

**AGENDA**  
**CITY COUNCIL OF THE CITY OF BATH, MAINE**

Regular Meeting

Wednesday, September 6, 2017 6:00pm  
City Council Chambers, Bath City Hall

*We encourage your comments and views, and appreciate your participation in your local government.*

**A. Pledge of Allegiance**

**B. Roll Call**

*Proclamation "Oklahoma Week" in recognition of the performance of the musical Oklahoma at the Chocolate Church.*

*Presentation by Daniel Lay Esq. of HM Payson – Annual report on the City's Investment Funds*

**C. Consent Agenda:**

*(Items as marked with an asterisk (\*) on the agenda shall be considered routine matters not requiring debate. In the case of items marked with an asterisk, the motion as stated in parenthesis following the items on the agenda shall be considered to have been passed by the City Council as part of the Consent Agenda. Any Councilor wishing to have any item so marked with an asterisk removed from the Consent Agenda shall have the unlimited right to do so at any time prior to the vote by Council on the Consent Agenda. If such an item is removed from the Consent Agenda, it shall be dealt with in the normal course of the meeting.)*

**\*1) Minutes of the previous Council meeting of August 2, 2017. (motion to Accept as Presented)**

**D. Time Devoted to Residents to Address the City Council:**

**E. Resolutions, Orders and Ordinances:**

**2) Order: Approving Internet Protocol Television System Franchise Agreement.**

**3) Order: Approving Bond Ordinance Referendum to Fund Sidewalks and Street and Road Improvements in the City to go on the ballot at the November 7, 2017 election.**

**4) Order: Approving Public Hearing and Notice of Public Hearing regarding proposed amendments to the City Charter to go on the ballot at the November 7, 2017 election.**

**5) Order: Approving Lambert Park Community Center Lease**

**F. Petitions & Communications:**

G. City Manager's Report:

6) Presentation: "Bring Your Own Bag" by Lee Leiner, Public Works Director

H. Committee Reports: if any

I. Unfinished Business:

J. New Business:

7) Appointment 3 members to the Bath Planning Board with terms to expire in September 2020.

8) Appointment 2 members to the Bath Zoning Board of Appeals with term to expire in September 2020.

K. Councilor Announcements:

EXECUTIVE SESSION:

Real Estate Matter per 1 MRSA §405(6)(C)- Willow Street Property

ADJOURN

## PROCLAMATION

**WHEREAS** the musical Oklahoma broke all box office records when it opened in 1943 and is considered to be the first musical to tell a story with music, dance and lyrics, thereby changing the form of musical theatre, and

**WHEREAS** the musical score from this production is one of the most beloved of all time, with the state of Oklahoma adopting the title song as its state song in 1953, and it is rumored that the Queen and Prince Phillip's "song" is "People Will Say We're In Love" from Oklahoma, and


**WHEREAS** the musical Oklahoma will be performed at the Chocolate Church September 15-24, and

**WHEREAS** the Chocolate Church wishes to bring the Wild West to the streets of Bath, Maine the week of September 9 - 15 to celebrate "Oklahoma Week" in Bath to promote the production of the musical, and

**WHEREAS** the citizenry of Bath will be able to see local business employees dressed in cowboy get-up such as hats, boots and bandanas, will be able to hear songs from the show at Waterfront Park, and will be able to enjoy events such as a hayride;

**NOW THEREFORE BE IT PROCLAIMED** that the Bath City Council proclaims September 9 - 15 as "Oklahoma Week" in the City of Bath and extends our sincere best wishes for a successful production and sell-out crowds for this well-loved musical.

Dated this 6<sup>th</sup> day of September, 2017.

