

# **TITLE 9**

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## **PUBLIC UTILITIES**

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### **CHAPTER 1**

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#### **Water Utility Regulations and Rates**

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## **Article A: Rates**

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

- (a) For public fire protection service to the Village of Fredonia, the annual charge shall be Fifty-five Thousand Sixty-six Dollars (\$55,066.00) to cover the use of mains and hydrants up to and including the terminal hydrant and connection on each main existing for the 1983 test year.
- (b) For all extensions of fire protection service, a charge of Fifty-five Cents (55c) per lineal foot of main shall be charged per annum on the basis of the length of main put into use between hydrants placed, plus a charge of Seventy-one Dollars (\$71.00) net per hydrant added to the system after the base period.
- (c) This service shall include the use of hydrants for fire protection service only and such quantities of water as may be demanded for the purposes of extinguishing fires within the municipal boundary only. For all other purposes, the metered or other rates set forth, or as may be filed with the Public Service Commission, shall apply.
- (d) The above base annual charge of Fifty-five Thousand Sixty-six Dollars (\$55,066.00) includes an estimated thirty-five thousand eight-hundred thirty-eight (35,838) feet of distribution main, six (6) inch and larger, and sixty-three (63) hydrants.

### **Sec. 9-1-2 Public Fire Protection Service – Suburban –F-2.**

- (a) Water used for extinguishing fires outside the immediate service area of the utility may consist of three (3) types of service:
  - (1) Water supplied to tank trucks from utility hydrants;
  - (2) Water supplied directly from hydrants located within the corporate limits, or on its borders, by means of hose lines; or
  - (3) Water supplied to tank trucks from any other utility water source.
- (b) A record of the measured or estimated volume of water used shall be submitted to the water utility after each use for fire protection outside the utility's immediate service area. If measuring or estimating is impossible, the water utility superintendent shall be furnished such data as size of orifice used, pressure and time water was permitted to flow, in order to determine volume used.
- (c) A charge for the volume of water used, for each fire either through a tank supply or from hydrants, will be billed to the township or fire department using water at One and 20/100 Dollars (\$1.20) per one thousand (1,000) gallons. A service charge, in addition to the water charge, shall be Ten Dollars (\$10.00) per hydrant used.

### Sec. 9-1-3 Private Fire Protection Service – Unmetered – Upf-1,

- (a) **Service Type.** This service shall consist of unmetered connections to the main for automatic sprinkler systems, standpipes (where same are connected permanently or continuously to the mains) and private hydrants.
- (b) **Charges.** Quarterly demand charges for private fire protection service:

Size of Connection	Charge
2-inch	\$15.00
3-inch	\$29.00
4-inch	\$48.00
6-inch	\$96.00
8-inch	\$153.00
10-inch	\$229.00
12-inch	\$335.00

- (c) **Billing.** Same provisions as for general service.
- (d) **Combined Service.** When a four (4) inch or larger connection is made to the main for private fire protection service, such service line may be tapped with a smaller size branch line for general service. This small branch line shall be metered and the water therefrom billed at the regular metered rates, Schedule Mg-1. The charge for private fire protection service will be that applicable to the size of connection to the main as stated in the above schedule. Where “X” equals the unmetered private fire protection quarterly charge applicable to the size of connection, and “Y” is the quarterly minimum charge for general service, the charge for private fire protection service shall be  $(X-.30Y)$ .

### Sec. 9-1-4 General Service – Metered – Mg-1.

- (a) **Minimum Quarterly Charge:**

5/8-inch meter	\$7.79
¾ -inch meter	\$7.79
1-inch meter	\$13.80
1 ¼-inche meter	\$17.97
1 ½-inch meter	\$25.17
2-inch meter	\$35.97
2 ½-inch meter	\$53.94
3-inch meter	\$71.90
4-inch meter	\$113.89

6-inch meter	\$159.14
8-inch meter	\$244.01
10-inch meter	\$366.01
12-inch meter	\$488.01

(b) **Volume Charge:**

First	30,000	gallons used each quarter - \$1.44 per 1,000 gallons.
Next	70,000	gallons used each quarter - \$1.30 per 1,000 gallons.
Next	200,000	gallons used each quarter - \$1.12 per 1,000 gallons.
Over	300,000	gallons used each quarter - \$ .96 per 1,000 gallons.

- (c) **Billing.** Bills for water service are rendered quarterly and become due and payable on the first of the month following the period for which service is rendered. A late payment charge of one percent per month will be added to bills not paid within twenty (20) days of issuance. This late payment charge will be applied to the total unpaid balance for utility service, including unpaid late payment charges. This late payment charge is applicable to all customers. The utility customer may be given a written notice that the bill is overdue no sooner than twenty (20) days after the bill is issued and unless payment or satisfactory arrangement for payment is made within the next eight (8) days, service may be disconnected pursuant to Chapter PSC 185, Wis. Adm. Code. A Twenty Dollar (\$20.00) charge will be made for processing checks that have been returned for insufficient funds.
- (d) **Combined Metering.** When a consumer's premises has several buildings, each supplied with service and metered separately, the full service charge will be billed for each meter separately and the readings will not be cumulated. If these buildings are all used in the same business and are connected by the consumer, they can be metered on one place. If the utility, for its own convenience, installs more than one meter, the readings will be cumulated for billing.

## Sec. 9-1-5 General Water Service – Unmetered – Ug-1.

- (a) **Rate.** Where the utility cannot immediately install its water meter, service may be supplied temporarily on an unmetered basis. Such service shall be billed at the rate of Twenty-nine and 87/100 Dollars (\$29.87) each quarter. This rate shall be applied only to single-family residential and small commercial customers and approximates the cost of eighteen thousand two hundred (18,200) gallons of water per quarter under Mg-1. If it is determined by the utility that usage is in excess of eighteen thousand two hundred (18,200) gallons per quarter, an additional charge of One and 24/100 Dollars (\$1.24) per one thousand (1,000) gallons will be made for the estimated additional usage.
- (b) **Billing.** Same as Schedule Mg-1.

**Sec. 9-1-6 Public Service – Mpa-1.**

- (a) Water service supplied to municipal buildings, schools, etc. shall be metered and the regular metered service rates applied.
- (b) Water used on an intermittent basis for flushing service, street sprinkling, flooding skating rinks, drinking fountains, etc., shall be metered where meters can be set to measure the service. Where it is impossible to measure the service, the Utility shall estimate the volume of water used based on the pressure, size of opening and period of time water is allowed to be drawn. The estimated quantity used shall be billed as the rate of Ninety-seven Cents (97c) per thousand (1,000) gallons.

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

	<b>During Normal Business Hours</b>	<b>After Normal Business Hours</b>
Reinstallation of meter	\$12.00	\$18.00
Valve turned on at curb stop	\$10.00	\$15.00

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

- (a) The initial water service lateral will be installed from the main through the curb stop and box by the utility, for which there will be made a charge as follows:

¾ inch or 1-inch copper water service	\$250.00
Larger sized services	Actual cost

- (b) The installation charge as filed shall be paid in advance.

**Sec. 9-1-9 Seasonal, Emergency or Temporary Service – Mgt-1.**

Seasonal customers shall be served at the general service rate (Mg-1) except that each customer served under this rate shall pay an annual seasonal service charge equal to four (4) times the applicable quarterly service charge. Water use in any month shall be billed at the applicable volume schedule in Mg-1 and the charge added to the annual seasonal service charge.

**Sec. 9-1-10 Building and Construction Water Service-Mz-1.**

- (a) For single-family and small commercial buildings apply the service charges (Mg-1) for the size of meter to be installed.

- (b) For large commercial, industrial or multiple apartment buildings, a temporary metered installation shall be made and general, metered rates (Mg-1) applied.

### **Sec. 9-1-11 Bulk Water – B-1.**

All bulk water supplied to fill tank trucks or swimming pools from the water system through hydrants or other connections shall be metered. Utility personnel shall supervise the delivery of the water.

Service charge	\$10.00 per tank load
Plus volume charge	\$1.20 per 1,000 gallons

### **Sec. 9-1-12 Additional Meter Rental Charge – Am-1.**

If a customer requests the installation of an additional meter to receive credit for clear water not discharged into the sanitary sewer system, or if a sewerage service customer who is not a customer of the Water Utility requests the installation of a meter to determine the volume of sewage discharged into the sanitary sewer system, the Utility shall furnish and install this additional meter. A rental fee shall be charged for the use of this meter and the following rates shall apply:

5/8 and 3/4 -inch meter	\$2.00 per quarter
1-inch meter	\$3.50 per quarter
1 1/4-inch meter	\$5.25 per quarter
1 1/2-inch meter	\$7.00 per quarter
2-inch meter	\$10.00 per quarter

### **Sec. 9-1-13 Remote Reading Register Meter Attachment – Mr-1.**

- (a) A remote register meter attachment will be installed upon request of a customer for such installation. Where the register is to be attached to the outside of the building in which the meter is located, the customer will be charged for each meter attachment at the rate set forth below.
- (b) Should the Utility change its entire system to remote register meters subsequent to installation of a remote register for which a charge was made, the amount paid, less One Dollar (\$1.00) for each year of service exclusive of any charge for excess wire installation, will be refunded to the then owner of the premises.
- (c) Rate. Each remote register – Twenty Dollars (\$20.00).

