VILLAGE OF BROCKPORT

"To provide a high quality of life for all residents, exercising fiscal responsibility and preserving Brockport's unique heritage and historic character."

VILLAGE BOARD - MEETING AGENDA

Monday, January 4, 2016 7:00pm

Location: Village Hall conference room

- **CALL TO ORDER / PLEDGE:** please silence cell phones & electronic devices
- **MOMENT OF SILENCE:** to honor those who serve our Country, enforce our laws, & respond to emergencies
- **BROCKPORT HISTORICAL MOMENT:**
- **OATH OF OFFICE:**
  - Annette M. Crane as Trustee

- **CERTIFICATES & PROCLAMATIONS:** none
- **PUBLIC HEARINGS:** none
  - Note: Proposed Local Law – adding a Parks chapter to the Brockport Village Code – public hearing of 12/21/15 carries over to a future meeting – date to be determined

- **PUBLIC COMMENT**: 5 minute limit per person / state name & address for record & speak directly to entire Board / share if this is a prepared statement & submit hard copy to Clerk after reading (& electronically next day)
- **GUESTS:** none

- **CONSENSUS ITEMS:**
  - Approval of minutes – 12/21/15
  - Approval of bills to be paid

- **CLERK REPORT:**
  - Clerk – Leslie Ann Morelli
    - 2016 Village Tax Collection – re Chase Lockbox

- **PERSONNEL ITEMS:**
  - Code Review Committee – Mary Rich off due to election to Sweden Town Board

- **OLD or NEW BUSINESS:**
  - Bid results – 2012 or newer hydraulic track excavator
  - Approve & authorize Mayor to sign Zoladz wood waste agreement
  - Amend Village Board liaisons listing
  - Authorize Mayor to attend NYCOM Winter Legislative Meeting in Albany February 7th-9th
  - Approve & authorize Mayor to sign amended cable television franchise agreement

- **VILLAGE BOARD REPORTS:** (Trustees listed in alphabetical order by last name)
  - Mayor Margaret B. Blackman
    -
  - Trustee/Deputy Mayor William G. Andrews
    -
  - Trustee Annette M. Crane
    -
  - Trustee Katherine J. Kristansen
    -
  - Trustee John D. LaPierre
    -

- **EXECUTIVE SESSION (if needed)**

- **ADJOURNMENT**

- **Upcoming:**

  Village Hall closed: Monday, 1/18 for holiday
  Village Board work session: 1/25 (with Treasurer & Department Heads re budget)

GUIDELINES
FOR PUBLIC COMMENT:

The public shall be allowed to speak only during the public comment period of the meeting or at such time as recognized by the presiding officer.

- Speakers must be visible.
- Speakers must give their name, address and organization, if any.
- Speakers must be recognized by the presiding officer.
- Speakers must limit their remarks to (5) five minutes on a given topic or extended if recognized by the presiding officer.
- Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.
- All remarks shall be addressed to the Board as a body and not to any member thereof.
- Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste.
- Interested parties or their representatives may address the Board by written communications in the event of creating a hardship to attend the meeting personally.

VILLAGE OF BROCKPORT

49 State Street · Brockport, New York 14420
Telephone (585) 637-5300 · Fax (585) 637-1045
Website: www.brockportny.org

The Victorian Village on the Erie Canal
Preserve America Community
Listed on the State and National Registers of Historic Places
Certified Local Government
Tree City USA Community
Erie Canalway Heritage Award of Excellence

VILLAGE OF BROCKPORT
NOTICE TO BIDDERS

PLEASE TAKE NOTICE that the Board of Trustees of the Village of Brockport desire to purchase and will receive sealed bids for one (1) USED 2012 OR NEWER HYDRAULIC TRACK EXCAVATOR for use by the Department of Public Works. Sealed bids with non-collusive bidding certificate will be received **no later than 12 pm, Wednesday, December 30, 2015,** at the Brockport Village Hall, 49 State Street, Brockport, NY, 14420 at which time and place they will be opened and read aloud. The Village Board reserves the right to reject any or all bids. Specifications may be obtained at Brockport Village Hall or from the Village website: www.brockportny.org.

By Order of the Brockport Village Board

Leslie Ann Morelli
Village Clerk
Village of Brockport

Dated: December 7, 2015

For publication in the December 13th edition of Suburban News
For posting on the Village Hall & DPW bulletin boards and the Village website

4 bids received - DPW Spt. Harry Donahue to review the details + advise VB + Clerk of his recommendation.

Southworth-Milton $89,785 new
United Rentals $83,183 new
George + Swede $69,212 used
Monroe Tractor $65,902.34 used

Mayor Margaret B. Blackman
Trustee Deputy Mayor William G. Andrews
Trustees Valerie A. Ciciotti, John D. LaPierre, Katherine J. Kristansen

BID FORMS

To: Village of Brockport
Attn: Harry Donahue

Re: Equipment
Purchasing
2012 or NEWER HYDRAULIC TRACK EXCAVATOR
Bid Tender Form

Bidder agrees to furnish and deliver to the Village of Brockport **ONE 2012 OR NEWER HYDRAULIC TRACK EXCAVATOR** for the following amount:

_____
Amount written in words (printed or typed)

_____;
(printed or typed)

$_____Total Lump Sum
Numerals

Signature:

_____
Legal Name of Bidder (printed or typed)

_____
Address (printed or typed)

_____
City State Zip Code

_____ ____, 2015 By: _____
Date Signature (printed or typed)

_____
Name (printed or typed)

_____
Title (printed or typed)

Seal

(_____) _____ (_____) _____
Phone Fax

_____
E-mail (printed or typed)

(If bid is by a corporation, place Corporation Seal above and to the left and attach a copy of a resolution authorizing this proposal.)

BID FORMS

To: Village of Brockport
Attn: Harry Donahue

Re: Equipment
Purchasing
2012 or NEWER HYDRAULIC TRACK EXCAVATOR
Non-Collusive Bidding Certificate Form

By submission of this bid or proposal, pursuant to *New York State General Municipal Law–Section 103-d*, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and behalf:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any Bidder or to any competitor;
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

Certification:

_____ Legal Name of Bidder (printed or typed)

_____ Address (printed or typed)

_____ City State Zip Code

_____ ____, 2015 By: _____ Signature (printed or typed)
Date

_____ Name (printed or typed)

_____ Title (printed or typed)

Seal

(_____) _____ (_____) _____
Phone Fax

_____ E-mail (printed or typed)

Where a Bid contains this certification, it shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and the submission of the Bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation. Corporate Bidders must execute the following resolution.

BID FORMS

To: Village of Brockport
Attn: Harry Donahue

Re: Equipment
Purchasing
2012 or NEWER HYDRAULIC TRACK EXCAVATOR
Resolution for Corporations

RESOLVED that _____, _____
Name (printed or typed) Title (printed or typed)
of _____ is hereby authorized to
Name of Corporation (printed or typed)
sign and submit the Bid of this corporation for furnishing and delivering **ONE 2012 OR NEWER HYDRAULIC TRACK EXCAVATOR** to the Village of Brockport, to include in such Bid a certificate as to non-collusion required by § 103-d of *New York State General Municipal Law* as the act and deed of such corporation, and for any inaccuracies or misstatements in such certificate this corporate Bidder shall be liable under the penalties of perjury.

