

<p>Village President P. Sean Michels</p> <p>Village Clerk Cynthia Galbreath</p> <p>Village Administrator Brent M. Eichelberger</p>	 <p>10 S. Municipal Drive Sugar Grove, Illinois 60554 Phone: 630-466-4507 Fax: 630-466-4521</p>	<p>Village Trustees</p> <p>Robert Bohler Kevin Geary Mari Johnson Rick Montalto Thomas Renk</p>
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April 12, 2011  
Special Board Meeting  
6:00 P.M.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Ordinance: Authorizing Execution of a Cable Franchise Agreement
5. Resolution: Intent to Utilize Tax Increment Financing to Stimulate Economic Development
6. Resolution: Authorization to Enter Into an Agreement with Teska Associates, Inc.
7. Discussion: FY 11-12 Budget
8. Closed Session: Land Acquisition, Personnel, Litigation
9. Adjournment

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** JUSTIN E. VANVOOREN, FINANCE DIRECTOR  
CYNTHIA L. GALBREATH, VILLAGE CLERK  
**SUBJECT:** ORDINANCE: AUTHORIZING EXECUTION OF  
A CABLE TELEVISION FRANCHISE AGREEMENT  
**AGENDA:** APRIL 12, 2011 SPECIAL BOARD MEETING  
**DATE:** APRIL 8, 2011

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**ISSUE**

Shall the Village Board approve the Cable Communications Franchise renewal with Mediacom.

**DISCUSSION**

The Village Board last discussed the Cable Communications Franchise at the April 5, 2011 Regular Board Meeting. At that time staff was asked to present information that could be distributed to the public regarding the agreement, how franchise agreements work, and detailed information on the various outlets for customer service and how to lodge a complaint.

We were informed by Mediacom this week that they do have a planned system upgrade for the Sugar Grove to be completed this year. This upgrade includes transport changes and node additions to increase the flow of data, which should improve transmission.

Staff has created a press release that would be sent to the press and to those residents who are signed up for email communications. This press release would also be used as a web page release and the corresponding question and answer would be placed on a separate web page as well for users that are searching for Mediacom information. Staff has also worked up a draft of a newsletter article to be included in the next news letter after the passage of the ordinance. This would be a double-sided addition to the regular newsletter information. Should the Board desire any additional information in any of the proposed publications they will be added. Both versions are attached.

Also attached is the summary of the provisions in the new Cable Communications Franchise between the Village of Sugar Grove and Mediacom that was presented at the April 5, 2001 Board Meeting. The actual agreement is not included in your packet, but is available on-line or by request.

**COSTS**

Costs associated with negotiation of the Cable Television Franchise Renewal are expected to total approximately \$6,000. Costs of \$5,348.25 have been incurred through April 1, 2011 from account 01-56-6309. This amount was not budgeted in fiscal year 2010 – 2011.

**RECOMMENDATION**

That the Village Board approve be consensus Ordinance No. 20110412 authorizing execution of a Cable Television Franchise Agreement between the Village of Sugar Grove, Illinois and MCC Illinois, LLC d/b/a Mediacom Communications.

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** BRENT EICHELBERGER VILLAGE ADMINISTRATOR  
RICHARD YOUNG, COMMUNITY DEVELOPMENT DIR.  
**SUBJECT:** RESOLUTION: INTENT TO UTILIZE TAX INCREMENT  
FINANCING (TIF) TO STIMULATE ECONOMIC DEVELOPMENT  
RESOLUTION: AUTHORIZING A PROFESSIONAL SERVICES  
AGREEMENT FOR A TIF STUDY AND PLAN  
**AGENDA:** APRIL 12, 2011 SPECIAL VILLAGE BOARD MEETING  
**DATE:** APRIL 8, 2011

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**ISSUE**

Should the Village consider a Tax Increment Financing (TIF) District to stimulate economic development.

**DISCUSSION**

Economic development is a critical component of every community. This fact has become more prominent during the recent recession. Responsible commercial/industrial growth provides employment and revenues that benefit residents, other businesses and all governmental units.

While the Village has had good commercial/industrial development in some locations, development in other locations has lagged. For example the High Point Center industrial property was annexed in 1998, and while there has been interest over the years, no development has taken place. There are numerous properties in the Rte. 30/ Dugan Road area that have remained undeveloped or underdeveloped for a similar time frame. Unfortunately there are also properties that have had decline.

A main contributing factor to the stagnant growth of the tax base for this sector of the Village is the lack of adequate infrastructure such as sanitary sewer, water and fiber services. The cost of the infrastructure has been greater than typical private development can absorb. Through the use of the Real Property Tax Increment Allocation Redevelopment Act (the Act), the financing of public improvements can be repaid by increased property taxes, resulting in private investment that will bring economic development to the benefit of all community stakeholders.

Approval of the Resolution of intent regarding the TIF possibility allows the costs of exploration to be recouped from the TIF if implemented. The Village's planning

consultant, Teska Associates, Inc., has significant experience in the study of potential TIF Districts and the development of TIF plans.

It is important to note that these steps do not create a TIF. That decision would be made at a later date. All interested parties, including other taxing bodies, will have the opportunity to provide input before any decision is made to establish a TIF.

## **ATTACHMENTS**

1. A Resolution of intent to utilize tax increment financing to improve deteriorating physical conditions and to stimulate new economic development within the Sugar Grove Industrial Area.
2. Professional Services Proposal for the Creation of a Study and Plan for a TIF.

## **COST**

There are estimated costs of \$18,000 for the use of a consultants to determine the feasibility of utilizing the Act for the study area, and if appropriate, the development of a Redevelopment Plan, or the initiation of a redevelopment program. It is intended that the Village would utilize the financing provisions of the Act if a TIF District is established to recapture such expenses, to the extent that they are eligible.

## **RECOMMENDATION**

That the Village Board approve a Resolution establishing intent to utilize of Tax Increment Financing to stimulate economic development and a Resolution authorizing execution of a professional services agreement for a TIF study and plan.

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**VILLAGE OF SUGAR GROVE  
INTEROFFICE MEMORANDUM**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** JUSTIN E. VANVOOREN  
**SUBJECT:** FY 11-12 BUDGET, WORKSHOP #3, APRIL 12, 2011  
**DATE:** APRIL 6, 2011  
**CC:** BRENT EICHELBERGER, CINDY GALBREATH, BRAD SAUER,  
TONY SPECIALE, AND RICH YOUNG

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**Fund 01 General Fund**

The General Fund showed a proposed FY 11-12 surplus of approximately \$27,400 at the last budget workshop on March 8, 2011. Please note that the following changes were made to the General Fund budget based on the most recent information available:

- 1) Increase in franchise fees based on expanded definition of franchise revenues – \$11,000;
- 2) Decrease in state income tax revenue based on April 2011 IML estimate – (\$63,000);
- 3) Increase in state sales tax revenue based on 8 months of Producers Chemical – \$10,300;
- 4) Increase in state use tax revenue based on April 2011 IML estimate – \$13,900;
- 5) Increase in road and bridge tax based on March 29, 2011 tentative levy – \$2,900;
- 6) Decrease in staff salaries – \$18,300;
- 7) Decrease in transfer to equipment replacement fund (after review of balances) – \$20,000;
- 8) Increase in dispatch services cost based on percentage of total calls – (\$46,500); and
- 9) Decrease in road salt cost based on current pricing and usage – \$12,500.

With these changes the proposed FY 11-12 General Fund budget now shows a surplus of approximately \$10,900.

### **Fund 30     General Capital Projects Fund**

The General Capital Projects Fund showed a proposed FY 11-12 deficit of approximately \$189,700 at the last budget workshop on March 8, 2011. Please note that the following changes were made to the Infrastructure Capital Projects Fund budget based on the most recent information available:

- 1)     Decrease in transfer to equipment replacement fund (after review of balances) – (\$20,500); and
- 2)     Inclusion of contribution to Mallard Point drainage project – (\$482,000).

With these changes the proposed FY 11-12 General Capital Projects Fund budget now shows a deficit of approximately \$691,900.

### **Fund 32     Airport Industrial TIF Capital Projects Fund**

Staff has created a new fund to account for expenditures incurred to create and administer the Airport Industrial Tax Increment Financing (TIF) Capital Projects Fund. The initial cost of \$18,000 included in the budget would be for professional services to create the TIF, publication of public hearing notices, mailing of notices, and surveying services to create the legal description. No revenue has been included at this time because a TIF has not been approved by the Village Board. The TIF study would develop the amount and timing of estimated revenues.

### **Fund 35     Infrastructure Capital Projects Fund**

The Infrastructure Capital Projects Fund showed a proposed FY 11-12 surplus of approximately \$117,500 at the last budget workshop on March 8, 2011. Please note that the following changes were made to the Infrastructure Capital Projects Fund budget based on the most recent information available:

- 3)     Decrease in motor fuel tax revenue based on April 2011 IML estimate – (\$17,500);
- 4)     Decrease in grant revenue to reflect the timing of work on the Cross Street and IL Route 47 intersection project – (\$131,400)
- 5)     Decrease in motor fuel tax engineering and construction to reflect reduced revenue noted above – \$17,500; and
- 6)     Increase in streets engineering and construction to reflect the 2011 transfer of General Fund surplus for additional street maintenance purposes – (\$130,000).

With these changes the proposed FY 11-12 Infrastructure Capital Projects Fund budget now shows a deficit of approximately \$143,800.

**Fund 41 Debt Service Fund**

There were no changes made since the last budget workshop to the FY 11-12 Debt Service Fund budget, which shows a deficit of approximately \$9,000.

**Fund 57 Refuse Fund**

There were no changes made since the last budget workshop to the FY 11-12 Refuse Fund budget, which shows a surplus of approximately \$10,100.

**Fund 80 Police Pension Fund**

There were no changes made since the last budget workshop to the FY 11-12 Police Pension Fund budget, which shows a surplus of approximately \$283,300.

**Fund 50 Waterworks and Sewerage Fund**

FY 10-11 – The Waterworks and Sewerage Fund is projected to finish with a deficit of approximately \$1.05 million versus the budgeted \$1.73 million deficit. Revenues will be lower than budgeted by approximately \$233,600, mainly due to lower water usage. Expenses will be lower than budgeted by approximately \$906,500, mainly due to higher electric costs and the timing of a payment to Fox Metro.

FY 11-12 – Water and sewer usage has trended downward over the past 4 years due to a number of factors including: 1) conservation awareness and education; 2) cooler and wetter summers; and 3) the economy. Fixed costs, primarily debt, have stayed constant while revenues have decreased.

Village staff will be convening the Rate Committee in May and June 2011 to present our recommendation for a series of rate increases that will take effect around July 2011. Please note that the attached does not contain any increases.

Water and sewer sales are currently proposed to stay constant since no rate increases and no residential housing permits have been included in the budget.

The operating expenses for FY 11-12 are proposed to increase by 4.6%, or approximately \$122,200 from FY 10-11 projected actual. Expenses will increase mainly due to increases in electricity, the number of replacement water meters, and the transfer of funds for equipment replacement.

Water Capital expenses for FY 11-12 are projected to be higher than the FY 10-11 projected actual mainly due to the completion of the Division Drive watermain project in FY10-11 and the beginning of the Mallard Point to Settlers Ridge and watermain project in FY11-12, as well as a one-time lump sum payment in lieu of land acquisition for sewer treatment facilities.

VILLAGE OF SUGAR GROVE  
 FY 2011-2012 BUDGET  
 FUND 01  
 GENERAL FUND  
 FUND SUMMARY BY DEPARTMENT

4/8/2011

ACCOUNT DESCRIPTION	FYE 09 ACTUAL	FYE 10 ACTUAL	FYE 11 APPROVED BUDGET	FYE 11 EST. ACTUAL	FYE 12 PROP. BUDGET	FYE 13 PROJ. BUDGET	FYE 14 PROJ. BUDGET
FUND BALANCE, BEGINNING OF YEAR	\$ 1,631,017	\$ 1,543,377	\$ 1,518,280	\$ 1,518,280	\$ 1,543,748	\$ 1,554,637	\$ 1,595,755
<b>REVENUES</b>	<b>4,305,575</b>	<b>3,997,663</b>	<b>4,092,385</b>	<b>4,032,159</b>	<b>4,156,902</b>	<b>4,494,588</b>	<b>5,019,971</b>
<b>EXPENDITURES BY DEPARTMENT</b>							
INFORMATION TECHNOLOGY	19,008	14,912	20,007	19,977	19,982	26,707	28,207
ADMINISTRATION	353,527	345,900	354,562	353,453	369,381	388,403	409,518
POLICE	2,008,073	1,964,365	2,056,998	1,999,662	2,069,422	2,226,552	2,357,366
PUBLIC WORKS - STREETS DIVISION	820,703	751,433	760,061	805,262	790,571	827,395	963,721
BUILDING MAINTENANCE	179,190	160,907	131,112	119,382	133,284	138,667	147,539
COMMUNITY DEVELOPMENT	736,661	546,787	637,071	492,665	545,215	608,034	795,537
FINANCE	184,895	151,289	138,988	146,846	144,326	149,738	160,497
BOARD AND COMMISSIONS	91,158	87,167	70,430	69,444	73,832	87,974	94,581
<b>TOTAL EXPENDITURES</b>	<b>4,393,215</b>	<b>4,022,760</b>	<b>4,169,229</b>	<b>4,006,691</b>	<b>4,146,013</b>	<b>4,453,470</b>	<b>4,956,966</b>
<b>NET CHANGE IN FUND BALANCE</b>	<b>(87,640)</b>	<b>(25,097)</b>	<b>(76,844)</b>	<b>25,468</b>	<b>10,889</b>	<b>41,118</b>	<b>63,005</b>
FUND BALANCE, END OF YEAR	\$ 1,543,377	\$ 1,518,280	\$ 1,441,436	\$ 1,543,748	\$ 1,554,637	\$ 1,595,755	\$ 1,658,760
GENERAL FUND RESERVE %	35.1%	37.7%		38.5%	37.5%	35.8%	33.5%

VILLAGE OF SUGAR GROVE  
 FY 2011-2012 BUDGET  
 FUND 50  
 WATERWORKS AND SEWERAGE FUND  
 SUMMARY

4/8/2011

ACCOUNT DESCRIPTION	FYE 09 ACTUAL	FYE 10 ACTUAL	FYE 11 APPROVED BUDGET	FYE 11 EST. ACTUAL	FYE 12 PROP. BUDGET	FYE 13 PROJ. BUDGET	FYE 14 PROJ. BUDGET
NET ASSETS, BEGINNING OF YEAR	\$ 17,930,830	\$ 18,423,502	\$ 17,987,784	\$ 17,987,784	\$ 16,933,368	\$ 15,454,733	\$ 14,636,953
<b>OPERATING REVENUES</b>							
CHARGES FOR SERVICES							
WATER REVENUE	1,105,170	1,159,744	1,321,138	1,220,400	1,222,517	1,226,493	1,242,962
SEWER REVENUE	1,067,518	1,169,094	1,283,653	1,187,771	1,191,767	1,194,483	1,207,615
OTHER REVENUE	34,774	22,807	53,297	53,643	61,435	78,478	111,818
TOTAL OPERATING REVENUES	2,207,462	2,351,645	2,658,088	2,461,814	2,475,719	2,499,454	2,562,395
<b>OPERATING EXPENSES EXCLUDING AMORTIZATION AND DEPRECIATION</b>							
INFORMATION TECHNOLOGY	16,180	10,185	20,008	19,978	19,983	25,208	25,208
ADMINISTRATION	346,249	335,661	349,196	346,406	355,106	370,156	390,201
PW ADMINISTRATION	647,783	592,620	637,402	654,647	678,888	702,841	738,440
WATER OPERATIONS	391,968	445,129	403,087	434,501	436,477	449,310	461,360
SEWER OPERATIONS	97,917	43,470	82,515	72,290	83,302	83,317	83,335
WATER CAPITAL	86	5,101	410,062	62,927	347,285	570,410	225,887
TOTAL OPERATING EXPENSES BEFORE AMORTIZATION AND DEPRECIATION	1,500,183	1,432,166	1,902,270	1,590,749	1,921,041	2,201,242	1,924,431
OPERATING INCOME BEFORE DEPRECIATION AND AMORTIZATION	707,279	919,479	755,818	871,065	554,678	298,212	637,964
DEPRECIATION AND AMORTIZATION	723,272	765,481	797,481	797,481	-	-	-
OPERATING INCOME	(15,993)	153,998	(41,663)	73,584	554,678	298,212	637,964
<b>NONOPERATING REVENUES (EXPENSES)</b>							
CONNECTION FEES	82,931	10,805	70,646	35,843	34,806	97,262	325,054
INTEREST INCOME	228,378	91,558	79,590	41,280	56,453	39,068	31,260
OTHER INCOME	18,492	-	-	-	-	-	-
PRINCIPAL	-	-	(1,184,775)	(589,776)	(1,483,231)	(631,908)	(660,816)
INTEREST EXPENSE	(381,996)	(386,385)	(346,283)	(346,334)	(326,881)	(306,704)	(284,560)
GAIN (LOSS) ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-
TOTAL NONOPERATING REVENUES (EXPENSES)	(52,195)	(284,022)	(1,380,822)	(858,987)	(1,718,853)	(802,282)	(589,062)
INCOME BEFORE CONTRIBUTIONS AND TRANSFERS	(68,188)	(130,024)	(1,422,485)	(785,403)	(1,164,175)	(504,070)	48,902
CONTRIBUTIONS	911,779	-	-	-	-	-	-
TRANSFERS IN	-	-	80,642	116,464	145,082	205,055	286,856
TRANSFERS (OUT)	(350,919)	(305,694)	(385,477)	(385,477)	(459,542)	(518,765)	(536,003)
	560,860	(305,694)	(304,835)	(269,013)	(314,460)	(313,710)	(249,147)
CHANGE IN NET ASSETS	492,672	(435,718)	(1,727,320)	(1,054,416)	(1,478,635)	(817,780)	(200,245)
NET ASSETS, END OF YEAR	\$ 18,423,502	\$ 17,987,784	\$ 16,260,464	\$ 16,933,368	\$ 15,454,733	\$ 14,636,953	\$ 14,436,708

**VILLAGE OF SUGAR GROVE, ILLINOIS  
CABLE TELEVISION FRANCHISE AGREEMENT**

**THIS CABLE TELEVISION FRANCHISE AGREEMENT** (the "Agreement") is made and entered into as of the effective date of \_\_\_\_\_, 2011 (the "Effective Date") by and between the Village of Sugar Grove, a unit of local government organized under the laws of the State of Illinois, (the "Franchising Authority") and MMC Illinois, LLC, a Delaware Limited Liability Company d/b/a Mediacom Communications (the "Grantee").

**WHEREAS**, the Grantee has applied for renewal of its non-exclusive Franchise (the "Prior Franchise") to provide cable television service in the Village of Sugar Grove; and

**WHEREAS**, the Franchising Authority has reviewed the performance of the Grantee under the Prior Franchise, has analyzed and considered the technical ability, financial condition, and legal qualifications of the Grantee to operate a cable television system, and has ascertained the cable-related needs and interests of the community, taking into account the costs of meeting such needs and interests; and

**WHEREAS**, the Franchising Authority has relied upon the Grantee's representations and has, after such consideration, analysis, and deliberation as required by applicable law, has approved and found sufficient the technical, financial, and legal qualifications of the Grantee, and has determined that the Grantee intends through the terms and conditions of this Agreement to meet the cable-related needs and interests of the community; and

**WHEREAS**, after adequate public notice, based on Grantee's representations and information, and in response to Grantee's request for renewal, the Village President and Board of Trustees of the Village of Sugar Grove have determined that, subject to the provisions of the Cable Communications Ordinance of the Village of Sugar Grove (the "Cable Communications Ordinance") and the terms and conditions set forth herein, the grant of a renewed non-exclusive Franchise to Grantee, to supersede the prior franchise (Ordinance No. 729, approved August 3, 1999), is consistent with the public interest, and therefore has enacted Ordinance No. 20110412 more than thirty (30) days after the filing of Grantee's request for renewal; and

**WHEREAS**, the Franchising Authority and the Grantee have reached agreement on the terms and conditions set forth herein;

**NOW, THEREFORE** in consideration of the Village's grant of a new Franchise to the Grantee and the Grantee's promise to provide cable television service to residents of the Village pursuant to and consistent with the Cable Communications Ordinance, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy are hereby acknowledged;

## THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

### SECTION 1: DEFINITIONS

For the purposes of this Section, the following phrases, terms, words, and their derivations shall have the meaning as stated herein. When not inconsistent with the context, words in the present tense shall include the future, words indicating a plural number shall include the singular number and words in the singular number include the plural number. The word "shall" and "will" are mandatory, and not directory. The word "may" is permissive. Words not defined shall be given their common and ordinary meaning. Unless a section provides otherwise, references to statutory enactments shall include any and all amendments thereto and any successor provisions. All capitalized words defined herein, and all other capitalized words utilized within this Agreement, shall have the meaning ascribed to them in the Cable Act unless said terms are not defined in the Cable Act, whereupon the definition shall be controlled by this Agreement. In the event of conflict between this Agreement and the Cable Act, the Cable Act definition shall control. Where there is a conflict between the Franchise Agreement and the Cable Communications Ordinance, the Franchise Agreement shall prevail. Where the Franchise Agreement is silent, the terms of the Cable Communications Ordinance and the Cable Act shall control.

**ACT:** Shall mean the Communications Act of 1934, the Telecommunications Act of 1996, the Cable Communications Policy Act of 1984 as amended by the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521 et. seq.) as now or hereinafter amended.

**BASIC CABLE SERVICE:** Shall mean any service tier which includes the retransmission of local television broadcast signals.

**BOARD:** "Board" or "Village Board" shall mean the Village of Sugar Grove President and Board of Trustees.

**CABLE ADMINISTRATOR:** Shall mean that individual who has been appointed by the Village Administrator to oversee and administer the Cable Communications Ordinance and any Franchise Agreement.

**CABLE COMMUNICATIONS ORDINANCE:** Shall mean Ordinance No. 20090519F11, the Village of Sugar Grove Cable Communications Ordinance, as may be amended from time to time consistent with the terms and conditions of this Franchise.

**CABLE OPERATOR:** Any Person or Persons, who provide Cable Services over a Cable System and directly or through one or more affiliates, owns a significant interest in such Cable System, or who otherwise controls, or is responsible or, through any arrangement, the management and operation of such Cable System.

**CABLE SERVICE or SERVICE:** Shall mean (1) The one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**CABLE SYSTEM:** “Cable Communications System”, “Cable System”, or “System”, shall mean a facility, consisting of a set of closed transmission paths, and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject in whole, or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent that such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (D) an Open Video System that complies with 47 U.S.C. § 573, or; (E) any facilities of any electric utility used solely for operating its electric utility systems.

**CHANNEL:** Shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

**COMPLAINT:** Means any written or verbal communication from any Person, individual, business, unit of government that is not the Franchising Authority, or institution, however communicated, to the Franchising Authority regarding a matter or matters pertaining to the Cable Service or other cable-related function of the Cable System or Franchise.

**CONSTRUCT:** Shall mean (i) the installation of cables, lines, fiber optic cables, connection boxes, power supply boxes, or facilities that are in or cross any Right-of-Way within the Village for use as part of a Cable System, or (ii) the connection of other facilities directly or indirectly to previously existing cables, lines, fiber optic cables, connection boxes, power supply boxes or facilities that are in or cross any Right-of-Way within the Village for use as part of a Cable System.

**CONTROL:** “Control” or “Controlling Interest” means 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 or entity (except underwriters during the period in which they are offering securities to the public) of 50 percent 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 group of Persons.

**CONVERTER:** A device provided by the Cable Operator to Subscribers for the purpose of decoding or changing the frequency of signals to a suitable Channel or Channels which the television receiver is able to deliver at designated dial locations.

**DWELLING UNIT:** Shall mean any house, apartment, building, or group of buildings in which a person lives.

**EDUCATIONAL ACCESS CHANNEL:** Shall mean the Waubonsee Community College educational access channel.

**FCC:** Shall mean the Federal Communications Commission and any legally constituted federal successor regulatory body, or agency.

**FEEDER CABLE:** Shall mean the cable that takes signals in a Cable System from the trunk line to a node, or similar appurtenance that serves a cluster of Dwelling Units and to which Subscriber taps are attached.

**FRANCHISE:** Shall mean the same as found in 47 U.S.C. § 522(9), i.e., an initial authorization or renewal thereof, including a renewal of an authorization which has been granted subject to 47 U.S.C. §546, issued by the Village of Sugar Grove, whether such authorization is designated as Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorized the construction or operation of a Cable System within the corporate boundaries of the Village of Sugar Grove.

**FRANCHISE AGREEMENT:** Shall mean this contractual agreement entered into between the Village and the Grantee hereunder which is enforceable by the Village and said Grantee and which sets forth the rights and obligations between the Village and said Grantee in connection with the Franchise.

**FRANCHISE AREA:** Shall mean the entire geographic area of the Village of Sugar Grove now or in the future, including any property annexed to the Village of Sugar Grove.

**FRANCHISE FEE:** Shall include any tax, fee, or assessment of any kind imposed by the Village or other governmental entity on the Grantee or cable Subscriber, or both, solely because of its status as such. A Franchise Fee shall not include any tax, fee, or assessment of general applicability including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or Subscribers; Payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in the support of, the use of Public, Educational, or Governmental Access facilities; Capital costs which are required by the Franchise to be incurred by Grantee for Public, Educational, or Governmental Access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, or; any fee imposed under Title 17, U.S. Code.

**FRANCHISING AUTHORITY:** Shall mean the Village Board of the Village of Sugar Grove.

**GOVERNMENT ACCESS CHANNEL:** Shall mean one future digital Channel to be shared with the Village of Elburn and located on the digital basic tier and to be used for noncommercial governmental use as more fully described in Section 17.

**GRANTEE:** Shall mean MCC Illinois LLC, a Delaware Limited Liability Company, its assigns, transferees or lawful successors.

**GROSS REVENUES:** Shall mean all consideration of any kind or nature in accordance with generally acceptable accounting principles (“GAAP”), including, without limitation, cash, credits, property, and in-kind contributions received by the Grantee for the operation of a Cable System to provide Cable Service within the Grantee’s Cable Service area within the Village.

A. Gross Revenues shall include the following:

1. Recurring charges for Cable Service.
2. Event-based charges for Cable Service including, but not limited to, pay-per-view and video-on-demand charges.
3. Rental of set top boxes and other Cable Service equipment.
4. Service charges related to the provision of Cable Service, including but not limited to activation, installation, and repair charges.
5. Administrative charges related to the provision of Cable Service, including but not limited to service order and service termination charges.
6. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
7. A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the Grantee’s network to provide Cable Service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of Subscribers in relation to the relevant regional or national compensation arrangement.
8. Compensation received by the Grantee that is derived from the operation of the Grantee’s network to provide Cable Service with respect to commissions that are received by the Grantee as compensation for promotion or exhibition of any products or services on the Grantee’s network, such as a "home shopping" or similar channel
9. In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the Grantee’s revenue attributable to the other services, capabilities, or applications shall be included in Gross Revenue unless the Grantee can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

B. Gross Revenues do not include any of the following:

1. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
2. Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the Grantee to the extent the refund, rebate, credit, or discount is attributable to Cable Service.
3. Regardless of whether the services are bundled, packaged, or functionally integrated with Cable Service, any revenues received from services not classified as Cable Service, including, without limitation, revenue received from telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the Grantee to noncable service in accordance with the Grantee's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
4. The sale of Cable Services for resale in which the purchaser is required to collect the Franchise Fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee with respect to the service.
5. Any tax or fee of general applicability imposed upon the Subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the Grantee and required to be remitted to the taxing entity, including sales and use taxes.
6. Security deposits collected from Subscribers.
7. Amounts paid by Subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the Cable Service.

C. Revenue of an affiliate of a Grantee shall be included in the calculation of Gross Revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the Grantee has the effect of evading the payment of the fee which would otherwise be paid by the Cable Service.

D. Where there is a conflict between this Section and Ordinance 20080318B of the Sugar Grove Municipal Code regarding the definition of Gross Revenues under the Cable/Video Service Provider Fee Ordinance or its application, the provisions of this Agreement shall prevail.

**HEADEND:** The control center of a cable television system, where signals are amplified, converted, processed, and combined into a common cable along with any origination cablecasting, for transmission to subscribers. The term generally includes antennas, preamplifiers, frequency converters, demodulators, processors, and other related equipment.

**INSTALLATION:** Shall mean the connection of the Cable System from Subscriber Drop cables to Subscribers' terminals.

**INTERACTIVE ON-DEMAND SERVICES:** Shall mean a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

**JULIE:** Shall mean The Joint Utility Locating Information for Excavators utility notification program.

**MODIFICATION:** Shall mean any Modification, Modification agreement, or amendment to the Franchise Agreement entered into and between the Grantee and the Village and made a part of the Franchise Agreement.

**NORMAL BUSINESS HOURS:** Shall mean those hours during which most similar businesses in the geographic area of the Village are open to serve customers.

**PERSON:** Shall mean any individual, firm, corporation, company, partnership, association, joint venture, trust, or organization of any kind and the lawful trustee, successor, transferee, assignee, or personal representative thereof.

**RIGHT-OF-WAY:** Shall mean any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements and easements dedicated for compatible uses, in which the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. "Right-of-Way" or "Rights-of-Way" shall not include any real or personal Village property that is not specifically described in the previous two (2) sentences and shall not include Village buildings, fixtures, and other structures or improvements regardless of whether they are situated in the Right-of-Way.

**SCHOOLS:** Any public or private elementary School, secondary Schools, junior college, or university facility which conducts classes or provides instruction services which has been granted a certificate of recognition by the Illinois State Board of Education.

**SNOW DROP:** Shall mean the temporary drop to the Subscriber's house that is placed above ground during the winter months.

**SUBSCRIBER:** Shall mean any Person who legally receives Cable Service.

**SUBSCRIBER DROP:** Means a cable which connects the ground block on the Subscriber's residence to the nearest Feeder Cable of the Cable System.

**VILLAGE:** Means the Village of Sugar Grove and all the territory within its present and future corporate boundaries and including any area over which the Village exercises its jurisdiction.

## **SECTION 2: GRANT OF NON-EXCLUSIVE FRANCHISE**

**Section 2.1: Grant of Operation.** The Village of Sugar Grove hereby grants to the Grantee the non-exclusive right and privilege to construct, erect, install, maintain, or operate in, upon, along, across, over, and under Rights-of-Way in the Village, poles, wires, cables, underground conduits, manholes, and other television conductors, fixtures, and appurtenances necessary for the maintenance, repair, and operation of a Cable System for the interception, production, sale, and distribution of audio, video, data, and radio signals.

**Section 2.2: Right of Village to Grant Other Franchises.** This Franchise and the right it grants to use and occupy the public Right-of-Way shall not be exclusive, and the Village reserves the right to grant other franchises for similar uses or for other uses of the public Right-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise, subject to applicable state law, as such law may be amended from time to time. In the event that the Franchising Authority finds that it is in the best interest of the community to grant another additional cable Franchise, the Franchising Authority shall follow the procedures set forth in 65 ILCS 5/11-42-11, as may be hereafter amended, in awarding another additional cable Franchise, and shall grant said second Franchise under substantially similar terms and conditions as the initial Franchise. The Franchising Authority shall not permit any Person to provide services similar to those provided by Grantee in the Franchise Area without first having secured a non-exclusive franchise from the Franchising Authority or an applicable authorization from the State to provide video service. The Franchising Authority agrees that any grant of additional Franchises, or the grant of an authorization to provide video or Cable Service by the Illinois Commerce Commission to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Franchise Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein in accordance with the requirements of 65 ILCS 5/11-42-11(e).

**Section 2.3: Acceptance of Franchise.** By accepting this Agreement, the Grantee:

- A. Acknowledges and accepts the Village's legal right to issue and enforce the Agreement pursuant to Federal, State, and Local law; and
- B. Agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, that this Agreement was freely and voluntarily given by the Grantee without duress or coercion and that it will not raise any claim to the contrary.
- C. Agrees, that except to the extent there is a conflict with the terms of this Agreement, the terms, conditions, requirements, and restrictions in the Cable Communications Ordinance, Ordinance No. 20090519, shall be a part of this Agreement, and this shall be the entire agreement to the extent permitted by State or Federal law. Grantee and the Village agree that the Village may through the lawful exercise of its police powers amend the Cable Communications Ordinance and the general ordinances of the Village provided that the Village provide the Grantee with no less than thirty (30) days advance written notice and

the revisions do not alter the material provisions of this Agreement, nor increase the obligations or limit the benefits of the Grantee in this Agreement.

D. Agrees, by acceptance, that except to the extent there is a conflict with the terms of this Agreement, that it will comply with all lawful terms, conditions, requirements, and restrictions of ordinances of the Village of Sugar Grove currently in effect, to the extent permitted by State or Federal law.

E. That it has carefully and completely read all of the terms and provisions of this Agreement, and acknowledges that, to the best of its knowledge, each provision is lawful and enforceable. If either party believes that the terms of this Agreement or any Village law or regulation conflicts with any state or federal law, or regulation, that party will notify the other party within a reasonable period of time upon learning of the conflict.

#### **Section 2.4: Police Powers; Reservation of Rights**

A. All rights and privileges granted herein are subject to the police powers of the Village and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate the Grantee and the construction, maintenance, repair, and operation of the Grantee's Cable System, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the Village shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce existing and future ordinances and regulations containing, specifically Right-of-Way (Ordinance No. 20080318C), cable television customer protection and service standards (Ordinance No. 20080318B), the Cable Communications Ordinance (Ordinance No. 20090519F11), the Public, Educational and Governmental (PEG) Support Fee Ordinance (Ordinance No. 20080318A), telecommunications and utility ordinances, and if applicable, rate regulation provisions; provided however, the Village shall provide Grantee thirty (30) days written notice in advance of enacting or passing any proposed ordinance, amended ordinance or regulation. The adoption and enforcement of any of the aforementioned ordinances or regulations, now or in the future, shall be subject to the provisions of state and federal law.

B. Subject to this Agreement, the Village reserves every right and power which is required to be reserved or provided by any ordinance of the Village, and the Grantee by its acceptance of this Franchise, agrees to be bound thereby and to comply with any lawful action or requirements of the Village in its exercise of such rights and powers which have been or may be enacted or established as long as it is not in conflict with FCC regulations or Federal law and consistent with the terms and conditions of this Agreement.

#### **Section 2.5: Consistency with Other Documents and Laws by Reference.**

This Agreement and any ordinance adopting this Agreement supplement and harmonize the regulatory framework set forth in the Cable Ordinance, State Law, and the Cable Act; and this Agreement and any ordinance adopting this Agreement shall at all times be read and construed for consistency and compatibility with the provisions of the Cable Ordinance, State Law, and the Cable

Act as read and interpreted in concert with each other. In the event of inconsistency between the terms of this Agreement and the terms contained in the Cable Ordinance, State Law, or the Cable Act, the terms contained in this Agreement shall prevail to the extent permitted by law.

For the purposes of this Agreement, the parties understand and agree that the following provisions or parts thereof, of the Cable Ordinance shall not be applicable unless otherwise provided by law:

Section 2.6, Definitions. Definition of Cable Provider or Video Provider shall be inapplicable in its entirety.

Section 2.11, Definitions. Definition of Competitive Franchise Applicant shall be inapplicable in its entirety.

Section 2.15, Definitions. Definition of Corporate Authority shall be inapplicable in its entirety.

Section 2.22, Definitions. Definition of Franchise Application shall be inapplicable in its entirety.

Section 2.29, Definitions. Definition of Gross Revenues Sections A.10 and B.4 shall be inapplicable in their entirety.

Section 2.31, Definitions. Definition of Holder shall be inapplicable in its entirety.

Section 2.32, Definitions. Definition of ICC shall be inapplicable in its entirety.

Section 2.35, Definitions. Definition of Leased Access Channel shall be inapplicable in its entirety.

Section 2.40, Definitions. Definition of PEG Access Support Fee shall be inapplicable in its entirety.

Section 2.45, Definitions. Definition of Service Line Drop shall be inapplicable in its entirety.

Section 2.46, Definitions. Definition of Service Provider Fee shall be inapplicable in its entirety.

Section 2.50, Definitions. Definition of Video Provider shall be inapplicable in its entirety.

Section 3.1, Franchise Required, Subsection F shall be inapplicable in its entirety.

Section 3.7, Content of Franchise Applications shall be inapplicable in its entirety.

Section 3.8, Representation; Background Information shall be inapplicable in its entirety.

Section 9.1, Causes for Revocation, shall be inapplicable in its entirety.

Section 9.2, Notice, Time to Correct and Hearing shall be inapplicable in its entirety.

Section 11.1(C), Quarterly and Annual Reports shall be inapplicable in its entirety.

Section 12.3, Records to be Provided to Village, shall be inapplicable in its entirety.

Section 13.2, FCC Technical Requirements, Subsections A and D shall be inapplicable in their entirety.

Section 13.5 (C), Auxiliary Power, shall be inapplicable in its entirety.

Section 13.7, Emergency Override, shall be inapplicable in its entirety.

Section 13.9, Service Interruptions, shall be inapplicable in its entirety.

Section 14.18, Failures of Performance, shall be inapplicable in its entirety.

Section 16, Service to Residents and Businesses in the Franchise Area, shall be inapplicable in its entirety.

Section 18.3, Universal Service, shall be inapplicable in its entirety.

Section 18.4, Community and Educational Access Channels, shall be exempt in its entirety.

Subject to the terms and conditions contained herein, the Grantee shall comply with all generally applicable, lawfully enacted local ordinances, rules and regulations. However, Grantee shall be subject to compliance and enforcement with all local laws, rules, and regulations under the terms of such laws, rules, and regulations. Specifically, the Village does hereby pursuant to law declare its intent to and shall enforce the Right-of-Way and customer service and privacy protections as described hereinbelow, and specifically the Village's Right-of-Way Ordinance (Ordinance No. 20080318C) also cited as Chapter 7-5-10 of the Sugar Grove Municipal Code, adopted March 18, 2008, and the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A) also cited as Chapter 3-9-1 of the Sugar Grove Municipal Code, enacted March 18, 2008 as both are referenced herein.

### **SECTION 3: TERM OF AGREEMENT**

**Section 3.1: Franchise Term.** The terms of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this Agreement, unless terminated sooner as provided in the Cable Communications Ordinance. The Agreement and the Franchise granted hereunder shall become effective upon the date of acceptance by the Grantee and Grantor.

### **SECTION 4: SERVICE AREA OF FRANCHISE**

The Franchising Authority hereby extends to the Grantee the privilege of operating the Cable System in any and all areas within the corporate limits of the Village as it exists now and as it may exist during the term of this Agreement. In the event that the Village annexes land adjacent to the Village boundaries, the Franchising Authority shall provide written notification to the Grantee pursuant to the requirements of Section 28 herein below, of such annexations when they become effective. As of the Effective Date of this Franchise, the corporate limits of the Village are those shown on the map found in Appendix A.

### **SECTION 5: RETRANSMISSION OF SIGNALS WITHIN A STRUCTURE**

Installation or Subscriber use of Cable System service which involves the retransmission of the signal or signals to multiple reception points within a structure shall be negotiated between the Grantee and the owner of the structure.

### **SECTION 6: MODIFICATION OF FRANCHISE**

A. In the event that the Grantee seeks a modification of this Agreement, the Grantee and the Franchising Authority shall follow the requirements and procedures set forth in applicable law. Modifications to this Agreement shall be requested by the Grantee in writing. The Franchising Authority may request additional information pertinent to making an informed decision, and review the

request for modification in a timely manner. Approval of the modification by the Village Board shall be written and made in ordinance form.

B. Modifications involving the Educational or Governmental Access Channel may be subject to informal negotiation between the Village and the Grantee. Upon recommendation from the Cable Administrator, Educational or Governmental Access Channel modifications shall be referred to the Village Board for review and approval.

## **SECTION 7: SYSTEM IMPROVEMENTS**

**Section 7.1: General System Description.** The Cable System shall meet or exceed the following characteristics:

A. A minimum of 750 MHz on all active components Upon demonstration to the Grantee of market demand for additional Cable Services based upon survey data collected by the Grantee or the Village, the Grantee shall expand its passive components to a minimum of at least 1 GHz; and

B. Bi-directional activation with a clean return path.

C. Grantee shall continue to pass through the portions of the television signal that provide closed captioning data for the hearing-impaired. For hearing-impaired Subscribers, the Grantee shall provide information concerning the availability of equipment to facilitate the reception of services for the hearing impaired. In addition, the Grantee must have means available, and a publicly-listed telephone number for such means, that will allow hearing or speech impaired Persons to contact the Grantee.

## **Section 7.2: Continuous Operation, Emergency Maintenance, and Staffing.**

A. **Continuous Operation:** Grantee shall operate and maintain said Cable System in a manner which will enable continuous twenty-four (24) hour operation of all services as required herein. The Grantee's Cable System shall be equipped with sources of auxiliary power at the Headend established by the Grantee for the purpose of continuation of service in the event of repairs, maintenance, power interruptions or power outages in accordance with Grantee's design.

B. **Emergency Maintenance:** The Grantee shall keep an emergency system and repair staff, capable of responding to and repairing System malfunctions or interruptions, on a twenty-four (24) hour basis.

C. **Staffing:** The Grantee must provide a sufficient staff, including its own employees, and at its sole discretion, contract labor, in order to respond efficiently to customer inquiries, Complaints, and requests for service either over the phone, or at the Subscriber's residence.

D. **Service Interruption:** The Grantee may interrupt service, when necessary, to cable Subscribers for the purposes of alteration, maintenance, repair or emergencies. Grantee shall create such interruptions at such time as will cause the least amount of inconvenience to its Subscribers, and unless such

interruption is unforeseen and immediately necessary, it shall give written notice to the Village of interruptions which affect Subscribers for a period in excess of six (6) hours.

**Section 7.3: System Characteristics.** The Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

A. **Industry-accepted Equipment.** The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The Grantee shall provide backup power to the Headend. The Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with receivers and recording devices.

B. **Scrambling.** The Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

C. **No Deterioration to Access Signals.** The System shall be so constructed and operated so that there is no significant deterioration in the quality of access signals received at the demarcation point from the Franchising Authority or its access channel designee, either upstream or downstream, as compared with any other Channel on the System. Deterioration refers to any signal problem, including, but not limited to, hum, co-Channel interference, pixellation on digital Channels created as a result of signal ingress, egress, or other causes, and other forms of interference.

D. **Customer Equipment for Lease or Sale.** Subject to applicable law or regulation, as part of the System, the Grantee shall offer every Subscriber the opportunity to use equipment that allows Subscribers to view a program on one Channel while recording a program on another Channel.

**Section 7.4: Extension of Service**

A. **Line Extensions to Residences:** The Grantee shall extend, at its sole expense, Service to any part of the Franchise Area where there is a density of twenty (20) homes per cable mile as measured from the closest active equipment source from which a signal meeting FCC technical requirements could be provided to the affected homes, but no longer than from one hundred twenty-five (125) feet of its trunk or node and where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way subject to the following installation schedule:

1. For potential Subscriber requests for service from January 1 through March 31 of any year, Grantee shall extend its Cable System to the area meeting the density standard no later than September 30 of such calendar year.
2. For potential Subscriber requests for service from April 1 through October 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than June 30 of the subsequent calendar year.
3. For potential Subscriber requests for service from November

1 through December 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than September 30 of the subsequent year following such request.

Grantee shall extend its Cable System to Subscribers at no cost other than the usual connection fee for all Subscribers requesting a Standard Installation where the density standards of this section are satisfied. A Standard Installation shall mean a service drop of no more than one hundred twenty-five (125) feet, with no boring, that does not require disruption of pavement or similar surfaces, providing the standard signal strength for residences, using a standard residential drop cable, which currently consists of RG-6 cabling.

B. **Line Extensions to Businesses:** Grantee shall extend the Cable System, upon request by local businesses within the Franchise Area where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way. Grantee shall extend the Cable System to those businesses requiring a Standard Installation if the Installation meets the criteria set forth in subsection (A) hereinabove provided that the Grantee may assess additional costs to any customer where the commercial installation requires additional time or expense.

C. **Line Extensions to Schools and Public Buildings:** The Grantee shall extend service to any School or public building, including buildings belonging to the Village, in the Franchise Area upon request of the School district, the Village, other governmental unit, or owner of the public building. The initial one hundred twenty-five (125) feet of the line extension from the Cable System feeder, trunk or node, shall be performed at the Grantee's sole expense. The Grantee may charge the School district, other governmental unit, or building owner the cost of labor and materials for extensions of more than one hundred twenty-five (125) feet. Installations of line extensions to Schools or public buildings shall be performed within the same time period as set forth in Subsection A hereinabove. Should additional time be needed, the Grantee shall request an extension in writing to the Village and the building owner showing the reasons requiring the need for additional time.

D. Where density and proximity requirements provided in this Section have been met and applicable right of entry agreements have been received, Grantee shall not exclude any multiple Dwelling Unit facilities located in the Village from having the ability to receive Cable Services, including but not limited to, apartment buildings, condominium complexes (including duplexes, townhouses and rowhouses), and senior citizen congregate housing. Nothing prevents Grantee from recouping from a property management firm the reasonable expenses necessary to serve the facility.

#### **Section 7.5: Periodic Testing and Compliance With FCC Standards**

A. Grantee shall comply with all Cable System testing regulations for video and audio signal quality and signal leakage as specified in Title 47, Section 76, Subpart K of the Code of Federal Regulations. Upon request, Grantee shall provide the Franchising Authority with copies of its FCC proof-of-performance tests in accordance with Section 13.2 of the Cable Communications Ordinance. In

the event that the FCC should delete or repeal the requirements of 47 C.F.R. § 76(K), the Village and the Grantee agree to incorporate similar standards into this Agreement. Upon request by the Franchising Authority, the Grantee shall provide a copy of any Cable System performance tests conducted pursuant to such similar standards within thirty (30) days after the end of the calendar year, or after the date of request, whichever comes first.

B. The Village may require special testing of a location or locations within the Cable System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or non-compliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The Village shall endeavor to arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers caused by such testing.

Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate, at its sole expense, and if necessary, correct problems or complaints that may necessitate testing. If such Complaints or problems have been addressed to the Village's satisfaction, then no further testing shall be ordered.

C. If, after such notice, the Village wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at the Village's expense by a qualified engineer selected by the Village, and Grantee shall cooperate in such testing. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers.

D. The Grantee shall test any new or substantially rebuilt portion of a Cable System after the portion of the Cable System is made available for service to Subscribers as a part of its next regularly scheduled Proof-of-Performance tests. Technical performance tests shall be conducted by the Grantee to demonstrate full compliance with FCC technical standards. Such tests shall be performed by, or under the supervision of an engineer with proper training and experience. Upon request, a copy of the report shall be submitted to the Cable Administrator describing test results, instrumentation, calibration, and test procedure, and the qualifications of the engineer responsible for the tests. The Proof-of-Performance test results from the new or substantially rebuilt portion of the Cable System shall meet the requirements of this subsection. At the option of the Village, reasonable additional tests may be required, at the expense of the Grantee, if the Grantee is unable to meet FCC technical standards based upon the results of technical performance tests or Proof-of-Performance tests. Any additional tests shall be conducted under the supervision of an engineer with proper training and experience.

**Section 7.6: New Services and Technologies.** This Agreement may not restrain or prohibit Grantee from adding new services and/or technologies to the Cable System as they become available. The Grantee shall notify the Village before it launches new categories of Subscriber services. This provision shall not be construed to require the Grantee to provide new categories of Subscriber services.

**Section 7.7: Performance Security and Security Fund**

A. Purpose. The Grantee shall establish a Security Fund in a form and in an amount as set forth in this section. The Security Fund shall be continuously maintained in accordance with this section at the Grantee's sole cost and expense. The Security Fund shall serve as security for:

1. The faithful performance by the Grantee of all the requirements of this Section;
2. Any expenditure, damage, or loss incurred by the Village occasioned by the Grantee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this chapter; and
3. The payment by Grantee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or nonperformance by Grantee in violation of this Section including, without limitation, any damage to public property or restoration work the Grantee is required by this Section to perform that the Village must perform itself or have completed as a consequence solely of the Grantee's failure to perform or complete, and all other payments due the Village from the Grantee pursuant to this Section or any other applicable law.

B. Form and Amount. Grantee shall furnish a performance bond or letter of credit (the "Security Fund"), which may include, but not be limited to, construction bonds, labor, and material bonds, in the amount of twenty-five thousand dollars (\$25,000.00) for compensation for damages resulting from the Grantee's nonperformance as specified in this Franchise, or any applicable local law. For construction projects involving cutting of streets, including directional boring and trenching, Grantee shall provide an additional twenty-five thousand dollars (\$25,000.00) construction bond on a per project basis. For projects involving more than one-sixth (1/6) of the total Cable System plant mileage, regardless of whether such plant is installed aerially or underground, the amount of the performance bond, letter of credit or security fund shall be no less than one hundred thousand dollars (\$100,000.00) on a per project basis. In any legal action concerning the bonds provided for in this Section, the prevailing party shall be entitled to recover its reasonable costs, including attorney's fees.

Any performance surety bond or letter of credit provided pursuant to this subsection shall, at a minimum:

1. Provide that it will not be canceled without thirty (30) days prior written notice to the Village and the Grantee;

2. Not require the consent of the Grantee prior to the collection by the Village of any amounts covered by it; and
3. Shall provide a location convenient to the Village and within the State of Illinois at which it can be drawn.

Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the Village, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Village Public Works Director may, in the exercise of sound discretion, allow the Grantee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this subsection (C) for any single phase.

C. Withdrawals. The Village, upon thirty (30) days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this subsection, may withdraw an amount from the Security Fund, provided that the Grantee has not reimbursed the Village for such amount within the thirty (30) day notice period. Withdrawals may be made if the Grantee:

1. Fails to make any payment required to be made by the Grantee hereunder;
2. Fails to pay any liens relating to the facilities that are due and unpaid;
3. Fails to reimburse the Village for any damages, claims, costs or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the Grantee; or
4. Fails to comply with any provision of this chapter that the Village determines can be remedied by an expenditure of an amount in the Security Fund.

D. Replenishment. Within thirty (30) days after receipt of written notice from the Village that any amount has been withdrawn from the Security Fund, the Grantee shall restore the Security Fund to the amount specified in subsection (C) hereof.

E. Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the Grantee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the Grantee to comply with any provisions of this chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the Village to the extent necessary to cover any reasonable costs, loss or damage incurred by the

Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the Grantee.

F. Rights Not Limited. The rights reserved to the Village with respect to the Security Fund are in addition to all other rights of the Village, whether reserved by this chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the Village may have. Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

G. Collection Upon Revocation. In the event this Franchise is revoked by reason of default of the Grantee, the Village shall be entitled to collect from the performance surety bond, or letter of credit that amount which is attributable to any damages sustained by the Village as a result of said default or revocation.

H. Return Upon Expiration of Franchise Term or Revocation. The Grantee shall be entitled to the return of the performance surety bond, letter of credit, or portion thereof, as remains on deposit after the expiration of the term of the Franchise or revocation for default thereof, provided the Village has not notified the Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

**Section 7.8: Reservation of Rights.** The rights reserved to the Village herein are in addition to all other rights of the Village, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to the aforesaid security will affect any other right the Village may have.

Neither the filing of a security with the Village, nor the receipt of any damages recovered by the Village thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the security or otherwise.

## **SECTION 8: CONSTRUCTION STANDARDS**

**Section 8.1: Notice of Proposed Construction and Timetable.** Where the Grantee intends to construct, reconstruct, or upgrade more than one-third (1/3) of the total mileage of Cable System plant within the Franchise Area, the Grantee shall provide to the Franchising Authority, a schedule for construction, reconstruction, or upgrade, including Grantee's best estimate of a timetable for the completion of said construction.

**Section 8.2: Adherence to Electrical and Safety Codes.** The Grantee shall comply with the requirements of Section 13.3 of the Cable Communications Ordinance as originally approved by the Village regarding adherence to electrical and safety codes.

**Section 8.3: Permit and Inspection Requirements.** For work in the Right-of-Way conducted by the Grantee, the requirements of Section 7-5-1 through 7-5-23 of the Sugar Grove Municipal Code (Ordinance No. 20080318C) shall apply. In the event that the Grantee proposes to perform work in the Right-of-Way that includes excavation of property, the requirements of Section

7-2-1 through 7-2-10 of the Sugar Grove Municipal Code (Ordinance No. 380) shall apply.

**Section 8.4: Overhead and Underground Installation.**

A. Aerial cable locations shall comply with Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance (Ordinance No. 20080318C).

B. In all sections of the Franchise Area where the cables, wires, or other like facilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. The Grantee shall comply with the provisions of Ordinance No. 20080318C, particularly Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance regarding underground installation of system plant and appurtenances. With respect to any cables, wires, and other like facilities constructed and installed by Grantee aboveground, Grantee shall, at its sole expense, reconstruct and reinstall cables, wires or other facilities underground pursuant to any project under which the cables, wires, or other facilities of all like utilities are placed underground within an area. At such time that a Grantee must relocate its System plant due to road or highway improvement, it shall relocate its plant in accordance with timetables established by the Village and shall relocate its lines in a manner as to avoid interference with road improvements and other utilities at no cost to the Village. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Right-of-Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Right-of-Way as necessary any property of the Grantee, provided:

(A) the expense of such is paid by said Person benefitting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice by the permit holder to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permit relocation.

C. Underground installations shall be in compliance with all applicable construction and safety codes. Construction, operation, maintenance, and repair of facilities shall be in accordance with applicable state laws and regulations, and with sound practices of the cable television industry. All safety practices required by the Illinois Occupational Safety and Health Act and the federal Occupational Safety and Health Act, along with other applicable laws shall be used during construction, repair and maintenance of facilities.

D. The Grantee shall notify the public prior to commencing any construction, other than emergency repair work, that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety

of the public generally. Written notice of such construction work shall be delivered to the Village at least one week prior to commencement of that work. Notice shall be provided to those Persons most likely to be affected by the work in at least one of the following ways: by telephone (if the Subscriber is a customer of Grantee's phone service), in person, by Certified United States mail, return receipt requested or by overnight courier, or by distribution of flyers to local residences. In the event that Grantee must enter a building or other structure and the owner, manager, or resident is not readily available, it must schedule an appointment at the reasonable convenience of the owner or resident. Entry into a building or other structure shall only be allowed if there is a Person affiliated with the owner or resident who is eighteen (18) years of age or older. The notice and scheduling of appointment provisions of this section shall not apply if the Grantee is investigating possible cable signal theft.

**Section 8.5: Grounding.** The Grantee shall comply with the grounding standards stated in Section 13.6 of the Cable Communications Ordinance.

**Section 8.6: Outage Prevention.** Grantee shall warrant against downtime due to Cable System outages on critical Cable System functions. In the event that a significant number of outages are found to be present in the Cable System, and, after the Franchising Authority has provided the Grantee with adequate notice and opportunity to cure said outages, and a significant number of outages continue to occur, the Grantee shall develop a plan which shall have the goal of minimizing the number of outages and shall present such plan to the Franchising Authority prior to implementation.

**Section 8.7: Emergency Removal of Plant.** If, at any time, in case of fire or other disaster within the Village, it shall become necessary to cut or move any of the wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee, the Village shall not be liable for cutting or moving, provided, a disinterested contractor, agreed to by the Village and the Grantee, determines that it was necessary for the Village to cut or move any wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee. Nothing herein shall be construed to preclude liability for willful or wanton acts.

**Section 8.8: Damage to Village Property.** Where any damage is caused to any Village property during construction, reconstruction, installation, or maintenance by Grantee, the Grantee shall be responsible for actual costs of such repairs including all service and materials after twenty (20) days prior written notice to Grantee providing an opportunity to cure. The charges shall be paid within forty-five (45) days of the date of billing, or the Village, at its option, may withdraw the cost of such repairs from the Security Fund established in Section 7.7 of this Agreement.

**Section 8.9: Restoration of Property.**

A. **Tree Preservation.** The Grantee shall comply with the Village's lawful standards for trees, including, but not limited to, preservation, mutilation, trimming, pruning, abuse, and protection pursuant to Sections 7-4-1 through 7-4-14 and Section 7-5-17 of the Sugar Grove Municipal Code, as may be amended from time to time, provided, however the Grantee shall notify the Village of such trimming and then shall have the authority to trim trees or other natural

growth in order to access and maintain the Cable System.

B. Restoration. The Grantee shall comply with the requirements of Chapter 7-5-19 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C regarding cleanup and restoration of property. Where areas of grass have been disturbed, Grantee shall replace said affected grassy areas with sod or seed, as soon as is feasible. In the event that the grass dies before the end of the first season, Grantee shall repair the grass one time or replace the grass one time at its expense.

C. Wiring. In the event that a Subscriber requests Grantee to remove cable home wiring from Subscriber's residence, Grantee shall be responsible for removing wiring to the demarcation point at the ground block on the exterior of the Dwelling Unit. Grantee shall pay for any damage caused as a result of Grantee's unintentional negligent installation or removal of wiring. Grantee shall comply with the provisions of Title 47, Section 76.802 of the U.S. Code of Federal Regulations concerning the disposition of cable home wiring.

**Section 8.10: Construction Delays.** At such time where Grantee fails to complete construction required pursuant to this Agreement, Grantee shall notify the Franchising Authority of the delay within ten (10) calendar days from the occurrence of the delay, and shall indicate the cause or causes for the delay. Upon receipt of notification by the Grantee of the delay, the Franchising Authority and the Grantee may agree to extend the construction completion date. In the event that the delay continues beyond the control of the Grantee, and extends beyond the agreed-upon date, the Franchising Authority and the Grantee may agree to establish a new date for resumption of construction or service.

### **Section 8.11: Installations at Dwelling Units**

A. Construction and placement of an aerial Subscriber Drop or Service Line Drop connected to a Dwelling Unit shall be at the direction of the Subscriber or the Village. Grantee shall be responsible for securing the written authorization for the method employed and shall keep said authorization on file until the expiration of its Franchise Agreement.

B. A Subscriber shall have the option to have the Grantee connect a standard Subscriber Drop to the Dwelling Unit by either:

1. Connection of the aerial Drop to the Dwelling Unit at a minimum of twelve (12) feet above the ground level; or,
2. Attachment of the Drop to the side of the utility pole and buried from the base of the utility pole to the Dwelling Unit at a depth of no less than six inches (6").

## **SECTION 9: CUSTOMER SERVICE**

**Section 9.1: Customer Service Standards.** The Grantee shall comply with the Cable and Video Customer Protection Law (220 ILCS 5/22-501) authorizing the Village to enforce all of the customer service and privacy protection standards of this law. The Village shall enforce the customer service and privacy protections

with respect to Complaints received from residents as provided by the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A, enacted March 18, 2008. Infractions of this ordinance shall be subject to liquidated damages and procedures as specified in Section 14 hereinbelow. Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Ordinance shall be incorporated into this Agreement by reference. However, any amendment that makes its provisions optional for adoption by the Village shall not be incorporated into this Agreement by reference without formal action by the Village Board.

**Section 9.2: Customer Service Complaint and Outage Records.** Subject to Grantee's obligations pursuant to law to maintain the privacy of certain information, the Grantee shall prepare and maintain records of all complaints received and the resolution of such complaints, including the date of such resolution. Such records shall be on file at the office of the Grantee. The Grantee shall provide the Village with a written summary of such complaints and their resolution upon request. Based upon their review, the Village Administrator and the Village Board may request further communication from the Grantee regarding information from the aforementioned logs and records.

## **SECTION 10: RATE REGULATION**

### **Section 10.1: Reservation of Rights**

The parties recognize that the FCC has declared that Grantee is subject to effective competition in the Village. Notwithstanding, the Village reserves its rights to regulate rates for the Basic Service Tier of Cable Service and equipment of the Grantee if allowed by the FCC in the future. In the event that the Village is allowed to regulate rates, the Village and the Grantee shall abide by all applicable laws, rules, regulations, and orders with regards to rates and regulations promulgated by the FCC and the Village. The Village and the Grantee agree that any amendment or modification by the FCC or the Congress of the United States of rules regarding rates and regulation now or hereafter amended, shall apply to this Franchise Agreement.

**Section 10.2: Basic Cable Service.** Grantee is committed to continuing to provide a lower-cost tier of Cable Service that includes the retransmission of local broadcast television signals and the Governmental and Educational Access Channels. This service is currently offered as "Broadcast Basic." The Grantee shall publicize the availability of this service tier periodically each year.

## **SECTION 11: FRANCHISE FEES, USAGE OF FEES AND OTHER SUPPORT**

### **Section 11.1: Amount, Payment and Required Information.**

A. As part of the consideration supporting the award of this Franchise Agreement, and the Village's permission to use the public Right-of-Ways of the Village, during the term of this Franchise, Grantee shall pay to Village an amount equal to five percent (5%) of Grantee's annual Gross Revenues or an amount equal to the maximum percentage permitted by law, of the Grantee's annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area, whichever is greater; provided, however, that the

Grantee shall not be compelled to pay any higher percentage of franchise fees than any other Cable Operator or video service provider, under state authorization or otherwise, providing service in the Franchise Area. Franchise Fees on Cable Service that is bundled with other services shall be paid as provided by applicable state and/or federal law.

B. The Village may require the Grantee to collect and remit Franchise Fees that include amounts collected from Subscribers and amounts collected from non-Subscriber revenues in accordance with applicable federal laws and regulations.

C. To the extent permitted by law, and in accordance therewith, increases in Franchise Fees levied by the Village shall be effective ninety (90) days after written notice is given to Grantee. Franchise Fees shall be paid quarterly and delivered to the Village Clerk either by hand, by certified United States Mail, or by a reputable overnight courier service, such as UPS or Federal Express. The quarterly anniversary shall be March 31, June 30, September 30, and December 31. Payment shall be made within forty-five (45) days from the aforementioned anniversary dates. Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee under GAAP during the preceding period for which payment is made. Grantee shall file a report signed by an authorized representative detailing the following separate categories of revenue for the period of the payment: installation, basic service, expanded basic service, digital service tiers, cable guides, premium services, pay-per-view, a la carte channels, video-on-demand service, bulk revenue, equipment rental, home shopping commissions, advertising revenues, late payment fees, miscellaneous and franchise fees. Grantee may, at its option, identify further specific categories of revenue.

D. The Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee during the preceding period for which payment is made. Upon the request by the Franchising Authority no later than April 30 of any year during the term of this Agreement, the Grantee shall file, an annual financial report, signed by a certified public accountant, clearly showing the accumulated total Gross Revenues under GAAP for the prior year. The report shall identify the same categories of revenue as included in Section (B) above.

The Certified Public Accountant may be a Grantee employee in a financially-related responsibility of the company, and shall certify that the report is true, complete, and correct.

E. For each whole or partial year that this Agreement or any extension thereof is in effect, the Franchise Fees due to the Village shall be paid on a quarterly basis as specified hereinabove. To avoid evasion of Franchise Fees, to the extent that discounts reduce revenues that are subject to inclusion for purposes of calculating Franchise Fees, a Grantee may not unfairly or unlawfully allocate discounts for bundled services.

**Section 11.2: Acceptance of Payment.** The acceptance of any payment required hereunder by the Village shall not be construed as an acknowledgment that the amount paid is the correct amount due nor shall such acceptance of payment be construed as a release of any claim which the Village may have for further or additional sums due and payable.

**Section 11.3: Request for Corporate Report.** Upon request by the Village, the Grantee shall provide a report which shall contain a listing of the Grantee's directors, officers, partners and/or shareholders who own directly or indirectly, at least five percent (5%) of the interest in the Grantee or its parent. The Grantee may refer the Village to a corporate report listing directors, officers, partners, and/or shareholders published on its Internet website. Where Grantee or its parent is a publicly-traded stock company, the filing by the Grantee with the Franchising Authority of a copy of the annual report to stockholders shall constitute compliance with the provisions of this Section. Where Grantee or its parent is a publicly-traded stock company subject to Securities and Exchange Commission (SEC) reporting requirements, the availability of its SEC filings on the Internet shall constitute compliance with this Section.

**Section 11.4: No Limitation of Liability.** Nothing in this Franchise shall be construed to limit the liability of Grantee for all applicable federal, state, and local taxes. Payment of the Franchise Fee by Grantee to Village shall not be considered in the nature of a tax or assessment, but shall be in addition to any and all taxes and assessments which are now or hereinafter required to be paid by any law to the Village.

**Section 11.5: Late and Final Payments.** In the event that the Grantee has not made a payment due to the Village on or before the applicable due date fixed in any Section of this Agreement, such Franchise Fee or other fee which remains unpaid in whole or in part after the date specified herein shall be delinquent. For any Franchise Fee or other fee payments owed by the Grantee which are not made on or before the due dates, the Grantee shall make such payments including interest, at a monthly rate of one and one-half (1 ½ ) percent. If an additional amount is due as a result of the recomputation, the Village shall send the Grantee a written notice and opportunity to cure in accordance with the provisions of this Agreement. In the event that the Grantee's Franchise is subject to termination, sale, transfer, or revocation, the Grantee shall be subject to the conditions established for expiration or revocation as stated in Section 23 of this Agreement.

## **SECTION 12: FRANCHISE FEE AUDITS/AGREED-UPON PROCEDURES**

### **Section 12.1: Right of Franchising Authority to Inspect and Audit Franchise Fees**

A. The Franchising Authority shall have the right of audit and agreed-upon procedures, and the right to require re-computation of any amounts determined to be payable under this Section and Section 11.3 of the Cable Communications Ordinance, as of the effective date of the Ordinance whether the records are held by the Grantee, an affiliate, or any other entity that collects or receives funds related to the Grantee's operations in the Village. The Grantee shall furnish to the Village upon request by the Village Administrator or his/her

designee, such additional reports, documents, and information necessary to enable the Village to verify the payments made to it by the Grantee.

1. The Village shall have the right to inspect and copy records subject to a confidentiality agreement and the rights to audit and to re-compute any amounts determined to be payable under this Agreement.
2. The Grantee shall be responsible for making available to the Village for inspection and analysis all records necessary to confirm the accurate payment of Franchise Fees, without regard to by whom they are held. The Grantee shall maintain such records for four (4) years.

B. The Franchising Authority shall provide Grantee with no less than twenty-one (21) calendar days' notice of the Franchising Authority's intent to conduct an inspection of Grantee's financial records. Grantee shall comply with the request of the Franchising Authority and make available all such records as are reasonably required at a mutually-agreed upon location.

C. The cost of said audit or agreed-upon procedures shall be borne by the Grantee if it is properly determined through the audit or agreed-upon procedures that the Grantee's annual payment due to the Village for the preceding year is increased by five (5) percent or more; otherwise, such costs shall be borne by the Franchising Authority as a cost incidental to the enforcement of the Franchise.

**Section 12.2: Payments of Amounts Due.** Any additional amount due as a result of such audit or agreed-upon procedures shall be paid within thirty (30) days following written notice to the Grantee by the Franchising Authority which notice shall include a copy of the audit report or the agreed-upon procedures report. If re-computation results in additional revenue to be paid to the Village, such amount shall be subject to interest at the monthly rate of one and one half percent (1 ½%).

## **SECTION 13: MAINTENANCE OF BOOKS AND RECORDS**

### **Section 13.1: Requirement to Maintain Specific Books and Records.**

Grantee shall maintain all revenue records pertaining to the operation of the Cable System necessary to the enforcement of this Franchise Agreement in a manner such that material relevant to the Franchise Area can be obtained.

### **Section 13.2: Records Required of Grantee.**

A. Upon notice to the Grantee, the Village shall have the right, during Normal Business Hours, dates, and frequency, to inspect of the Grantee's records, documents, and engineering records and documents in connection with compliance with the Franchise necessary for the enforcement of this Franchise Agreement. The Grantee shall fully cooperate in allowing the Village to conduct such inspections. Grantee shall provide records required by this Franchise, State or Federal law.

B. Grantee shall maintain all records pertaining to the operation of the Cable System necessary to the enforcement of the Franchise Agreement and the Ordinance as of the effective date in a manner such that material relevant to the Franchise Area can be obtained. Grantee shall not maintain its only records concerning the Cable System within the Franchise Area in aggregate form which commingles such records with those of Cable Systems in other communities to the extent that Grantee's records for the Franchise Area cannot be separately distinguished. This Section shall not apply to records generated by a third party not affiliated with the Grantee with respect to Cable System programming or operations.