### **Sec. 9-1-14 through 9-1-19 Reserved for Future Use.**

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

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

All persons now receiving a water supply from the Village of Fredonia water utility, or who may hereafter make application therefore, shall be considered as having agreed to be bound by the rules and regulations as filed with the Public Service Commission of Wisconsin.

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

- (a) Application for water service shall be made in writing on a form furnished by the water utility. The application will contain the legal description of the property to be served, name of the owner, the exact use to be made of the service, and the size of the supply pipe and meter desired. (Note particularly any special refrigeration and/or air-conditioning water-consuming appliances).
- (b) Service will be furnished only if:
  - (1) Premises have a frontage on a properly platted street or public strip in which a cast iron or other long-life water main has been laid, or where property owner has agreed to and complied with the provisions of the utility's filed main extension rule.
  - (2) Property owner has installed or agrees to install a service pipe from the curb line to the point of use, and laid not less than six (6) feet below the surface of an established or proposed grade, and according to utility's specification, and
  - (3) Premises have adequate piping beyond metering point.
- (c) The owner of a multi-unit dwelling has the option of being served by individual metered water service to each unit. The owner, by selecting this option, is required to provide interior plumbing and meter settings to enable individual metered service to each unit and individual disconnection without affecting service to the other units. Each meter and meter connection will be a separate water utility customer for the purpose of the filed rules and regulations.
- (d) No division of the water service of any lot or parcel of land shall be made for the extension and independent meterage of the supply to an adjoining lot or parcel of land. No division of a water supply service shall be made at the curb for separate supplies therefrom for two (2) or more separate premises having frontage on any street or public service strip whether owned by the same or different parties.
- (e) The Utility is hereby empowered to withhold approval of any application wherein full information of the purpose of such supply is not clearly indicated and set forth by the applicant property owner.

### **Sec. 9-1-22 Service Contract.**

- (a) The minimum service contract period shall be one (1) year unless otherwise specified by special contract or in the applicable rate schedule. Where the Utility service has been disconnected at the customer's request prior to expiration of his minimum contract period, a reconnection charge shall be made, payable in advance, when the customer

requests reconnection of service. (See Schedule R-1 for applicable rate.) The minimum contract period is renewed with each reconnection.

- (b) A reconnection charge shall also be required from consumers whose services are disconnected (shut off at curb stop) because of non-payment of bills when due (not including disconnection for failure to comply with deposit or guarantee rules). (See Schedule R-1 for applicable rate.)
- (c) A consumer shall be considered as the same consumer provided the reconnection is requested for the same location by any member of the same family, or if a place of business, by any partner or employee of the same business.

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

An applicant for temporary water supply on a metered basis shall make and maintain a monetary deposit of not less than Fifteen Dollars (\$15.00) for each meter installed as security for payment for use of water and for such other charges which may arise from the use of the supply. The charge for setting the valve and furnishing and setting the meter will be Five Dollars (\$5.00), so that of the Fifteen Dollars (\$15.00) deposited, Ten Dollars (\$10.00) will be available to pay for the water used at the scheduled rates.

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

- (a) When water is requested for construction purposes, or for filling tanks or other such uses, an application therefore shall be made to the Utility, in writing, upon application provided for that purpose in the Water Department office, giving a statement of the amount of construction work to be done, or the size of the tank to be filled, etc. Payment for the water for construction shall be made in advance at the scheduled rates. The service pipe must be installed inside the building from where the water must be drawn. No connection with the service pipe at the curb shall be made without special permission from the Utility.
- (b) In no case will any employee of the utility turn on water for construction work unless the contractor first presents a permit. Upon completion of the construction work, the contractor must return the original permit to the Utility, together with a statement of the actual amount of construction work performed.
- (c) Consumers shall not allow contractors, masons or other persons to take water from their premises without first showing a permit from the Department. Any consumer failing to comply with this provision will have water service discontinued.

### **Sec. 9-1-25 Use of Hydrants for Construction; Temporary Supply.**

- (a) In cases where no other supply is available, permission may be granted by the superintendent to use a hydrant. No hydrant shall be used until it is equipped with a

sprinkling valve. A charge of Six Dollars (\$6.00) will be made for setting a valve or for moving it from one hydrant to another. In no case shall any valve be moved except by a member of the Water Department.

- (b) Before a valve is set, payment must be made for its setting and for the water to be used at the scheduled rates. The applicant must make a deposit of Five Dollars (\$5.00) for the hydrant wheel and Five Dollars (\$5.00) for the reducer, if necessary. When the contractor has finished using the hydrant, he must notify the Water Department to that effect. The minimum charge for the use of water from a hydrant will be Ten Dollars (\$10.00), exclusive of the deposit, but including the charge for setting the valve.
- (c) In the use of a hydrant supply, the hydrant valve will be fully opened by the Utility, and the flow of water must be regulated by means of a gate valve. If the water is to be used through iron pipe connections, all such pipe installations shall have the swing joint to facilitate quick disconnection from the fire hydrant.

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

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

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

All money deposited as security for payment of charges arising from the use of temporary water supply on a metered basis, or for the return of a gate valve or reducer, if the water is used on an unmetered basis, will be refunded to the depositor on the termination of the use of water, the payment of all charges levied against the depositor, and the return of the valve and reducer.

### **Sec. 9-1-28 Service Connection (or Water Laterals).**

- (a) No water service shall be laid through any trench having cinders, rubbish, rock or gravel fill, or any other material which may cause injury to or disintegration of the service pipe, unless adequate means of protection are provided by sand filling or such other insulation as may be approved by the Utility. Service pipes passing through curb or retaining walls shall be adequately safeguarded by provision of channel space or pipe casing, not less than twice the diameter of the service connection. The space between the service pipe and channel or pipe casing shall be filled and lightly caulked with an oakum, mastic cement, or other resilient material, and made impervious to moisture.
- (b) In backfilling the pipe trench, the service pipe must be protected against injury by carefully hand tamping the ground filling, free from hard lumps, rocks, stones, or other injurious material, around and at least six (6) inches over the pipe.

- (c) All water supplies shall be of undiminished size from the street main in to the point of meter placement. Beyond the meter outlet valve the piping shall be sized and proportioned to provide, on all floors, at all times, an equitable distribution of water supply for the greatest probable number of fixtures or appliances operating simultaneously. All such service shall comply with the provisions of the State Plumbing Code and shall be inspected by the Village Building Inspector.

### **Sec. 9-1-29 Service Piping for Meter Settings.**

- (a) In cases where a new customer whose service is to be metered installs the original service piping or where an existing metered customer changes his service piping for his own convenience, or where an existing flat rate customer requests to be metered, the customer shall, at his expense provide a suitable location and the proper connections for the meter. The Water Utility should be consulted as to the type and size of meter setting. Where it is possible to set meters in the basement, or other suitable place within the building, a short nipple shall be inserted after the stop and waste cock, then a union, and then another nipple and coupling of the proper length. The nipple attached to the union and coupling shall be cut to a standard length provided by the plans of the Utility (it may require a horizontal run of eighteen (18) inches in such pipe line) which may later be removed for the insertion of the meter into the supply line.
- (b) No permit will be given to change from metered to flat rate service.

### **Sec. 9-1-30 Turning on Water.**

The water cannot be turned on for a consumer except by a duly authorized employee of the utility. When a plumber has completed a job, he must leave the water turned off. This does not prevent the plumber from testing the work.

### **Sec. 9-1-31 Failure to Read Meters.**

- (a) Where the utility is unable to read a meter after two (2) successive attempts, the fact will be plainly indicated on the bill, and either an estimated bill will be computed, or the minimum charge applied. The difference shall be adjusted when the meter is again read, that is, the bill for the succeeding quarter will be computed with the gallons or cubic feet in each block of the rate schedule doubled and credit will be given on that bill for the amount of the minimum bill paid the preceding month. Only in unusual cases or where approval is obtained from the customer shall more than two (2) consecutive estimated bills be rendered.
- (b) If the meter is damaged (see Surreptitious Use of Water ) or fails to operate, the bill will be based on the average use during the past year unless there is some reason why the use is not normal. If the average use cannot be properly employed, the bill will be estimated by some equitable method.

### **Sec. 9-1-32 Complaint Meter Tests.**

See Wis. Adm. Code, Chapter PSC 185.77.

### **Sec. 9-1-33 Thawing Frozen Services.**

See Wis. Adm. Code, Chapter PSC 185.89.

### **Sec. 9-1-34 Stop Boxes.**

The consumer shall protect the stop box in the terrace and shall keep the same free from dirt and other obstructions. The utility shall not be liable for failure to locate the stop box and shut off the water in case of a leak on the consumer's premises.