The foregoing is a true and correct copy of the resolution adopted by

_____
Name of Corporation (printed or typed)

_____
Address (printed or typed)

_____
City State Zip Code

_____ ____, 2015 By: _____
Date Signature (printed or typed)

_____
Name (printed or typed)

_____
Title (printed or typed)

Seal

(_____) _____ (_____) _____
Phone Fax

_____
E-mail (printed or typed)

2012 OR NEWER USED EXCAVATOR SPECIFICATIONS

Y___N___ The hydraulic track excavator shall have a 52 net horsepower diesel engine and a 13-foot 11-inch dig depth with long excavator arm. The hydraulic track excavator shall have a minimum operating weight of 18,400 pounds. The hydraulic track excavator shall meet all OSHA and EPA requirements in effect on the date of bid opening and shall have lead free paint.

ENGINE

Y___N___ The engine shall be a 4-cylinder, inline diesel engine.
Y___N___ The engine shall also have a minimum of 52 SAE net horsepower at 2,100 RPM.
Y___N___ The engine shall produce a minimum torque of 136 ft-lbs at 1,800 RPM per SAE J1349.
Y___N___ Engine shall be Tier III certified.
Y___N___ Single stage air cleaner
Y___N___ 24-volt electrical system w/ 12 volt inverter in cab
Y___N___ Minimum 50-amp alternator
Y___N___ In-line fuel filter
Y___N___ 500-hour engine oil and filter change interval
Y___N___ Tier III emission certified
Y___N___ Machine to have no more than 1400 hrs. use on it

HYDRAULIC SYSTEM

Y___N___ The excavator shall have a hydraulic system with a minimum of two variable displacement axial piston pumps that provide a minimum combined flow of 36.0 gallons per minute.
Y___N___ The system relief pressure will be a maximum of 4,264 psi.
Y___N___ Auxiliary valve section as standard equipment
Y___N___ Pilot control oil supply provided by a separate pump
Y___N___ Hydraulic system with pilot-operated controls for the boom, stick, bucket, swing, and travel
Y___N___ External hydraulic oil cooler
Y___N___ Hydraulic reservoir sight gauge level indicator
Y___N___ Pilot hydraulic system accumulator to provide pilot pressure in case of engine shutdown
Y___N___ 5000-hour hydraulic oil change interval
Y___N___ 1000-hour hydraulic filter change interval
Y___N___ Machine to include hydraulic auxiliary double acting bi-directional piping on dipper for attachments

CONTROLS

Y___N___ The excavator shall have low effort and easy-to-operate controls.
Y___N___ Minimum swing speed of 9 revolutions per minute
Y___N___ Anti drift values in the boom cylinder circuit
Y___N___ Selectable two-speed travel with auto down shift
Y___N___ "One-touch" accelerator / decelerator control built into the right hand joystick
Y___N___ Cushioned cylinder stops at arm in and out, boom up, and bucket curl
Y___N___ A 100% swing brake to hold upper structure when engine is off

UNDERCARRIAGE

Y___N___ The excavator undercarriage shall have an overall length of 9 feet 4 inches of track, and the overall width shall be a maximum of 7 feet 7 inches with 17.7-inch track, w/ 450 mm rubber pads bolted to standard rail
Y___N___ Each track frame supported by a minimum of 5 bottom rollers and 1 upper roller
Y___N___ Permanently lubricated rollers
Y___N___ Travel motors encased within the frame with two (2) speeds and a minimum travel speed of 3.0 MPH
Y___N___ The track tension maintained by a hydraulic track adjustment cylinder

Y___N___ Full underside shield protection for the excavator upper structure and turn table made of high strength steel
Y___N___ Sealed outer flange rollers for track alignment
Y___N___ Gradeability of 70%
Y___N___ Heavy duty dozer blade with a minimum width of 7 feet 7 inches
Y___N___ Maximum dozer blade height of 1 feet 6 inches

OPERATOR ENVIRONMENT

Y___N___ The excavator cab shall be located on the left side of the machine.
Y___N___ Heater and air conditioner as standard
Y___N___ Deluxe suspension seat
Y___N___ Three-inch seat belt
Y___N___ Adjustable pilot controls for excavator operation
Y___N___ Adjustable pilot control consoles with four (4) positions
Y___N___ AM/FM radio
Y___N___ See through skylight
Y___N___ Windshield wiper with washer
Y___N___ Onboard self-diagnostic system
Y___N___ Left arm rest in the up position that locks out the pilot controls
Y___N___ Safety gate on the left side of the operator that must be lowered to activate the hydraulic pilot controls
Y___N___ Single-key cab door lock, ignition, and all vandal protection locks
Y___N___ Auxiliary 12-volt power supply
Y___N___ Cab glass of impact resin and safety glass front window

The message system will notify the operator of the following conditions:

Y___N___ Travel speed selected
Y___N___ Low fuel level

The system and audible alarm display will notify the operator of the following conditions:

Y___N___ Emergency stop
Y___N___ Low fuel level
Y___N___ Low coolant level
Y___N___ Battery level
Y___N___ Low oil pressure
Y___N___ Overheat for the engine temperature
Y___N___ Overheat for the hydraulic oil temperature
Y___N___ Alternator
Y___N___ Engine electrical problems

DIMENSIONS (LONG ARM 6ft 11in STICK)

Y___N___ The excavator shall be easy to maneuver and transport.
Y___N___ Maximum overall transport height of 8 feet 10 inches
Y___N___ Maximum overall transport length of 22 feet 1 inch
Y___N___ Maximum overall transport width of 7 feet 7 inches
Y___N___ Maximum tail swing radius of 5 feet 5 inches
Y___N___ Minimum upper structure ground clearance of 2 feet 5 inches
Y___N___ Minimum ground clearance of 14 inches

PERFORMANCE (6ft 11in LONG STICK)

Y___N___ Maximum dig radius at ground line of 23 feet 10 inch
Y___N___ Maximum dig depth (8 feet level bottom) of 13 feet 11 inches

Y___N___ Minimum dump height of 15 feet 1 inch
Y___N___ Minimum vertical straight wall dig depth of 11 feet 8 inches
Y___N___ Minimum arm digging force of 7,644 pounds force
Y___N___ Minimum bucket digging force of 12,792 pounds force
Y___N___ Minimum lift capacity over the side (at 10-foot radius and ground line with long stick) of 6,002 pounds
Y___N___ Minimum lift capacity over the end (at 10-foot radius and ground line with long stick) of 9,803 pounds

BUCKET

Y___N___ The excavator shall have a heavy-duty 36-inch digging bucket with teeth Wain Roy compatible .
Y___N___ Anti-clatter device to ensure a snug fit
Y___N___ O-ring seal between the arm and bucket to keep grease in and dirt out

SERVICE CAPABILITIES

Y___N___ 13-gallon hydraulic tank refill capacity
Y___N___ 26-gallon total hydraulic system capacity
Y___N___ 1.2-quart final drive capacity (per side)
Y___N___ 9.5-quart engine oil with filter change capacity
Y___N___ 26-gallon fuel tank capacity
Y___N___ 10.8-quart radiator capacity

ATTACHMENTS

Y___N___ Hydraulic controlled thumb pinned to arm not bucket
Y___N___ Machine to include original (old) style Wain Roy coupler
Y___N___ Bidders must be a factory authorized dealer

Leslie Morelli

From: Carol McNees
Sent: Wednesday, December 30, 2015 10:48 AM
To: Leslie Morelli
Subject: FW: Waste wood agreement
Attachments: Brockport Wood Waste Agreement.doc

This needs to be added to the agenda for the next board meeting. (Jan 4)

Attached is a proposal from Zoladz Construction for a two year contract to grind our joint brush pile with Sweden. The price reflected is for our ½ of the pile. I have no problems locking into a 2 year agreement with them.

Let me know if you have any questions.

Thanks,
Carol

WOOD WASTE AGREEMENT

This WOOD WASTE AGREEMENT (this "Agreement") is entered into as of this ____day of _____, 2016, by and between **Zoladz Construction, Co., Inc., ("Zoladz")** having its principal offices at 13600 Railroad Street, NY, and **Village of Brockport, a Municipal Corporation** with its principal place of business at _____, _____, NY _____ ("Supplier"). Each of Zoladz and Supplier is herein referred to as a "Party" and together as the "Parties".

RECITALS

WHEREAS, Zoladz is a contractor engaged in the business of grinding and removal of unadulterated wood waste; and

WHEREAS, Supplier generates green and virgin wood waste and/or biomass waste ("Waste") from its operations and desires to dispose of such Waste by allowing Zoladz to remove such Waste from Supplier's site at 6793 E. Canal Street, Sweden, NY _____ (a "Storage Site").

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Supply and Collection of Waste.

(a) Supplier shall make available all of Supplier's Waste for processing and removal by Zoladz and Zoladz shall process and remove from the Storage Site all of Supplier's Waste, all in accordance with the terms and conditions hereof. A minimum of approximately six hundred (600) net tons must be present at the Storage Site before Zoladz will mobilize and process the Waste. Such Waste shall constitute or contain only unadulterated waste and is free from all foreign matter, including, without limitation, metals, wire, string, plastics, soil, cinder, glass or any other contaminates. In addition, such Waste shall not be "watered down" except by atmospheric moisture. Zoladz shall process Supplier's stump Waste only if 90% of the soil is removed from the stumps and any Waste that is excessive in size that requires additional equipment, collectively ("Oversized Waste"). Zoladz may reject any Waste not meeting the foregoing specifications, including, without limitation, any painted wood or chemically treated wood (e.g., pressure treated wood, treated railroad ties) or wood containing glues or adhesives (e.g., plywood, particle board), and Supplier shall be obligated to remove such rejected Waste from the Storage Site.

(b) Supplier represents, warrants, and covenants that:

(i) All Waste supplied under this Agreement shall conform to the specifications set forth above;

(ii) Zoladz shall receive good title to all Waste delivered hereunder, free from any security interest or other lien or encumbrance;

Supplier shall immediately notify Zoladz if any of the foregoing representations, warranties and covenants no longer is true for any reason.

(c) Supplier shall make the Waste available to Zoladz at Supplier's Site. Supplier shall afford Zoladz reasonable access to Supplier's Site to allow Zoladz (or its agent or representatives) to collect, inspect, process, and remove the Waste at Supplier's Site at such times according to Supplier's normal business hours from 7:00 AM to 7:00 PM, unless agreed upon by both Parties and with such frequency as Zoladz may reasonably elect; provided, however, that Zoaldz shall give Supplier approximately 3 day prior notice of its intent to access Supplier's Site for such purposes; and provided, further, that Zoaldz (or its agent or representatives) shall obtain and maintain in effect during the term of this Agreement such commercial insurance at or no less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate, and Auto Liability insurance of not less than one million dollars (($1,000,000) combined single limit with the Supplier named as an additional insured.

Section 2. Payment.

(a) Supplier shall pay Zoladz thirty six hundred dollars ($3,600) for Grind and removal of 50% of said Waste Pile as this debris is jointly owned with the Town of Sweden. It is also agreed that pricing is based on there being a wheel loader made available to Zoladz, on site for loading trucks, and if a wheel loader is not provided the cost to grind and remove will be thirty nine hundred ($3,900) for 50% of said waste;

(b) Supplier shall pay Zoladz thirty (30) days from the date of Zoladz' invoice.

Section 3. Term and Termination.

(a) This Agreement shall be in effect for a period of two (2) year, commencing January 1, 2016 and ending December 31, 2017 or commencing on the date on which Zoladz first receives Waste in accordance with Section 1, whichever is later, and shall automatically be renewed at the end of the existing Term for further terms of two (2) year each (the Renewed Term) unless either Party terminates this Agreement, after the Term or Renewed Term, by giving sixty (60) days notice in writing to the other Party, and this Agreement shall end at the expiration of the then existing Term. This Agreement may be terminated by either Party in the event that the other Party is in breach or default of its obligations hereunder and such breach or default continues uncured for a period of thirty (30) days from the date on which written notice of such breach or default is received by such other Party.

Section 4. Force Majeure.

(a) As used in this Agreement, the term "Force Majeure" means an event or circumstance that prevents a Party from performing its obligations under this Agreement, that was not within the control of the Party claiming Force Majeure (the "Claiming Party"), and that by exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid, including but not limited to, acts of God or nature or a public enemy, strikes, riots, injunctions or other legal orders, or because of the passage or operation of any state, federal or local laws, statutes, ordinances or regulations or requisitions of any governmental authority. For the avoidance of doubt, injunctions or other legal orders that result from the negligent act or omission of the Claiming Party shall not constitute a Force Majeure event.

(b) In the event that, solely due to Force Majeure, the Claiming Party is unable to carry out its obligations under this Agreement, the obligations and liabilities of the Claiming Party and the corresponding obligations and liabilities of the other Party shall be temporarily suspended only to the extent made necessary by and during the continuance of such Force Majeure. In the event of a Force Majeure, the Claiming Party shall provide the other Party written notice of such Force Majeure specifying the nature, extent and expected duration of the Force Majeure; provided, however, in the event the Claiming Party fails to provide such notice, it will not waive its rights under this Section.

(c) The Claiming Party shall use its reasonable best efforts to remedy its inability to perform arising out of any act of Force Majeure in an expeditious fashion; provided, however, that nothing in this Section 5(c) shall be construed to require the settlement of any strike, walkout, or other labor dispute on terms which, in the reasonable judgment of the Claiming Party, are contrary to its interest. However, to the extent that the Force Majeure event is not remedied within twenty-six (26) weeks, the non-Claiming Party may terminate the Agreement upon written notice to the Claiming Party.

Section 5. Representations and Warranties. Each of the Parties hereby represents and warrants as follows:

(a) Organization and Powers. It is a duly organized and validly existing limited liability company or corporation, as applicable, under the laws of its state of formation and is in good standing in such jurisdiction. It has all requisite limited liability company power and authority or corporate power and authority, as applicable, to enter into this Agreement, and to carry out the transactions contemplated hereby.

(b) Qualification and Good Standing. It is qualified or authorized to do business and is in good standing in every jurisdiction where necessary to carry out its businesses and operations as they relate to its obligations under this Agreement.

(c) Due Authorization. It has taken all necessary limited liability company action or corporate action, as applicable, to authorize the execution, delivery and performance of this Agreement.

(d) No Conflict. The execution, delivery and performance by it of this Agreement does not (i) violate any provision of any law or any governmental rule or regulation applicable to it, its organizational documents or any order, judgment or decree of any court or other agency of government binding on it, or (ii) require any approval of stockholders, partners or members or any approval or consent of any other person or entity, except for such approvals or consents which will be obtained on or before the date hereof or which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to perform under this Agreement.

(e) Binding Obligation. This Agreement has been duly executed and delivered by it and is the legally valid and binding obligation thereof, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

(f) Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of it, threatened at law, in equity, in arbitration or before any governmental authority, by or against it that purport to restrain, prevent or impose materially burdensome conditions on this Agreement.

(g) Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any governmental authority is required for the execution, delivery or performance of this Agreement by it. It is the holder of all federal, state, local and other governmental permits, license, approvals or other authorizations required to permit it to carry out its obligations under this Agreement.

Section 6. Miscellaneous.

(a) Headings. The captions of the provisions of this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of this Agreement.

(b) Successors and Assigns. Supplier may not assign this Agreement, or its rights, duties or interests hereunder, without the written consent of Zoladz. Zoladz may assign its rights, duties or interests hereunder upon written notice to Supplier and, upon delivery of such notice, Zoladz shall be released from any and all further liabilities and obligations hereunder.

(c) Severability. If any clause, provision or section of this Agreement shall be found to be invalid by any court of competent jurisdiction, the invalidity thereof shall not change the validity or effectiveness of the remaining provisions hereo

(d) Governing Law. This Agreement shall be governed by and construed in accordance with, and any dispute arising in connection herewith shall be governed by, the laws of the State of New York, without reference to principles of conflicts of law (other than Section 5-1401 of the New York General Obligations Law).

(e) Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein and all prior agreements or arrangements with respect to such matters are superseded. No amendment, modification or change of any of the provisions of this Agreement shall be of any force or effect unless in writing and duly executed by the Party against which enforcement of it is sought.

(f) Waivers. No failure by Zoladz or Supplier to insist upon the strict performance of any agreement, term, covenant or condition of this Agreement or to exercise any right or remedy upon a breach of any of them, and no acceptance of full or partial performance during the continuation of any breach, shall constitute a waiver of the breach or of the agreement, term, covenant or condition. No agreement, term, covenant or condition to be performed or complied with by Zoladz or Supplier, and no breach of any of them, shall be waived, altered or modified except by a written instrument executed by Zoladz or Supplier, as the case may be. No waiver of any breach shall affect or alter

this Agreement, and each and every agreement, term, covenant and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each Party shall receive a duplicate original of the counterpart copy or copies executed by it.

(h) Dispute Resolution. Prior to pursuing any other remedies that may be available in equity or at law, the Parties shall act in good faith with respect to each other and shall attempt to resolve all questions and disputes between them in a spirit of cooperation.

(i) Notices. All notices or communications under this Agreement shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, addressed to the Party at the address set forth above or at such other address as the Party shall have designated in writing.

(j) Alternate Suppliers. Nothing herein shall prohibit or limit Zoladz's acquisition or purchase of wood waste and/or biomass waste from other suppliers.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of this date hereinabove set forth.

("Zoladz") **Dave Clare** **President of Operations** **Zoladz Construction Co., Inc.,**	**("Supplier")**
By _____	By _____
Printed Name: Jon Burgess	Printed Name _____
Title: Field Rep.	Title _____

TO BE AMENDED 1/4/16

VILLAGE OF BROCKPORT
VILLAGE BOARD LIAISONS
TO DEPARTMENTS / AREAS / BOARDS / COMMITTEES / OUTSIDE ENTITIES
AUGUST 2014 – JULY 2015
Adopted by Village Board 7/20/15

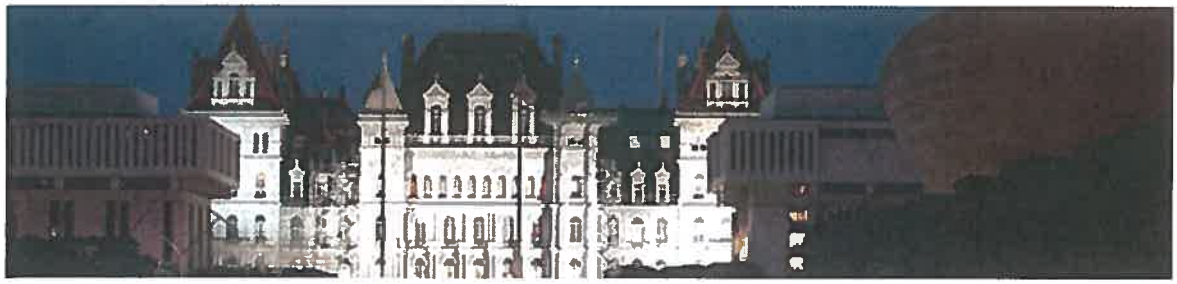
Mayor Blackman, Trustee/Deputy Mayor Andrews, Trustees Ciciotti, Hannan, La Pierre

Personnel / Human Resources	Blackman
Budget & Finance	Blackman
Town/Gown Relations (SUNY College at Brockport)	Blackman & Andrews
Intergovernmental Relations (Towns of Sweden & Clarkson)	Blackman & Andrews
Police Department	La Pierre & Kristansen
Building / Zoning / Code Enforcement	~~Ciciotti~~ & Kristansen
Planning Board	? Crane
Zoning Board of Appeals	
Code Review Committee	
Department of Public Works	La Pierre & ~~Ciciotti~~
Parks Committee	? Crane
History	
Historic Preservation Board	Kristansen
Emily L. Knapp Museum & Library of Local History Board	Andrews
Brockport Community Museum	Andrews
Economic Development	
Farmers Market	La Pierre
Welcome Center Management Committee	Andrews
BMA (Brockport Merchants Association)	Kristansen
GBCoC (Greater Brockport Chamber of Commerce)	La Pierre
GBDC (Greater Brockport Development Corporation)	Andrews
BISCO (Brockport Integrated Service & Community Org)	~~Ciciotti~~ ? Crane
Tree Board	Blackman
Walk Bike Brockport Action Group	Andrews
Housing Task Force	~~Ciciotti~~ Kristansen or ? Crane
Seymour Library Board	Kristansen or ? Crane

(for discussion to even out)

Leslie Morelli

From: NYCOM <info@nycom.org>
Sent: Monday, December 21, 2015 4:40 PM
To: Leslie Morelli
Subject: NYCOM Winter Legislative Meeting, February 7-9, Hilton Albany - REGISTER NOW



NYCOM Winter Legislative Meeting
February 7 - 9 – Hilton Albany

Dear Local Official:

With the legislative stakes greater than ever before, NYCOM needs you to join with your colleagues from around the state as we gather at our Winter Legislative Meeting in Albany, February 7-9. In the coming year, we plan to focus on issues of critical importance to cities and villages, including:

- Providing a long overdue increase in general purpose state aid;
- Allocating the State's surplus and new bank settlement funds to municipal infrastructure;
- Fixing shortcomings with the property tax cap;
- Expanding local revenue options; and
- Passing the mandate relief promised when the tax cap was first enacted.

The primary goal of our legislative efforts in 2016 is an increase in state aid. For the past eight years (and beyond), city and village officials have been tightening their belts every way they possible can, yet at the same time their state aid has DECLINED. This, combined with a property tax cap that has now fallen well below 1%, has threatened our communities' capacity to provide services and invest in capital infrastructure. As you know, these trends are UNSUSTAINABLE. We aren't asking the State to "prop up" villages and cities - yet the State's current municipal policy of abandonment must be replaced by one that includes a true fiscal partnership.

NYCOM needs each and every one of our members to join in this important fight. As part of our Winter Legislative Meeting (February 7-9), we are asking that a strong group of city and village officials from each county come to Albany to participate in our conference and then descend on the Capitol with us on **February 9th for NYCOM LOBBY DAY**. This day will include meetings with your state legislative delegation and other state leaders. I encourage you to call and schedule the February 9th meetings with your Senator

and Assemblymember as soon as possible, since legislators' calendars fill up very quickly during February as the state budget negotiations are well underway.

Please review the **tentative agenda below and register today.** I look forward to seeing you in Albany, as we join together to fight for what our taxpayers deserve.

Rick Milne
NYCOM President
Mayor, Village of Honeoye Falls

SUNDAY, FEBRUARY 7

5:00 p.m. OPENING GENERAL SESSION

- Update on State Budget and Important Legislation
- Open Discussion of NYCOM Priorities

6:00 p.m. Super Bowl -Themed Reception and Dinner

• Network with your colleagues while watching Super Bowl 50

MONDAY, FEBRUARY 8

8:00 a.m. Breakfast Briefings on special issues of interest

9:00 a.m. KEYNOTE ADDRESS

Support Without Subsidies, Partnership Without "Propping Up": The Role New York State Needs to Play in Revitalizing Our Communities

9:45 a.m. Break

10:00 a.m. MUNICIPAL PERSPECTIVES FROM STATE LEADERS ***(invited)***

Governor Andrew Cuomo
Senate Majority Leader John Flanagan
Assembly Speaker Carl Heastie
Senate Democratic Conference Leader Andrea-Stewart Cousins
Assembly Minority Leader Brian Kolb

12:15 p.m. Lunch

1:30 p.m. SOLUTION SESSIONS

- Getting Transformational: Accessing the State's Municipal Restructuring Fund
- Working Through Your MPO to Get Federal/State Highway Funds
- Turning the Tide on Abandoned Properties
- Controlling Streetlights = Controlling Costs

2:45 p.m. Break

3:00 p.m. - SOLUTION SESSIONS

- Saving on Health Insurance Costs Through Employee Choice
- State Help for Fixing Your Pipes: Water/Sewer Infrastructure Funding
- Proven Technologies for Improving Police-Community Relations

5:00 p.m. RECEPTION

Evening - Dinner on your Own

TUESDAY, FEBRUARY 9

NYCOM Lobby Day at the State Capitol and Legislative Office Building

- County-wide Groups of City and Village Officials Meet with their State Legislators

Call your State legislators today to schedule meetings.

REGISTER HERE

Please note:

HOTEL RESERVATION DETAILS • HILTON ALBANY
Due to high hotel volume during this time - Hotel reservations MUST BE MADE BY January 21st – NO EXCEPTIONS

230.00 registration
471.96 hotel
138.35 train

not to exceed
$900
(without meals)

To: Mayor Blackman

From: Daniel P. Hendricks

Date: December 30, 2015

Re: Time Warner Franchise Agreement

Attached is an updated Time Warner Franchise Agreement.

In Section 3 .2 language has been added regarding tree trimming.

Please let me know if you have any questions or concerns.

FRANCHISE AGREEMENT

TO PROVIDE CABLE TELEVISION SERVICES

Between

Village of Brockport, New York

AND

Time Warner Cable Northeast LLC
d/b/a Time Warner Cable

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered as of _____ between the Village of Brockport (the "Grantor") and Time Warner Cable Northeast LLC, d/b/a Time Warner Cable, a limited liability company organized and existing in good standing under the laws of Delaware ("Grantee").

WHEREAS, the Grantee has applied under the provisions of Federal law to Grantor for a renewal of its franchise granting it the right to construct and operate a cable television system and provide cable service; and

WHEREAS, the Company is providing such service pursuant to a franchise dated _____ and has substantially complied with the material terms of the franchise and applicable law; and

WHEREAS, the technical ability, financial condition and character of the Grantee and Grantee's plans for constructing and operating the cable system were considered and found adequate and feasible and approved by Grantor at a full public proceeding affording due process; and

WHEREAS, this proposed Franchise Agreement complies with the standards of the New York State Public Service Commission ("NYPSC"); and

WHEREAS, the franchise granted herein is non-exclusive,

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein:

IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1. SHORT TITLE

This Franchise Agreement shall become known and may be cited as the Village of Brockport/Time Warner Cable Franchise Agreement.

SECTION 2. DEFINITIONS.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 2. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

2.1 "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. § § 521-611) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385,106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996), as may be further amended.

2.2 "Cable Service" shall have the meaning provided under Section 602(6) of the Cable Act (47 U.S.C. §522(6) as may be amended.

2.3 "Cable System" or "System" shall have the meaning provided under Section 602(7) (47 U.S.C. §522(7) as may be amended.

2.4 "Channel" means a portion of the electromagnetic frequency spectrum or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available) which is used in a cable television system and is capable of delivering a television channel as television channel is defined by FCC regulation.

2.5 "Effective Date" has the meaning given to it in Section 3.4 of this Agreement.

2.6 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

2.7 "Franchise Area" means the territorial area of the Village of Brockport. Such area shall include all areas annexed by the Village of Brockport. For purposes of this Agreement, annexations shall be effective upon sixty (60) days notice from the Grantor to Grantee, including a list of affected addresses. If Grantee is operating a cable system in an annexed area immediately prior to the date of annexation under the terms of another franchise, Grantee may, at its option, continue to operate under the terms of such other franchise until any date up to the expiration of said franchise at which time Grantee will operate its system in the annexed area under the terms of this Franchise.

2.8 "Grantee" means Time Warner Cable Northeast LLC or any successor thereto.

2.9 "Gross Revenues" means all revenue, without deduction, received by Grantee directly or indirectly from the provision of cable television service in the Village of Brockport. Gross Revenues includes all eligible subscriber and non-subscriber revenue as determined in accordance with GAAP. This includes, but is not limited to, all revenue from basic, standard, digital and premium tiers of cable service; installation, disconnection and/or reconnection charges; late or delinquent fee charges to the extent revenue; video on demand and pay-per-view service; on-screen program guides; additional outlets; franchise fees; equipment charges; as well as, all non-subscriber revenue including, but not limited to, revenue from advertising, home shopping, and leased access. Gross Revenues shall be adjusted for bad debt written off by the Grantee

in the normal course of business provided that bad debt recoveries shall be included in Gross Revenues during the period collected."