C. Where Grantee is unable to locate books and records specific to the Franchise Area at a location which is either within the Village of Sugar Grove, or within the two hundred (200) mile restriction, Grantee may locate such books and records at a remote location which is set forth by Grantee with the provision that in the event that the Franchising Authority, or its designee requests to inspect such records, Franchising Authority shall provide no less than ten (10) calendar days' notice to Grantee to inspect such records. If such records are not located in the metropolitan Chicago area and travel to review such documents is necessary, the Village shall have the right to seek and obtain reimbursement for all documented expenses (e.g., airfare, meals, lodging, car rental, public transportation, overnight courier charges, parking, and tolls) reasonably incurred by the Village or its designee for inspection of the Grantee's records.

**Section 13.3: Records to be Provided to Village.** The Grantee shall provide, upon request with written notice, the Franchising Authority with the following:

A. Pursuant to FCC rules, the Grantee shall file with the Village any reports, petitions, applications, or correspondence submitted to or received from the FCC by the Grantee or its affiliates that relate specifically to the Cable System or a group of Cable Systems of which the Grantee's Cable System is a part or are reasonably likely to affect the operations of the Grantee in the Franchise Area. The Grantee shall also file with the Village any other petitions, applications, reports, and communications filed with the Securities and Exchange Commission, or any other federal or state governmental entity having jurisdiction with respect to any matter specifically affecting the Cable System. Said documents shall be filed with the Village at the same time that they are filed with any other agency.

B. A quarterly summary of service calls tendered by Subscribers to the Grantee. Such summary record shall include the number of service calls received and an identification of the substance of the service calls.

C. Upon request, those reports required to demonstrate compliance with customer service obligations and standards established under state law as adopted under Ordinance No. 20080318A .

D. **Snow Drop and Temporary Drop Report.** Upon request, Grantee will provide a monthly report for all temporary Subscriber Drops installed, including "Snow Drops", including location, the date of Installation, and the date of burial.

**Section 13.4: Records Retention; Privacy.** The Grantee shall take all steps that may be required to ensure that it is able to provide the Village all information which must be provided or may be requested under the Cable Communications Ordinance or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Grantee to violate 47 U.S.C. §551 or 220 ILCS 5/22-501(p). Grantee shall be responsible for redacting any data that federal or state law prevents it from providing to the Village. The Village retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least four (4) years unless otherwise agreed to in writing.

#### **SECTION 14: LIQUIDATED DAMAGES**

A. Because the Grantee's failure to comply with certain provisions of this Agreement will result in injury to the Village, and because it will be difficult to estimate the economic extent of such injury, the Village and the Grantee agree to the following liquidated damages for the following violations of this Agreement, which represent both parties' best estimate of the damages resulting from the specific violation. Such damages shall be assessed from the date on which the Village gives written notice to the Grantee pursuant to Section 14(C) hereinbelow, but shall not be applied except according to the procedures specified in Section 14(C). Liquidated damages can only be imposed by the Village after the period afforded to the Grantee to cure said violations and any extension thereof has passed and the violation remains uncured or undisputed subject to the provisions of Subsection (F), the Village, in its sole discretion, may charge to and collect from the Grantee the following liquidated damages for a period of up to ninety (90) days in the event of an uncured Franchise violation:

1. For failure to provide data, documents, reports, or information or to cooperate with the Village during a Cable System review or as otherwise provided herein, the liquidated damage amount shall be one hundred dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues.
2. For failure to comply with construction standards, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues.
3. For violation of customer service standards as set forth in Chapter 3-9-1 of the Sugar Grove Municipal Code and Ordinance No. 20080318A, as incorporated in Section 9.1 of this Agreement, the liquidated damage amount shall be defined by Illinois law.
4. For failure to provide the implementation and utilization of the access Channels, or the funding of capital equipment, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues.

5. For failure to file, obtain, or maintain any required security instrument or insurance certificate in a timely fashion, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day or part thereof.
6. For failure to restore damaged Village property, weather permitting, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, in addition to the cost of the restoration as required under the Village Right-of-Way Ordinance (Ordinance No. 20080318C) as incorporated hereinabove.
7. For violation of any other provision of this Franchise or applicable Federal, or State law or regulation, where enforcement is expressly delegated to the Village, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such violation continues.

B. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate liquidated damage amount can be imposed.

C. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within fourteen (14) days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein.

D. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no more than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation:

1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village Board shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute and decide upon a method or methods of resolving the dispute that shall provide Grantee due process and the right to call and to cross examine witnesses and to present evidence.

3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at a Village Board meeting not less than ten (10) days following the issuance of the Committee's decision.

E. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may extend the time for cure. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with due process and the right to call and cross examine witnesses and to present evidence with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act. The Village Board shall preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing and shall issue its determination, based upon the evidence presented at the hearing of whether there was a violation of the Franchise. The determination shall be in writing and shall include a written finding of fact, decision, and order, including any imposition of liquidated damages.

F. In the event that the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose liquidated damages as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. The Grantee shall pay any liquidated damage amount assessed in accordance with this Agreement within thirty (30) days of a final order by the Village Board. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction, in which case the final decision shall be stayed pending the appeal.

## **SECTION 15: INDEMNIFICATION AND INSURANCE**

### **Section 15.1: Indemnification Provisions**

A. By occupying or constructing facilities in the Right-of-Way, the Grantee shall be deemed to agree to defend, indemnify, and hold the Village and its elected and appointed officials and officers, employees, agents, and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act, or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the Rights-of-Way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise Agreement; provided, however that the Grantee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses, or

expenses arising out of or resulting from the negligence, misconduct or breach of this Agreement by the Village, its officials, officers, employees, agents or representatives.

B. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in defense of any litigation by their own counsel at their sole expense. Such participation shall not under any circumstances relieve Grantee from its duties of defense against liability or of paying any judgment entered against such indemnified party.

1. In order for the Franchising Authority to assert its rights to be indemnified, defended, and held harmless, Franchising Authority must with respect to each claim:
  - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
  - b. Afford Grantee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding, and
  - c. Fully cooperate with the request of Grantee, at Grantee's expense, in its participation in and compromise, settlement, or resolution or other disposition of such claim or proceedings subject to the provisions herein.

## **Section 15.2: Insurance Provisions**

A. The Grantee shall comply with the requirements for insurance as set forth in Section 7-5-8 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C as originally approved, except Grantee shall not be required to comply with Section 7-5-8(C) of the Ordinance No. 20080318C and shall not be required to provide any insurance policy to the Franchising Authority.

B. A copy of Certificates of Insurance identifying the policy or policies, coverages, and named insureds and naming the Village as an additional named insured shall be sent to Village as provided for herein.

C. Grantee shall be responsible for the payment of all premiums on said policy or policies. In the event that Grantee intends not to renew said policy or policies, not to replace the same, or to materially alter or change the same, Grantee shall provide at least sixty (60) days written notice of its intentions to be delivered by certified United States Mail to the Village.

## **SECTION 16: CABLE PROGRAMMING**

**Section 16.1: Categories of Service to be Provided.** To the extent not pre-empted by federal law, Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC

regulations. Grantee shall provide a wide range and diversity of programming for Subscribers residing within the Franchise Area. In accordance with Federal law, the programming decisions shall be within the discretion of the Grantee. Except as expressly permitted by law, the Grantee shall not exercise any editorial control over the content of programming on the access Channel, except for such programming as the Grantee may produce or cablecast on such Channel. Categories of programming comparable in quality, mix, and level to be provided by Grantee to Subscribers shall include, but not be limited to the following:

- A. Local, regional, national, and international news, sports, and weather programs
- B. Music video and concert programs
- C. Educational programming
- D. Public affairs and public service programming
- E. Classic and contemporary movies
- F. General entertainment programming
- G. Ethnic and foreign language programming
- H. Children's programming
- I. Financial and business-related programming

**Section 16.2: Programming Tier for Congregate Housing.** The Grantee may provide a customized tier of service for congregate housing facilities located in the Franchise Area. For the purpose of this Section, congregate housing facilities may include nursing homes and long term care facilities, apartment complexes, and hotels or motels. The Grantee may apply bulk billing rates for the customized tier of service that are at a lower rate than the rate charged to individual customers for the same level of service.

## **SECTION 17: PUBLIC, EDUCATIONAL, & GOVERNMENTAL (PEG) PROGRAMMING**

**Section 17.1: Future Government Access Channel.** Commencing January 1, 2012, the Village shall have the option of requesting, for the purpose of meeting the community's need for PEG access programming, one (1) Government Access Channel on the digital basic service tier (the "Government Access Channel") to be shared with the Village of Elburn, Illinois, throughout the remaining term of this Franchise. As of the effective date of this Franchise, the Village is not controlling and operating said Government Access Channel. Prior to making the request, the Village shall create a staff-developed plan, acceptable to Grantee and approved by the Village Board, for operating and funding the Government Access Channel (the "Operational Plan"). Upon making the request, the Village and Grantee shall meet to discuss and mutually agree upon an implementation plan to activate said channel, consistent with this Section and applicable law.

**Section 17.2: Rules and Designated Provider for Future Government Access Channel.** In the event of implementation, the Village may authorize a designated access provider to control, operate, and manage the use of the Village specific access facilities, including without limitation, the operation of the Village's specific access channel. The Village or its designee may formulate rules for the operation of the Village's specific access channel, consistent with the Franchise. Nothing herein shall prohibit the Village from authorizing itself to be a designated access provider.

**Section 17.3: Programming of Future Government Access Channel.** It is expressly understood that the Village and/or its designee shall bear sole responsibility for determining the quality, type and acceptability of programming on the Government Access Channel. Any such permitted programming shall be in accordance with FCC regulations. The Village shall dedicate the time, personnel and other resources needed to operate the Government Access Channel designated herein. In the event that the Village terminates its operation of the Government Access Channel, including all programming on the Channel, as of the effective date of termination of operations and programming, the Village will not be responsible for providing the time, personnel, and other resources necessary for the operation of the Channel. However, the aforementioned shall not apply should a Village-designated entity assume operation and programming of the Government Access Channel on behalf of the Village as noted hereinabove.

**Section 17.4: Responsibility for Programming the Future Government Access Channel.** Prior to the cablecast of any program on the Government Access Channel, the Village shall require any producer of programming to provide written certification in a form and substance acceptable to the Village that the Person has obtained all necessary copyright clearances to air the program material, including clearance on all components and which releases, indemnifies, and holds harmless the Village, the Grantee, and their respective employees, officers, agents, and assigns from any liability, cost, damages, and expenses, including all expenses for legal fees, arising or connected in any way with said program. The Village shall defend and hold Grantee harmless of any liability arising out of the use and control of the Government Access Channel. The content of programs on the Government Access Channel shall not be controlled by the Grantee. In the event that Grantee controls, operates, and supervises the Government Access Channel, Grantee shall be exempt from the requirements of this Subsection.

**Section 17.5: Editorial Control.** Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated Government Access Channel, except for such programming as the Grantee may produce and cablecast on such Channel.

**Section 17.6: Non-Commercial Programming.**

A. The Government Access Channel dedicated to the use and control of the Village shall be utilized for noncommercial programming and purposes and without any charges by the Village to any Subscriber. The Village shall have the right to utilize its access Channels to provide residents with any non-commercial service considered in the public interest. For the purpose of this Agreement, the term "non-commercial" shall be construed to allow the operator of an access Channel to seek monetary or in-kind support from a public or private source or sources. Such support may include, but not be limited to, grants, budgetary allocations, stipends, fees or charges for transcripts, tape reproductions, or other costs related to the production or reproduction of a program or programs, or other similar support. Said support shall be directly related to the governmental purposes promoted by the Future Government Access Channel.

B. In the case of a grant, stipend, in-kind contribution or other form of support provided by a public or private source or sources, an acknowledgment of the contribution of the source may be shown on the Channel in accordance with the policies established by the Village provided that commercial advertising for the source shall not be allowed. Programming cablecast on the Future Government Access Channel shall not be considered origination cable-casting for purposes of the Grantee's compliance with Title 47, Section 76, Subpart G of the FCC rules and regulations unless otherwise determined by the FCC with respect to the Grantee. Use of such Channels is not "for profit" or "commercial" solely because an access programmer or access Channel manager has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the Village. Nothing shall prevent the Village from authorizing charges to users or viewers to pay for services such as fees for video class instruction or charges to recover the cost of special use equipment, or as they may be required to charge under applicable law.

**Section 17.7: Channel Availability Timetable.** The Grantee shall observe the following timetable for implementing the Future Government Access Channel:

A. Within six (6) months, of the Franchising Authority's notice to the Grantee that it is ready to utilize the Future Government Access Channel space and facilities to develop and cablecast government access programming, Grantee shall install two-way capability to permit origination of programming from the Elburn Village Hall. In the event that two-way capability does not currently exist, the Grantee shall activate the return capability not later than June 30, if the request is submitted to Grantee on or before January 1, or the Grantee shall activate the return capability no later than January 1 if the request is received on or before June 30.

1. The dedicated connection required by this Sections shall be designed and built to include all equipment, but not limited to transmitters, receivers, modulators, processors, drops, and wiring in order to enable the sending of signals to the Headend on said Channel.
2. Grantee shall ensure that programming received via upstream feeds is retransmitted as sent by the future Government Access Channel programmer without changing the attributes of the signal in such a way as to effectively degrade the output by an incremental amount greater than the deterioration in commercial channels as quantitatively measured in FCC technical standards, including, but not limited to, co-Channel interference and other forms of interference, hum, distortions, degradation of chroma and luminance, pixellation, and imperfections.

**Section 17.8: Reclamation of Channel by Grantee.** Because the Village and Grantee agree that a blank or under-utilized Access Channel is not in the public interest. The Grantee may program unused time on the Government Access Channel subject to reclamation from the Village upon no less than sixty (60) days' notice. The programming of the Government Access Channel with character generation or playback of previously aired programming shall not constitute unused time. Character generation containing out-of-date or expired information for a period of fourteen (14) days shall be considered unused time. Unused time

shall also be considered to be a period of time, in excess of six hours, where no programming of any kind can be viewed on the PEG Channel resulting in the display of a blank screen. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

**Section 17.9: Future Capital Support for Government Access Channel.**

A. Upon requesting the future Government Access Channel, the Village Board may request in writing an initial capital contribution grant of up to Six Thousand dollars (\$6,000.00) (the "Initial Capital Grant"), which shall be paid upon ninety (90) days of the request. These funds shall be used by the Village for capital expenditures related to future government access programming including, without limitation, for government access related equipment purchases, and construction costs. Grantee shall recover the Initial Capital Grant from Subscribers through a \$0.20 per Subscriber per month PEG fee (the "PEG Fee").

When Grantee has fully recovered the Initial Capital Grant, Grantee will continue to collect the PEG Fee from subscribers and remit the proceeds to the Village on an annual basis for the remaining initial term of this Franchise, so long as the Village is following the Operational Plan. As a condition for collection and remittance of the PEG fee, the Village shall provide the Grantee with a summary report of programming produced and attached copies of receipts for capital equipment expenditures no later than ninety (90) days from the end of the calendar year following receipt of the initial capital grant. This report shall also include the status and progress made on goals or objectives cited in the Village's plan for PEG Channel operations.

B. It is recognized by the parties that the Grantee has the right under 47 C.F.R. §76.922 to pass through the costs of the future capital support contained herein, and the Grantee may, at its discretion, include a monthly amount per Subscriber on its monthly billing statements. Such capital support shall not exceed more than the monthly amount per Subscriber as determined from the amount of the grant stated hereinabove.

C. The Village shall reimburse the Grantee for all capital grants in the event that the Village creates or joins a communications utility that directly provides Cable Services in competition with those Cable Services provided by the Grantee in the Village during the term of the Franchise. This Section shall not apply to the Village's membership or participation in the Northern Illinois Telecommunications Triangle, Northern Illinois University Network (NIUNET), the Illinois Municipal Broadband Communications Association, or other publicly-funded organization that provides broadband voice and data services within the corporate limits of the Village.

D. Upon the Grantee's written request, the Village shall submit a report annually on the use of the Village specific access channel and capital contribution. The Village shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the Village regarding the use of the capital contribution.

**Section 17.10: Educational Access Channel.** Grantee agrees to continue to provide Subscribers a feed of the Waubonsee Community College Educational Access Channel on the digital basic service tier for the duration of this Franchise.

## **SECTION 18: EMERGENCY OVERRIDE**

A. Any Emergency Alert System (“EAS”) provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers, and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorney’s fees and costs. As of the Effective Date of this Agreement, the Village participates in the use of the EAS by way of notification from the Village Police or Fire Departments to the Kane County Office of Emergency Management (KCOEM), which in turn, follows the procedures set forth in the State of Illinois EAS Plan. In the event that the Village alters its notification procedures to KCOEM, or should KCOEM inform the Village that it has changed its notification procedures under the State EAS Plan, the Village shall send written notification to the Grantee advising it of such changes.

B. Willful or wanton failure of the EAS to perform on the Cable System in the event of an public emergency declared by the President of the United States, the Governor of Illinois, the Chairperson of the Kane County Board, or the Village President or his or her designee, unless such failure is beyond the control of the Grantee, shall be a material breach of this Agreement and shall be subject to a damage amount of seven hundred fifty dollars (\$750.00) per occurrence.

## **SECTION 19: SERVICE TO PUBLIC FACILITIES**

### **Section 19.1: Service to Public Facilities.**

A. The Grantee shall provide, at no charge, one outlet of Basic Cable Service to Village and other local government buildings and Schools pursuant to the requirements of Chapter 3-9-1 of the Sugar Grove Municipal Code (Ordinance No. 20080318A) incorporating 220 ILCS 5/22-501(f)(1-2). The Grantee shall provide Cable Service to any School, library, or government buildings that are constructed during the term of this Agreement subject to the line extension provisions of this Agreement. A listing of such Schools, government buildings, and public institutions as of the Effective Date of this Agreement that are subject to Installation of Cable Service are identified in Appendix B. It is understood that there may be government buildings in existence today where Cable Service is not desired at this time, however, Cable Service shall be requested at a later date through a written request to the Grantee.

B. Upon notice and consent by Grantee to insure signal integrity, signal leakage, and commercial use concerns, the institution being served may further distribute within the municipal building, School, library, or facility any Cable Service that it lawfully receives, consistent with the mission of the institution. Such further distribution shall be at the expense of the Village, if the building is owned or leased by the Village, or at the expense of the School, or other institution being served.

C. The Grantee shall also provide, at no charge, one Converter, decoder, or similar equipment if necessary for Subscriber equipment (such as television sets) to receive Basic Cable Service at each such outlet, with all capabilities or options afforded at a given time by the Cable System. Grantee shall ensure that all signals are provided at such outlets with sufficient strength that they can be further amplified to distribute them throughout the site.

## **SECTION 20: FRANCHISE EVALUATIONS AND PERIODIC FRANCHISE REVISITATIONS**

### **Section 20.1: Franchise Evaluations.**

A. The Franchising Authority may, at any time during the term of this Agreement, evaluate performance of the Grantee for purposes of determining compliance with this Agreement and the Cable Communications Ordinance, and to provide for consideration of technological, legal, or regulatory changes in the state of the art of cable television. The Franchising Authority and the Grantee may hold performance evaluation sessions at any time during the term of the Franchise and as may be required by State and Federal law. Evaluation meetings shall be open to the public. Sessions that are open to the public shall be publicized in accordance with the Illinois Open Meetings Act. The Franchising Authority shall be responsible for notifying the Grantee in writing, at least sixty (60) days in advance of any performance evaluation sessions.

B. The Village and the Grantee shall mutually cooperate and shall provide such information and documents as the Village and Grantee deem necessary to perform their review in order that a review of the Cable System can be performed.

C. Topics which may be discussed during the evaluation process or at evaluation sessions shall include, but not be limited to the following: Service rate structures, free services, discounted services, Franchise Fees, penalties, applications of new technologies, repair and maintenance services, billing procedures, service provided by Customer Service Representatives, system performance, programming offered, programming desired by Subscribers, Subscriber complaints, rights of privacy, above and below-ground extension of cables and equipment, rulings and decisions of the Federal Communications Commission, Federal and State Courts of Law affecting Cable Service, and Grantee or Village rules. The Franchising Authority shall provide Grantee with a listing of topics for discussion twenty-one (21) days prior to the date of a scheduled evaluation session.

D. Franchise evaluation sessions and meeting shall be conducted in accordance with the Illinois Open Meetings Act and shall be in accordance with provisions established in Section 4.1 of the Cable Communications Ordinance in the form originally approved by the Village.

E. In the event that the evaluation of the Grantee's performance under the Franchise reveals evidence indicating inadequate performance of the Cable System which seems to constitute a violation of FCC technical requirements, the Franchising Authority may require the Grantee to conduct tests and assessments within thirty (30) days following notice to the Grantee of the violation to locate the

source of system deficiencies and to specify remedies to correct such deficiencies. The Grantee shall reasonably cooperate with the Franchising Authority in performing such testing and shall prepare results and a report if requested within thirty (30) days after completion of the tests. Such report shall include the following:

1. A statement of the problem, complaint, or suspected deficiency which prompted the need for testing and assessment;
2. The system component or components that were tested;
3. Date, place, and time where such testing took place;
4. Equipment used in the testing and procedures employed to carry out such tests or assessments;
5. Methods used to remedy identified problems, deficiencies, or suspected violations of FCC technical standards, and the status of resolution of such problems, deficiencies, or suspected violations.

The Franchising Authority may utilize an independent consultant with experience and knowledge of cable television systems engineering who has no affiliation with the Grantee, to supervise Grantee in conducting tests and assessments of the Cable System. The consultant shall sign all records of tests and assessments conducted upon the Cable System, develop a report based on the findings of such tests and assessments, and provide the Village Board with a report interpreting the results of the tests and assessments to include recommendations of actions which would remedy problems or deficiencies uncovered during the course of such testing and assessments.

Where said testing determines that problems, deficiencies, or violations of the Franchise exist, Franchising Authority shall provide Grantee with notice of said problems, deficiencies, or Franchise violations, and provide an appropriate time period, which shall not be less than thirty (30) days, for the Grantee to cure said problem, deficiency, or violation. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers. The Franchising Authority's rights under this Section shall be limited to requiring tests, assessments, and reports concerning subjects and characteristics based on complaints, suspected deficiencies, or other evidence when and under such circumstances as the Franchising Authority has sufficient grounds to believe that such complaints, suspected deficiencies, or other evidence requires that tests be performed to protect Cable System Subscribers against substandard Cable Service.

F. If, at the conclusion of the review, the Village makes specific, written findings of fact that show that the Grantee has not complied with the requirements of this Franchise Agreement, and has failed to correct such violation after a written notice and opportunity to cure has been provided, the Village may assess remedies in accordance with the procedures for Franchise violations as described in Section 14 and Section 23 of this Agreement.

**SECTION 21: MODIFICATIONS TO COMMUNICATIONS AND CABLE ACTS.**

In the event that the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, the Illinois Cable and Video Competition Law of 2007 or the Illinois Cable and Video Customer Protection Law of 2007 are modified or amended in any manner that is mandatory, or the FCC or the State of Illinois modifies or alters any of its regulations pertaining to cable television which may affect any provision(s) of this Franchise Agreement, such provisions shall remain in effect until the effective date of such modifications, amendments, or alterations. The Franchising Authority and the Grantee, upon notice that said modifications, amendments, or alterations may affect any provision(s) of this Agreement and prior to the effective date of said modifications, amendments, or alterations, or as soon thereafter as practical, may meet in good faith to amend this Franchise Agreement accordingly.

**SECTION 22: TRANSFERS, DELEGATIONS, AND ASSIGNMENTS OF OWNERSHIP**

The Grantee and the Franchising Authority shall follow the procedures for transfers, delegations, and assignments of ownership of the Cable System as set forth in Sections 8.1 through 8.11 of the Cable Communications Ordinance, as of the Effective Date of this Agreement, except where otherwise provided in this Agreement. In the event of a transfer or change in actual working Control, the transferee shall become a signatory to this Agreement.

**SECTION 23: MATERIAL BREACH AND REVOCATION**

A. In addition to all other rights and powers retained by the Village under the Cable Communications Ordinance and this Agreement or otherwise, the Village reserves the right to terminate the Franchise and all rights and privileges of a Grantee hereunder in the event of an uncured substantial breach of its terms and conditions which remain uncured after notice to the Grantee, and an opportunity to cure subject to the procedures outlined below. Material provisions shall include all labeled as such and all others, which under the facts and circumstances indicated, constitute a significant portion of this Franchise Agreement. A material breach by a Grantee shall include, but shall not be limited to the following:

1. Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Agreement, such as payment of Franchise Fees and the PEG Fee.
2. Repeated failure to cure material violations of this Agreement within a specified time after notice from the Village.
3. Failure to restore service after seventy-two (72) consecutive hours of interrupted service, provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's control.
4. Material fraud or misrepresentation in the negotiation or renegotiation of the Franchise.
5. Failure to maintain required insurance coverage.
6. Wanton or reckless violation of federal, state, or local privacy requirements.
7. Transfer of the Franchise without Village Board consent.
8. Grantee Abandonment of the Franchise. A Grantee shall be deemed to have abandoned its Franchise if it willfully refuses

or is unable to operate the Cable System as granted by this Franchise Agreement where there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property. Grantee may not abandon the Cable System or any portion thereof without compensating the Village for damages resulting from the abandonment. The Village may recover from Grantee damages for all costs of the removal of the Cable System.

B. Notice of substantial breach: Written notice shall be given to a Grantee setting forth with specificity:

1. The nature of the substantial breach or default by the Grantee;
2. A written demand that a Grantee correct the violation;
3. Notice that any failure to correct the remedy within thirty (30) days or such other period and as may be stipulated in a Franchise Agreement or as the parties may agree, and to diligently pursue the completion of the breach or default, may be cause for revocation of the Franchise, or lesser sanctions.

C. The Grantee shall respond within thirty (30) days in writing to the Village after receipt of a notice of breach or violation and shall provide any and all information and documentation in support of its response. The Grantee's response may include a statement:

1. That it contests the Village's notice of breach or violation and requests an opportunity to be heard as provided herein.
2. That corrective action has been implemented by the Grantee and the breach or violation has been cured.
3. That corrective action has been implemented by the Grantee and is being actively and diligently pursued, accompanied with a written corrective action plan that includes the estimated time period in which the breach or violation will be cured.

D. No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the Village or Grantee to seek or obtain judicial relief to enforce the provisions of this Agreement.

E. In the event Grantee continues operation of all or any part of the Cable System beyond the revocation or expiration of this Agreement, Grantee shall pay to the Village the compensation set forth in Section 11.5 hereinabove at the rate in effect at the time of such revocation or expiration, and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the Village may be entitled in Section 14 hereinabove.

F. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The written notice shall include the nature of the

breach or default by the Grantee; a written demand that a Grantee correct the violation; and, notice that any failure to correct the remedy within thirty (30) days or such other period as may be stipulated in the Franchise Agreement or as the parties may agree, may result in penalties, liquidated damages, revocation, or other sanctions, and that the Grantee shall diligently pursue the correction of the breach or default.

G. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within fourteen (14) days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein. The Grantee may provide any and all information and supporting documentation in support of its response.

H. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no less than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation:

1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village Board shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute and decide upon a method or methods of resolving the dispute that shall provide Grantee due process and the right to call and to cross examine witnesses and to present evidence.
3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at a Village Board meeting not less than twenty (20) days following the issuance of the Committee's decision. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. If a hearing officer has been designated, the hearing officer shall hear the relevant evidence, preserve a record and submit written findings and a recommendation to the Village Board for the Board make the appropriate determination. Based upon the evidence presented, the Village Board or the hearing officer shall render the findings and a decision and issue them in writing. The Village Board may continue the hearing in order to allow the Grantee to comply with any lesser liquidated damage imposed by the Village Board in order to correct any breaches or violations. The Village Board shall preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing and shall issue its determination, based upon the evidence presented at the hearing of whether there was a violation of the Franchise. The determination shall be in writing and shall include a written finding of fact, decision, and order, including any imposition of liquidated damages.

In the event that the Village Board determines that cause exists to revoke the Franchise, it shall send notice of revocation within ten (10) business days of the Village's determination. In the event that the Village Board is persuaded after a Grantee's opportunity to be heard in a public meeting that it has committed a violation for which a lesser sanction other than revocation is warranted, the Village Board may, after giving Grantee an opportunity to be heard, order Grantee to remedy the violation within a reasonable period of time specified by the Village Board; assess liquidated damages against the Grantee in accordance with Section 14 hereinabove and to exercise any other remedy provided in this Agreement or the Cable Communications Ordinance; or impose any lesser sanction permitted by this Agreement. The Village shall not exercise any right without a resolution approved by the Village Board.

I. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may extend the time for cure. The Village shall not unreasonably deny an extension of time to remedy the violation. Should the Village grant the extension, the Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that Grantee also informs the Village on a regular basis of the steps being taken to remedy the violation. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act.

J. In the event that the the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose assessment of liquidated damages, or revocation. as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction, at which time the final decision shall be stayed pending the appeal.

K. The Village Board may, upon good cause shown, and upon its own motion, impose any lesser sanction permitted by this Agreement, or as such lesser sanction is permitted at law or in equity, or waive any damage or penalty.

L. All remedies under this Agreement and the Cable Communications Ordinance are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve the Grantee of its obligations to comply with this Franchise Agreement or applicable law.

M. Recovery by the Village of any amounts under insurance, a security fund, performance bond, or letter of credit, or otherwise does not limit Grantee's duty to indemnify the Village in any way; nor shall such recovery relieve Grantee of

its obligations under this Agreement, limit the amounts owed to the Village, or in any respect prevent the Village from exercising any other right or remedy it may have. Provided, however, that a single recovery may only be derived from any and all sources of security.

N. The Village President and the Village Board shall be the sole entity to make a final determination under this Agreement regarding the revocation of the Grantee's Franchise subject to Grantee's right to judicial review of any such decision.

O. If the Grantee is providing telecommunications services as defined by the Cable Act in conjunction with Cable Services, and, in the event that the Grantee's Franchise to provide Cable Services is revoked under the conditions of this Section of this Agreement, Grantee shall be allowed to retain its Cable System plant. However, Grantee shall be required to cease the provision of all Cable Services.

#### **SECTION 24: NO BAR OR WAIVER OF RIGHTS; INTERVENTION**

A. Neither the granting of the Franchise nor any provision governing the Franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the Village.

B. The Village may seek to intervene in any act or other proceeding to which the Grantee is a party, in accordance with applicable law or regulation as it relates to this Franchise.

#### **SECTION 25: DELEGATED AUTHORITY**

The Village may delegate to an advisory body or other Person authority to administer the Franchise and monitor the performance of the Grantee pursuant to the Franchise; provided, however, that any and all ultimate enforcement authority shall be exercised only by the Village Board. The Grantee shall cooperate with any such delegee of the Village Board.

#### **SECTION 26: FORCE MAJEURE**

Whenever a period of time is provided for in the Cable Communications Ordinance or the Franchise Agreement, for either the Village or the Grantee to do or perform any act or obligation, including obtaining permits, licenses, or access to poles and conduits, neither party shall be liable for any delays due to war, riot, insurrection, rebellion, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, or any cause beyond the control of said party. In such event, said time period shall be extended for the amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the Grantee's control" if committed, omitted, or caused by the Grantee or its employees, officers, or agents, or a subsidiary, affiliate, or parent of the Grantee, or by any corporation or other business entity that holds a Controlling Interest in the Grantee, whether held directly or indirectly. Further, the failure of a Grantee to obtain financing, or to pay any money due from it to any Person, including the Village, for whatever reason, shall not be an act or omission which is beyond the control of the Grantee.

**SECTION 27: COMPLIANCE WITH STATE BIDDING STATUTES**

Through the acceptance of this Agreement, and in accordance with Illinois State Statutes regarding public contracts, the Grantee and the Village certify that neither party is in violation of Illinois State Statutes concerning bid rigging or bid rotation as stated in 720 ILCS 5/33(E)(3-4).

**SECTION 28: SERVICE OF NOTICE**

A. For purposes of this Franchise Agreement, Grantee authorizes and appoints the Senior Manager of Government Affairs, MCC Illinois, LLC d/b/a/ Mediacom Communications Corporation, with offices located at 3900 26<sup>th</sup> Avenue, Moline, Illinois 61265 to act as its registered agent and represents to the Franchising Authority that such agent is authorized to accept notice and service on its behalf.

B. Grantee shall notify the Franchising Authority in writing, thirty (30) days after any change in the registered agent or representative(s) referenced hereinabove.

C. Any notice or service served upon Grantee's registered agent shall also be provided to the Legal representatives at the addresses specified below. All notices or other written communications required to be provided to Franchising Authority or Grantee under any provision of this Agreement, shall be deemed to be received by the recipient thereof only when said notices or other written communications are actually received in the office of the recipient at the following addresses:

Franchising Authority: Office of the Village Administrator  
Village of Sugar Grove  
10 South Municipal Drive  
Sugar Grove, Illinois 60554

Mickey, Wilson, Weiler, Renzi  
and Andersson, P.C.  
P.O. Box 787  
Aurora, Illinois 60506

Grantee: MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Senior Manager of Government Affairs  
3900 26<sup>th</sup> Avenue  
Moline, Illinois 61265

MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Legal Counsel  
100 Crystal Run Road  
Middletown, New York 10941

Except as otherwise provided in this Agreement, all written notices regarding any matter concerning this Agreement, the Cable Communications Ordinance, or any of the other ordinances of the Village shall be sent by the Village by either certified United States Mail, return receipt requested; by overnight mail services, such as Federal Express, with a delivery confirmation signature, or by facsimile transfer ("Fax"), or by electronic mail ("e-mail") with a written copy of such e-Mail subsequently provided. Notice shall be deemed to have been given based upon the date of transmittal, however, this shall not preclude the Village from allowing a Grantee to act upon such notice, where action is applicable, within a specified time period starting from the date of receipt by the party to which the notice was sent.

#### **SECTION 29: ORAL MODIFICATION**

This Franchise Agreement shall not be changed, modified, or amended in whole or in part except in writing and signed by all of the parties unless such changes are a direct result of a change in applicable state law or federal regulation.