  
Mari H. Eosco, Madame Chair  
Bath City Council





**HMPayson**

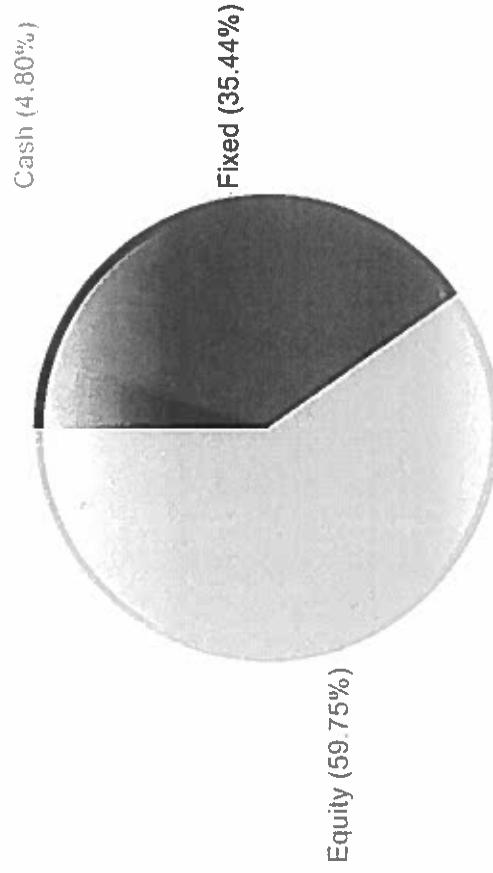
August 2017

**City of Bath  
Portfolio Review**

**Daniel M. Lay, Esq.**  
*Managing Director*

**Jenny Lynd Robinson**  
*Investment Assistant*

*H. M. Payson*



Description	Total Cost	Market Value	Percent	Income	Yield
■ Cash and Equivalents	545,297.23	545,297.23	4.80%	4,144.26	0.76%
■ Fixed Income	4,001,011.16	4,022,408.00	35.44%	114,197.50	2.84%
□ Equity	5,467,438.46	6,781,267.75	59.75%	143,224.85	2.11%
<b>Total Portfolio</b>	<b>10,013,746.85</b>	<b>11,348,972.98</b>	<b>100.00%</b>	<b>261,566.61</b>	<b>2.30%</b>

## City of Bath Account Activity- 7/1/2016 – 6/30/2017

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Beginning Market Value - 7/1/2016 \$10,389,985

### Income

Dividends \$157,813

Interest \$101,770

Other Income \$0

### Additions

\$0

### Withdrawals

Account Fees -\$36,756

Taxes Paid *(on foreign equities)* \$0

Other Disbursements -\$400,000

**Change in Market Value \$1,016,346**

Ending Market Value - 6/30/2017\* \$11,229,159

*\*Excluding accrued income*

**HM Payson**

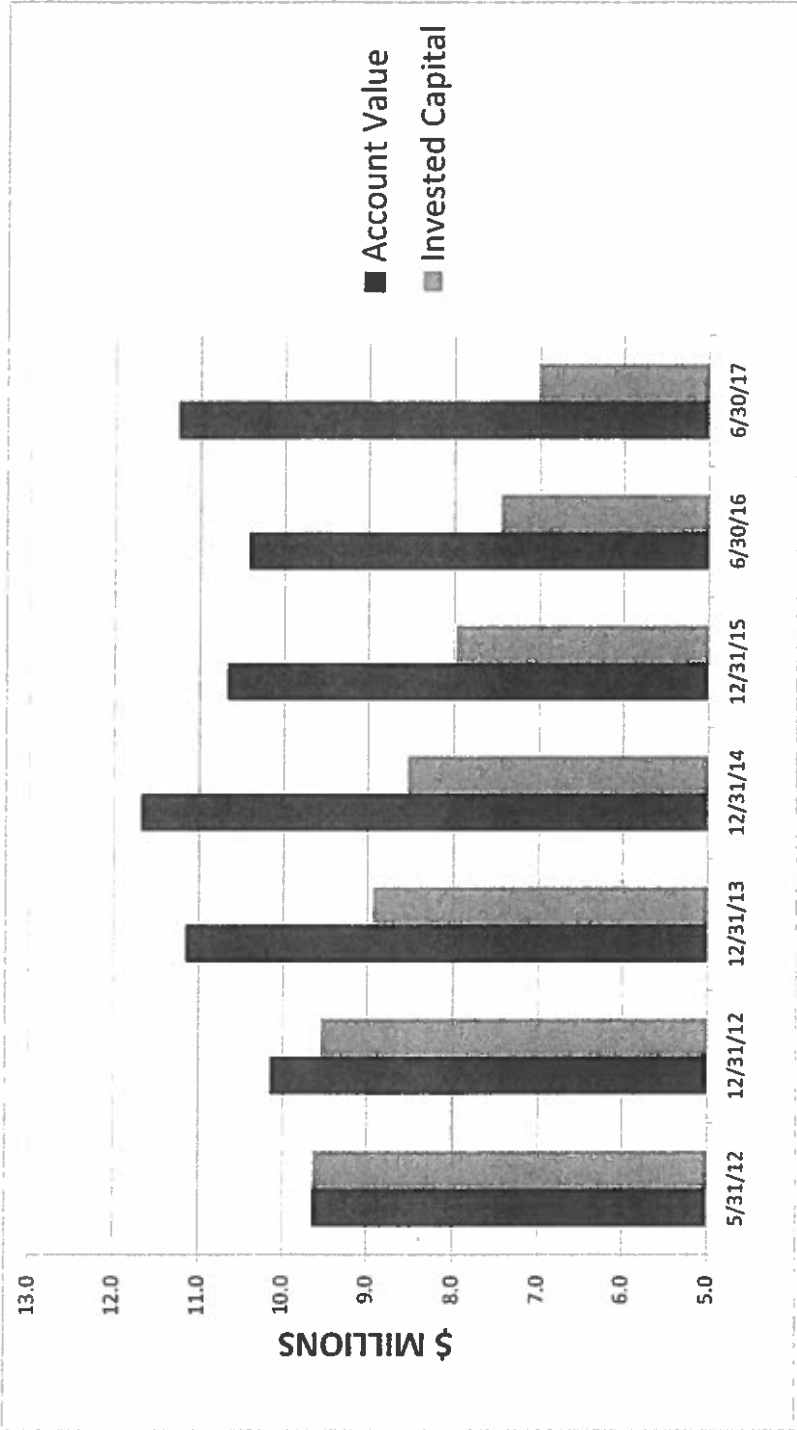
## City of Bath Performance (through 6/30/2017)