2.10 "NYPSC" means the New York Public Service Commission or any successor agency.

2.11 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, private or public, whether for profit or not-for-profit

2.12 "Public Property" means any real property owned by any governmental unit.

2.13 "Streets" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held and/or maintained by the Grantor.

2.14 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of or in connection with the Cable System whether or not a fee is paid for such Cable Service.

SECTION 3. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

3.1 Grant of Franchise. Upon the Effective Date and subject to the terms and conditions of this Agreement and of applicable law, Grantee is granted a non-exclusive franchise for the occupation and use of the Grantor's Streets for the installation, operation, maintenance, repair, upgrade, and removal of the Cable System (the "Franchise"). This Agreement specifically gives Grantee the right to provide Cable Service via the Cable System within the Franchise Area.

3.2 Authority for Use of Streets.

A. For the purpose of operating, maintaining, and constructing a Cable System in the Franchise Area, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the Franchise Area such lines, cables, conductors, poles, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System.

B. Grantee shall operate and maintain the Cable System so as not to interfere with other uses of Streets. Grantee shall participate and cooperate in any "one-call" or similar system for the exchange of information on the utility location or work to be conducted.

C. Grantee shall contact and review with Village officials plans regarding tree trimming, prior to commencing such trimming. Said plans should include specifics related to trimming and any plans for tree removal.

3.3 Provision of Cable Service.

A. Grantee shall construct plant and make its cable service available consistent with the provisions of Section 895.5 of the regulations of the NYPSC.

B. Grantee shall not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the area in which such group resides.

3.4 Franchise Term. The terms of this Franchise are subject to the approval of the NYPSC. Therefore, the Franchise shall commence on the date of approval by the NYPSC (Effective Date") and shall expire ten (10) years from the date of the renewal order by the NYPSC (the "Franchise Term") unless renewed, revoked or terminated sooner as herein provided. Grantee shall file applications for all necessary approvals from the NYPSC or FCC within sixty days of the approval of the Franchise or any amendment thereto by the Grantor.

3.5 Extension of System. Grantee shall extend its Cable System in the Franchise Area as required by the regulations of the NYPSC.

3.6 Police Powers. Grantor reserves the right to adopt in addition to the provisions contained herein and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers; provided, however, that such regulations are reasonable, not materially in conflict with the privileges granted herein and consistent with all federal and state laws, rules, regulations and orders.

3.7 Written Notice. All notices, reports or demands shall be given either by email with designated email address or by paper notice, hand-delivered or deposited in the United States mail in a sealed envelope with certified mail postage prepaid thereon, or by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to Grantor: Village of Brockport
Attn: Mayor
49 State Street
Brockport, NY 14420

with a copy to: Grantor _____
Attn:

If to Grantee: Time Warner Cable
Attn: Government Relations
2604 Seneca Avenue
Niagara Falls, NY 14305

With a copy to: Time Warner Cable
Attn: Law Department/Regulatory
60 Columbus Circle
New York, NY 10023

Such addresses may be changed by either party upon notice to the other party given as provided in this Section. In addition, either party may agree to receive certain notices, reports or demands by email at an email address which it provides to other party.

3.8 Franchise Non-Exclusive.

A. The Franchise granted herein is non-exclusive. The Grantor specifically reserves the right to grant, at any time, additional franchises for a cable television system in accordance with state and federal law. The Grantor agrees that any grant of additional franchises by the Grantor to any other entity to provide cable or video service shall not be on terms and conditions that when taken as a whole are more favorable or less burdensome to the franchisee of any such additional franchise, than those which are set forth herein.

B. If the Grantor grants a cable television franchise or other right to provide cable service to another person on terms which overall provide greater benefits or impose lesser burdens than provided herein, the Grantor agrees to amend this Franchise (effective upon the grant to said other person) to overall provide such greater benefits or lesser burdens.

C.(i) Grantee agrees that it will not move damage, penetrate, replace or interrupt any portion of the Cable Television System of another franchisee without the prior written consent of such other franchisee. Grantee shall indemnify such other franchisee against any damages or expenses incurred by such other franchisee as a result of any removal, damage, penetration, replacement or interruption of the services of such other franchisee caused by the Grantee.

(ii) In the event Grantor grants to any other Person (being referred to as "Other Person" in the below quoted paragraph) a franchise, consent or other right to occupy or use the Streets, or any part thereof, for the construction, operation or maintenance of all or part of a cable television system or any similar system or technology, the Grantor shall include the following language or language to similar effect into any such franchise, consent or other document and/or promptly pass a resolution, conditioning the use of the Streets or any part thereof by any such Person, as follows:

> "Other Person agrees that it will not move damage, penetrate, replace or interrupt any portion of the Cable Television System of another franchisee without the prior written consent of such other franchisee. Other Person shall indemnify such other

franchisee against any damages or expenses incurred by such other franchisee as a result of any removal, damage, penetration, replacement or interruption of the services of such other franchisee caused by the Other Person."

D. Notwithstanding any other provision in this Franchise: In the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to construct, operate or maintain a cable system in the Franchise Area to obtain a franchise from the Grantor for the construction, operation or maintenance of a cable system, then, Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise. Grantee shall not abandon cable service in any portion of the Franchise Area without Grantor's consent and shall remain subject to all applicable laws and regulations with respect to abandonment of service including those of the NYPSC. Furthermore, in the event any change to state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the Franchise Area in a way that reduces the regulatory or economic burdens for such person, then, at Grantee's request, Grantor shall agree with Grantee to amend this Franchise to similarly reduce the regulatory or economic burdens on Grantee. It is the intent of this section that, at Grantee's election, Grantee shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct operate or maintain a cable system in the Franchise Area. To the extent any acts pursuant to this section, including Grantee's choice to terminate this Franchise, result in an amendment to the Franchise, any such amendment shall be subject to such approval by the NYPSC as required by law and regulation.

3.9 Continuing Administration. The Mayor is responsible for the continuing administration of the Franchise.

SECTION 4. TECHNICAL STANDARDS.

4.1 Technical Standards. The Cable System shall be designed, constructed, and operated so as to meet the technical standards promulgated by the FCC relating to Cable Communications Systems contained in part 76 of the FCC's rules and regulations, as may be amended from time to time. The Grantor may, upon written request, witness tests of the Cable System being conducted pursuant to FCC rules and regulations, and the results of those tests shall be made available to the Grantor free of charge within thirty (30) days of completion of the tests if the Grantor requests them in writing.

SECTION 5. EAS AND PEG.

5.1 Emergency Alert System. Grantee shall comply with the Emergency Alert System regulations of the FCC. The emergency alert system shall meet all Federal and State requirements.

5.2 PEG Access Channels. Grantee shall make available PEG access and comply with the standards set for PEG as required by the regulations of the NYPSC. Any PEG channel shall be shared with other franchising authorities served by Grantee's cable system. The Grantor shall indemnify, save and hold Grantee harmless from and against any liability resulting from the Grantor's use of the PEG Channels for municipal access.