#### **SECTION 30: TIME IS OF THE ESSENCE**

Whenever any material provision of this Franchise Agreement shall set forth any time for any act to be performed by the Grantee, such time shall be deemed to be of the essence.

#### **SECTION 31: SEVERABILITY**

The provisions of this Franchise Agreement are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid, such holding shall not affect the remaining provisions which can be given effect without the invalid provision or application. In the event that any provision of this Agreement becomes invalid, the Village and the Grantee may amend this Agreement upon mutual consent.

#### **SECTION 32: ENTIRE CONTRACT**

This Franchise Agreement, including appendices, constitutes the entire contract between the parties and there are no other understandings, oral and written, relating to the subject hereof. This Agreement supersedes any prior understandings or the prior franchise agreement.

#### **SECTION 33: OBLIGATIONS TO CONTINUE THROUGHOUT TERM**

Unless otherwise specifically stated, all obligations under this Franchise Agreement shall continue throughout the entire term or extension of this Franchise Agreement.

#### **SECTION 34: HEADINGS**

Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Franchise Agreement.

#### **SECTION 35: WAIVER OF REQUIREMENTS**

A. The Village may, on its own motion, or at the request of the Grantee, for good cause shown, waive any requirement or requirements of this Franchise Agreement.

B. The Village shall have the right to waive any provision of this Agreement. However, any waiver shall be restricted to the particular subject matter

of the waiver, and in no way shall be considered precedent for any other waiver, nor shall the Village be obligated to consider any request for a similar waiver. Further, the Village reserves the right to deny any waiver.

C. The failure of the Village or Grantee on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right, compliance or performance has specifically been waived in writing. No delay or omission of the Village or Grantee to exercise any right or remedy shall be considered to be a waiver of or acquiescence in any default. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural Grantee or Village bestowed upon it under Federal or State law or statute unless such waiver is expressly stated herein.

**SECTION 36: NO WAIVER OF RIGHTS BESTOWED BY VIRTUE OF LAW**

Neither the Village nor the Grantee waives or releases rights bestowed upon them by virtue of law or statute.

**SECTION 37: GOVERNING LAW**

This Franchise Agreement shall be governed by the applicable laws and agencies of the United States Government, and if applicable, the laws of the State of Illinois. Venue shall be in the Circuit Court of Kane County, Illinois, Sixteenth Judicial Circuit, or the United States District Court, Northern District of Illinois, Eastern Division.

Accepted By:  
MCC Illinois, LLC  
d/b/a Mediacom Communications Corporation  
a Delaware Limited Liability Company  
By: MCC Illinois, LLC  
Subject to applicable federal, state  
and local law

Village of Sugar Grove, Illinois

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Village President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**APPENDIX A**  
**MAP OF FRANCHISE AREA**

PLEASE SEE 2011 ZONING MAP

**APPENDIX B  
LIST OF PUBLIC INSTITUTIONS**

<b>Institution Name</b>	<b>Address</b>
Village of Sugar Grove	10 South Municipal Drive
Sugar Grove Public Library District	125 South Municipal Drive
Village of Sugar Grove – Public Works	601 Heartland Drive
Sugar Grove Fire Protection District	15 South Municipal Drive
Sugar Grove Park District	61 Main Street
Kaneland Middle School *	1601 Esker Drive**
John Shields Elementary School *	85 South Main
Sugar Grove Community House	141 Main Street
Sugar Grove Township	54 Snow Street
Sugar Grove Township Road District	70 West 1 <sup>st</sup> Street
Waubonsee Community College District #516	Route 47 at Waubonsee Drive

\* Kaneland Community Unit School District #302

\*\* Subject to line extension requirements of section 7.4(C) of the Franchise



**VILLAGE OF SUGAR GROVE, ILLINOIS**

**ORDINANCE NO. 20110412**

**AN ORDINANCE AUTHORIZING EXECUTION OF  
A CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN THE VILLAGE OF SUGAR GROVE, ILLINOIS  
AND  
MCC ILLINOIS, LLC d/b/a MEDIACOM COMMUNICATIONS**

**WHEREAS**, the Village of Sugar Grove, an Illinois municipal corporation, is allowed pursuant to 65 Illinois Compiled Statutes 5/11-42-11 and pursuant to Section 626 of the Cable Communications Act of 1984, as amended (47 U.S.C §546) to grant or renew one or more non-exclusive franchises to operate, construct, maintain, and improve a cable television system within the Village of Sugar Grove; and

**WHEREAS**, pursuant to Ordinance No. 20090519F11, the Village of Sugar Grove Cable Communications Ordinance, the Village of Sugar Grove and MCC Illinois, LLC, have been meeting for the purpose of renewing the franchise; and

**WHEREAS**, the parties have reached an agreement, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, all requirements set forth in Ordinance No. 20090519F11, Section 7 have been met, including an opportunity for public comment; and

**WHEREAS**, a copy of the Agreement shall be located in the office of the Village Clerk.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF SUGAR GROVE, ILLINOIS:**

**Section 1:** That the Village Board of Trustees of the Village of Sugar Grove, Illinois hereby approves the Franchise Agreement with MCC Illinois, LLC d/b/a Mediacom Communications, attached hereto as Exhibit "A." The Village President and Village Clerk are hereby authorized to execute the Agreement and any other documents necessary to effectuate this Agreement on behalf of the Village of Sugar Grove.

**Section 2:** That the effective date of the Franchise Agreement shall be no later than forty-five (45) calendar days from the date upon which the Village President has signed the Agreement.

**Section 3:** That this ordinance shall become effective immediately upon its passage.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, on the 12<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
P. Sean Michels, President of the Board of Trustees  
of the Village of Sugar Grove, Kane County, Illinois

ATTEST: \_\_\_\_\_  
Cynthia Galbreath, Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Robert E. Bohler	_____	_____	_____	_____
Trustee Kevin M. Geary	_____	_____	_____	_____
Trustee Mari Johnson	_____	_____	_____	_____
Trustee Rick Montalto	_____	_____	_____	_____
Trustee Thomas Renk	_____	_____	_____	_____



**DRAFT**

*May 2011*

10 S. Municipal Drive  
Sugar Grove, Illinois 60554  
Phone: 630-466-4507 · Fax: 630-466-4521

## **Updated Cable TV Franchise Agreement Approved**

The Village of Sugar Grove approved an updated franchise agreement for the provision of cable television service with Mediacom Communications on April 12, 2011. Sugar Grove and the Village of Elburn jointly worked together with the assistance of Municipal Services Associates, Inc. to negotiate the extension. The new agreement includes the State of Illinois Franchise customer service requirements, which are greatly expanded from the original agreement. The Village Board insisted on these provisions to insure that Mediacom was making a commitment to provide customers with the best service possible.

The agreement is non-exclusive which simply means that any company that chooses to provide cable television service in Sugar Grove shall be granted a franchise under substantially similar terms and conditions as Mediacom Franchise Agreement. The franchise agreement in short, gives a non-exclusive right and privilege to Mediacom to operate a cable system in the Village.

The Village recognizes that residents also utilize Mediacom for the provision of internet and phone services. During negotiations Mediacom was asked to use the same due diligence in the provision of these services as cable television services. Mediacom was very cognizant of this request and agreed that it is important. It must however be noted, that due to State, Federal, and ICC and FCC rules and regulations, the Village cannot regulate phone or internet services offered by Mediacom or any other provider. The following are the most often asked questions regarding franchise agreements, the agreement with Mediacom and other cable, internet and phone services questions.

### Why did Sugar Grove enter into this agreement with Mediacom?

Current law requires companies desiring to provide cable television service to enter into a franchise agreement with either the local government or the State. The Village prefers a local agreement to address the needs of our community.

### Why did Sugar Grove not seek out other cable providers?

The Village has sought additional cable television, internet and phone service providers. The agreement with Mediacom does not prevent other companies from providing services. It must be recognized that the provision of cable television, internet and phone services by private businesses is a business decision based on profit potential. The Village would welcome additional providers.

### What can I do if my television service is poor or interrupted?

You are encouraged to call Mediacom or to visit the local office in Elburn. Office hours are from 9 am to 5 pm. The office is located at 808 E North St, Elburn, IL 60119 and their phone number is (630) 365-0045 or call them toll free 800-332-0245.

### Who do I contact if I feel I did not receive satisfactory customer service?

If you feel that your service is unsatisfactory you can contact the Village. You are encouraged to use our online form at [www.sugar-grove.il.us/Dept\\_Fin/MCForm.html](http://www.sugar-grove.il.us/Dept_Fin/MCForm.html) however you may also call the Village at 630-466-4507, send the Village a note to 10 S. Municipal Drive, Sugar Grove, IL 60554 or via fax at 630-466-4521. You can also contact the State of Illinois Attorney General, information and forms can be found at [www.illinoisattorneygeneral.gov/index.html](http://www.illinoisattorneygeneral.gov/index.html), or call 1-800-243-0618. Or for phone problems contact the ICC at 1-800-524-0795 or via the internet [www.icc.illinois.gov/](http://www.icc.illinois.gov/). For internet problems you may also contact the FCC at 1-888-225-5322 or via the internet at [http://www.fcc.gov/e-file/support\\_table.html](http://www.fcc.gov/e-file/support_table.html)

### What can I do if my internet or phone service is poor or interrupted?

You are encouraged to call Mediacom or to visit the local office in Elburn. Office hours are from 9 am to 5 pm. The office is located at 808 E North St, Elburn, IL 60119 and their phone number is (630) 365-0045 or call them toll free 800-332-0245.

### Does Sugar Grove receive any compensation from Mediacom?

The Village does receive franchise fees from Mediacom. How these are determined are within the agreement.

Why doesn't the agreement improve the channel selection?

The Village is not allowed to be involved in any channel program selections or tiers of service due to State, Federal and FCC rules and regulations

How often is the system tested?

The Village's agreement states that the video provider shall perform system testing a minimum of two (2) times a year. The Village may require sight specific testing, but must give 30 day notice.

What can the Village do if Mediacom does not provide customer service in the manner outlined?

The Village has the ability per the standards to fine any video or cable provider that does not abide by standards as set by code or their agreement. The Village also has the ability to revoke the franchise agreement. However it should be noted that if the franchise agreement was revoked, no cable services – television, phone, or internet could be provided.

What are the customer service standards?

The customer service standards and protection code was adopted by the Village in March of 2008. The customer service standards are the State Adopted Regulations - Illinois Compiled Statutes 220 5/70-501. The following is an excerpt of those standards.

The statute states that all cable or video providers in this State shall comply with the following customer service requirements and privacy protections.

The following definitions apply:

**Cable or video provider** means any person or entity providing cable service or video service.

**Normal operating conditions** means those service conditions that are within the control of cable or video providers. Those conditions that are not within the control of cable or video providers include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of cable or video providers 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 service or video service network.

**Service interruption** means the loss of picture or sound on one or more cable service or video service on one or more cable or video channels.

**General customer service standards** include, but are not limited to: installation, disconnection, service & repair obligations; appointment hours and employee ID requirements; customer service phone numbers & hours; procedures for billing, charges, deposits, refunds, and credits; procedures for termination of service; notice of deletion of programming service; changes related to transmission of programming; changes or increases in rates; the use and availability of parental control or lock-out devices; the use and availability of an A/B switch if applicable.

**General customer service obligations:**

Cable or video providers shall render reasonably efficient service, promptly make repairs, and interrupt service only as necessary and for good cause, during periods of minimum use of the system and for no more than 24 hours.

All service representatives or any other person who contacts customers or potential customers shall have a visible identification card with their name and photograph and shall orally identify themselves. Customer service representatives shall identify themselves to callers immediately following the greeting during each telephone contact with the public.

The representatives who contacts customers on behalf of the cable provider shall state the estimated cost prior to delivery of the service or before any work is performed, shall provide the customer with an oral statement of the total charges before terminating the telephone call or other contact in which a service is ordered, whether in-person or over the Internet, and shall provide a written statement of the total charges before leaving the location at which the work was performed. In the event that the cost of service is a promotional price or is for a limited period of time, the cost of service at the end of the promotion or limited period of time shall be disclosed.

Cable or video providers shall provide customers a minimum of 30 days' written notice before increasing rates or eliminating transmission of programming.

Cable or video providers shall provide clear visual and audio reception that meets or exceeds applicable FCC technical standards. If a customer experiences poor video or audio reception due to the equipment of the cable or video provider, the cable or video provider shall promptly repair the problem at its own expense.



**DRAFT**

10 S. Municipal Drive  
Sugar Grove, Illinois 60554  
Phone 630.466.4507  
Facsimile 630.466.4521

## **NEWS RELEASE For Immediate Release**

**Date: April 12, 2011**

**For more information contact:**

**Name: Cindy Galbreath**

**Email: [cgalbreath@sugar-grove.il.us](mailto:cgalbreath@sugar-grove.il.us)**

**Phone: 630-466-4507 ext. 24**

### **Village of Sugar Grove Approves Updated Cable TV Franchise Agreement**

The Village of Sugar Grove approved an updated franchise agreement for the provision of cable television service with Mediacom Communications on April 12, 2011. Sugar Grove and the Village of Elburn jointly worked together with the assistance of Municipal Services Associates, Inc. to negotiate the extension. The new agreement includes the State of Illinois Franchise customer service requirements, which are greatly expanded from the original agreement. The Village Board insisted on these provisions to insure that Mediacom was making a commitment to provide customers with the best service possible.

The Village recognizes that residents also utilize Mediacom for the provision of internet and phone services. During negotiations Mediacom was asked to use the same due diligence in the provision of these services as cable television services. Mediacom was very cognizant of this request and agreed that it is important. It must however be noted, that due to State, Federal, and ICC and FCC rules and regulations, the Village cannot regulate phone or internet services offered by Mediacom or any other provider.

The agreement is non-exclusive which simply means that any company that chooses to provide cable television service in Sugar Grove shall be granted a franchise under substantially similar terms and conditions as Mediacom Franchise Agreement. The franchise agreement in short, gives a non-exclusive right and privilege to Mediacom to operate a cable system in the Village.

You can view a copy of the agreement at [www.sugar-grove.il.us/20110405MCDraft.pdf](http://www.sugar-grove.il.us/20110405MCDraft.pdf). A copy is also available at the Municipal Center, 10 S. Municipal Drive, Sugar Grove, IL 60554.

The Village Code 3-9 (Cable and Video Customer Protection Law) and 3-10 (Cable/Video Service Provider Fee) can also be viewed on the website at [www.sugar-grove.il.us](http://www.sugar-grove.il.us) or at the Municipal Center. The State Statute can be viewed at:

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022000050HArt%2E+70&ActID=1277&ChapterID=23&SeqStart=47200000&SeqEnd=-1>

Questions and Answers regarding Franchise Agreements and Mediacom Service. Please click on the following:

**DRAFT**

1. [Why Did Sugar Grove enter into this agreement with Mediacom?](#)
2. [Why did Sugar Grove not seek out other cable providers?](#)
3. [What can I do if my television service is poor or interrupted?](#)
4. [Who do I contact if I feel I did not receive satisfactory customer service?](#)
5. [What can I do if my internet or phone service is poor or interrupted?](#)
6. [Does Sugar Grove receive any compensation from Mediacom?](#)
7. [Why doesn't the agreement improve the channel selection?](#)
8. [How often is the system tested?](#)
9. [What can the Village do if Mediacom does not provide customer service in the manner outlined?](#)
10. [What are the customer service standards?](#)

1. Why did Sugar Grove enter into this agreement with Mediacom?

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2. Why did Sugar Grove not seek out other cable providers?

The Village has sought additional cable television, internet and phone service providers. The agreement with Mediacom does not prevent other companies from providing services. It must be recognized that the provision of cable television, internet and phone services by private businesses is a business decision based on profit potential. The Village would welcome additional providers.

3. What can I do if my television service is poor or interrupted?

You are encouraged to call Mediacom or to visit the local office in Elburn.

**Toll Free Phone Number:**

800-332-0245

**Address:**

808 E North St, Elburn, IL 60119  
(630) 365-0045

**Hours:**

9 AM - 5 PM

4. Who do I contact if I feel I did not receive satisfactory customer service?

If you feel that your service is unsatisfactory you can contact the Village. You are encouraged to use our online form at [www.sugar-grove.il.us/Dept\\_Fin/MCForm.html](http://www.sugar-grove.il.us/Dept_Fin/MCForm.html) however you may also call the Village at 630-466-4507, send the Village a note to 10 S. Municipal Drive, Sugar Grove, IL 60554 or via fax at 630-466-4521. You can also contact the State of Illinois Attorney General, information and forms can be found at [www.illinoisattorneygeneral.gov/index.html](http://www.illinoisattorneygeneral.gov/index.html), or call 1-800-243-0618. Or for phone problems contact the ICC at 1-800-524-0795 or via the internet [www.icc.illinois.gov/](http://www.icc.illinois.gov/). For internet problems you may also contact the FCC at 1-888-225-5322 or via the internet at [http://www.fcc.gov/e-file/support\\_table.html](http://www.fcc.gov/e-file/support_table.html)

5. What can I do if my internet or phone service is poor or interrupted?

Please call Mediacom or visit the local office in Elburn.

**Toll Free Phone Number:**

800-332-0245

**Address:**

808 E North St, Elburn, IL 60911

(630) 365-0045

**Hours:**

9 AM - 5 PM

**DRAFT**

6. Does Sugar Grove receive any compensation from Mediacom?

The Village does receive franchise fees from Mediacom. How these are determined are within the agreement.