	Fiscal Year to Date	5 Year*	From Inception* (5/31/12)
Total Account	12.25%	7.71%	8.03%
Fixed Income (Bonds)	1.53%	N/A	N/A
Equity (Stocks)	20.06%	10.96%	11.59%

\*Annualized



# City of Bath Market Value vs. Invested Capital



Total Investment Gains	\$4,241,000
Net Distributions	-\$2,198,000

Beginning Value (05/31/12)	\$9,641,000
Ending Value (6/30/17)	\$11,264,000

## CITY OF BATH

HMPayson

Account #:

Report Period: 05/31/2012 - 06/30/2017

## Equity Characteristics - 10 Largest Holdings

Company	% of Equity	Sector	Market Cap (\$ Millions)	P/E Latest 4 Qtrs	Dividend Yield	Dividend Growth: 5 Year Annualized	Earnings Growth: 5 Year Annualized	V-Ratio	S&P EPS & Dividend Rating
QUALCOMM INCORPORATED	5.69	Information Technology	86,548	19.5	3.9	20.1	10.3	0.40	A-
PHILLIPS 66	5.66	Energy	39,414	23.7	3.7	N/A	-15.8	0.20	NR
APPLE INC.	5.12	Information Technology	810,491	18.2	1.6	N/A	15.6	1.01	B+
MASTERCARD INCORPORATED CLASS A	4.71	Information Technology	131,951	32.7	0.7	67.5	14.5	0.99	A-
CISCO SYSTEMS, INC.	4.22	Information Technology	159,902	16.1	3.6	50.9	11.8	0.57	B+
PFIZER INC.	4.21	Health Care	194,194	27.5	3.9	8.5	2.9	0.14	B+
BERKSHIRE HATHAWAY INC. CLASS B	4.18	Financials	410,411	18.2	0.0	N/A	13.9	0.37	B+
AMGEN INC.	4.17	Health Care	117,117	15.1	2.9	48.2	16.5	0.69	A-
JOHNSON & JOHNSON	3.62	Health Care	350,414	21.9	2.6	7.0	8.0	0.49	A
DELPHI AUTOMOTIVE PLC	3.51	Consumer Discretionary	23,853	20.7	1.3	N/A	17.4	0.71	NR
Top 10 Largest Holdings*	45.09		233,585	21.4	2.5	34.1	8.8	0.55	
Total Portfolio*			205,769	27.2	2.1	23.2	4.6	0.62	
S&P 500			175,031	21.4	2.0	11.0	3.4	0.29	

\* Excludes cash and/or mutual funds and ETF holdings

\* The V-Ratio is a H.M. Payson &amp; Co. proprietary measure comparing a company's dividend yield plus reinvestment rate to its P/E ratio