SECTION 6. CONSTRUCTION PROVISIONS.

6.1 Construction Standards.

A. Grantee shall construct and maintain its cable system using materials of good and durable quality. All work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough, and reliable manner.

B. All construction practices shall be in accordance with all applicable Federal and state law and generally applicable local codes.

C. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the applicable National Electrical Safety Code and National Electrical Code.

D. All of Grantee's plant and equipment (a) shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices; and (b) shall not endanger or interfere with ordinary use of the rights-of-way or unnecessarily hinder or obstruct pedestrian or vehicular traffic.

E. Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

F. Grantee has constructed a hybrid fiber/coax cable system capable of providing a minimum capacity of (78) channels. Grantee shall maintain the system at the same or enhanced level during the term of the franchise.

6.2 Construction Codes.

A. Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction in the Franchise Area.

B. The Grantor shall have the right to inspect all construction or installation work in the public rights-of-way performed pursuant to the provisions of this Agreement.

6.3 Repair of Streets and Property.

A. Any and all Streets, municipal property, or private property, which are destroyed or damaged by Grantee during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the Cable System shall be promptly replaced or repaired by Grantee, at its expense, and restored to a serviceable condition as good as that prevailing prior to Grantee's disturbance of, or damage to, the property. If Grantee fails to repair, replace, or otherwise correct a Street or property following reasonable written notice by the Grantor, the Grantor may complete any repair, replacement, restoration or other correction and invoice Grantee for the same.

6.4 Use of Existing Poles.

A. Poles may be erected by Grantee subject to any generally applicable regulation by Grantor with regard to location, height, type, and any other pertinent aspect. It is the responsibility of Grantee to secure agreements for use of poles or conduits owned by third parties.

B. Where poles already existing for use in serving the Franchise Area are available for use by Grantee, but it does not make arrangements for such use, the Grantor may require Grantee to use such poles if it determines that the public convenience would be enhanced thereby, and if the Grantee can obtain such use on reasonable terms and conditions and at less cost to Grantee than erecting its own poles. No term or condition shall be reasonable if not consistent with pole attachments rates and conditions established by the FCC and/or NYPSC.

6.5 Undergrounding of Cable.

A. Cable shall be installed underground where the existing telephone and electrical utilities are already underground. In the event the Grantor reimburses any utility for undergrounding, Grantee shall be similarly reimbursed.

6.6 Reservation of Street Rights.

A. Nothing in this Agreement shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

B. All such work shall be done, insofar as practicable in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, Street or any other public improvement, at least thirty (30) days written notice shall be given to Grantee by the Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the Grantor so that the same shall not interfere with the said public work of the Grantor, as reasonably determined by the Grantor and such removal or replacement shall be at the expense of Grantee, provided, however, if any other right-of-way user is compensated for such work by the Grantor, then Grantee shall be similarly compensated.

D. Nothing contained in this Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, re-grading, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system or with any other work.

6.7 Trimming of Trees. Grantee shall have the authority to trim trees, in accordance with all generally applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets, alleys, sidewalks, and public places of the Grantor so as to prevent the branches of such trees from interfering with the Cable System. ***Grantee shall notify the Village of such activities prior to trimming; trees shall not be removed without Village approval.***

6.8 System Abandonment.

Grantee may not abandon cable service in any portion of the Franchise Area without the consent of Grantor.

6.9 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Agreement, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the Franchise Area, upon two (2) weeks written notice by the Grantor to Grantee, Grantee shall move, such of its facilities as may be required to facilitate such movements. The Person requesting the temporary removal shall pay Grantee in advance the costs Grantee incurs in moving its facilities. Any service disruption provisions of this Agreement shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities pursuant to this Section results in temporary service disruptions.

SECTION 7. REPORTING PROVISIONS.

7.1 Audit and Inspection. The Grantor, its agents and its representatives shall have the authority, during normal business hours, to arrange for and conduct an inspection of the books, records, maps, plans, financial statements and other like materials of Grantee where such inspection is necessary to ascertain Grantee's compliance with the material terms of this Franchise. Grantee will be given thirty (30) business days advance written notice of such an inspection request and a description, to the best of the Grantor's ability, of the materials it wants to inspect.

7.2 Communications with Regulatory Agencies. Copies of all publicly available petitions, applications, communications and reports submitted by Grantee, to any federal or state regulatory commission or agency relating to the Cable System operated pursuant to this Franchise shall also be made available to the Grantor upon request. Copies of publicly available responses from the regulatory agencies to Grantee shall likewise be made available to the Grantor upon request.

7.3 Confidentiality. Grantor shall maintain as confidential any information provided to it by Grantee under the terms of this Franchise which Grantee has designated as confidential. In the event that Grantor believes at any time that it is required by law to disclose such information to a third party, Grantor will so notify Grantee at a time prior to any such disclosure that affords Grantee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

7.4 Reporting. Any report required by this Franchise may be satisfied with system-wide statistics, except for reporting requirements related to franchise fees and customer complaints.

SECTION 8. CONSUMER PROTECTION PROVISIONS.

8.1 Rate Regulation. Grantee's rate and charges for cable service shall be subject to regulation in accordance with Federal law.

8.2 Customer Service.

A. Grantee shall comply with the cable customer service and consumer protection standards of the FCC and NYPSC.

B. Any bill, notice or other communication provided or issued by Grantee to any Subscriber may be provided or issued, if such Subscriber so consents, solely by electronic means.

SECTION 9. FRANCHISE FEES.

A. Grantee shall pay to the Grantor a franchise fee in an amount equal to five percent (5 %) of Grantee's Gross Revenues.

B. Payments due the Grantor under this provision shall be computed quarterly. Payments shall be due and payable for each quarter not later than 45 days following the end of the quarter. Each payment shall be accompanied by a brief report of Grantee's Gross Revenues for the preceding quarter.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the Grantor.

D. In the event of an underpayment of franchise fees, Time Warner Cable will remit the underpaid amount within 60 days of notification. Time Warner Cable will pay interest on the underpaid amount at an annual rate equal to prime plus 1%, from the date the underpayment occurred through the date payment of the underpaid amount is issued.

E. Grantor shall not conduct an audit more frequently than once every three (3) years and may not audit any period earlier than six (6) years prior to the time the audit is conducted.

F. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise granted by Grantor.

G. If Grantee charges a combined or "bundled" rate for a package of services which includes Cable Services subject to the franchise fee and other services which are not subject to the franchise fee, the franchise fee shall be imposed on the portion of the bundled charge applicable to the cable services subject to the franchise fee as reflected in the books and records of Grantee, subject to any applicable laws and regulations. Any discounts applied to bundled rates shall be applied in accordance with GAAP.

10. <u>INDEMNITY AND INSURANCE.</u>

10.1 <u>Indemnity</u>

A. Grantee shall indemnify, defend, and hold harmless the Grantor for all damages and penalties incurred by Grantor as a result of Grantee's conduct or performance under this Agreement or exercise of the Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Grantee's exercise of the Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement; such indemnification shall include, but not be limited to, reasonable attorney's fees and costs. Grantee's obligations hereunder shall not extend to any claim or loss to the extent arising from the Grantor's negligence; misconduct; the content of programming carried on any

channel set aside for public educational or governmental use, or channels leased pursuant to 47 U.S.C. §532; and, the Grantor's use of Grantee's emergency alert system ("EAS") capability.