### **Sec. 9-1-35 Installation of Meters.**

Meters will be furnished and placed by the utility and are not to be disconnected or tampered with by the consumer. All meters shall be so located that they shall be protected from obstructions and permit ready access thereto for reading, inspection, and servicing, such location to be designated or approved by the Utility. All piping within the building must be supplied by the consumer. Where additional meters are desired by the consumer, he shall pay for all piping and an additional amount sufficient to cover the cost of maintenance and depreciation.

### **Sec. 9-1-36 Repairs to Meters.**

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

### **Sec. 9-1-37 Replacement and Repair of Service Pipe.**

- (a) Where the property owner requests that a larger service lateral be installed to replace an existing smaller diameter pipe, an allowance of Fifteen Dollars (\$15.00) will be made as a deduction in the cost, providing the new service is to be installed in the same ditch as the existing service pipe.
- (b) The service pipe from the main to and through the curb stop will be maintained and kept in repair and when worn out, replaced at the expense of the utility. The property owner shall maintain the service pipe from the curb stop to the point of use.
- (c) If a consumer fails to repair a leaking or broken service pipe from curb to point of metering or use within such time as may appear reasonable to the Utility after notification has been served on the consumer by the Utility, the water will be shut off and will not be turned on again until the repairs have been completed.

### **Sec. 9-1-38 Charges for Water Wasted Due to Leaks.**

See Wis. Adm. Code, Chapter PSC 185.35(6).

## **Sec. 9-1-39 Inspection of Premises.**

During reasonable hours any officer or authorized employee of the utility shall have the right of access to the premises supplied with service, for the purpose of inspection or for the enforcement of the utility's rules and regulations. At least once every twelve (12) months the utility will make a systematic inspection of all unmetered water taps for the purpose of checking waste and unnecessary use of water.

## **Sec. 9-1-40 Customer's Deposits.**

- (a) **New Residential Service.** The utility may require a cash deposit or other guarantee as a condition of new residential service if, and only if, the customer has an outstanding account balance with the utility which accrued within the last six (6) years, and which at the time of the request for new service remains outstanding and not in dispute.
- (b) **Existing Residential Service.** The utility may require a cash deposit or other guarantee as a condition of continued service if, and only if, either or both of the following circumstances apply:
  - (1) Service has been shut off or discontinued within the last twelve (12) months for violation of these rules and regulations or for nonpayment of a delinquent bill for service which is not in dispute.
  - (2) Credit information obtained by the company subsequent to the initial application indicates that the initial application for service was falsified or incomplete to the extent that a deposit would be required under these rules and regulations.
- (c) **Commercial and Industrial Service.** If the credit for an applicant for commercial or industrial service has not been established to the satisfaction of the utility, he may be required to make a deposit or otherwise guarantee to the utility payment of bills for service.
- (d) **Refund of Deposits.** The utility shall review the payment record of each residential customer with a deposit on file at not less than twelve – (12) month intervals and shall not require or continue to require a deposit unless a deposit could be required under the conditions stated above. In the case of a commercial or industrial customer the utility shall refund the deposit after twenty-four (24) consecutive months of prompt payment if the customer's credit standing is satisfactory to the company. Payment shall be considered "prompt" if it is made prior to notice of disconnection for nonpayment of a bill not in dispute. Any deposit or portion thereof refunded to a customer shall be refunded by check unless both the customer and the company agree to credit the regular bill or unless service is terminated, in which case the deposit with accrued interest shall be applied to the final bill and any balance returned to the customer promptly.
- (e) **Other Conditions.** A new or additional deposit may be required upon reasonable written notice of the need therefore if such new or additional deposit could have been required under the circumstances when the initial deposit was made. Service may be refused or disconnected for failure to pay a deposit request as provided in the rules. When service has been disconnected for failure to make a deposit, or for failure to pay a delinquent bill,

or for failure to comply with the terms of a Deferred Payment Agreement, and satisfactory arrangements have been made to have service restored, a reconnection charge as specified elsewhere in these rules, shall be paid by the customer as a condition to restoration of service.

(f) **Guarantee Contracts.**

- (1) The utility may accept, in lieu of a cash deposit, a contract signed by a guarantor satisfactory to the company, whereby payment of a specified sum not exceeding the cash deposit requirement is guaranteed. The term of a guarantee contract shall be two (2) years, but shall automatically terminate after the customer has closed his account, or at the guarantor's request upon thirty (30) days' written notice to the utility.
- (2) Upon termination of a guarantee contract or whenever the company deems same insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required upon reasonable written notice to the customer. Service to any customer who fails to comply with these requirements may be refused, or upon eight (8) days' written notice, disconnected.
- (3) The utility shall mail the guarantor copies of all disconnect notices sent to the customer whose account he has guaranteed unless the guarantor waives such notice in writing.
- (4) In lieu of a cash deposit or guarantee, an applicant for new service who has an outstanding account accrued within the last six (6) years with the utility shall have the right to receive service from the company under a Deferred Payment Agreement as provided in these Rules and Regulations for the outstanding account balance.

## **Sec. 9-1-41 Disconnection and Refusal of Service.**

(a) **Reasons for Disconnection.** Service may be disconnected or refused for any of the following reasons:

- (1) Failure to pay a delinquent account or failure to comply with the terms of a Deferred Payment Agreement.
- (2) Violation of the utility's rules and regulations pertaining to the use of service in a manner which interferes with the service of others or to the operation of nonstandard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation.
- (3) Failure to comply with the deposit or guarantee arrangements as provided for in these rules and regulations.
- (4) Diversion of service around the meter.

(b) **Disconnection for Delinquent Accounts.**

- (1) A bill for service is delinquent if unpaid after the due date shown on the bill. The utility may disconnect service for a delinquent bill by giving the customer at least eight (8) calendar days prior to disconnection, a written disconnect notice which may be included with the bill for service. For purposes of this rule, the due date shall not be less than twenty (20) days after issuance.
- (2) The utility may disconnect without notice where a dangerous condition exists for as long as the condition exists. Service may be denied to any customer for failure

to comply with the applicable requirements of the rules and regulations of the Public Service Commission or of these rules and regulations, or if a dangerous or unsafe condition exists on the customer's premises.

- (3) The utility shall notify the County Department of Health and Social Services at least five (5) calendar days prior to any scheduled disconnection of residential service if the customer or responsible person has made a written request for this procedure. The utility shall apprise customers of this right upon application for service. If service to a residential customer which has been disconnected has not been restored within twenty-four (24) hours after disconnection, the utility shall notify the appropriate county Sheriff's Department of the billing name and service address and that a threat to health and life might exist to persons occupying the premises.

**(c) Deferred Payment Agreement.**

- (1) The utility shall offer Deferred Payment Agreements to residential customers. The Deferred Payment Agreement shall provide that service will not be discontinued for the outstanding bill if the customer pays a stated reasonable amount of the outstanding bill and agrees to pay a stated reasonable portion of the remaining outstanding balance in installments until the bill is paid. In determining what amounts are "reasonable", the parties shall consider the:
  - a. Size of the delinquent account.
  - b. Customer's ability to pay.
  - c. Customer's payment history.
  - d. Time that the debt has been outstanding.
  - e. Reasons why the debt has been outstanding.
  - f. Any other relevant factors concerning the circumstances of the customer.
- (2) In the Deferred Payment Agreement it shall state immediately preceding the space provided for the customer's signature and in boldface print at least two (2) sizes larger than any other used thereon, the following:

"If you are not satisfied with this agreement, do not sign. If you do sign this agreement you give up the right to dispute the amount due under the agreement except for the utility's failure or refusal to follow the terms of this agreement."

- (3) A Deferred Payment Agreement shall not include a finance charge.
- (4) If an applicant for service has not fulfilled the terms of a Deferred Payment Agreement, the utility shall have the right to disconnect service or refuse service in accordance with these rules and under such circumstances, it shall not be required to offer subsequent negotiation of a Deferred Payment Agreement prior to disconnection.
- (5) Any payments made by the customer in compliance with a Deferred Payment Agreement, or otherwise, shall be first considered made in payment of the previous account balance with any remainder credited to the current bill.

**(d) Dispute Procedures.**

- (1) Whenever the customer advises the utility's designated office prior to the disconnection of service that all or part of any billing as rendered is in dispute, or that any matter related to the disconnection is in dispute, the company shall investigate the dispute promptly and completely, advise the customer of the results of the investigation, attempt to resolve the dispute, and provide the opportunity for the customer to enter in to a Deferred Payment Agreement when applicable in order to settle the dispute.
- (2) After the customer has pursued the available remedies with the utility, he may request that the Public Service Commission's staff informally review the disputed issue and recommend terms of settlement.
- (3) Any party to the dispute after informal review may make a written request for a formal review by the Commission. If the Commission decides to conduct a formal hearing on the dispute, the customer must pay fifty percent (50%) of the bill in dispute or post a bond for that amount on or before the hearing date. Failure to pay the amount or post the bond will constitute a waiver of the right to a hearing. Service shall not be disconnected because of any disputed matter while the disputed matter is being pursued under the dispute procedure. In no way does this relieve the customer from the obligation of paying charges which are not disputed.
- (4) The form of disconnection notice to be used is as follows:

### **DISCONNECTION NOTICE**

Dear Customer:

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

**You have 8 days to pay the utility service arrears or your service is subject to disconnection.**

If you fail to pay the service arrears, or fail to contact us within the 8 days allowed to make reasonable time payment arrangements, we will proceed with disconnection action.