7. Why doesn't the agreement improve the channel selection?

The Village is not allowed to be involved in any channel program selections or tiers of service due to State, Federal and FCC rules and regulations

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The Village's agreement states that the video provider shall perform system testing a minimum of two (2) times a year. The Village may require sight specific testing, but must give 30 day notice.

9. What can the Village do if Mediacom does not provide customer service in the manner outlined?

The Village has the ability per the standards to fine any video or cable provider that does not abide by standards as set by code or their agreement. The Village also has the ability to revoke the franchise agreement. However it should be noted that if the franchise agreement was revoked, no cable services – television, phone, or internet could be provided.

10. What are the customer service standards?

The customer service standards and protection code was adopted by the Village in March of 2008. The customer service standards are the State Adopted Regulations - Illinois Compiled Statutes 220 5/70-501. The following is an excerpt of those standards.

The statute states that all cable or video providers in this State shall comply with the following customer service requirements and privacy protections.

The following definitions apply:

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**Normal operating conditions** means those service conditions that are within the control of cable or video providers. Those conditions that are not within the control of cable or video providers include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of cable or video providers 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 service or video service network.

**Service interruption** means the loss of picture or sound on one or more cable service or video service on one or more cable or video channels.

**General customer service standards** include, but are not limited to: installation, disconnection, service and repair obligations; appointment hours and employee ID requirements; customer service telephone numbers and hours; procedures for billing, charges, deposits, refunds, and credits; procedures for termination of service; notice of deletion of programming service; changes related to transmission of programming; changes or increases in rates; the use and availability of parental control or lock-out devices; the use and availability of an A/B switch if applicable; complaint procedures and procedures for bill dispute resolution; a description of the rights and remedies

available to consumers if the cable or video provider does not materially meet its customer service standards; and special services for customers with visual, hearing, or mobility disabilities.

**General customer service obligations:**

Cable or video providers shall render reasonably efficient service, promptly make repairs, and interrupt service only as necessary and for good cause, during periods of minimum use of the system and for no more than 24 hours.

All service representatives or any other person who contacts customers or potential customers on behalf of the cable or video provider shall have a visible identification card with their name and photograph and shall orally identify themselves upon first contact with the customer. Customer service representatives shall orally identify themselves to callers immediately following the greeting during each telephone contact with the public.

In each contact with a customer, the service representatives or any other person who contacts customers or potential customers on behalf of the cable or video provider shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, shall provide the customer with an oral statement of the total charges before terminating the telephone call or other contact in which a service is ordered, whether in-person or over the Internet, and shall provide a written statement of the total charges before leaving the location at which the work was performed. In the event that the cost of service is a promotional price or is for a limited period of time, the cost of service at the end of the promotion or limited period of time shall be disclosed.

Cable or video providers shall provide customers a minimum of 30 days' written notice before increasing rates or eliminating transmission of programming.

Cable or video providers shall provide clear visual and audio reception that meets or exceeds applicable Federal Communications Commission technical standards. If a customer experiences poor video or audio reception due to the equipment of the cable or video provider, the cable or video provider shall promptly repair the problem at its own expense.

The video provider may interrupt service, when necessary, to cable Subscribers for the purposes of alteration, maintenance, repair or emergencies. Video provider shall create such interruptions at such time as will cause the least amount of inconvenience to its Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give written notice to the Village of interruptions which affect Subscribers for a period in excess of six (6) hours.

The System shall be so constructed and operated so that there is no significant deterioration in the quality of access signals received. Deterioration refers to any signal problem, including, but not limited to, hum, co-Channel interference, pixilation on digital Channels created as a result of signal ingress, egress, or other causes, and other forms of interference.

**(Sugar Grove, IL) -**

**###**

RESOLUTION NO. 20110412A

A RESOLUTION OF INTENT TO  
UTILIZE TAX INCREMENT FINANCING TO IMPROVE DETERIORATING  
PHYSICAL CONDITIONS AND TO STIMULATE NEW ECONOMIC  
DEVELOPMENT WITHIN THE SUGAR GROVE INDUSTRIAL AREA

---

**WHEREAS**, the Village of Sugar Grove Manufacturing/Industrial area west of the airport contains evidence of lack of infrastructure, deterioration, vacancies, lag in growth of property values, and other factors which negatively impact the climate for private investment and threaten the sound growth and tax base of the community; and

**WHEREAS**, the Illinois General Assembly has passed the Real Property Tax Increment Allocation Redevelopment Act, as amended, (the Act) to allow the financing of public improvements to stimulate private investment in certified "Conservation Areas" by debt to be repaid by increases in property taxes in those areas; and

**WHEREAS**, the provisions of the Act have been held constitutional by the Supreme Court of the State of Illinois; and

**WHEREAS**, numerous municipalities in the State have successfully utilized the Act to improve seriously deteriorating physical conditions and to stimulate new economic development within their boundaries; and

**NOW THEREFORE, BE IT RESOLVED**, by the Village of Sugar Grove, Kane County, State of Illinois, as follows:

1. The Village President and Village Board (the corporate authorities) intend to investigate the feasibility of the Act for designating the Airport Industrial Study Area, which includes parcels zoned or planned for industrial use on the Comprehensive Plan, generally west of the airport. The final District may include additional parcels immediately adjacent to this study area based on the findings of the Eligibility Study.
2. The corporate authorities intend to employ, if feasible, the powers provided in the Act for the Airport Industrial Increment Financing District for purposes of removing or alleviating adverse conditions or instituting conservation measures necessary to encourage private investment, to restore and enhance the tax base of the taxing districts in the Study Area, and to promote and protect the health, safety, morals and welfare of the public.
3. Municipal expenditures may be made for the investigation of the feasibility of the Act for the Study Area, the development of a required Redevelopment Plan, or the initiation of a redevelopment program prior to the formal adoption of the ordinances necessary to implement the full powers of the Act. It is the intent of

the corporate authorities to utilize the financing provisions of the Act to recapture such expenses, to the extent that they are eligible, if and when the necessary implementation ordinances are passed and certified.

4. This resolution of intent shall not obligate or impose a duty upon the corporate authorities to employ or institute the power derived under the Act.
5. For additional information about the proposed redevelopment project area or to make comments or suggestions regarding the redevelopment of the area to be studied, interested parties should contact Richard Young, Director of Community Development, 10 Municipal Drive, Sugar Grove, IL 60554, or by phone at (630) 466-4507 ext. 18.

**PASSED**, by the Village President and Village Board of the Village of Sugar Grove, this 12th day of April, 2011.

Approved:

---

P. Sean Michels  
Village President

Attest:

---

Cynthia L. Galbreath  
Village Clerk



*Community Planning • Site Design • Development Economics • Landscape Architecture*

March 29, 2011

Brent Eichelberger  
Village of Sugar Grove  
10 Municipal Drive  
Sugar Grove, IL 60554

**Subject: Proposal for the creation of an Industrial Park  
Tax Increment Financing Eligibility Study and Redevelopment Plan**

Dear Brent:

It was a pleasure meeting with you and other Village staff members last Friday to discuss creation of a Tax Increment Financing (TIF) District. The Redevelopment Project Area would include all contiguous property zoned for industrial/manufacturing use, generally on the west side of the airport. In addition, we would include any adjacent parcels that could be annexed or rezoned to manufacturing prior to TIF adoption (Batavia Enterprises, Weidner, Patterson, etc.). As we discussed, we have a unique opportunity to qualify the area as a TIF given current unemployment rates in the area being slightly higher than the national average. While these conditions remain, it will be relatively easy to prove eligibility of the area for an Industrial Park Conservation Area (local rate needs to be higher for at least one month out of the last 6 prior to adoption of the TIF).

It is our understanding that the area has been zoned for manufacturing for 20 or so years, and that development has been extremely slow primarily due to lack of infrastructure (particular looped water and sanitary sewer service). While some limited expansion is occurring at Scott Industries, the financial partnership offered by TIF may well be the additional incentives needed to make more significant development a reality. The Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "Act") provides the Village with the tools necessary to address development constraints and encourage private redevelopment within the Project Area. The steps necessary for the creation of a TIF Redevelopment Plan for a Project Area are outlined below.

The scope of services is divided into three phases.

### **PHASE 1: ELIGIBILITY STUDY**

**Task 1.1 Project Kick-Off Meeting.** TESKA will meet with key Village officials to discuss the proposed TIF area, obtain relevant base information, and learn additional details about the history and desired redevelopment of the study area. At the meeting, a more specific study area will be defined.

**Task 1.2 Eligibility Field Inventory.** TESKA's team will conduct a field survey of the parcels in the Study Area to identify the existing land uses, the site conditions, above ground public infrastructure

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**Teska Associates, Inc.**

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conditions, and the characteristics of any existing buildings in accordance with eligibility criteria contained in the Act. A photographic inventory of the properties covered in the field survey of the Study Area will be prepared. As we discussed, it is our intent to utilize the unemployment rate as the primary qualifying factor. However, we will need to document existing physical conditions in the study area as a part of the eligibility report.

**Task 1.3 Background Data Collection and Analysis.** TESKA will work with the appropriate Kane County Departments and Village Staff to obtain supplemental information from official records related to the eligibility of the Study Area. Supplemental information includes base maps with tax identifiers, age of structures, presence of illegal uses, code violations, occupancy and vacancy status of structures, infrastructure deficiencies, equalized assessed values and tax delinquencies, and local unemployment rates. For budgeting purposes, we have assumed that the Village and/or EEI can provide TESKA with an electronic map showing parcels, roads, etc.

**Task 1.4 Eligibility Findings Report.** A draft report will be prepared which will outline the eligibility status of the parcels to be included in a TIF district.

## **PHASE 2: REDEVELOPMENT PLAN**

**Task 2.1 Plan Preparation.** TESKA will prepare a Redevelopment Plan for the project area that will include all required elements as outlined in the Tax Increment Allocation Redevelopment Act (Chapter 65 ILCS 5/11-74.4-1, et seq.) of the Illinois Statutes as amended. Highlights of the Redevelopment Plan's elements include:

- Redevelopment Project Area boundary maps; (note, a separate legal description will need to be prepared, which we assume EEI would prepare)
- Redevelopment Plan and Program Objectives; and,
- Proposed Project Area land use plan, infrastructure, and public improvements.

**Task 2.2 Identification of Public Notice of Meetings.** TESKA will work with the Kane County to identify the property owners of record and subsequent public notice list for all properties located within the TIF Redevelopment Project Area and all properties within 750 feet of the TIF Redevelopment Project Area as required per the Act. TESKA will provide the appropriate address lists to the Village of Sugar Grove. TESKA will prepare and execute all required mailed public notification of Joint Review Board and other required public hearings as described in state statutes, and will keep complete records of these notices. TESKA will provide sample notices for newspaper publication by the Village.

**Task 2.3 Report Submittal.** A draft TIF Redevelopment Plan will be prepared and submitted for review to the Village. TESKA will attend one meeting with the Village Board to discuss the draft TIF Redevelopment Plan. TESKA will make one set of revisions to the draft version and create a Final Draft version of the TIF Redevelopment Plan. TESKA will submit the Final Draft version for the adoption process.

### **PHASE 3: PLAN ADOPTION**

**Task 3.1 Joint Review Board Meetings.** The Village of Sugar Grove will convene a Joint Review Board (JRB) as required by TIF statute. TESKA will attend one meeting of the JRB to present the findings of the eligibility study and the Plan and Program.

**Task 3.2 Public Notice of Meetings.** The Village will provide public notice of the public hearing described in Task 3.3. In advance of this task, TESKA will have prepared and will provide to the Village a taxpayer of record list for each Property Identification Number (PIN).

**Task 3.3 Public Hearing.** TESKA will participate in one formal public hearing as required by Illinois Revised Statutes to discuss the proposed TIF Plan and Program, discussion points from the Joint Review Board Meeting, and respond to questions.

### **ADDITIONAL MEETINGS**

TESKA may participate in additional meetings with Village officials, Village staff, or other organizations or individuals to discuss implementation of the project at the request of the Village. TESKA will be compensated for additional meetings on the basis of time and expenses, or as mutually agreed upon.

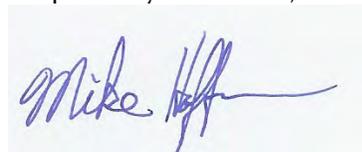
### **BUDGET**

The fees for TESKA to complete Phases 1 through 3 as identified above for the redevelopment project area site shall not exceed \$15,000 for professional time and normal expenses (travel, printing, delivery).

Fees for the publication of notices in local newspapers and mailing of notices will be the responsibility of the Village. Fees for acquiring any data, including sidwell maps, the GIS parcel base for mapping and PIN identification from Kane County, and the services of a surveyor to create the legal description will be a separate cost that will also be the responsibility of the Village (we would assume under your existing agreement with EEI). This fees outlined in the paragraph would be in addition to the above \$15,000 amount, and are estimated to fall in the \$3,000 range for a project total of approximately \$18,000.

As for timing, we have found that the TIF creation process generally take between three to five months. Given the simplified eligibility criteria and need to act while unemployment rates are what they are, we will push to move as quickly as possible. We are prepared to begin immediately after receipt of a signed agreement. A potential timeline is attached four your review. Please feel free to contact us if you have any questions.

Respectfully submitted,



Mike Hoffman, AICP, RLA  
Vice President

**Village of Sugar Grove**  
**Industrial Park Conservation Area**  
**DRAFT Schedule**

<b>Date</b>	<b>Day</b>	<b>Task</b>	<b>Responsibility</b>
04/19/11	Tuesday	Village adopts Resolution of Intent and establishes Interested Parties Registry	Village
04/29/11	Friday	Draft Eligibility Study and Redevelopment Plan submitted to Village	Teska
05/04/11	Wednesday	Publication of notice of Interested Parties Registry in newspaper	Village
<b>05/04/11</b>	<b>Wednesday</b>	<b>Redevelopment Plan submitted to Village (at least 10 days prior to ordinance setting public hearing date)</b>	Teska
<b>05/17/11</b>	<b>Tuesday</b>	<b>Village adopt ordinance fixing time and place for public hearing</b>	Village
05/18/11	Wednesday	Teska mails notices with TIF report by certified mail to all taxing districts and DCCA (not less than 45 days prior to public hearing)	Teska
05/20/11	Friday	Village mails notice of availability of plan to interested parties and all residential addresses within 750' of district boundaries	Village
06/02/11	Thursday	Village convenes Joint Review Board (not less than 14 days but not more than 28 days after notice to taxing bodies)	Joint Review Board
06/08/11	Wednesday	First publication of public hearing in newspaper (not more than 30 days nor less than 10 days prior to Public Hearing)	Village
06/15/11	Wednesday	Second publication of public hearing in newspaper (generally one week after the first notice)	Village
07/02/11	Saturday	Latest date for Joint Review Board to adopt recommendation (not later than 30 days from the first JRB meeting)	Joint Review Board
06/23/11	Thursday	Latest date for mailing notices to all taxpayers and owners of delinquent property (by certified mail), and residents in TIF project area (by regular mail) (not less than 10 days prior to Public Hearing)	Village
<b>07/05/11</b>	<b>Tuesday</b>	<b>PUBLIC HEARING</b>	Village, Teska
<b>07/19/11</b>	<b>Monday</b>	<b>Earliest date for Village Board to adopt TIF ordinances (not less than 14 days after Public Hearing)</b>	Village Board
09/20/11	Tuesday	Latest regular meeting to adopt TIF ordinances	Village Board
10/03/11	Friday	Latest date for Village Board to adopt TIF ordinances (not more than 90 days after Public Hearing)	Village Board



**RESOLUTION NO. 20110412B**

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH TESKA ASSOCIATES, INC. FOR AN ELIGIBILITY STUDY AND REDEVELOPMENT PLAN FOR THE POSSIBLE CREATION OF TAX INCREMENT FINANCING DISTRICT**

**WHEREAS**, the Village of Sugar Grove Board of Trustees find that it is in the best interest of the Village to determine if the creation of a Tax Increment Financing (TIF) District will aide in the redevelopment of certain areas in the Village; and

**WHEREAS**, the Village of Sugar Grove Board of Trustees find that it is in the best interest of the Village to engage the services of Teska Associates, Inc. to provide such study.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, that the attached hereto and incorporated herein by reference as **Exhibit A**, a Proposal for the creation of an Industrial Park Tax Increment Financing Eligibility Study and Redevelopment Plan.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Village Administrator is hereby authorized to execute any and all documents on behalf of the Village and to take such further actions as necessary to achieve the completion of the study as proposed in **Exhibit A**.

Passed by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, at a regular meeting thereof held on the 12<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
P. Sean Michels, President of the Board  
of Trustees of the Village of Sugar Grove,  
Kane County, Illinois

ATTEST: \_\_\_\_\_  
Cynthia Galbreath, Village Clerk,  
Village of Sugar Grove

	Aye	Nay	Absent	Abstain
Trustee Robert E. Bohler	_____	_____	_____	_____
Trustee Kevin M. Geary	_____	_____	_____	_____
Trustee Mari Johnson	_____	_____	_____	_____
Trustee Rick Montalto	_____	_____	_____	_____
Trustee Thomas Renk	_____	_____	_____	_____