B. In order for the Grantor to assert its rights to be indemnified and held harmless, the Grantor must:

(1) promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
(2) afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
(3) fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

10.2 Liability Insurance.

A. Grantee shall maintain, throughout the term of the Franchise, liability insurance with a company licensed to do business in the State of New York with a rating by Best of not less than "A-," insuring Grantee and the Grantor (wherein the Grantor is named as additional insured) with respect to Grantee's activities in the Franchise Area in the minimum amounts of:

1. One Million Dollars ($1,000,000.00) for bodily injury or death to any one (1) person;
2. Three Million Dollars ($3,000,000.00) for bodily injury or death resulting from any one (1) accident or occurrence;
3. One Million Dollars ($1,000,000.00) for all other types of liability.
4. Five Million Dollars ($5,000,000.00) excess liability or umbrella coverage.

B. Grantee shall maintain in force, during the term of this Agreement and any renewal thereof, Workers' Compensation Insurance, covering its obligations under the Workers' Compensation statute.

C. Upon request, Grantee shall furnish to the Grantor a certificate evidencing that a satisfactory insurance policy has been obtained. Such insurance policy shall require that the Grantor be notified thirty (30) days prior to any expiration or cancellation.

SECTION 11. REVOCATION AND REMOVAL

11.1. Right to Revoke.

A. In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this Agreement and the Franchise and all rights and privileges pertaining thereto, after following the procedures outlined herein, in

the event that Grantee substantially violates any material provision of this Agreement and fails to remedy such violation as required.

B. Whenever the Grantor finds that Grantee has allegedly violated one or more material terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford the Grantee an opportunity to investigate and/or remedy the alleged violation. Grantee shall have sixty (60) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within thirty (30) days of receipt of notice, notify the Grantor that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and stay the running of the above-described time.

C. Grantor shall hear Grantee's dispute at a regularly scheduled or specially scheduled Council meeting of which Grantee has been given at least two weeks' notice. Grantee shall have the right to subpoena and examine witnesses and cross-examine any other witnesses. The Grantor shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination and provide such findings to Grantee. If a violation is found, Grantee may petition for reconsideration.

D. If after hearing the dispute, the claim of non-compliance is upheld by the Grantor, then Grantee shall have sixty (60) days from the date of receipt of Grantor's written decision within which to remedy the violation.

E. The time for Grantee to correct any alleged violation shall be extended by the Grantor if the necessary action to correct the alleged violation is of such a nature or character as to require more than sixty (60) days within which to perform, provided Grantee commences corrective action and thereafter exercises due diligence to correct the violation.

F. In the event that Grantee fails to remedy the violation within the time frame set herein, Grantor may revoke the Franchise by vote of its governing body after a public hearing of which Grantee has been given at least two weeks' notice and at which Grantee shall have the right to be heard; to subpoena and examine witnesses; and cross-examine any other witnesses. Grantor shall state in writing the basis for any decision to revoke the Franchise. Any revocation hereunder is subject to appeal by Grantee in a court of competent jurisdiction.

11.2. <u>Removal After Revocation or Termination.</u>

A. At the termination of the Franchise Term if renewal has been finally denied in accordance with Federal law, or upon revocation of the Franchise, as provided for herein, the Grantor shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the Cable System from Streets and Public Property within the Franchise Area. In so removing the Cable System, Grantee shall refill and compact at its own expense any excavation that shall be made and shall leave all Streets, Public Property and

private property in as good a condition as that prevailing prior to Grantee's removal of the Cable System, and without affecting, altering or disturbing in anyway electric, telephone or utility, cables wires or attachments. The Grantor, or its delegate, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire term of removal.

SECTION 12. TRANSFER

12.1 Sale or Transfer of Franchise.

A. Grantee shall provide at least sixty days notice to Grantor in the event the Franchise is to be sold, assigned or otherwise transferred.

B. Within thirty (30) days of the consummation of any Franchise Transfer subject to the provisions of this Section, Grantee shall notify the Grantor of the closing of such Franchise Transfer.

SECTION 13. RIGHTS OF INDIVIDUALS PROTECTED.

13.1 Discriminatory Practices Prohibited.

A. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of age, race, creed color, national origin or sex. Grantee shall comply at all times with all applicable federal and state laws relating to non-discrimination.

B. Grantee will not refuse neither to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment on the basis of age, race, creed, color, national origin or sex.

SECTION 14. MISCELLANEOUS PROVISIONS.

14.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Agreement, the provisions of this Agreement shall govern.

14.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable, that provision will be ineffective but the remainder of this Agreement will not be affected, and it will in all other respects, continue to be effective and enforceable. If the

holding of invalidity or unenforceability is subsequently repealed, unenforceable or otherwise changed so that the provision which had been held invalid is no longer in conflict with the law, rules and regulations then in effect, the provision will return to full force and effect.

14.3 Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

14.4 No Third Party Beneficiaries. This Agreement is not intended to, and does not create any rights or benefits on behalf of any person other than the parties to this Agreement.

14.5 Captions. The paragraph captions and headings in this Agreement are for convenience and reference purpose only and shall not affect in any way the meaning of interpretation of this Agreement.

14.6 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period, or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

14.7 Amendments. This Agreement may be amended only by the mutual consent of the Grantor and Grantee and in accordance with the regulations of the NYPSC. Any amendment must be in writing and executed by the Grantor and Grantee.

14.8 Force Majeure. In no event, and notwithstanding any contrary provision in this Franchise, shall this Franchise be subject to revocation or termination, or Grantor or Grantee be subject to penalty or prejudice or in any way liable for non-compliance with or delay in the performance of any obligations hereunder, where its failure to cure or take reasonable steps to cure is due to reason of Acts of God; acts of public enemies; order of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots; strikes; failure of suppliers; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; partial or entire failure of utilities or any other cause or event not reasonably within the control of the party. Neither Grantor nor Grantee shall be deemed to be in violation or default during the continuance of such inability and such party shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of the obligations hereunder shall automatically extended for a period of time equal to the period of the existence of any such events or conditions and such reasonable time thereafter as shall have been necessitated by any such events or conditions.

14.9 Courtesy Service. Grantee shall provide, without charge, one outlet of standard cable service to all municipally owned buildings, libraries, and police departments within the service area of this franchise that are listed on Exhibit A.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be signed by their duly authorized officials and officers as of _____.

GRANTOR OF THE VILLAGE OF BROCKPORT

By:_____

Title:_____

TIME WARNER CABLE NORTHEAST LLC

By:_____

Title:_____

Approved as to form:

_____

EXHIBIT A

Brockport Village Police Department
1 Clinton Street
Brockport, NY 14220

Brockport Village Hall
49 State Street
Brockport, NY 14220

Brockport Village DPW
38 East Avenue
Brockport, NY 14220

Brockport Village Welcome Center
11 Water Street
Brockport, NY 14220

Seymour Library
161 East Avenue
Brockport, NY 14220