To avoid the inconvenience of service interruption and an additional charge for reconnection, **we urge you to pay the full arrears IMMEDIATELY AT OUR OFFICE.**

If you have entered into a Deferred Payment Agreement with us and have failed to make the time payment you agreed to, your service will be subject to disconnection unless you pay the amount due within 8 days.

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

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

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

### **Illness Provision**

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

### **Deferred Payment Agreements**

If, for some reason, you are unable to pay the full amount of the utility service arrears on your bill, you may contact the Utility to discuss arrangements to pay the arrears over an extended period of time.

This time payment agreement will require:

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

In any situation where you are unable to resolve billing disputes or disputes about the grounds for proposed disconnection through contacts with our utility, you may make an appeal to the Wisconsin Public Service Commission, Madison, Wisconsin.

**(UTILITY NAME)**

- (5) In the event the utility is not able to collect any bill for water service even though Deposit and Guarantee Rules are on file, the bill may be put upon the tax roll as provided in Sec. 66.069, Wisconsin Statutes.

## **Sec. 9-1-42 Surreptitious Use of Water.**

- (a) When the utility has reasonable evidence that a consumer is obtaining his supply of water, in whole or in part, by means of devices or methods used to stop or interfere with the proper metering of the utility service being delivered to his equipment, the utility

reserves the right to estimate and present immediately a bill for service unmetered as a result of such interference and such bill shall be payable subject to a twenty-four (24) hour disconnection of service. When the utility shall have disconnected the consumer for any such reason, the utility will reconnect the consumer upon the following conditions:

- (1) The consumer will be required to deposit with the utility an amount sufficient to guarantee the payment of the consumer's bills for utility service to the utility.
- (2) The consumer will be required to pay the utility for any and all damages to its equipment on the consumer's premises due to such stoppage or interference with its metering.
- (3) The consumer must further agree to comply with reasonable requirements to protect the utility against further losses.
- (4) Sections 98.26 and 943.20, Wisconsin Statutes, as relating to water service, are hereby adopted and made a part of these rules.

### **Sec. 9-1-43 Vacation of Premises.**

When premises are to be vacated, the utility shall be notified in writing at once, so that it may remove the meter and shut off the supply at the curb cock. The owner of the premises shall be liable to prosecution for any damage to the property of the water department by reason of failure to notify the utility of vacancy.

### **Sec. 9-1-44 Repairs to Mains.**

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

### **Sec. 9-1-45 Duty of Utility with Respect to Safety of the Public**

It shall be the duty of the Utility to see that all open ditches for water mains, hydrants, and service pipes are properly guarded to prevent accidents to any person or vehicle and at night there shall be displayed amber signal light in such manner as will, so far as possible, insure the safety of the public.

### **Sec. 9-1-46 Handling Water Mains and Service Pipes in Sewer or Other Trenches.**

- (a) Where excavating machines are used in digging sewers, all water mains shall be maintained at the expense of the contractor.
- (b) Contractors must ascertain for themselves the existence and location of all service pipes. Where they are removed, cut or damaged in the construction of a sewer, the contractor must at his own expense cause them to be replaced or repaired at once. He must not shut off the water service pipes from any consumer for a period exceeding six (6) hours.

## **Sec. 9-1-47 Settling Main or Service Trenches.**

Trenches in unpaved streets shall be refilled with moist, damp earth, or by means of water tamping. When water tamping is used, the water shall be turned into the trench after the first twelve (12) inches of backfill has been placed and then the trench shall be kept flooded until the remainder of the backfill has been put in.

## **Sec. 9-1-48 Protective Devices.**

- (a) **Protective Devices in General.** The owner or occupant of every premise receiving water supply shall apply and maintain suitable means of protection of the premise supply, and all appliances thereof, against damage arising in any manner from the use of the water supply, variation of water pressure, or any interruption of water supply. Particularly, such owner or occupant must protect water-cooled compressors for refrigeration systems by means of high pressure safety cutout devices. There shall likewise be provided means for the prevention of the transmission of water ram or noise of operation of any valve or appliance through the piping of their own or adjacent premises.
- (b) **Relief Valves.** On all “closed systems” (i.e., systems having a check valve, pressure regulator, or reducing valve, water filter or softener) an effective pressure relief valve shall be installed either in the top tapping or the upper side tapping of the hot water tank, or on the hot water distributing pipe connection at the tank. A one-half (1/2) inch drain pipe shall be connected to the relief valve for discharge on the floor or into a sink or open drain through an air gap. No stop valve shall be placed between the hot water tank and the relief valve or on the drain pipe. (See applicable Village plumbing codes).
- (c) **Air Chambers.** An air chamber or approved shock absorber shall be installed at the terminus of each riser, fixture branch, or hydraulic elevator main for the prevention of undue water hammer. The air chamber shall have a diameter not less than that of the pipe it serves, and a length not less than fifteen (15) diameters of said supply pipe. Where possible, the air chamber should be provided at its base with a valve and rain cock for water drainage and replenishment of air.

## **Sec. 9-1-49 Cross Connection Control.**

- (a) **Definition.** A cross connection shall be defined as any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the Village water system, and the other from a private source, water of unknown or questionable safety, or steam gases, or chemicals, whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
- (b) **Cross Connections Restricted.** No person, firm or corporation shall establish or maintain or permit to be maintained any cross connection whereby potable water from a

private, auxiliary or emergency water supply other than the regular public water supply of the Village of Fredonia may enter the supply or distribution system of said municipality, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the Fredonia Water Utility and by the Wisconsin Department of Natural Resources in accordance with Section NR 811-09(2), of Wisconsin Administrative Code.

- (c) **Inspections.** It shall be the duty of the sewer and water superintendent to cause inspection to be made of all properties served by the public water system where cross connections with the public water system are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the Fredonia Water Utility Committee and as approved by the Wisconsin Department of Natural Resources.
- (d) **Right of Entry.** Upon presentation of credentials, the Director of Public Works or his authorized representative shall have the right to request entry at any reasonable time to examine any property served by a connection to the public water system of the Village of Fredonia for cross connections. If entry is refused, such representative shall obtain a special inspection warrant under S. 66.122, Wisconsin statutes. On request the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property.
- (e) **Discontinuance of Service.** The Fredonia Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this ordinance exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice and opportunity for hearing under Chapter 68, Wisconsin Statutes, except as provided in Section f. Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this ordinance.
- (f) **Emergency Discontinuance.** If it is determined by the Fredonia Water Utility that a cross connection or an emergency endangers public health, safety or welfare and required immediate action, and a written finding to that effect is filed with the Clerk of the Village of Fredonia and delivered to the customer's premises, service may be immediately discontinued. The customer shall have an opportunity for hearing under Chapter 68, Wisconsin Statutes, within 10 days of such emergency discontinuance.
- (g) **State Code Adopted.** The Village of Fredonia adopts by reference the State Plumbing Code of Wisconsin, being Chapter ILHR 82, Wisconsin Administrative Code.
- (h) **Section Not to Supersede Other Ordinances.** This section does not supersede the State Plumbing Code and any Village plumbing ordinances but is supplementary to them.

## **Sec. 9-1-50 Water Main Extension Rule.**

The Village of Fredonia Water Utility will extend water mains for new customers on the basis set forth herein:

- (a) **Definitions.**
  - (1) **Customer.** The word "customer" as used in this rule means the owner of premises to which water is now or is to be furnished unless specific written

agreements specify otherwise. The customer at all times means the property owner at the time a contribution is to be made or a refund becomes available.

(2) **Contributor.** “Contributor” means the owner of property at the time of a contribution or refund unless otherwise specified by written agreement.

(b) **Contribution from Customer.**

(1) Costs to customers who hook up to the original water main system if the service lateral system was installed at the time the water main was laid are to immediately be collected through assessment by the municipality against the abutting property per ordinance. The procedure set forth under Sec. 66.60 of the Wisconsin Statutes will apply, and no additional customer contribution to the utility will be required.

(2) Costs to customers who hook up to the original water main system, if the service lateral was not installed, are to immediately be collected through assessment by the municipality against the abutting property per ordinance. The procedure set forth under Sec. 66.60 of the Wisconsin Statutes will apply, and no additional customer contribution to the utility will be required.

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

- a. Where the cost of the extension is to immediately be collected through assessment by the municipality against the abutting property, the procedure set forth under Sec. 66.60 of the Wisconsin Statutes will apply, and no additional customer contribution to the utility will be required.
- b. Where the municipality is unwilling or unable to make a special assessment, the extension will be made on a customer-financed basis as follows:
  1. The applicant(s) will advance as a contribution in aid of construction the total amount equivalent to that which would have been assessed for all property under (a).
  2. Part of the contribution required Subsection (3)b1 will be refundable. When additional customers are connected to the extended main within twenty (20) years of the date of completion, contributions in aid of construction will be collected equal to the amount which would have been assessed under Subsection (3)a for the abutting property being served. This amount will be refunded to the original contributor(s). In no case will the contributions received from additional customers exceed the proportionate amount which would have been required under Subsection (3)a nor will it exceed the total assessable cost of the original extension.
- c. When a new customer(s) is connected to an existing main, not financed by the customer contributions, it shall not be considered as a main extension and no contribution may be collected from the customer(s). This provision applies to mains installed after the effective date of this rule.

## **Sec. 9-1-51 Water Main Installations in Platted Subdivisions.**

- (a) Application for installation of water mains in regularly platted real estate development subdivisions shall be filed with the Village Clerk-Treasurer and shall set forth the following information:
  - (1) Name of subdivision.
  - (2) Legal description.
  - (3) Map showing streets, lots and sizes of proposed mains and hydrants, and street laterals.
  - (4) Date of approval of subdivision plan by the State Department of Development.
  - (5) Date of approval of proposed mains by the State Department of Natural Resources.
  - (6) Number of houses presently under construction.
- (b) Upon receipt of the application, the water utility will prepare detailed estimates of the cost of extending sewer mains of the size deemed necessary in the subdivision and submit same to the municipal governing body for approval of the extension. The applicant for water service to be supplied to a subdivision shall be required to advance to the utility, prior to the beginning of the construction, the total estimated cost of the extension. If the final costs exceed estimated costs, an additional billing will be made for the balance of the cost due, with the balance to be paid within thirty (30) days. If final costs are less than estimated, a refund of overpayment will be made by the utility. If the developer, or a contractor employed by the developer, is to install the sewer mains (with the approval of the utility), the developer shall be responsible for the total cost of construction.

## **Sec. 9-1-52 Well Abandonment Program.**

- (a) **Purpose.** To prevent unused and/or improperly constructed wells from serving as a passage for contaminated surface nor near-surface waters or other materials to reach the usable ground water. These wells must be properly filled and sealed.
- (b) **Coverage.** All private wells located on any premises which is served by the public water system of the Village shall be filled by May 31, 1987. Only those wells for which a well operation permit has been granted by the Village Clerk may be exempted from this requirement; subject to conditions of maintenance and operation.
- (c) **Well Operation Permits.** A permit may be granted to a well owner to operate a well for a period not to exceed 5 years if the following requirements are met. (Application shall be made on forms provided by the Village Clerk.)
  - (7) The well and pump installation meet or may be upgraded to meet the requirements of Chapter NR 812, Wisconsin Administrative Code, and a well constructors report is on file with the Department of Natural Resources, or certification of the acceptability of the well has been granted by the Private Water Supply Section of the Department of Natural Resources.
  - (8) The well has a history of producing safe water and presently produces bacteriologically safe water as evidenced by two samplings two weeks apart. In areas where the Department of Natural Resources has determined that groundwater aquifers are contaminated with substances other than bacteria additional chemical tests may be required to evidence safety of the water.

- (9) The proposed use of the well can be justified as being necessary in addition to water provided by the public water system.
- (10) No physical connection shall exist between the piping of the public water system and the private well.
- (11) The well water discharged to the sanitary sewer shall be properly metered and authorized by the sewer utility.
- (d) **Methods.** Wells to be abandoned shall be filled according to the procedures outlined in Chapter NR 812, Wisconsin Administrative Code. The pump and piping must be removed and the well checked for obstruction prior to plugging. Any obstruction or liner must be removed.
- (e) **Reports and Inspections.** An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the Village Clerk and the Department of Natural Resources within 30 days of the completion of the well abandonment.
- (f) Any person, firm or other well owner violating any provision of this ordinance shall upon conviction be punished by a fine of not less than \$10 nor more than \$25 together with the cost of prosecution. Each 24-hour period during which a violation exists shall be deemed and constitute a separate offense.

## **Chapter 2**

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

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## Article A: General Provisions

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

- (a) The following definitions are applicable to this Chapter:
- (1) **Ammonia Nitrogen (NH<sub>3</sub>N)**. One (1) of the oxidation states of nitrogen in which nitrogen is combined with hydrogen in molecular form as NH<sub>3</sub> or ionized form as NH<sub>4</sub><sup>+</sup>Quantitative determination of ammonia nitrogen shall be made in accordance with procedures set forth in “Standard Methods.”
  - (2) **Approving Authority**. Means the Village Board of the Village of Fredonia or its duly authorized deputy, agent or representative.
  - (3) **Board**. Means the Village Board of the Village of Fredonia.
  - (4) **Biochemical Oxygen Demand (BOD)**. Means the quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter. Quantitive determination

of BOD shall be made in accordance with procedures set forth in “Standard Methods.”

- (5) **Building Drain (Sanitary).** Means that part of the lowest horizontal piping of a drainage system which receives the discharge of wastewaters from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.
- (6) **Building Sewer.** Means a sewer intended to receive both wastewater and storm water.
- (7) **Combined Sewer.** Means a sewer intended to receive both wastewater and storm water.
- (8) **Compatible Pollutant.** Means biochemical oxygen demand, suspended solids, pH or fecal coliform bacteria, plus additional pollutants identified in the discharge permit for the publicly owned treatment works receiving the pollutants if such works were designed to treat such additional pollutants and, in part, does remove such pollutants to a substantial degree.
- (9) **Composite Sample (24 Hours).** The combination of individual samples taken at intervals of not more than one (1) hour.
- (10) **Chlorine Requirement.** Means the amount of chlorine, in milligrams per liter, which must be added to sewage to produce a specified residual chlorine content in accordance with procedures set forth in “Standard Methods.”
- (11) **Discharger.** Means any person, municipality or other entity that discharges anything, without limitation, directly or indirectly into a sewerage system or any part thereof.
- (12) **Domestic Wastewater.** Means water-carried wastes normally discharging into the sanitary sewers from dwellings (including apartment houses and hotels), office buildings, factories and institutions, free from storm water and industrial wastes.
- (13) **Easement.** Means an acquired legal right for the specific use of land owned by others.
- (14) **Effluent.** Means wastewater, water or other liquid after some degree of treatment flowing out of any wastewater treatment facility.
- (15) **Existing Sewer.** Means any sanitary sewer of the sewerage system for which construction approval was not granted prior to its construction by the Utility. Existing sewers may occur through annexations, public dedications of private sewers or sewerage systems or construction undertaken in violation of this Chapter.
- (16) **Fixed Charge.** Means the charges for the cost of debt retirement associated with the construction, erection, modification or rehabilitation of the wastewater treatment works, along with the cost to treat infiltration/inflow, administrative costs, billing costs and partial costs of sewer cleaning and general maintenance. Fixed charges are based upon the size of the water meter(s) serving the user.
- (17) **Floatable Oil.** Means oil, fat or grease in a physical state such that it will separate by gravity from wastewater.
- (18) **Flow Proportional Sample.** A sample taken that is proportional to the volume of flow during the sampling period.

- (19) **Garbage.** Means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of food.
- (20) **Ground Garbage.** Means the residue from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than one-half (1/2) inch in any dimension.
- (21) **Grease.** Means a group of substances including fats, waxes, free fatty acids, calcium and magnesium soaps, mineral oils and certain other nonfatty materials as analyzed for in accordance with "Standard Methods."
- (22) **Grit.** Means the heavy suspended mineral matter in wastewater such as, but not limited to, sand, gravel and cinders.
- (23) **Groundwater.** Means subsurface water occupying the zone of saturation from which wells and springs are fed. In a strict sense, the term applies only to water below the water table.
- (24) **Incompatible Pollutant.** Means any pollutant which is not a compatible pollutant.
- (25) **Industrial User.**
- a. Means any nongovernmental, nonresidential users of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under the following divisions:
    1. Division A – Agriculture, Forestry and Fishing
    2. Division B – Mining.
    3. Division D – Manufacturing.
    4. Division E – Transportation, Communications, Electric, Gas and Sanitary Services.
    5. Division I – Services.
  - b. A user in one (1) of the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.
  - c. An industrial user would be classified as a "high volume" user if metered water consumption exceeds 100,000 gallons per quarter.
- (26) **Industrial Wastes; Industrial Wastewater.** Means the wastes dischargeable to sanitary sewers from industrial manufacturing processes, trade or business or from the development, recovery or processing of natural resources, as distinct from sanitary or normal domestic wastewater.
- (27) **Infiltration.** Means the water unintentionally entering sanitary sewers, building drains and building sewers from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. (Infiltration does not include, and is distinguished from, inflow.)
- (28) **Infiltration/Inflow.** Means the total quantity of water from both infiltration and inflow distinguishing the source.
- (29) **Inflow.** Means the water discharged into the sanitary sewers, building drains and building sewers from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, unpolluted cooling water

discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff, street wash waters or drainage. (Inflow does not include, and is distinguished from, infiltration.)

- (30) **Interceptor.** Means any sewer which receives the flow from a number of sanitary sewer outlets.
- (31) **Normal Sewage.** Means sanitary sewage in which BOD<sub>5</sub>SS, P, and NH<sub>3</sub>N concentrations do not exceed normal concentrations of:
  - a. A five (5) day, twenty (20) degree centigrade BOD of not more than two hundred (200) mg/l.
  - b. A suspended solids content of not more than two hundred fifty (250)mg/l.
  - c. A phosphorous content of not more than twelve (12)mg/l.
  - d. An ammonia nitrogen content of not more than thirty (30)mg/l.
- (32) **NPDES Permit.** Permit issued under the National Pollutant Discharge Elimination System.
- (33) **Operation and Maintenance Costs.** All costs associated with the operation and maintenance of the wastewater treatment facilities, as well as the costs associated with periodic equipment replacement necessary for maintaining the capacity and performance of the wastewater treatment facilities, including, but not limited to, the following:
  - a. Wages and salaries and employee-related expenses of operating maintenance, clerical, laboratory and supervisory personnel, together with fringe benefits and premiums paid on such wages and salaries for the State of Wisconsin worker's compensation coverage.
  - b. Electrical power.
  - c. Chemicals, fuel and other operating supplies.
  - d. Repairs to and maintenance of the equipment associated therewith.
  - e. Sewer system maintenance.
  - f. Premiums for insurance providing coverage against liability for the injury to persons and/or property and hazard insurance.
  - g. Rents and leasing costs.
  - h. Operation, licensing and maintenance costs for trucks and heavy equipment.
  - i. Consultant and legal fees.
  - j. Replacement.
- (34) **Parts per Million.** A weight-to-weight ratio; the parts-per-million value multiplied by the factor 8.34 shall be equivalent to pounds-per-million gallons of water.
- (35) **Phosphorus (P).** Total phosphorus in wastewater, which may be present in any of three (3) principal forms: orthophosphate, polyphosphates and organic phosphates. Quantitative determination of total phosphorus shall be made in accordance with procedures set forth in "Standard Methods."
- (36) **Person.** Means any individual, firm, company, association, society, corporation or group.
- (37) **pH.** Means the logarithm (to the base ten(10)) of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

- (38) **Pollution.** Means the placing of any noxious or deleterious substance in any navigable waters of the United States in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or aquatic life or property, or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (39) **Pretreatment.** Means treatment of wastewaters by dischargers before introduction into the sewerage system.
- (40) **Private Sewer.** Means a sewer which is not owned by the Village or Utility.
- (41) **Properly Shredded.** Means having processed solid materials to such a degree that all particles will be carried freely under flow conditions normally prevailing in sanitary sewers with no particle greater than one and one-half (1 ½) inch in any dimension.
- (42) **Public Sewer.** Means any sewer provided by or subject to the jurisdiction of the Village of Fredonia. It shall also include sewers within or outside the Village boundaries that serve one (1) or more persons and ultimately discharge into the Village sanitary sewer system, even though those sewers may not have been constructed with Village funds.
- (43) **Replacement.** Means expenditures for processing and installing equipment, accessories and appurtenances necessary during the useful life of the treatment works to maintain its designated capacity and performance.
- (44) **Residential Equivalent Connection.**
- a. Means the amount of sewage contributed to the system from a single-family residence based on the following criteria which will be recomputed each year:  
$$\text{Flow} = \frac{\text{Amount of water sold to residential units (Gal. Per. Year)}}{\text{Total number residential units}}$$
  - b. Residential equivalent connections will be used to establish user charges for typical residential users not serviced by a water meter.
- (45) **Sanitary Sewage.** Means a combination of water-carried wastes from residences, business buildings, institutions and industrial plants (other than industrial wastes from such plants), together with such ground, surface and storm waters as may be present.
- (46) **Sanitary Sewers.** Means those sewers which receive domestic wastewater and industrial wastes without the intentional admixture of storm water. These sewers are owned by the Village and are located in easements to the Village or public rights-of-way.
- (47) **Scum.** Means the layer or film of extraneous or foreign matter that rises to the surface of a liquid and is formed there, a residue deposited on a container or channel at the water surface or a mass of matter that floats on the surface of wastewater.
- (48) **Segregated Domestic Wastes.** May be defined as wastes from nonresidential sources resulting from normal domestic activities. These activities are distinguished from industrial, trade and/or process discharge wastes.
- (49) **Sewer.** Means a pipe or conduit for the transportation of domestic wastewater, industrial wastes and/or storm water.

- (50) **Sewer Lateral.** Means the portion of the sewage system located between the property line and sanitary sewer.
- (51) **Sewer Service Charge.** Total charge for debt retirement, operation, maintenance and replacement.
- (52) **Sewage System.** Means all facilities, including sewers and appurtenances for collecting, transporting, pumping, treating and disposing of wastewater.
- (53) **Shall** is mandatory; **may** is permissible.
- (54) **Singular and Plural.** When permitted by the context, use of the singular shall be construed to include the plural and of the plural to include the singular.
- (55) **Slug.** Means any discharge of water, wastewater or industrial waste which, in concentration of any given constituent or in rate of flow, exceeds, for any continuous fifteen (15) minute period, five (5) times the average concentration of that constituent or rate for a twenty-four (24) hour period or normal operation of the discharger.
- (56) **Standard Methods.** Means the latest edition of the **Standard Methods for the Examination of Water and Wastewater** prepared, approved and published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation. "Standard Method" definition of terms shall be applicable unless context implies that a dictionary, legal or other definition is intended.
- (57) **Storm Sewers.** Means those sewers which carry storm water but exclude domestic wastewater and industrial wastes.
- (58) **Storm Water.** Means not only storm water (water from snow, rain, sleet, hail, flood or other natural causes) but also roof water, overflow water (from tank, cistern, well or sump pump) and other surface water. (Storm water does not include, and is distinguished from, industrial and domestic wastewater).
- (59) **Suspended Solids (SS) or Total Suspended Solids (TSS).** Means total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater or other liquids and is removable by laboratory filtration as prescribed in the "Standard Methods."
- (60) **Toxic Substance.** Means any substance, whether gaseous, liquid or solid, which, when discharged to the sewerage system in sufficient quantities, interferes with any wastewater treatment process, or constitutes a hazard to human being or animals, or inhibits aquatic life in the receiving waters of the effluent from the wastewater treatment facility.
- (61) **Unmetered User.** Means a user who is not connected to the municipal water system and thereby does not have his private waste supply metered.
- (62) **Unpolluted Water.** Means water not containing any pollutants limited or prohibited by the effluent standards in effect or water whose discharge will not cause any violation of receiving water quality standards.
- (63) **User.** Means any person discharging domestic wastewater or industrial wastes into the collection system.
- (64) **User Charge.** A service charge levied on users of the wastewater collection and treatment facilities for operation, maintenance and replacement costs of said facilities.

- (65) **User Charge System.** That system which generates operation, maintenance and replacement (O, M & R) revenues equitably for providing each user category with services.
- (66) **Utility.** Means the Village of Fredonia Sewer Utility.
- (67) **Village.** Shall mean the Village of Fredonia, Ozaukee County, Wisconsin.
- (68) **Village Board.** Means the Village Board of the Village of Fredonia as defined in Sec. 61.24, Wis. Stats.
- (69) **Wastewater; Waste.** Means industrial wastes or domestic wastewater or both, whether treated or untreated, which enters the sanitary sewerage system.
- (70) **Wastewater Treatment Works.** Means an arrangement of devices and structures for the storage, treatment, recycling and reclamation of wastewater, liquid industrial wastes and sludge. These systems include interceptor sewers, outfall sewers, wastewater collection systems, individual systems, pumping, power and other equipment and their appurtenances; any works that are an integral part of the treatment process or are used for ultimate disposal of residues from such treatments; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal or industrial wastes.
- (71) **Watercourse.** Means a natural or artificial channel for the passage of water, either continuously or intermittently.
- (72) **WPDES Permit.** Wisconsin Pollutant Discharge Elimination System Permit. General provision are stated in Chapter NR 205 of the Wisconsin Administrative Code. The discharge limitations are as established by the current permit issued by the Wisconsin Department of Natural Resources.
- (73) **CBOD.** The test measures the oxygen required for the biochemical degradation of organic material (carbonaceous demand) and the oxygen used to oxidize inorganic material such as sulfides and ferrous iron. Use of a HACH nitrification inhibitor prevents oxidations of certain forms of nitrogen (nitrogenous demand).
- (74) **COD.** A measure of oxygen consuming capacity of inorganic and organic matter present in wastewater. COD is expressed as the amount of oxygen consumed from a chemical oxidant in mg/l during a specific test. Results are not necessarily related to the BOD because the chemical oxidant may react with substances that bacteria do not stabilize.