# CITY OF BATH (5990046904, Endowment)

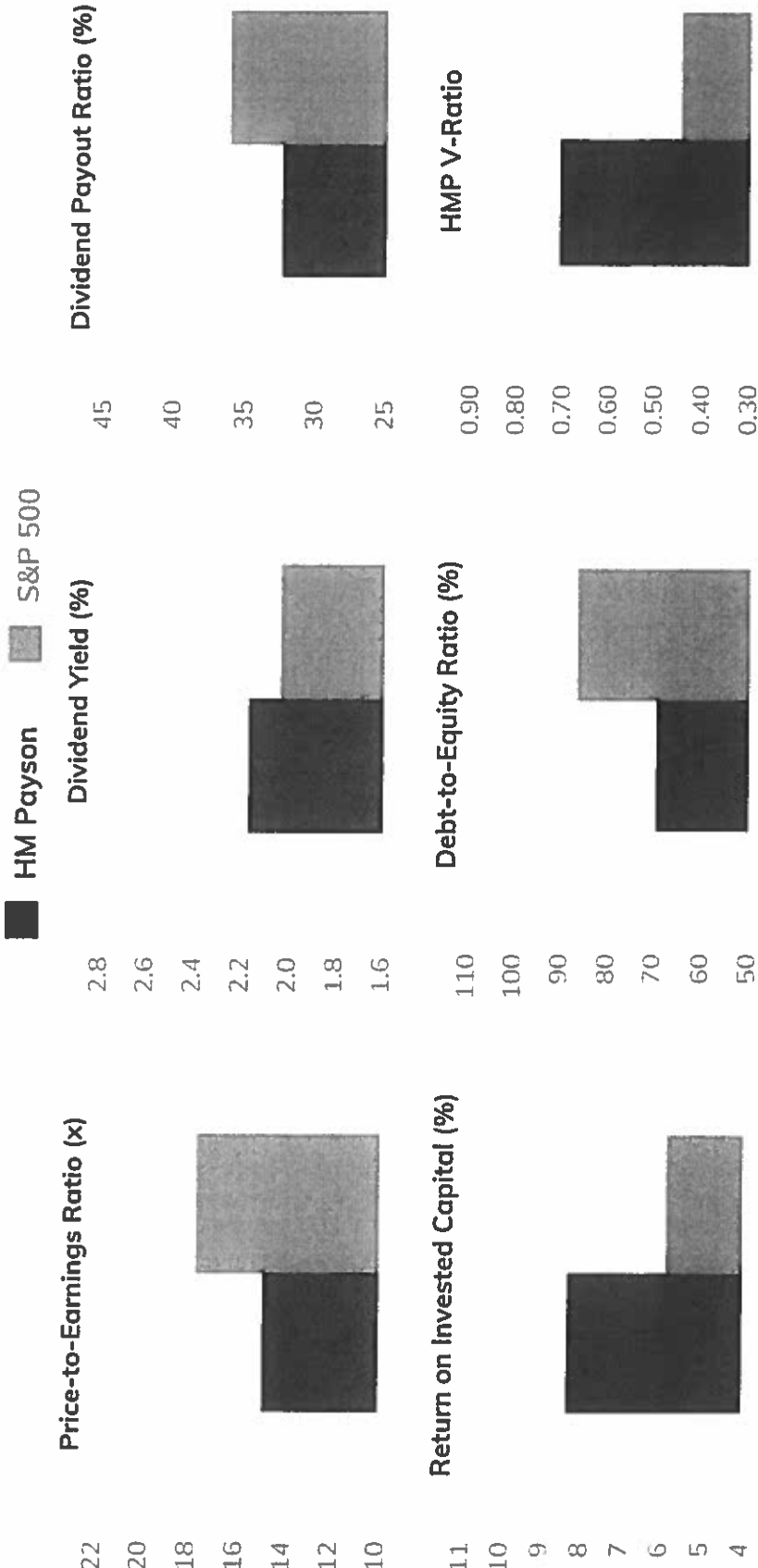
Holdings as of: August 18, 2017

Characteristics Summary	HM	
	Payson	S&P 500
Price-to-Earnings (x)	14.9	17.7
Dividend Yield (%)	2.2	2.0
Payout Ratio (%)	32	36
Return on Invested Capital (%)	8.3	5.9
Long term Debt-to-Equity (%)	69	86
V-Ratio	0.71	0.45

$$V\text{-Ratio} = \frac{ROIC + \text{Dividend Yield}}{\text{Price-to-Earnings Ratio}}$$

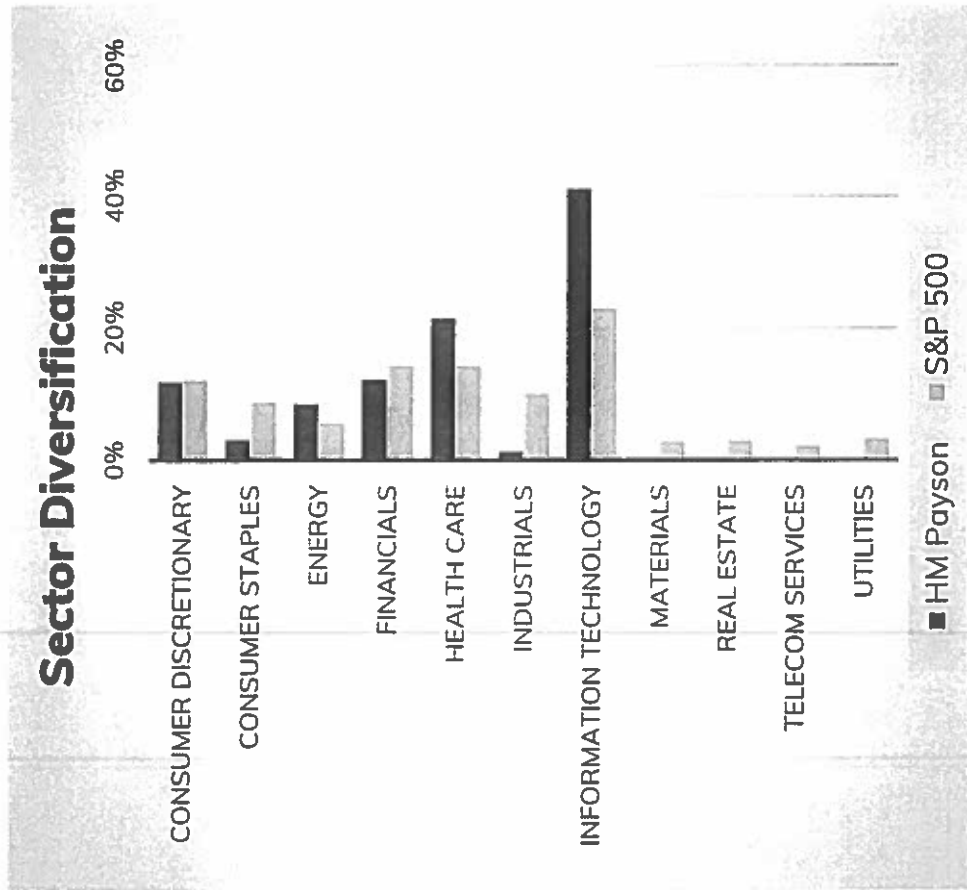
$$ROIC = \frac{\text{Earnings} - \text{Dividends}}{\text{Total Capital}}$$

Consistently profitable companies with shareholder-friendly capital allocation tend to outperform over time. We believe that portfolios constructed around these characteristics, combined with a disciplined approach toward valuation, offer enhanced potential long-term returns. HM Payson's V-Ratio captures these features by weighing an approximation of quality against a measure of price.



# CITY OF BATH (5990046904, Endowment)

Holdings as of: August 18, 2017



S&P Sector	HM Payson	S&P 500
Consumer Discretionary	11.9%	12.1%
Consumer Staples	3.1%	8.8%
Energy	8.5%	5.7%
Financials	12.3%	14.4%
Health Care	21.6%	14.3%
Industrials	1.3%	10.1%
Information Technology	41.2%	23.1%
Materials	0.0%	2.9%
Real Estate	0.0%	3.0%
Telecom Services	0.0%	2.2%
Utilities	0.0%	3.3%

Top 10 Common Stock Holdings	Market Value	Weight
Apple Inc	353,588	5.6%
Phillips 66 Com	353,155	5.6%
QUALCOMM Inc	338,259	5.3%
Mastercard Incorporated	321,293	5.1%
Berkshire Hathaway	276,994	4.4%
Pfizer Inc	258,910	4.1%
Cisco Systems Inc	258,601	4.1%
Amgen Inc	255,954	4.0%
International Business Machines Corp	251,460	4.0%
Delphi Automotive Plc Shs Us Listed	233,443	3.7%

# Appraisal With Income

CITY OF BATH

Account Number: 5990046904

# HMPayson

Description	Units	Unit Cost	Total Cost	Price	Market Value	Percent	Income	Yield
<b>Cash and Equivalents</b>								
FDIC INSURED MONEY MARKET DEPOSIT ACCOUNT	536,645.69	1.00	536,645.69	1.00	536,645.69	4.73%	4,078.51	0.76%
FDIC INSURED MONEY MARKET DEPOSIT ACCOUNT	8,651.54	1.00	8,651.54	1.00	8,651.54	0.08%	65.75	0.76%
UNINVESTED CASH	0.00	0.00	0.00	1.00	0.00	0.00%	0.00	0.00%
UNINVESTED CASH	0.00	0.00	0.00	1.00	0.00	0.00%	0.00	0.00%
<b>Total</b>	<b>545,297.23</b>		<b>545,297.23</b>		<b>545,297.23</b>	<b>4.80%</b>	<b>4,144.26</b>	<b>0.76%</b>
<b>Fixed Income</b>								
<b>Corporate Bonds and Notes</b>								
LABORATORY CORP OF AMERICA HLDGS SR NT DTD 08/23/2012 2.2%	150,000.00	100.16	150,241.43	100.00	150,006.00	3.73%	3,300.00	2.20%
TECH DATA CORP SR NT DTD 09/21/2012 3.75% 09/21/2017	100,000.00	100.28	100,279.92	100.15	100,146.00	2.49%	3,750.00	3.74%
AMAZON.COM INC SR NT DTD 11/29/2012 1.2% 11/29/2017	200,000.00	99.26	198,528.00	99.91	199,822.00	4.97%	2,400.00	1.20%
MURPHY OIL CORP SR NT DTD 11/30/2012 3.5% 12/01/2017	100,000.00	100.33	100,326.72	100.00	100,000.00	2.49%	3,500.00	3.50%
NEWELL BRANDS INC NT DTD 12/04/2012 2.05% 12/01/2017	220,000.00	100.00	220,000.00	100.13	220,275.00	5.48%	4,510.00	2.05%
DIRECTV HLDGS LLC/DIRECTV SR NT DTD 01/15/2013 1.75% 01/15/2018	100,000.00	100.03	100,029.09	100.05	100,053.00	2.49%	1,750.00	1.75%
BROWN-FORMAN CORP SR NT DTD 12/12/2012 1% 01/15/2018	75,000.00	98.20	73,651.25	99.80	74,850.00	1.86%	750.00	1.00%
GOLDMAN SACHS GROUP INC MTN DTD 01/22/2013 2.375% 01/22/2018	150,000.00	100.00	150,000.00	100.32	150,484.50	3.74%	3,562.50	2.37%
MATTEL INC NOTE DTD 03/07/2013 1.7% 03/15/2018	100,000.00	99.15	99,146.00	99.96	99,964.00	2.49%	1,700.00	1.70%
QUALCOMM INC SR NT DTD 05/20/2015 1.4% 05/18/2018	200,000.00	99.04	198,084.00	99.93	199,852.00	4.97%	2,800.00	1.40%
NORTHROP GRUMMAN CORP NOTE DTD 05/31/2013 1.75% 06/01/2018	200,000.00	99.87	199,734.00	100.17	200,346.00	4.98%	3,500.00	1.75%
UNION PACIFIC CORP NT DTD 01/10/2014 2.25% 02/15/2019	100,000.00	100.23	100,230.87	101.04	101,040.00	2.51%	2,250.00	2.23%
NOBLE ENERGY INC NT DTD 02/27/2009 8.25% 03/01/2019	150,000.00	109.52	164,280.32	109.16	163,744.50	4.07%	12,375.00	7.56%
TYSON FOODS INC NOTE DTD 08/08/2014 2.65% 08/15/2019-2019	200,000.00	100.58	201,151.38	101.33	202,662.00	5.04%	5,300.00	2.62%
SOUTHERN COMPANY SR NT DTD 08/22/2014 2.15% 09/01/2019-2019	100,000.00	99.37	99,367.00	100.48	100,481.00	2.50%	2,150.00	2.14%
DEERE & COMPANY NT DTD 10/16/2009 4.375% 10/16/2019	200,000.00	105.63	211,250.49	105.54	211,086.00	5.25%	8,750.00	4.15%

CITY OF BATH

Description	Units	Unit Cost	Total Cost	Price	Market Value	Percent	Income	Yield
FEDEX CORP NOTE DTD 01/09/2015 2.3% 02/01/2020	200,000.00	99.76	199,510.00	100.83	201,666.00	5.01%	4,600.00	2.28%
MICROSOFT CORP SENIOR NOTE DTD 09/27/2010 3% 10/01/2020	200,000.00	103.70	207,396.33	103.69	207,374.00	5.16%	6,000.00	2.89%
TEXTRON INC DTD 01/30/2014 3.65% 03/01/2021	200,000.00	103.11	206,218.00	103.75	207,504.00	5.16%	7,300.00	3.52%
DOVER CORP DTD 02/22/2011 4.3% 03/01/2021-2020	200,000.00	106.51	213,026.00	106.66	213,326.00	5.30%	8,600.00	4.03%
CVS HEALTH CORPORATION SR NT DTD 05/12/2011 4.125% 05/15/2021-2021	200,000.00	105.34	210,680.79	106.21	212,416.00	5.28%	8,250.00	3.88%
SYSCO CORP SR GLBL NT DTD 04/01/2016 2.5% 07/15/2021-2021	200,000.00	101.31	202,623.57	101.21	202,414.00	5.03%	5,000.00	2.47%
ABBOTT LABORATORIES NT DTD 03/10/2015 2.55% 03/15/2022	200,000.00	98.17	196,344.00	99.46	198,920.00	4.95%	5,100.00	2.56%
ARROW ELECTRS INC NT DTD 03/02/2015 3.5% 04/01/2022-2022	200,000.00	99.46	198,912.00	101.99	203,976.00	5.07%	7,000.00	3.43%
	Total		4,001,011.16		4,022,408.00	100.00%	114,197.50	2.84%
	Total		4,001,011.16		4,022,408.00	35.44%	114,197.50	2.84%
<b>Core Equity</b>								
<b>Consumer Discretionary</b>								
ADIENT PLC ORD SHS	2,365.00	66.31	156,831.50	66.01	156,113.65	2.46%	2,601.50	1.67%
AMAZON.COM INC	150.00	761.03	114,155.21	982.74	147,411.00	2.32%	0.00	0.00%
DELPHI AUTOMOTIVE PLC	2,530.00	68.61	173,582.81	93.34	236,150.20	3.72%	2,934.80	1.24%
DISCOVERY COMMUNICATIONS INC A	6,000.00	29.72	178,306.45	22.76	136,560.00	2.15%	0.00	0.00%
	Total	11,045.00	622,875.97		676,234.85	10.64%	5,536.30	0.82%
<b>Consumer Staples</b>								
UNILEVER PLC SPONSORED ADR (ISIN #US9047677045 SEDOL #2416520)	3,470.00	39.19	135,981.62	57.58	199,802.60	3.14%	5,118.25	2.56%
	Total	3,470.00	135,981.62		199,802.60	3.14%	5,118.25	2.56%
<b>Energy</b>								
EXXON MOBIL CORP	2,445.00	78.40	191,683.25	78.04	190,807.80	3.00%	7,530.60	3.95%
PHILLIPS 66	4,330.00	78.48	339,828.13	83.68	362,334.40	5.70%	12,124.00	3.35%
	Total	6,775.00	531,511.38		553,142.20	8.70%	19,654.60	3.55%
<b>Financials</b>								
AFLAC INC	1,697.00	39.45	66,952.07	81.26	137,898.22	2.17%	2,918.84	2.12%
BERKSHIRE HATHAWAY INC B	1,560.00	79.53	124,072.36	177.47	276,853.20	4.36%	0.00	0.00%
DISCOVER FINANCIAL SERVICES	2,865.00	60.43	173,141.95	61.87	177,257.55	2.79%	4,011.00	2.26%
JPMORGAN CHASE & CO COM	1,265.00	54.97	69,539.13	92.73	117,303.45	1.85%	2,530.00	2.16%
WELLS FARGO & COMPANY	1,540.00	46.52	71,633.79	52.85	81,389.00	1.28%	2,402.40	2.95%
	Total	8,927.00	505,339.30		790,701.42	12.44%	11,862.24	1.50%
<b>Health Care</b>								
ABBOTT LABORATORIES	3,340.00	41.24	137,742.93	48.82	163,058.80	2.57%	3,540.40	2.17%

Description	Units	Unit Cost	Total Cost	Price	Market Value	Percent	Income	Yield
<b>AMGEN INC</b>	1,530.00	168.71	258,133.89	170.04	260,161.20	4.09%	7,038.00	2.71%
CELGENE CORP	920.00	136.24	125,340.71	131.37	120,860.40	1.90%	0.00	0.00%
DANAHER CORP	1,551.00	63.41	98,351.91	80.56	124,948.56	1.97%	868.56	0.70%
GILEAD SCIENCES INC	2,070.00	100.49	208,016.06	73.12	151,358.40	2.38%	4,305.60	2.84%
JOHNSON AND JOHNSON	1,730.00	94.06	162,716.41	133.38	230,747.40	3.63%	5,812.80	2.52%
MERCK & CO INC	1,045.00	53.49	55,901.11	62.50	65,312.50	1.03%	1,964.60	3.01%
PFIZER INC	7,925.00	26.24	207,920.72	33.38	264,536.50	4.16%	10,144.00	3.83%
<b>Total</b>	<b>20,111.00</b>		<b>1,254,123.74</b>		<b>1,380,983.76</b>	<b>21.73%</b>	<b>33,673.96</b>	<b>2.44%</b>
<b>Industrials</b>								
JOHNSON CTLS INTL PLC SHS	2,294.00	45.69	104,812.86	37.83	86,782.02	1.37%	2,294.00	2.64%
<b>Total</b>	<b>2,294.00</b>		<b>104,812.86</b>		<b>86,782.02</b>	<b>1.37%</b>	<b>2,294.00</b>	<b>2.64%</b>
<b>Information Technology</b>								
ACCENTURE PLC A (ISIN #IE00B4BNMY34 SEDOL #B4BNMY3)	675.00	122.18	82,468.63	129.38	87,331.50	1.37%	1,633.50	1.87%
ALPHABET INC CAP STK CL A	65.00	754.87	49,066.85	938.08	60,975.20	0.96%	0.00	0.00%
ALPHABET INC CAP STK CL C	205.00	738.22	151,334.53	922.22	189,055.10	2.97%	0.00	0.00%
APPLE INC	2,245.00	70.95	159,293.89	161.60	362,792.00	5.71%	5,657.40	1.56%
CISCO SYSTEMS INC	8,515.00	28.56	243,190.28	32.09	273,246.35	4.30%	9,877.40	3.61%
INTEL CORP	6,000.00	25.28	151,655.00	36.00	216,000.00	3.40%	6,540.00	3.03%
INTERNATIONAL BUSINESS MACHINES	1,800.00	150.78	271,401.28	142.07	255,726.00	4.02%	10,800.00	4.22%
MASTERCARD INC CLASS A	2,450.00	81.09	198,658.31	131.58	322,371.00	5.07%	2,156.00	0.67%
MICROSOFT CORP	2,790.00	28.39	79,217.81	73.22	204,283.80	3.21%	4,352.40	2.13%
QUALCOMM INC	6,515.00	52.62	342,814.64	53.87	350,963.05	5.52%	14,854.20	4.23%
SKYWORKS SOLUTIONS INC	1,785.00	67.55	120,576.22	105.80	188,853.00	2.97%	2,284.80	1.21%
VISA INC CLASS A SHARES	1,530.00	43.93	67,216.15	102.63	157,023.90	2.47%	1,009.80	0.64%
<b>Total</b>	<b>34,575.00</b>		<b>1,916,893.59</b>		<b>2,668,620.90</b>	<b>41.98%</b>	<b>59,165.50</b>	<b>2.22%</b>
<b>Total</b>	<b>87,197.00</b>		<b>5,071,538.46</b>		<b>6,356,267.75</b>	<b>56.01%</b>	<b>137,304.85</b>	<b>2.16%</b>
<b>Other Equity</b>								
<b>Foreign Equity Funds</b>								
DFA EMERGING MARKETS CORE EQUITY PORTFOLIO	20,000.00	19.80	395,900.00	21.25	425,000.00	100.00%	5,920.00	1.39%
<b>Total</b>	<b>20,000.00</b>		<b>395,900.00</b>		<b>425,000.00</b>	<b>100.00%</b>	<b>5,920.00</b>	<b>1.39%</b>
<b>Total</b>	<b>20,000.00</b>		<b>395,900.00</b>		<b>425,000.00</b>	<b>3.74%</b>	<b>5,920.00</b>	<b>1.39%</b>
<b>Total Portfolio</b>	<b>4,597,494.23</b>		<b>10,013,746.85</b>		<b>11,348,972.98</b>	<b>100.00%</b>	<b>261,566.61</b>	<b>2.30%</b>





E2

**ORDER  
APPROVING  
INTERNET PROTOCOL TELEVISION SYSTEM  
FRANCHISE AGREEMENT**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT AN INTERNET PROTOCOL TELEVISION SYSTEM FRANCISE AGREEMENT, BY AND BETWEEN THE CITY OF BATH AND LINCOLNVILLE COMMUNICATIONS, INC., A COPY OF WHICH IS ATTACHED HERETO, BE AND HEREBY IS APPROVED, AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF BATH.



**INTERNET PROTOCOL TELEVISION SYSTEM AGREEMENT**

**BETWEEN**

**THE CITY OF BATH, MAINE**

**AND**

**LINCOLNVILLE COMMUNICATIONS, INC.**

# BATH, MAINE CABLE TV FRANCHISE

July 6, 2017

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## **Administrative Issues**

### **1. Statement of Agreement**

This Franchise Agreement (the "Agreement") is made and entered as of this 6<sup>th</sup> day of July, 2017, by and between the City of Bath, a municipal corporation, with its principal place of business in Bath, in the County of Sagadahoc, and State of Maine, (the "Municipality") and Lincolnville Communications, Inc., a corporation duly organized in Maine and existing and transacting business in good standing under the laws of the State of Maine, a wholly owned Subsidiary of Lincolnville Telephone Company (the "Company").

### **2. Title**

This Franchise Agreement shall be known and cited as the "City of Bath Internet Protocol Television System Agreement". Within this document it shall also be referred to as "this Franchise" or "the Franchise".

### **3. Parties**

#### **A. Municipality**

City of Bath  
55 Front Street  
Bath, ME 04530  
Contact: William D. Giroux, City Manager  
Telephone: 207-443-8330  
E-Mail: wgiroux@cityofbath.com

#### **B. Company**

Lincolnville Communications, Inc.  
Attn: Richard Manning, Vice President  
133 Back Meadow Road  
Nobleboro, ME 04555-9254  
Telephone: 207-380-6162  
E-Mail: rick@lintelco.net

#### **C. Company Local Business Office**

As required by 30-A MRSA §3010 (1)(B), and 47 CFR §76.309(c)(1)(v) Company shall maintain a local Conveniently Located business office that must be open during usual business hours and have a listed toll-free telephone number capable of receiving complaints, requests for adjustments and service calls.

1. Business Office Address: 133 Back Meadow Road, Nobleboro, ME, 04555-9254



2. Toll-free Customer Service Number: 1-800-

#### **D. Addresses**

The addresses in Paragraph 3(A) and (B) above may be changed by either party upon 30-days prior written notice to the other party.

#### **4. Notices (Communications)**

All notices required to be provided in this Agreement shall be provided in writing via e-mail, overnight or certified mail to:

1. Company: to the company contact at the mailing address in Section 3(B);
2. Municipality: to the Municipal Contact at mailing address in Section 3(A).

#### **5. Grant of Authority**

Pursuant to the authority in 30-A M.R.S.A. §3008 and 3010, and subject to the terms and conditions set forth herein, the City of Bath, acting through its City Council, as the Local Franchise Authority, hereby grants a non-exclusive, revocable Internet Protocol Television System Franchise to Lincolntonville Communications, Inc. authorizing and permitting the Company to own, construct, upgrade, install, operate and maintain an Internet Protocol Television System within the City of Bath, Maine.

##### **A. Franchise Area**

Company is hereby granted by Municipality, where it has the right to do so, the right and privilege to own, construct, reconstruct, erect, operate and maintain, in the Municipality of Bath, Maine" (herein called the "Franchise area" or the "City of Bath"), in, upon, along, across, above, over and under the Rights of Way now laid out or dedicated, and all extensions thereof and additions thereto, poles, wires, cables, optical fibers, underground conduits, manholes and other television and radio conductors and fixtures necessary for the installation, maintenance and operation of an Internet Protocol System. In the event of annexation by the City, any new territory shall become part of the area covered upon sixty (60) days advance written notice by the Municipality to the Company.

##### **B. