system and all buildings, machinery and fixtures pertaining thereto shall be the property of said Village.

### **Sec. 9-2-6 Notification to Users.**

The Village of Fredonia Sewer Utility will annually notify the users of the treatment works which portions of the sewer service charge are attributable to debt retirement, operation, maintenance and replacement. The Cost Methodology Formula, on file with the Village Clerk, contains the methodology used to determine these costs.

**Sec. 9-2-7 through Sec. 9-2-9 Reserved for Future Use.**

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## **Article B: User Rules and Regulations**

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### **Sec. 9-2-10 User Rules and Regulations.**

- (a) The user rules, regulations and sewer rates of the Utility are a part of the contract between the Utility and every user. Every person who connects to the Utility sewer system is deemed to have consented to be bound by such rules, regulations and rates. In the event of violation of the rules or regulations, the water and/or sewer service to the violating user shall be shut off (even though two (2) or more parties are receiving service through the same connection). Water and sewer service shall not be reestablished until all outstanding sewer utility bills and shut-off and reconnection charges are paid in full and until such other terms and conditions as may be established by the Village are met.
- (b) In addition to all other requirements, the Village Board shall be satisfied that the offender will not continue in violation of the rules and regulations before authorizing reconnection of the offender's services. The Village Board may change the rules, regulations and sewer rates from time to time as it deems advisable and may make special rates and contracts in all proper cases.

### **Sec. 9-2-11 Regulation of Plumbers.**

No plumber, pipe fitter or other person will be permitted to do any plumbing or pipefitting work in connection with the sewer system without first receiving a license from the State of Wisconsin and posting a Five Thousand Dollar (\$5,000.00) bond with the Village, except in cases where state law permits building owners to do their own work without being licensed.

### **Sec. 9-2-12 Regulation of Users.**

- (a) **Application for Service.**
  - (1) Every person connecting with the sewer system shall file an application in writing to the Utility in such form as is prescribed for that purpose. Blanks for such applications will be furnished by the Utility Clerk. The Application must state fully and truly all the uses which will be allowed. If the applicant is not the owner of the premises, the written consent of the owner must accompany the application.
  - (2) The application may be for service to more than one (1) building or more than one (1) unit of service through one (1) connection, only if previously approved by the State of Wisconsin Department of Safety and Professional Services; and in such case, charges shall be made accordingly.
  - (3) If it appears that the service applied for will not provide adequate service for the contemplated use, the Utility may reject the application. If the Utility shall approve the application, it shall issue a permit for services as shown on the application.

- (b) **Alterations.** After sewer connections have been completed in a building or upon any premises, no plumber shall make any alterations, extensions or attachments, unless the party ordering such work shall exhibit the proper permit.
- (c) **User to Keep in Repair.** All users shall keep their own building sewers and building drains in good repair and protected from frost, at their own risk and expense, and shall prevent any unnecessary overburdening of the sewer system.
- (d) **User Use Only.** No user shall allow others or other services to connect to the sewer system through his building sewers and building drains.
- (e) **User to Permit Inspection.** Every user shall permit the Utility, or its duly authorized agent, at all reasonable hours of the day, to enter their premises or building to examine the pipes and fixtures, and the manner in which the drains and sewer connections operate; and they must, at all times, frankly and without concealment, answer all questions put to them relative to its use.
- (f) **Utility Responsibility.** The Utility and its agents and employees shall not be liable for damages occasioned by reason of the breaking, clogging, stoppage or freezing of any building sewers or building drains; nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary. The right is hereby reserved to cut off the water and sewer service at any time for the purpose of repairs, or any other necessary purpose, any permit granted or regulation to the contrary notwithstanding. Whenever it shall become necessary to shut off the sewer service within the district of the said Village, the Village shall, if practicable, give notice to each and every consumer affected within said Village of the time when such service will be so shut off.
- (g) **Permits.**
  - (1) After sewer connections have been completed in a building or upon any premises, no plumber shall make any alterations, extensions or attachments, unless the party ordering such work shall exhibit the proper permit.
  - (2) A connection permit shall be obtained from the Utility prior to connecting any piping to the laterals or mains. The fee for this permit shall be as prescribed in Subsection (h).
- (h) **Permit Fees.**
  - (1) Schedule. The schedule of permit fees to be paid shall be as follows, and such fees must be paid at the time the permit is issued.
  - (2) Connection Permit. A service connections permit shall be required before any work is started. The fee for this permit shall be \$1,500 for a single family unit. Two-family and multi-family units shall pay \$500 for each one bedroom unit, \$1,000 for each two bedroom unit and \$1,500 for each three or more bedroom unit. Industrial and commercial connection fees of \$1,200 will be based upon an average 15,000 gallons quarterly use and domestic strength discharge. Any additional projected use or higher strengths will be prorated accordingly.
- (i) **Industrial Permit Reports.** Each year all industrial users shall submit a DNR Industrial Permit Report to the Utility. Forms for this report will be furnished by the Utility Clerk.

### **Sec. 9-2-13 Excavations.**

- (a) In making excavations in streets or highways for laying building sewers or making repairs, the paving and earth removed must be deposited in a manner that will occasion the least inconvenience to the public.
- (b) No person shall leave any such excavation made in any street or highway open at any time without barricades; and during the night, warning lights must be maintained at such excavations.
- (c) In refilling the opening, after the building sewers are laid, the earth must be replaced by slurry fill. This work, together with the replacing of sidewalks, gravel and paving must be done so as to make the street as good, at least, as before it was disturbed and satisfactory to the Village and county. No opening of the streets for tapping the pipes will be permitted when the ground is frozen, except in emergencies.
- (d) A permit from the Village or other appropriate governmental body shall be obtained prior to excavating in any street, alley or other public way. Such permit shall be obtained and exhibited to the Village Clerk before a connection permit will be issued.

### **Sec. 9-2-14 Tapping the Mains.**

- (a) No person, except those having special permission from the Utility, or persons in their service and approved by them, will be permitted under any circumstances to tap the mains or collection pipes. The kind and size of the connection with the pipe shall be that specified in the permit or order from said Village.
- (b) Pipes should always be tapped on the top and not within fifteen (15) inches (thirty-eight (38) cm) of the joint or within thirty-six (36) inches (ninety (90) cm) of another lateral connection.
- (c) All connections to existing sewer mains shall be made with a saddle “T” or “Y” fitting set upon a carefully cut opening centered on the upper quadrant of the main sewer pipe and securely strapped on with corrosion-resistant straps or rods or with solvent-welded joints in the case of plastic pipe.

### **Sec. 9-2-15 Installation of Building Sewers.**

- (a) All building sewers on private property will be installed in accordance with State of Wisconsin Administrative Code Chapter SPS 382, “Design, Construction, Installation, Supervision and Inspection of Plumbing,” specifically Section H 82.04(4), “Building Sewers.”
- (b) Per Section SPS 82.21, all building sewers will be inspected. The building sewer and/or private interceptor main sewer shall be inspected upon completion of placement of the pipe and before backfilling and tested before or after backfilling.

## Sec. 9-2-16 Sewer Service Charges.

- (a) **Revenue System.** It shall be the policy of the Village to obtain sufficient revenues to pay the cost of:
- (1) The annual debt retirement payment on any bonded indebtedness;
  - (2) Any required cash reserve account payment; and
  - (3) Operation and maintenance of the sewage works, including a replacement fund (i.e., a cash account to be used for future expenditures for obtaining or installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance of the sewage works during the service life for which such works were designed and constructed), through a system of user charges as defined in this Section. The system shall assure that each user of the sewage works pays a proportionate share of the cost of such works. (See Attachment One for the method used to determine service charges, incorporated herein by reference).
- (b) **User Classes.** All sewer users shall be classified by the Utility as:
- (1) Residential.
  - (2) Commercial (domestic strength).
  - (3) Industrial customers.
  - (4) Public authority.
  - (5) Multi-family.
- (c) **Meter Reading.**
- (1) Water meter readings shall be used to determine the actual water volume used. If a portion of the water furnished to any customer is not discharged into the sewer system, the quantity of such water will be deducted in computing the charge for sewer service, provided a meter has been installed to measure such water. This provision may also be satisfied, in the case of high volume industrial users only, with adequate documentation from the customer, favorable recommendation from the Water and Sewer Committee and approval by the Village Board. All meters used for this purpose shall be approved by the Water Utility and furnished, installed and maintained at the expense of the customer.
  - (2) If any person discharging sewage into the public sewer system procures any part or all of his water from source other than the Village Water Utility, the person shall furnish, install and maintain at his expense water meters of a type approved by the Water Utility for the purpose of determining the volume of sewage discharged to the sewage system.
- (d) **Meter Readings Unavailable.** Where it is not possible to obtain a water meter reading or in cases where no water meter exists, the customer shall be assigned an average water volume by the Utility, based on previous meter readings; and this shall be so stated on the bill. The difference shall be adjusted when the meter is read again.
- (e) **Industrial and Commercial Charges for Other than Domestic Wastewater.** Charges for wastewater other than domestic wastewater shall be based on flow, BOD, suspended solids, phosphorus and such other constituents which affect the cost of collection and treatment. All persons discharging wastes into the sewer system are subject to a surcharge, in addition to any other wastewater service charge, if their wastewater has a concentration greater than domestic wastewater concentrations. The volume of flow used



for computing waste surcharges shall be the metered water consumption, or the actual volume of waste as determined by an industrial waste metering installation. The amount of surcharge shall reflect the cost incurred by the Utility in removing the BOD, suspended solids, phosphorous and other pertinent constituents. This cost is determined every other year and is on file at the WWTP. The concentration of BOD, SS, P, or FOG shall be based on one sample event per six months. Dischargers may upon approval of the utility monitor more frequently. Surcharges shall be based on a formula established annually and put in the files of the utility.

- (f) **Billing.** Sewer service charges shall be billed quarterly and shall be payable at any officially designated location or by mail to the Village of Fredonia Utility. Statements for such charges and assessments levied and assessed in accordance with this Chapter shall become due and payable within twenty (20) days from and after the date of the statement. In the event that any such statement or statements are not paid when due, a penalty of one percent (1%) per month of the unpaid balance will be added thereto.
- (g) **Responsibility for Billing.** The property owner is held responsible for all sewer bills on premises that he owns. All sewer bills and notices of any nature relative to the sewer service will be addressed to the owner and/or occupant and delivered to the addressed by first class mail.
- (h) **Failure to Receive Bill No Penalty Exemption.** Every reasonable care will be exercised in the proper delivery of sewer bills. Failure to receive a sewer bill, however, shall not relieve any person of the responsibility for payment of sewer rates within the prescribed period, nor exempt any person from any penalty imposed for delinquency in the payment thereof.
- (i) **Delinquent Bills.** On October 15 in each year, notice shall be given to the owner or occupant of all lots or parcels of real estate to which service has been furnished prior to October 1 and payment for which is owing and in arrears at the time of giving such notice. The Utility shall furnish the Village Treasurer with a list of all such lots or parcels of real estate, and the notice shall be given by the Utility. Such notice shall be in writing and shall state the amount of such arrears, including any penalty assessed pursuant to the rules of such Utility – that unless the same is paid by November 1 the same will be levied as a tax against the lot or parcel of real estate to which service was furnished and for which payment is delinquent as above specified. Such notice may be served by delivery to either such owner or occupant personally, or by letter addressed to such owner or occupant at the post office address of such lot or parcel of real estate. Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real estate to which the service was furnished and payment for which is delinquent. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate.

## **Sec. 9-2-17 Septic Tank and Holding Tank Disposal.**

- (a) No person in the business of gathering and disposing of septic tank sludge or holding tank sewage shall transfer such material into any disposal area or sewer manhole located within the Village boundaries unless a permit for disposal has been first obtained from

the Utility. Written application for this permit shall be made to the Utility and shall state the name and address of the applicant; the number of its disposal units, and the make, model and license number of each unit. Permits shall be nontransferable, except in the case of replacement of the disposal unit for which a permit shall have been previously issued. The permit may be obtained upon payment of a fee (Twenty-five Dollars (\$25.00) per calendar year). The Utility may impose such conditions as it deems necessary on any permit granted.

- (b) Charges for disposal shall be in accordance with the rate schedules established by this Chapter. Bills shall be mailed on a monthly basis; and if payments are not received in thirty (30) days thereof, disposal privileges shall be suspended.
- (c) Any person disposing of septic tank or holding tank sludge agrees to carry public liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,00.00) to protect any and all persons or property from injury and/or damage caused in any way or manner by any act or failure to act by any of his employees. The person(s) shall furnish a certificate certifying such insurance to be in full force and effect.
- (d) All materials dumped in the treatment system shall be of domestic origin only. The user shall comply with the provisions of any and all applicable ordinances of the Utility and shall not deposit or drain any gasoline, oil, acid, alkali, grease, rags, waste, volatile or inflammable liquids or other deleterious substances into any manhole, nor allow any earth, sand or other solid material to pass into any part of the sewerage system.
- (e) The person disposing of waste agrees to indemnify and save harmless the Village from any and all liability and claims for damages arising out of or resulting from work and labor performed.

## **Sec. 9-2-18 Control Manholes.**

- (a) Each user discharging industrial wastes into a public sewer shall be required by the Approving Authority to construct and maintain one (1) or more control manholes or access points to facilitate observation, measurement and sampling of his wastes, including domestic sewage.
- (b) Control manholes or access facilities shall be located and built in a manner acceptable to the Approving Authority. If measuring devices are to be permanently installed, they shall be of the type acceptable to the Approving Authority.
- (c) Control manholes, access facilities and related equipment shall be installed by the establishment discharging the waste, at its expense, and shall be maintained by it so as to be in a safe condition, accessible and in proper operating condition at all times. Plans for installation of the control manholes or access facilities and related equipment shall be approved by the Approving Authority prior to the beginning of construction.

## **Sec. 9-2-19 Metering of Waste.**

Devices for measuring the volume of waste discharged may be required by the Approving Authority if this volume cannot otherwise be determined from the metered water consumption records. Metering devices for determining the volume of waste shall be installed, owned and maintained by the discharger. A maintenance schedule must be accepted by the Approving Authority. Following approval and installation, such meters may not be removed without the consent of the Approving Authority.

## **Sec. 9-2-20 Waste Sampling.**

- (a) Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of said wastes. The determination shall be made by the industry as often as may be deemed necessary by the Approving Authority.
- (b) Sampling shall be collected in such a manner as to be representative of the composition of the wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority.
- (c) Installation, operation and maintenance of the sampling facilities shall be the responsibility of the establishment discharging the waste and shall be subject to the approval of the Approving Authority. Access to sampling locations shall be granted to the Approving Authority or its duly authorized representative at all times. Every care shall be exercised in the collection of samples to ensure their preservation in a state comparable to that at the time the sample was taken.

## **Sec. 9-2-21 Analyses.**

- (a) All measurements, tests and analyses of the characteristics of water and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location times, durations and frequencies are to be determined on an individual basis subject to approval by the Approving Authority.
- (b) Determination of the character and concentration of the industrial wastes shall be made by the establishment discharging them, or its agent, as designated and require by the Approving Authority. The Village may also make its own analyses on the wastes, and these determinations shall be binding as a basis for charges.

## **Sec. 9-2-22 Pretreatment.**

- (a) Where required, in the opinion of the Approving Authority, to modify or eliminate wastes that are harmful to the structures, processes or operation of the wastewater treatment works, the person shall provide, at his expense, such preliminary treatment or processing facilities as may be determined required to render his wastes acceptable for admission to the public sewers.

- (b) National categorical pretreatment standards promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Clean Water Act shall be met by all users which are subject to such standards. When requested, an application for modification of the national categorical pretreatment standards will be considered for submittal when the Utility sewer system achieves consistent removal of the pollutants. "Consistent removal" shall be defined as in 40 C.F.R. 403.7(a)(1) of the "General Pretreatment Regulations for Existing and New Sources of Pollution."
- (c) Conditional revision of national categorical pretreatment standards may be made by the Utility in accordance with Section 403.7(b)(2)(i-iv) of the "General Pretreatment Regulations for Existing and New Sources of Pollution," if requested by the industry(ies) in accordance with the requirements of Section 403.7(b)(1)(i).

### **Sec. 9-2-23 Submission of Information.**

Plans, specifications and any other pertinent information relating to proposed flow equalizations, pretreatment or processing facilities shall be submitted for review of the Approving Authority prior to the start of their construction if the effluent from such facilities is to be discharged into the public sewers.

### **Sec. 9-2-24 Prohibited Wastes.**

Under no circumstances may the introduction of wastes prohibited by s. NR 211.10 be allowed into the waste treatment system. Prohibited wastes include those:

- (a) Which create a fire or explosion hazard in the treatment work;
- (b) Which will cause corrosive structural damage to the treatment work;
- (c) Solid or viscous substances in amounts which cause obstructions to the flow in sewers or interference with the property operation of the treatment work;
- (d) Wastewaters at a flow rate of pollutant loading which are excessive over relatively short time periods so as to cause a loss of treatment efficiency; or
- (e) Changes in discharge volume or composition from contributing industries which overload the treatment works or cause a loss of treatment efficiency.

### **Sec. 9-2-25 through Sec. 9-2-29 Reserved for Future Use.**

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## **Article C: Miscellaneous Rules and Regulations.**

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### **Sec. 9-2-30 Mandatory Hookup.**

- (a) The owner of each parcel of land adjacent to a sewer main on which there exists a building usable for human habitation or in a block through which such system is extended shall connect to such system within three hundred sixty-five (365) days of notice in writing from the Village. Upon failure to do so, the Village may cause such connection to be made and bill the property owner for such costs. If such costs are not paid within thirty (30) days, such notice shall be assessed as a special tax lien against the property, all pursuant to Sec. 144.06, Wis. Stats., provided, however, that the owner may, within thirty (30) days after the completion of the work, file a written request with the Utility stating that he cannot pay such amount in one (1) sum and asking that there be levied a special assessment, not to exceed five (5) equal installments, and that the amount shall be so collected with interest at the rate of six percent (6%) per annum from the completion of the work, the unpaid balance being a special tax lien, all pursuant to Sec. 144.06, Wis. Stats.
- (b) In lieu of the above, the Utility, at its option, may impose a penalty for the period that the violation continues after ten (10) days' written notice to any owner failing to make a connection to the sewer system of an amount equal to one hundred fifty percent (150%) of the average residential charge for sewer service payable quarterly for the period in which the failure to connect continue; and upon failure to make such payment, said charge shall be assessed as a special tax lien against the property, all pursuant to Sec. 144.06, Wis. Stats.
- (c) This Chapter ordains that the failure to connect to the sewer system is contrary to the minimum health standards of said Village and fails to assure preservation of public health, comfort and safety of said Village.

### **Sec. 9-2-31 Maintenance of Services.**

- (a) The Utility shall maintain sewer service within the limits of the Village for the street mains, without expense to the property owner, except when they are damaged as a result of negligence or carelessness on the part of the property owner, a tenant or an agent of the property owner. All sewer laterals from the sewer main to and throughout the premises must be maintained free of defective conditions, by and at the expense of the owner or occupant of the property.
- (b) When any sewer lateral is to be relaid and there are two (2) or more buildings on such lateral, each building shall be disconnected from such lateral and a new sewer lateral shall be installed for each building.

## **Sec. 9-2-32 Penalty for Improper Use.**

- (a) It shall be unlawful for any person to willfully injure the sewer system, or any building machinery or fixture pertaining thereto, or to willfully and without authority of the Utility bore or otherwise cause to leak any tunnel, aqueduct, reservoir, pipe or other thing used in the system for holding, conveying or distributing sewage.
- (b) It shall be unlawful, unless a special permit is obtained from the Utility, for any person to introduce sewage into the system which shows an excess of BOD of over two hundred fifty (250) mg/l, suspended solids concentration of over two hundred fifty (250) mg/l, phosphorous content of more than 8 mg/l, or ammonia nitrogen content of more than 20 mg/l (normal domestic sewage); a surcharge shall be based on the excess of BOD, suspended solids, phosphorous and ammonia over this rate. The Utility reserved the right to test the sewage at any point within the connection system of the user or consumer.
- (c) No user shall discharge or cause to be discharged any of the following described liquids or solid wastes to any sanitary sewer;
  - (1) Any storm water, surface water, groundwater, roof run-off, surface drainage or other clearwater (infiltration/inflow) source.
  - (2) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
  - (3) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, slug, plastics, wax, wood, fleshings, hides, animal guts, spent lime, spent grain, spent hops, whole blood, paunch manure or any other solid or viscous substance capable of causing obstruction of the flow in sewers or other interference with the proper operation of the sewerage system or any part thereof.
  - (4) Any water or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constituting a hazard to humans and animals or create any hazard in the receiving treatment facility.
  - (5) Any water or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such material at the sewage treatment plant.
  - (6) Any noxious or malodorous gas or substance capable of creating a public nuisance.
  - (7) Any garbage that has not been properly shredded.
  - (8) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit, or lower than thirty-two (32) degrees Fahrenheit.
  - (9) Any water or wastes, which may contain more than one hundred (100) parts per million by weight of fat, oil or grease, as analyzed in accordance with "Standard Methods."
  - (10) Any water or wastes having a pH lower than five and one-half (5.5) or higher than nine (9.0) having any corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewerage works.
  - (11) All plans for new sewers and connections to the sewer system shall be reviewed and approved by the Village Board and its appointed representative prior to the start of construction.

- (d) No toxic pollutants shall be discharged by any user to the sanitary sewer system. Any user found to be discharging toxic pollutants, shall pay for any increase OMR costs caused by the toxic pollutants, including any monitoring deemed necessary by the Village Board.

### **Sec. 9-2-33 Damage Recovery.**

- (a) The Village shall have the right to recover any expense incurred by the Utility for the repair or replacement of any property owned by the Village or Utility damaged in any manner from the person responsible for such damage.
- (b) Any user discharging toxic pollutants shall pay for any increased operation, maintenance and replacement costs caused by said discharge. In addition future monitoring requirements designed to prevent future discharges shall be paid by the discharger along with to any other charge or penalties provided herein.

### **Sec. 9-2-34 Penalties.**

Any person who shall violate any of the provisions of this Chapter or rules or regulations of the Village, or who shall connect a building sewer without first having obtained a permit therefore, or who shall violate any provision of the Wisconsin Statutes, Wisconsin Administrative Code, or any other materials which are incorporated by reference shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) and the costs of prosecution. This, however, shall not bar the Utility from enforcing the mandatory hookup set out in Section 9-2-30 or any other rights the Village or Utility may have.

### **Sec. 9-2-35 Septic Tanks and Holding Tanks Prohibited.**

The maintenance and use of septic tanks, holding tanks and other private sewage disposal systems within the area of the Village serviced by its sewer system are hereby declared to be a public nuisance and a health hazard. The use of septic tanks, holding tanks or any private sewage disposal system within the area of the Village shall be prohibited unless a special permit is obtained from the Utility. Upon abandonment of the septic tank or holding tank, the tanks shall be filled with gravel or sand in a manner acceptable to the Village.

### **Sec. 9-2-36 Vacating of Premises and Discontinuance of Service.**

Whenever premises served by the system are to be vacated or whenever any person desires to discontinue service from the system, the Utility must be notified in writing. The owner of the premises shall be liable for any damages to the property or such damage which may be discovered having occurred to the property of the system other than through the fault of the system or its employees, representatives or agents.

### **Sec. 9-2-37 Extensions of the Sewer System.**

- (a) (1) The cost of the installation of sanitary sewers to be connected to the Utility sewer system shall be borne by the property owner of the land to be served. All installations shall be in accordance with Wisconsin Administrative Code 110 and the requirements of the Village and Utility.
- (2) Plans and specifications shall be reviewed and approved by the Village Engineer and paid for by the property owner. A written approval obtained from the Utility is required before construction is initiated.
- (b) No connection to the Utility sewer system will be permitted unless it is shown that existing facilities have sufficient capacity available for the collection and treatment of the additional discharges.

### **Sec. 9-2-38 Interceptors; Traps.**

Grease, oil and sand interceptors shall be provided when, in the opinion of the Utility, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarter or dwelling units. All interceptors shall be of a type and capacity approved by the Utility and shall be located as to be readily and easily accessible for cleaning and inspection.

### **Sec. 9-2-39 Right to Reject Connections.**

The Utility reserves the right to reject connections to the sanitary sewer system and require pretreatment of wastes to acceptable levels, prior to discharge into the sanitary sewer system.

### **Sec. 9-2-40 Adoption of Other Rules.**

The Village hereby adopted all the rules and regulations of the State Plumbing and State Building Codes and the building rules of the Safety and Professional Services and the Department of Natural Resources of the State of Wisconsin insofar as the same are applicable to the Village.



## **Chapter 3**

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### **Cable Television Franchise**

<b>9-3-1</b>	Short Title
<b>9-3-2</b>	Definitions
<b>9-3-3</b>	Rights and Privileges of Grantee
<b>9-3-4</b>	Agreement and Incorporation of Application by Reference
<b>9-3-5</b>	Franchise Territory
<b>9-3-6</b>	Duration and Acceptance of Franchise
<b>9-3-7</b>	Franchise Renewal
<b>9-3-8</b>	Police Powers
<b>9-3-9</b>	Cable Television Franchise Required
<b>9-3-10</b>	Use of Grantee Facilities
<b>9-3-11</b>	Initial Franchise Costs
<b>9-3-12</b>	Notices
<b>9-3-13</b>	Letter of Credit/Security Deposit
<b>9-3-14</b>	Performance Bond
<b>9-3-15</b>	Liability and Insurance
<b>9-3-16</b>	Indemnification
<b>9-3-17</b>	Rights of Individuals
<b>9-3-18</b>	Public Notice
<b>9-3-19</b>	Service Availability and Record Request
<b>9-3-20</b>	System Construction
<b>9-3-21</b>	Construction and Technical Standards
<b>9-3-22</b>	Use of Streets
<b>9-3-23</b>	Operational Standards
<b>9-3-24</b>	Continuity of Service Mandatory
<b>9-3-25</b>	Complaint Procedure
<b>9-3-26</b>	Grantee Rules and Regulations
<b>9-3-27</b>	Franchise Fee
<b>9-3-28</b>	Transfer of Ownership or Control
<b>9-3-29</b>	Availability of Books and Records
<b>9-3-30</b>	Other Petitions and Applications

<b>9-3-31</b>	Fiscal Reports
<b>9-3-32</b>	Removal of Cable Television System
<b>9-3-33</b>	Required Services and Facilities
<b>9-3-34</b>	Rules and Regulations
<b>9-3-35</b>	Performance Evaluation Sessions
<b>9-3-36</b>	Forfeiture and Termination
<b>9-3-37</b>	Foreclosure
<b>9-3-38</b>	Right of Acquisition by the Village
<b>9-3-39</b>	Receivership
<b>9-3-40</b>	Compliance with State and Federal Laws
<b>9-3-41</b>	Landlord/Tenant
<b>9-3-42</b>	Applicant's Bids for Initial Franchise
<b>9-3-43</b>	Financial, Contractual, Shareholder and System Disclosure
<b>9-3-44</b>	Theft of Services and Tampering
<b>9-3-45</b>	Penalties
<b>9-3-46</b>	Procedures

## **Section 9-3-1 Short Title.**

This chapter shall be known and may be cited as the "Fredonia Cable Television Franchise Ordinance", hereinafter "Franchise," or "Ordinance."

## **Section 9-3-2 Definitions.**

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

- a) "Basic service" means any subscriber tier provided by the Grantee which includes the delivery of local broadcast stations, and public, educational and governmental access channels. The Basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic tier.
- b) "Cable System" or "System" or "cable television system" means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the

Village. The definition shall not include any such facility that serves or will serve only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, and which does not use Village rights-of-way.

- c) “Class IV channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- d) “Control” and/or “Controlling Interest” shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person and Entity (except underwriters during the period in which they are offering securities to the public) of ten percent (10%) or more of a Cable System or the Franchise under which the System is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.
- e) “Converter” means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.
- f) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- g) “Grantee” means a person or entity to whom or which a Franchise under this chapter is granted by the Village, along with the lawful successors or assigns of such person or entity.
- h) “Gross Revenues” means all service fees, installation, charges, and all other fees or charges collected from the provision of Cable Services to subscribers of the System. Gross Revenues shall not include (1) excise taxes; or (2) sales taxes or any other taxes or fees, including the franchise fee, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental unit.
- i) “Initial service” area means all areas in the Village having at least 20 dwelling units per street mile.
- j) “Installation” means the connection of the system from feeder cable to subscribers’ terminals.
- k) “May” is permissive.
- l) “Monitoring” means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever’ provided monitoring shall not include system wide, non individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.
- m) “Normal Business Hours” as applied to the grantee, shall mean those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one night per week, and/or some weekend hours.

- n) “Normal Operating Conditions” shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- o) “Shall” is mandatory.
- p) “Service Interruption” and/or “Outages” shall mean the loss of either picture or sound or both for a single or multiple subscriber(s).
- q) “Street” means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Village for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.
- r) “Subscriber” shall mean any person, firm, Grantee, corporation, or association lawfully receiving Basic and/or any additional service from Grantee.
- s) “User” means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.
- t) “Village” means the Village of Fredonia, Wisconsin.

### **Section 9-3-3 Rights and Privileges of Grantee.**

Any franchise granted by the Village pursuant to Wisconsin Statutes Section 66.082 shall grant to the grantee the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

### **Section 9-3-4 Agreement and Incorporation of Application by Reference.**

- a) Upon adoption of any franchise agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein.
- b) Any Grantee also agrees to provide all services specifically set forth in its application, if any, and to provide cable television service within the confines of the Village; and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application

is thereby incorporated by reference and made a part of the franchise. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the Village, in the opinion of the Village, shall prevail.

### **Section 9-3-5 Franchise Territory.**

Any franchise is for the present territorial limits of the Village and for any area henceforth added thereto during the term of the franchise.

### **Section 9-3-6 Duration and Acceptance of Franchise.**

The franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the Franchise Agreement and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within fifteen (15) days after the date of final passage of the franchise the Grantee shall file with the Village its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths. Such franchise shall be non-exclusive and revocable.

### **Section 9-3-7 Franchise Renewal.**

- a) Current federal statutory process:
  - 1) the Village may, on its own initiative, during the six-month period which begins with the thirty-six (36) month before the Franchise expiration, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests and (2) reviewing the performance of the grantee under the Franchise. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six (6) months after the date such notice is submitted.
  - 2) Upon completion of the proceeding under paragraph (1) above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.
  - 3) Upon submittal by the Grantee of a proposal to the Village for the renewal of the Franchise, the Village shall provide prompt, public notice of such proposal and renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed, and at the request of the Grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.
  - 4) The Village shall consider in any administrative proceeding whether (1) the Grantee has substantially complied with material terms of the existing Franchise and with applicable law; (2) the quality of the Grantee's service, including signal

quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the System, has been reasonable in the light of community needs; (3) the Grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Grantee's proposal; and (4) the Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

- 5) In any administrative proceeding described in paragraph (4), the Grantee shall be afforded adequate notice and the Grantee and the Village, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under paragraph (4) above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.
- 6) At the completion of a proceeding under paragraph (4), the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefore.
- 7) Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described at (1) through (4) of paragraph (4) pursuant to the record of the proceeding under said paragraph. The Village may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise or on events considered under paragraph (4)(2) unless the Village has provided the Grantee with notice and the opportunity to cure or in any case in which it is documented that the Village has waived its right to object.
- 8) The Grantee may appeal any final decision or failure of the Village to act in accordance with the procedural requirements of this Section. The court shall grant appropriate relief if the court finds that (1) any action of the Village is not in compliance with the procedural requirements of this Section; or (2) in the event of a final decision of the Village denying the renewal proposal, the Grantee has demonstrated that the adverse finding of the Village with respect to each of the factors described in paragraph (4)(1) through (4) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.

- b) Franchise renewal in the event of change in federal law:
- c) A franchise may be renewed by the Village upon application of the Grantee pursuant to the procedure established in this section, and in accordance with the then applicable law.
  - 1) At least twenty-four (24) months prior to the expiration of the franchise, the Grantee shall inform the Village in writing of its intent to seek renewal of the franchise.
  - 2) The Grantee shall submit a proposal for renewal which demonstrates:
    - a) That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this Ordinance and its franchise;
    - b) That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this Ordinance and its franchise;
    - c) That it has the legal, technical, financial, and other qualifications to continue to maintain and operate its system, and to extend the same as the state of the art progresses so as to assure its Subscribers high quality service; and
    - d) That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community as may be reasonably ascertained by the Village.
  - 3) After giving public notice, the Village shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the franchise. Grantee shall not be denied renewal unless it is determined by the Village that renewal would not be in the public interest.
  - 4) Renewal shall not be arbitrarily or capriciously denied. Any renewal period shall be determined by the Village at the time of renewal and need not be for an additional fifteen (15) year period.
  - 5) Any franchise granted under this Chapter by the Village shall be nonexclusive.
  - 6) The grant of franchise under this Chapter may be by resolution of the Village Board and shall bind the grantee to all terms and provision contained in this Chapter and in its franchise application, upon acceptance by Grantee.

### **Section 9-3-8 Police Powers.**

- a) In accepting this franchise, the Grantee shall acknowledge that its rights hereunder are subject to the police power of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public; and shall agree to comply with all applicable general laws and ordinances enacted by the Village pursuant to such power.
- b) Any conflict between the provisions of this ordinance and any other present or future lawful exercise of the Village's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the Grantee or cable television systems

which contains provisions inconsistent with this franchise, shall prevail only if upon such exercise the general welfare or such exercise is mandated by law.

### **Section 9-3-9 Cable Television Franchise Required.**

No cable television system shall be allowed to occupy or use the streets, i.e. rights-of-way, for system installation and maintenance purposes, of the Village or be allowed to operate without a franchise.

### **Section 9-3-10 Use of Grantee Facilities.**

The Village shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the Grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the Grantee. The Village shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Village's use.

### **Section 9-3-11 Initial Franchise Costs.**

Costs to be borne by the Grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial franchise, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this franchise, and any costs not covered by application fees, incurred by the Village in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications.

### **Section 9-3-12 Notices.**

All notices from the grantee to the Village pursuant to this ordinance shall be to the Village Administrator's Office. The Grantee shall maintain with the Village, throughout the term of this franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this cable television ordinance.

### **Section 9-3-13 Letter of Credit/Security Deposit.**

- a) Within fifteen (15) days after the award of the initial franchise, the grantee shall deposit with the Village either an irrevocable letter of credit from a financial institution or a security deposit in the amount of fifty thousand dollars (\$50,000.00) with the form to be established by the Village. The form and content of such letter of credit or security deposit shall be approved by the Village Attorney. These instruments shall be used to insure the faithful performance of the grantee of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or



office of the Village having jurisdiction over its acts or defaults under this franchise, and the payment by the Grantee of any claims, liens, and taxes due the village which arise by reason of the construction, operation or maintenance of the system.

- b) The letter of credit or security deposit shall be maintained at the amount established by the Village for the entire term of this franchise, even if amounts have to be withdrawn pursuant to subsections (a) or (b) of this section.
- c) If the Grantee fails to pay to the Village any compensation within the time fixed herein; or fails after fifteen (15) days notice to pay to the Village any taxes due and unpaid; or fails to repay the Village within fifteen (15) days, any damages, costs or expenses which the Village is compelled to pay by reason of any act or default of the Grantee in connection with this franchise, or fails, after three (3) days notice of such failure by the Village to comply with any provision of this franchise which the Village reasonably determines can be remedied by demand on the letter of credit or security deposit, the Village may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit or security deposit. Upon such request for payment, the Village shall notify the grantee of the amount and date thereof.
- d) The rights reserved to the Village with respect to the letter of credit are in addition to all other rights of the Village, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Village may have.
- e) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit or security deposit may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 (thirty) days after receipt by the Village, by registered mail, of written notice of such intention to cancel or not to renew."
- f) Upon receipt of the above-referenced notice, this shall be construed as a default granting the Village the right to call on the bank for either the security deposit or letter of credit.
- g) The Village at any time during the term of this Ordinance, may waive Grantee's requirement to maintain a letter of credit or security deposit. The invitation to waive the requirement can be initiated by the Village or Grantee.

### **Section 9-3-14 Performance Bond.**

- a) Within thirty (30) days after the award of this franchise, the initial Grantee shall file with the Village a performance bond in the amount of not less than fifty (50) percent of costs to install the system contained in the new application in favor of the Village. This bond shall be maintained throughout the construction period and until such time as determined by the Village, unless otherwise specified in a Franchise Agreement.
- b) If the Grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the Franchise Agreement which is

- incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Village as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Village's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 9-3-13.
- c) The Village may, upon completion of construction of the service area, waive or reduce the requirement of the Grantee to maintain the bond. However, the Village may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the Village.
  - d) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, a written notice of such intent to cancel and not to renew." Upon receipt of a thirty-day notice, this shall be construed as default granting the Village the right to call in the bond.
  - e) The Village at any time during the term of this Ordinance may waive Grantee's requirement to maintain a performance bond. The invitation to waive the requirement can be initiated by the Village or Grantee.

## **Sec. 9-3-15 Liability and Insurance.**

- (a) The Grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the Village and the Grantee in the minimum amount of:
  - (1) One million dollars (\$1,000,000.00) for property damage to any one person;
  - (2) One million dollars (\$1,000,00.00) for property damage to any one accident;
  - (3) One million dollars (\$1,000,000.00) for personal injury to any one person; and
  - (4) One million dollars (\$1,000,000.00) for personal injury in any one accident.
- (b) The certificate of insurance obtained by the Grantee in compliance with this section is subject to the approval of the Village Attorney and such certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Village during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The Grantee shall immediately advise the Village Attorney of any litigation that may develop that would affect this insurance.
- (c) Neither the provisions of this section nor any damages recovered by the Village thereunder, shall be construed to or limit the liability of the Grantee under any franchise issued hereunder or for damages.

- (d) All insurance policies maintained pursuant to this franchise shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, a written notice of such intention to cancel or not to renew."

### **Sec. 9-3-16 Indemnification.**

- (a) Disclaimer of Liability: The Village shall not at any time be liable for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the Grantee's Telecommunication System and due to the act or omission of any Person or entity other than the Village or those Persons or entities for which the Village is legally liable as a matter of law.
- (b) Indemnification: The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Village, the Commission, all associated, affiliated, allied and subsidiary entities of the Village, not existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnities"), from and against:
- (1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorney, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any Person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Telecommunications System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with the Federal, State or local statute, ordinance or regulation.
  - (2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which is imposed upon, incurred by or asserted against the indemnities by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Telecommunications System caused by Grantee, its subcontractors or agents and, upon the written request of the Commission shall cause such claim or lien to be discharged or bonded within fifteen (15) days following such request.

- (3) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes, or regulations of the State of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and shall arise solely out of information supplied by the Village to the Grantee in writing and included in the offering materials with the express written approval of the Village prior to the offering.
- (c) Assumption of Risk: The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city owned or controlled property, including Public Rights-of-Way, and the Grantee hereby agrees to indemnify and hold harmless the Indemnities against and from any claim asserted or liability imposed upon the Indemnities for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the Telecommunications System or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- (d) Defense of Indemnities: In the event of action or proceeding shall be brought against the Indemnities by reason of any matter for which the indemnities are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnities, at the Grantee's sole cost and expense, resist and defend the same with legal counsel mutually acceptable to the Village Attorney of the Village of Fredonia and Grantee provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnities without the written consent of the Village Attorney of the Village of Fredonia or Village Attorney's designee.
- (e) Notice Cooperation and Expenses: The Village shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Village from cooperating with Grantee and participating in the defense of any litigation by the Village's own counsel. The Grantee shall pay all reasonable expenses incurred by the Village in defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Village Attorney if such service is determined necessary and appropriate by the Village Attorney and the actual expenses of the Village's agents, employees or expert witnesses, and disbursements and liabilities assumed by the Village in connection with such suits, actions or proceedings. No recovery by the Village of any sum under the Letter of Credit shall be any limitation upon the liability of the Grantee to the Village under the terms of this Section, except that any sum so received by the

Village shall be deducted from any recovery which the Village might have against the Grantee under the terms of this Section.

- (f) Non-waiver of Statutory Limits: Nothing in this agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in Wisconsin Statutes Section 893.80 et. seq., including the limits of liability of the Village as exists presently or may be increased from time to time by the legislature.

### **Sec. 9-3-17 Rights of Individuals.**

- (a) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income or sex. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.
- (b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, state and local regulations, and as amended from time to time.
- (c) The Grantee shall, at all times, comply with the privacy requirements of State and Federal law.
- (d) Grantee is required to make all services available to all residential dwellings throughout the service area.

### **Sec. 9-3-18 Public Notice.**

Minimum public notice of any public meeting relating to this franchise shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, and by posting at the Village Hall.

### **Sec. 9-3-19 Service Availability and Record Request.**

The Grantee shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours.

### **Sec. 9-3-20 System Construction.**

- (a) New construction timetable.
  - (1) Within two (2) years from the date of the award of the initial franchise, the Grantee must make cable television service available to every dwelling unit within the initial service area.

- (a) The Grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the initial service area within six (6) months from the date of the award of the franchise.
    - (b) The Grantee must make cable television service available to at least fifty (50) percent of the dwelling units within the initial service area within one (1) year from the date of the award of the franchise.
  - (2) The Grantee, in its application if any, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the franchise agreement, and will be binding upon the Grantee.
  - (3) Any delay beyond the terms of this timetable, unless specifically approved by the Village, will be considered a violation of this chapter for which the provisions of either Sections 37 or 46 shall apply, as determined by the Village.
  - (4) In special circumstances the Village can waive one hundred (100) percent completion within the two (2) year time frame provided substantial completion is accomplished within allotted time frame, substantial completion construed to be not less than ninety-five (95) percent and justification for less than one hundred (100) percent must be submitted subject to the satisfaction of the Village.
- (b) Line extensions:
- (1) In areas of the franchise territory not included in the initial service areas, the Grantee shall be required to extend its system pursuant to the following requirements:
    - (a) No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable System as necessary within the Village. To expedite the process of extending the Cable System into a new subdivision, the Village will forward to the Grantee an approved engineering plan of each project. Subject to the density requirements, the Grantee shall commence the design and construction process upon receipts of the final engineering plan. Upon notification from the Village that the first home in the project has been approved for building permit, the Grantee shall have a maximum of three (3) months to complete the construction/activation process within the project phase.
    - (b) The Grantee must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least twenty (20) dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.
    - (c) The Grantee must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred seventy-five (175) foot drop line.

- (2) Early extension: In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The Grantee shall then extend service upon request of the potential subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. The amount paid by subscribers for early extensions shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.
- (3) New development under ground: In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the Village of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Grantee prior to approval of the preliminary plat request.
- (c) Special Agreements: Nothing herein shall be construed to prevent the Grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that three (3) percent of those gross revenues are paid to the Village as franchise fees under Section 27.
  - (1) The Grantee, in its application, may propose a line extension policy which will result in serving more residents of the Village than as required above, in which case the Grantee's policy will be incorporated into the franchise agreement, and will be binding on the Grantee.
  - (2) The violation of this section shall be considered a breach of the terms of this chapter for which the provisions of either Sections 37 or 46 shall apply, as determined by the Village.

## **Sec. 9-3-21 Construction and Technical Standards.**

- (a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, constructions standards, governmental requirements, and FCC

technical standards. In addition, the Grantee shall provide the Village, upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(b) Additional specifications:

- (1) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configuration shall be arranged in parallel and bundled with due respect for engineering considerations.
- (2) The Grantee shall at all times comply with:
  - (a) National Electrical Safety Code (National Bureau of Standards);
  - (b) National Electrical Code (National Bureau of Fire Underwriters);
  - (c) Bell System Code of Pole Line Construction; and
  - (d) Applicable FCC or other federal, state and local regulations.
- (3) In any event, the System shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.
- (4) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
- (5) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.
- (6) Radio Frequency leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.
- (7) The Grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two (2) hours.
- (8) In all areas of the Village where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so.

## **Sec. 9-3-22 Use of Streets.**

- (a) Interference with persons and improvements. The Grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the street and public ways, or interfere with any improvements the Village may deem



proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

- (b) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Village, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the Village.
- (c) Erection, removal and common uses of poles:
  - (1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Village with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Village determines that the public convenience would be enhanced thereby.
  - (2) Where poles or other wire-holding structures already existing for use in serving the Village are available for use by the Grantee, but it does not make arrangements for such use, the Village may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
  - (3) In the absence of any governing federal or state statute, where the Village or a public utility serving the Village desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the Village may require the Grantee to permit such use for such consideration and upon such terms as the Village shall determine to be just and reasonable, if the Village determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.
- (d) Relocation of the facilities. If at any time during the period of this franchise the Village shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the Village, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the Grantee shall be similarly compensated.
- (e) Cooperation with building movers. The Grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.
- (f) Tree trimming. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the Village. The Village shall have the right to do the trimming

requested by the Grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold Village harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

### **Sec. 9-3-23 Operational Standards.**

- (a) The Grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.
- (b) Upon the reasonable request for service by any person located within the franchise territory, the Grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.
- (c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (d) The Grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Village nor shall other utilities interfere with the Grantee's system.
- (e) The Grantee shall have knowledgeable, qualified Grantee representatives available to respond to customer telephone inquiries 24 hours per day and seven days per week.
- (f) Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90% of the time as measured on an annual basis.
- (g) Under normal operating conditions, the customer will receive a busy signal less than 3% (three percent) of the total time that the office is open for business.
- (h) Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 175 feet of the existing system.
- (i) Excluding those situations which are beyond its control, the Grantee will respond to any Service Interruption promptly and in no event later than 24 hours from the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities will be "morning" or "afternoon"; not to exceed a four-hour "window" during normal business hours for the system, or at a time that is mutually acceptable. The Grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and

the appointment rescheduled as necessary at a time that is convenient to the customer.

- (j) Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of 8 hours a day Monday through Friday, unless there is a need to modify those hours because of the location or customer served. The Grantee and Village by mutual consent will establish supplemental hours on weekdays and weekends if it would fit the needs of the community.
- (k) Subscriber Credit for Outages. Upon Service Interruption and /or Outages of subscriber's cable service, the following shall apply:
  - (1) For Service Interruptions and/or Outages of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the Subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected Services for each 24-hour period service is interrupted for four (4) or more hours for any single subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage.
  - (2) For Service Interruptions and/or Outages of seven (7) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.
- (l) The Grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:
  - (1) Product and services offered.
  - (2) Prices and service options.
  - (3) Installation and service policies.
  - (4) How to use the telecommunications services.
- (m) Bills will be clear, concise and understandable, with all cable services itemized.
- (n) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the Grantee if service has been terminated.
- (o) Customers will be notified a minimum of thirty (30) days in advance of any rate or channel change, provided that the change is within the control of the Grantee.
- (p) The Grantee shall maintain and operate its network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communication Commissions, the United States Congress, or the State of Wisconsin.
- (q) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the Village find, by resolution that the Grantee has failed to maintain these technical standards and quality of service, the Grantee shall be required to implement a plan for resolution. Failure to make such improvement within three (3) months of such resolution will constitute a breach of a condition for which penalties contained in Section 46 are applicable.
- (r) The Grantee shall keep a monthly service log which will indicate the nature of each service complaint received in the last 24 months, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspection by the Village.

### **Sec. 9-3-24 Continuity of Service Mandatory.**

- (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. If the Grantee elects to over build, rebuild, modify or sell the system, or the Village gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.
- (b) If there is a change of franchise, or if a new operator acquires the system, the Grantee shall cooperate with the Village, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services until it no longer operates the system.
- (c) If the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Village or without just cause, the Village may, at its option, operate the system or designate an operator until such time as the Grantee restores the service under conditions acceptable to the Village or a permanent operator is selected. If the Village is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Village for all reasonable costs or damages in excess of revenues from the system received by the Village that are the result of the Grantee's failure to perform.

### **Sec. 9-3-25 Complaint Procedure.**

- (a) The Village Administrator is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) During the terms of this franchise, and any renewal thereof, the Grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipmental functions and similar matters. The Grantee will use its good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.
- (c) As subscribers are connected or reconnected to the system, the Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.
- (d) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Village, casts doubt on the reliability or quality of cable service, the Village shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. The Grantee shall fully cooperate with the Village in performing such testing and

shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;
- (2) What system component was tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to the tests and analysis which may be required.

The Village may require that tests be supervised by an independent professional engineer or equivalent of the Village's choice. The engineer should sign all records of special tests and forward to the Village such records with a report interpreting the results of the tests and recommending actions to be taken. Should such a test prove that the Grantee failed to meet the technical standard, the Grantee shall bear the cost of the test. If the test should prove that the Grantee met the technical standards, the Village shall bear the cost of the test.

The Village's right under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Village has reasonable grounds to believe that the complaints or other evidence required that tests be performed to protect the public against substandard cable service.

### **Sec. 9-3-26 Grantee Rules and Regulations.**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

### **Sec. 9-3-27 Franchise Fee.**

- (a) For the reason that the streets of the Village to be used by the Grantee in the operation of its system within the boundaries of the Village are valuable public properties acquired and maintained by the Village at great expense to its taxpayers, and that the grant to the Grantee to the streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the Village an amount equal to five (5) percent of the Grantee's Gross Revenue from the operations of the Grantee within the confines of the Village or contract area. If the statutory five (5) percent limitation on franchise fees is raised or the federal statute deletes the franchise fee limitation entirely, then the franchise fee may be subject to renegotiation.

- (b) This payment shall be in addition to any other tax or payment owed to the Village by The Grantee.
- (c) The franchise fee and any other costs or penalties assessed shall be payable annually, on a calendar year basis to the Village and the Grantee shall file a complete and accurate verified statement of all gross receipts as previously defined within 45 days after the end of the year as established between the Village and Grantee.
- (d) The Village shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within 24 months following the close of each of the Grantee's fiscal years. Any additional amount due to the Village as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the Village which notice shall include a copy of the audit report.
- (e) If any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate charged by the U.S. Internal Revenue Service for late tax payments and the Grantee shall reimburse the Village for any additional expenses and costs incurred by the Village by reason of the delinquent payments(s).

### **Section 9-3-28 Transfer of Ownership or Control.**

- (a) Except as may be provided in a franchise agreement, this franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Village. The Grantee may, however, transfer or assign the franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. The proposed assignee must show financial responsibility as determined by the Village and must agree to comply with all provisions of the franchise. The Village shall have 120 days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Village of Fredonia. The Village shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within one-hundred and twenty (120) days following receipt of written notice and the necessary information as to the effect of the proposed transfer or assignment upon the public unless the requesting party and the Village agree to an extension of time. The Village shall not unreasonably withhold such consent to the proposed transfer.
- (b) Except as may be provided in a franchise agreement, the Grantee shall promptly notify the Village of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as

used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten (10) percent of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Village shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Village may inquire into the qualification of the prospective controlling party, and the Grantee shall assist the Village in such inquiry.

- (c) The consent or approval of the Village to any transfer of the Grantee shall not constitute a waiver or release of the rights of the Village in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this franchise.
- (d) In the absence of extraordinary circumstances, the Village will not approve any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.
- (e) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.

### **Sec. 9-3-29 Availability of Books and Records.**

- (a) The Grantee shall fully cooperate in making available at reasonable times, and the Village shall have the right to inspect, where reasonably necessary to the enforcement of the franchise, books, records, maps, plans and other like materials of the Grantee applicable to the cable television system, at any time during normal business hours; provided where volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee's premises.
- (b) The following records and/or reports are to be made available to the Village upon request, but no more frequently than on an annual basis unless mutually agreed upon by the Grantee and the Village:
  - (1) A quarterly review and resolution on progress report submitted by the Grantee to the Village;
  - (2) Periodic preventative maintenance reports;
  - (3) Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
  - (4) Subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints periodically;
  - (5) Periodic construction update reports, including where appropriate the submission of as-built maps.

### **Sec. 9-3-30 Other Petitions and Applications.**

Copies of all petitions, applications, communications and reports either submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having

jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise or received from such agencies shall be provided to the Village upon request.

### **Sec. 9-3-31 Fiscal Reports.**

The Grantee shall file annually with the Village no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the Grantee.

### **Sec. 9-3-32 Removal of Cable Television System.**

At the expiration of the terms for which this franchise is granted and any renewal denied, or upon its termination as provided herein, the Grantee shall forthwith, upon notice by the Village, remove at its own expense all designated portions of the cable television system from all streets and public property within the Village. If the Grantee fails to do so, the Village may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by the Grantee in an amount sufficient to cover this expense.

### **Sec. 9-3-33 Required Services and Facilities.**

- (a) The cable television system shall have a minimum channel capacity of seventy-seven (77) channels and at least 750 MHz of bandwidth available for future use.
- (b) The Grantee shall maintain the following:
  - (1) At least one (1) specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis.
  - (2) At least one (1) specially-designated channel for use by local educational authorities:
  - (3) At least one (1) specially-designated channel for local governmental uses;
  - (4) At least one (1) specially-designated channel for leased access uses;
  - (5) Provided, however, these uses may be combined on one or more channels until such time as additional channel become necessary in the opinion of the Village. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into a Franchise Agreement.
- (c) The Grantee shall incorporate into its cable television system the capacity which will permit the Village, in times of emergency, to override, by remote control, the audio of all channels simultaneously which the Grantee may lawfully override. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the Village in the use and operation of the emergency alert override system.
- (d) (1) The grantee may be required to interconnect its cable system with other adjacent cable television systems for the purpose of sharing public, educational, and governmental access programming. Such



interconnection shall be made within a reasonable time limit to be established by the Village.

- (2) Interconnection procedure: Upon receiving directive from the Village to interconnect, the franchise shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.
- (3) Relief: The franchise may be granted reasonable extensions of time to interconnect or the Village may rescind its order to interconnect upon petition by the franchise to the Village. The Village shall grant the request if it finds that the franchisee has negotiated in good faith and has failed to obtain approval from the operator or franchising authority of the system to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.
- (4) Cooperation required: The Grantee shall cooperate with any interconnection, regional interconnection authority or Village, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Village.
- (5) Initial technical requirements to assure future interconnection capability:
  - a. All cable systems receiving franchises to operate within the Village shall use the standard frequency allocations for television signals.
  - b. All cable systems are required to use signal processors at the headend for each television signal.
  - c. The Village also urges franchisees to provide local origination equipment that is compatible throughout the area so that video cassettes or video tapes can be shared by various systems.
  - d. Grantee shall provide such additional services and facilities as are contained in its application, if any.

### **Sec. 9-3-34 Rules and Regulations.**

- (a) In addition to the inherent powers of the Village to regulate and control this cable television franchise, and those powers expressly reserved by the Village, or agreed to and provided for herein, the right and power is hereby reserved by the Village to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.
- (b) The Village may also adopt such regulations at the request of Grantee upon application.

### **Sec. 9-3-35 Performance Evaluation Sessions.**

- (a) The Village and the Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, and twelfth anniversary dates of the Grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.
- (b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the Village or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The Grantee shall notify its subscribers of all evaluation sessions by announcements on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints, privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and Grantee or Village rules.
- (e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the Village, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

### **Sec. 9-3-36 Forfeiture and Termination.**

- (a) In addition to all other rights and powers retained by the Village under this franchise or otherwise, the Village reserves the right to forfeit and terminate the franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Grantee shall include, but shall not be limited to the following:
  - (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the Village made pursuant to the franchise;
  - (2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the Village or its subscribers or customers;
  - (3) Failure to begin or complete system construction or system extension as provided under Section 20;
  - (4) Failure to provide the services promised in the Grantee's application if any as incorporated herein by Section 4;
  - (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Village; or
  - (6) Material misrepresentation of fact in the application for or negotiation of the franchise.

- (b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- (c) The Village may make a written demand that the Grantee comply with any such provision, rule, order or determination under or pursuant to this franchise. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Village may place the issue of termination of the franchise before the Village Board. The Village shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.
- (d) The Village Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred.
- (e) If the Village Board shall determine the violation by the Grantee was the fault of the Grantee and within its control, the Board may, by resolution declare that the franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Board may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.
- (f) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board then may terminate the franchise forthwith upon finding that the Grantee has failed to achieve compliance or may further extend the period, in its discretion.

### **Sec. 9-3-37 Foreclosure.**

Upon foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the Village of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this franchise governing the consent of the Village to such change in control of the Grantee shall apply.

### **Sec. 9-3-38 Right of Acquisition by the Village.**

- (a) Federal regulations as per U.S.C. 537 shall apply to the right of acquisition by the Village. In the event that the relevant federal regulations are repealed, the guidelines specified in section (b) below shall apply.
- (b) Upon the expiration of the term of the franchise and denial of any renewal or upon any other termination thereof as provided herein the Village at its election and upon the payment to the Grantee of a price equal to the fair market value shall have the right to purchase and take over the System upon resolution by the

Village Board. If the Village has denied the Grantee's petition for renewal of its franchise as provided by Section 7, the Village must exercise its option to purchase the system within sixty (60) days of the denial of renewal and at least six (6) months prior to the end of the franchise. Nothing shall prohibit the Grantee in the event of the election of the Village to purchase the system from requesting the court to set a reasonable bond of the Village to secure the purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary.

### **Sec. 9-3-39 Receivership.**

The Village shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

- (a) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and
- (b) Such a receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the Grantee.

### **Sec. 9-3-40 Compliance With State and Federal Laws.**

- (a) Notwithstanding any other provisions of this franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of this franchise or of any law or regulation of the Village, then as soon as possible following knowledge thereof, the Grantee shall notify the Village of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Village or this franchise.
- (b) If the Village determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the Village and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

### **Sec. 9-3-41 Landlord/Tenant.**

- (a) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication Grantee regulated by and lawfully operating under a valid and existing franchise issued by the Village.
- (b) Gratuities and payment to permit service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting of cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.
- (c) Penalties and charges to tenants for service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a Grantee operating under a valid and existing cable communication franchise issued by the Village.
- (d) Reselling service prohibited. No person shall resell, without the expressed, written consent of both the Grantee and the Village, any cable service, program or signal transmitted by a cable communication Grantee under a franchise issued by the Village.
- (e) Protection of property permitted. Nothing in this chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.
- (f) Risks assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a Grantee from agreeing to indemnify the owner or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

### **Sec, 9-3-42 Applicant's Bids for Initial Franchise.**

- (a) All bids received by the Village from the applicants for an initial franchise will become the sole property of the Village.
- (b) The Village reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the Village may be served.
- (c) All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the Village in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Village as having received the application documents. The Village reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be

answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgement of receipt of all addenda.

- (d) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.
- (e) Before submitting a bid, each applicant must:
  - (1) Examine this chapter and the application documents thoroughly;
  - (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;
  - (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
  - (4) Carefully correlate the bid with the requirements of this chapter and the application documents.
- (f) The Village may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the Village all such information and data for this purpose as the Village may request. The Village reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the Village that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.
- (g) All bids received shall be placed in a secure depository approved by the Village and not opened nor inspected prior to the public opening.

### **Sec. 9-3-43 Financial, Contractual, Shareholder and System Disclosure for Initial Franchises.**

- (a) No initial franchise will be granted to any applicant unless all requirements and demands of the Village regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to this franchise and the proposed cable television system. The Grantee of this franchise shall disclose all other contracts to the Village as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.
- (c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.
- (d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof,

and shall include the amount of consideration for each share of stock and the nature of the consideration.

- (e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:
  - (1) Locations of all other franchises and the dates of award for each location.
  - (2) Estimated construction costs and estimated completion dates for each system;
  - (3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
  - (4) Date for completion of construction as promised in the application for each system.
- (f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including but not limited to the following:
  - (1) Location of other franchise applications and date of application for each system;
  - (2) Estimated dates of franchise awards.
  - (3) Estimated number of miles of construction; and
  - (4) Estimated construction costs.

### **Sec. 9-3-44 Theft of Services and Tampering.**

- (a) No person may intentionally do any of the following:
  - (1) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.
  - (2) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.
  - (3) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the

purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.

- (4) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing the service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company and that thereafter there exists in fact a connection to the cable system at the defendant's residence or business.
- (5) Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and if the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the cable television company without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedures, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.
- (6) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (1) to (5) with the intent that device or printed circuit be used to receive that cable television company's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.
- (7) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television



system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

(b) Civil liability for theft of telecommunications service (including cable television service.)

- (1) Any person who incurs injury as a result of violation of Section 45 may bring a civil action against the person who committed the violation.
  - a. Except as provided in sub. (b)(2), if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursement.
- (2) If the person who incurs the loss prevails against a person who committed the violation willfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of Section 45, the court shall grant the prevailing party all the following:
  - a. Except as provided in subs (2e) and (2f), not more than \$10,000.
  - b. Actual damages.
  - c. Any profits of the violators that are attributable to the violation and that are not taken into account in determining the amount of actual damages under par. (2b).
  - d. Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursement and reasonable attorney fees.
  - e. If the court finds that the violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under sub (2a) not to exceed \$50,000.
  - f. If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the courts may reduce the amount granted under sub. (2a).
- (3) If damages under sub. (2c) are requested, the party who incurred the injury shall have burden of providing the violator's gross revenue and the violators' deductible expenses and the elements of profit attributable to factors other than the violation.
- (4) In addition to other remedies available under this section, the courts may grant the injured party a temporary or permanent injunction.

## **Sec. 9-3-45 Penalties.**

For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the letter of credit or performance bond as applicable as follows and the

Village may determine the amount of the fine for other violations which are not specified in a sum not to exceed five hundred dollars (\$500.00) for each violation, with each day constituting as separate violation.

- (a) Failure to furnish, maintain, or offer all cable services to any potential Subscriber within the Village upon order of the Village: Two Hundred dollars (\$200.00) per day, per violation, for each day that such failure occurs or continues;
- (b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;
- (c) Failure to provide access to data, documents, records, or reports to the Village as required by sections 19, 29, 30, and 37: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;
- (d) Failure to comply with applicable construction, operation, or maintenance standards: Three hundred dollars (\$300.00) per day, per violation.
- (e) Failure to comply with a rate decision or refund order. Five hundred dollars (\$500.00) per day, per violation, for each day such a violation occurs or continues. Grantor may impose any or all of the above enumerated measures against Grantee, which shall be in addition to any and all other legal or equitable remedies it has under the Franchise or under any applicable law.
- (f) Any violations for non-compliance with the customer service standards of Sections 23 through 25 the Grantee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.
- (g) Any other violations of this franchise agreement to be determined by the Grantor in a public hearing but not specifically noted in this section shall not exceed \$500.00 per day, per violation.

## **Sec. 9-3-46 Procedures.**

- (a) Whenever the Village believes that the Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the Village may impose penalties unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation, or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within sixty (60) days of notice from the Village, or such other time as the Grantee and the Village may mutually agree to, the Village may proceed to impose liquidated damages.
- (b) The Grantee may, within ten (10) days of receipt of notice, notify the Village that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Village shall specify with particularity the matters disputed by the Grantee and shall stay the running of the thirty (30) day cure

period pending Board decision as required below. The Board shall hear the Grantee's dispute. Grantee must be given at least five (5) days notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the Village shall provide Grantee a copy of its action, along with supporting documents. In the event the Village upholds the finding of a violation, the Grantee shall have thirty (30) days subsequent, or such other time period as the Grantee and the Village mutually agree, to such determination to correct the alleged violation before penalties may be imposed.

- (c) The rights reserved to the Village under this section are in addition to all other rights of the Village whether reserved by this franchise or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the Village may have.
- (d) The Village shall stay or waive the imposition of any penalty set forth above upon a finding that any failure or delay is a result of any Act of Nature or due to circumstances beyond the reasonable control of the Grantee.