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

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

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

The Sewer Utility of The Village shall have the power to construct sewer lines for public use and shall have the power to lay sewer pipes in and through the alleys, streets and public grounds within the Village boundaries, and generally to do all such work as may be found necessary or

convenient in the management of the sewer system. The Village Board, its officers, agents and employees are empowered to enter upon any land for the purpose of inspection or supervision in the performance of their duties under this Chapter, without liability therefore; and the Village Board shall have power to purchase and acquire for the Utility all real and personal property which may be necessary for construction of the sewer system or for any repair, remodeling or addition thereto.

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

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

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

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

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

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

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

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

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

- (a) The user rules, regulations and sewer rates of the Utility are a part of the contract between the Utility and every user. Every person who connects to the Utility sewer system is deemed to have consented to be bound by such rules, regulations and rates. In the event of violation of the rules or regulations, the water and/or sewer service to the violating user shall be shut off (even though two (2) or more parties are receiving service through the same connection). Water and sewer service shall not be reestablished until

all outstanding sewer utility bills and shut-off and reconnection charges are paid in full and until such other terms and conditions as may be established by the Village are met.

- (b) In addition to all other requirements, the Village Board shall be satisfied that the offender will not continue in violation of the rules and regulations before authorizing reconnection of the offender's services. The Village Board may change the rules, regulations and sewer rates from time to time as it deems advisable and may make special rates and contracts in all proper cases.

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

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

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

### **(a) Application for Service.**

- (1) Every person connecting with the sewer system shall file an application in writing to the Utility in such form as is prescribed for that purpose. Blanks for such applications will be furnished by the Utility Clerk. The Application must state fully and truly all the uses which will be allowed. If the applicant is not the owner of the premises, the written consent of the owner must accompany the application.
  - (2) The application may be for service to more than one (1) building or more than one (1) unit of service through one (1) connection, only if previously approved by the State of Wisconsin Department of Industry, Labor and Human Relations; and in such case, charges shall be made accordingly.
  - (3) If it appears that the service applied for will not provide adequate service for the contemplated use, the Utility may reject the application. If the Utility shall approve the application, it shall issue a permit for services as shown on the application.
- (b) **Alterations.** After sewer connections have been completed in a building or upon any premises, no plumber shall make any alterations, extensions or attachments, unless the party ordering such work shall exhibit the proper permit.
  - (c) **User to Keep in Repair.** All users shall keep their own building sewers and building drains in good repair and protected from frost, at their own risk and expense, and shall prevent any unnecessary overburdening of the sewer system.
  - (d) **User Use Only.** No user shall allow others or other services to connect to the sewer system through his building sewers and building drains.
  - (e) **User to Permit Inspection.** Every user shall permit the Utility, or its duly authorized agent, at all reasonable hours of the day, to enter their premises or building to examine the pipes and fixtures, and the manner in which the drains and sewer connections operate; and they must, at all times, frankly and without concealment, answer all questions put to them relative to its use.
  - (f) **Utility Responsibility.** The Utility and its agents and employees shall not be liable for damages occasioned by reason of the breaking, clogging, stoppage or freezing of any

building sewers or building drains; nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary. The right is hereby reserved to cut off the water and sewer service at any time for the purpose of repairs, or any other necessary purpose, any permit granted or regulation to the contrary notwithstanding. Whenever it shall become necessary to shut off the sewer service within the district of the said Village, the Village shall, if practicable, give notice to each and every consumer affected within said Village of the time when such service will be so shut off.

**(g) Permits.**

- (1) After sewer connections have been completed in a building or upon any premises, no plumber shall make any alterations, extensions or attachments, unless the party ordering such work shall exhibit the proper permit.
- (2) A connection permit shall be obtained from the Utility prior to connecting any piping to the laterals or mains. The fee for this permit shall be as prescribed in Subsection (h).

**(h) Permit Fees.**

- (1) Schedule. The schedule of permit fees to be paid shall be as follows, and such fees must be paid at the time the permit is issued.
- (2) Connection Permit. A service connections permit shall be required before any work is started. The fee for this permit shall be \$1,500 for a single family unit. Two-family and multi-family units shall pay \$500 for each one bedroom unit, \$1,000 for each two bedroom unit and \$1,500 for each three or more bedroom unit. Industrial and commercial connection fees of \$1,200 will be based upon an average 15,000 gallons quarterly use and domestic strength discharge. Any additional projected use or higher strengths will be prorated accordingly.

- (i) Industrial Permit Reports.** Each year all industrial users shall submit a DNR Industrial Permit Report to the Utility. Forms for this report will be furnished by the Utility Clerk.

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

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

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

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

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

- (a) All building sewers on private property will be installed in accordance with State of Wisconsin Administrative Code Chapter H62, “Design, Construction, Installation, Supervision and Inspection of Plumbing,” specifically Section H 82.04(4), “Building Sewers.”
- (b) Per Section H 82.04(5), all building sewers will be inspected. The building sewer and/or private interceptor main sewer shall be inspected upon completion of placement of the pipe and before backfilling and tested before or after backfilling.

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

- (a) **Revenue System.** It shall be the policy of the Village to obtain sufficient revenues to pay the cost of:
  - (1) The annual debt retirement payment on any bonded indebtedness;
  - (2) Any required cash reserve account payment; and
  - (3) Operation and maintenance of the sewage works, including a replacement fund (i.e., a cash account to be used for future expenditures for obtaining or installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance of the sewage works during the service life for which such works were designed and constructed), through a system of user charges as defined in this Section. The system shall assure that each user of the sewage works pays a proportionate share of the cost of such works. (See Attachment One for the method used to determine service charges, incorporated herein by reference).
- (b) **User Classes.** All sewer users shall be classified by the Utility as:
  - (1) Residential.
  - (2) Commercial (domestic strength).
  - (3) Industrial customers.
  - (4) Public authority.
- (c) **Meter Reading.**
  - (1) Water meter readings shall be used to determine the actual water volume used. If a portion of the water furnished to any customer is not discharged into the sewer

system, the quantity of such water will be deducted in computing the charge for sewer service, provided a meter has been installed to measure such water. This provision may also be satisfied, in the case of high volume industrial users only, with adequate documentation from the customer, favorable recommendation from the Water and Sewer Committee and approval by the Village Board. All meters used for this purpose shall be approved by the Water Utility and furnished, installed and maintained at the expense of the customer.

- (2) If any person discharging sewage into the public sewer system procures any part or all of his water from source other than the Village Water Utility, the person shall furnish, install and maintain at his expense water meters of a type approved by the Water Utility for the purpose of determining the volume of sewage discharged to the sewage system.
- (d) **Meter Readings Unavailable.** Where it is not possible to obtain a water meter reading or in cases where no water meter exists, the customer shall be assigned an average water volume by the Utility, based on previous meter readings; and this shall be so stated on the bill. The difference shall be adjusted when the meter is read again.
- (e) **Industrial and Commercial Charges for Other than Domestic Wastewater.** Charges for wastewater other than domestic wastewater shall be based on flow, BOD, suspended solids, phosphorus and such other constituents which affect the cost of collection and treatment. All persons discharging wastes into the sewer system are subject to a surcharge, in addition to any other wastewater service charge, if their wastewater has a concentration greater than domestic wastewater concentrations. The volume of flow used for computing waste surcharges shall be the metered water consumption, or the actual volume of waste as determined by an industrial waste metering installation. The amount of surcharge shall reflect the cost incurred by the Utility in removing the BOD, suspended solids, phosphorous and other pertinent constituents.
- (f) **Billing.** Sewer service charges shall be billed quarterly and shall be payable at any officially designated location or by mail to the Village of Fredonia Utility. Statements for such charges and assessments levied and assessed in accordance with this Chapter shall become due and payable within twenty (20) days from and after the date of the statement. In the event that any such statement or statements are not paid when due, a penalty of one percent (1%) per month of the unpaid balance will be added thereto.
- (g) **Responsibility for Billing.** The property owner is held responsible for all sewer bills on premises that he owns. All sewer bills and notices of any nature relative to the sewer service will be addressed to the owner and/or occupant and delivered to the address by first class mail.
- (h) **Failure to Receive Bill No Penalty Exemption.** Every reasonable care will be exercised in the proper delivery of sewer bills. Failure to receive a sewer bill, however, shall not relieve any person of the responsibility for payment of sewer rates within the prescribed period, nor exempt any person from any penalty imposed for delinquency in the payment thereof.
- (i) **Delinquent Bills.** On October 15 in each year, notice shall be given to the owner or occupant of all lots or parcels of real estate to which service has been furnished prior to October 1 and payment for which is owing and in arrears at the time of giving such notice. The Utility shall furnish the Village Treasurer with a list of all such lots or parcels of real estate, and the notice shall be given by the Utility. Such notice shall be in

writing and shall state the amount of such arrears, including any penalty assessed pursuant to the rules of such Utility – that unless the same is paid by November 1 the same will be levied as a tax against the lot or parcel of real estate to which service was furnished and for which payment is delinquent as above specified. Such notice may be served by delivery to either such owner or occupant personally, or by letter addressed to such owner or occupant at the post office address of such lot or parcel of real estate. Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real estate to which the service was furnished and payment for which is delinquent. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate.

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

- (a) No person in the business of gathering and disposing of septic tank sludge or holding tank sewage shall transfer such material into any disposal area or sewer manhole located within the Village boundaries unless a permit for disposal has been first obtained from the Utility. Written application for this permit shall be made to the Utility and shall state the name and address of the applicant; the number of its disposal units, and the make, model and license number of each unit. Permits shall be nontransferable, except in the case of replacement of the disposal unit for which a permit shall have been previously issued. The permit may be obtained upon payment of a fee (Twenty-five Dollars (\$25.00) per calendar year). The Utility may impose such conditions as it deems necessary on any permit granted.
- (b) Charges for disposal shall be in accordance with the rate schedules established by this Chapter. Bills shall be mailed on a monthly basis; and if payments are not received in thirty (30) days thereof, disposal privileges shall be suspended.
- (c) Any person disposing of septic tank or holding tank sludge agrees to carry public liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,00.00) to protect any and all persons or property from injury and/or damage caused in any way or manner by any act or failure to act by any of his employees. The person(s) shall furnish a certificate certifying such insurance to be in full force and effect.
- (d) All materials dumped in the treatment system shall be of domestic origin only. The user shall comply with the provisions of any and all applicable ordinances of the Utility and shall not deposit or drain any gasoline, oil, acid, alkali, grease, rags, waste, volatile or inflammable liquids or other deleterious substances into any manhole, nor allow any earth, sand or other solid material to pass into any part of the sewerage system.
- (e) The person disposing of waste agrees to indemnify and save harmless the Village from any and all liability and claims for damages arising out of or resulting from work and labor performed.

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

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

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

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

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

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

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

- (a) All measurements, tests and analyses of the characteristics of water and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location times, durations and

frequencies are to be determined on an individual basis subject to approval by the Approving Authority.

- (b) Determination of the character and concentration of the industrial wastes shall be made by the establishment discharging them, or its agent, as designated and require by the Approving Authority. The Village may also make its own analyses on the wastes, and these determinations shall be binding as a basis for charges.

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

- (a) Where required, in the opinion of the Approving Authority, to modify or eliminate wastes that are harmful to the structures, processes or operation of the wastewater treatment works, the person shall provide, at his expense, such preliminary treatment or processing facilities as may be determined required to render his wastes acceptable for admission to the public sewers.
- (b) National categorical pretreatment standards promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Clean Water Act shall be met by all users which are subject to such standards. When requested, an application for modification of the national categorical pretreatment standards will be considered for submittal when the Utility sewer system achieves consistent removal of the pollutants. "Consistent removal" shall be defined as in 40 C.F.R. 403.7(a)(1) of the "General Pretreatment Regulations for Existing and New Sources of Pollution."
- (c) Conditional revision of national categorical pretreatment standards may be made by the Utility in accordance with Section 403.7(b)(2)(i-iv) of the "General Pretreatment Regulations for Existing and New Sources of Pollution," if requested by the industry(ies) in accordance with the requirements of Section 403.7(b)(1)(i).

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

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

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

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

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

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

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

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

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

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

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

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

- (a) It shall be unlawful for any person to willfully injure the sewer system, or any building machinery or fixture pertaining thereto, or to willfully and without authority of the Utility bore or otherwise cause to leak any tunnel, aqueduct, reservoir, pipe or other thing used in the system for holding, conveying or distributing sewage.
- (b) It shall be unlawful, unless a special permit is obtained from the Utility, for any person to introduce sewage into the system which shows an excess of BOD of over two hundred (200) mg/l, suspended solids concentration of over two hundred fifty (250) mg/l, phosphorous content of more than 12 mg/l, or ammonia nitrogen content of more than 20 mg/l (normal domestic sewage); a surcharge shall be based on the excess of BOD, suspended solids, phosphorous and ammonia over this rate. The Utility reserved the right to test the sewage at any point within the connection system of the user or consumer.
- (c) No user shall discharge or cause to be discharged any of the following described liquids or solid wastes to any sanitary sewer;
  - (1) Any storm water, surface water, groundwater, roof run-off, surface drainage or other clearwater (infiltration/inflow) source.
  - (2) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
  - (3) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, slug, plastics, wax, wood, fleshings, hides, animal guts, spent lime, spent grain, spent hops, whole blood, paunch manure or any other solid or viscous substance capable of causing obstruction of the flow in sewers or other interference with the proper operation of the sewerage system or any part thereof.
  - (4) Any water or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constituting a hazard to humans and animals or create any hazard in the receiving treatment facility.
  - (5) Any water or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such material at the sewage treatment plant.
  - (6) Any noxious or malodorous gas or substance capable of creating a public nuisance.
  - (7) Any garbage that has not been properly shredded.
  - (8) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit, or lower than thirty-two (32) degrees Fahrenheit.
  - (9) Any water or wastes, which may contain more than one hundred (100) parts per million by weight of fat, oil or grease, as analyzed in accordance with "Standard Methods."
  - (10) Any water or wastes having a pH lower than five and one-half (5.5) or higher than nine (9.0) having any corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewerage works.
  - (11) All plans for new sewers and connections to the sewer system shall be reviewed and approved by the Village Board and its appointed representative prior to the start of construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is hereby adopted all the rules and regulations of the State Plumbing and State Building Codes and the building rules of the Department of Industry, Labor and Human Relations and the Department of Natural Resources of the State of Wisconsin insofar as the same are applicable to the Village.

## **Chapter 3**

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### **Cable Television Franchise**

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

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

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

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

- a) "Basic service" means any subscriber tier provided by the Grantee which includes the delivery of local broadcast stations, and public, educational and governmental access channels. The Basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic tier.
- b) "Cable System" or "System" or "cable television system" means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the Village. The definition shall not include any such facility that serves or will serve only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, and which does not use Village rights-of-way.
- c) "Class IV channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- d) "Control" and/or "Controlling Interest" shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person and Entity (except underwriters during the period in which they are offering securities to the public) of ten percent (10%) or more of a Cable System or the Franchise under which the System is operated. A change in the control or controlling

interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.

- e) “Converter” means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.
- f) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- g) “Grantee” means a person or entity to whom or which a Franchise under this chapter is granted by the Village, along with the lawful successors or assigns of such person or entity.
- h) “Gross Revenues” means all service fees, installation, charges, and all other fees or charges collected from the provision of Cable Services to subscribers of the System. Gross Revenues shall not include (1) excise taxes; or (2) sales taxes or any other taxes or fees, including the franchise fee, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental unit.
- i) “Initial service” area means all areas in the Village having at least 20 dwelling units per street mile.
- j) “Installation” means the connection of the system from feeder cable to subscribers’ terminals.
- k) “May” is permissive.
- l) “Monitoring” means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever’ provided monitoring shall not include system wide, non individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.
- m) “Normal Business Hours” as applied to the grantee, shall mean those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one night per week, and/or some weekend hours.
- n) “Normal Operating Conditions” shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- o) “Shall” is mandatory.
- p) “Service Interruption” and/or “Outages” shall mean the loss of either picture or sound or both for a single or multiple subscriber(s).
- q) “Street” means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Village for the

purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.

- r) “Subscriber” shall mean any person, firm, Grantee, corporation, or association lawfully receiving Basic and/or any additional service from Grantee.
- s) “User” means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.
- t) “Village” means the Village of Fredonia, Wisconsin.

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

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

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

- a) Upon adoption of any franchise agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein.
- b) Any Grantee also agrees to provide all services specifically set forth in its application, if any, and to provide cable television service within the confines of the Village; and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the Village, in the opinion of the Village, shall prevail.

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

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

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

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

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

- a) Current federal statutory process:
- 1) the Village may, on its own initiative, during the six-month period which begins with the thirty-six (36) month before the Franchise expiration, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests and (2) reviewing the performance of the grantee under the Franchise. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six (6) months after the date such notice is submitted.
  - 2) Upon completion of the proceeding under paragraph (1) above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.
  - 3) Upon submittal by the Grantee of a proposal to the Village for the renewal of the Franchise, the Village shall provide prompt, public notice of such proposal and renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed, and at the request of the Grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.
  - 4) The Village shall consider in any administrative proceeding whether (1) the Grantee has substantially complied with material terms of the existing Franchise and with applicable law; (2) the quality of the Grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the System, has been reasonable in the light of community needs; (3) the Grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Grantee's proposal; and (4) the Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.
  - 5) In any administrative proceeding described in paragraph (4), the Grantee shall be afforded adequate notice and the Grantee and the Village, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under

paragraph (4) above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Additional specifications:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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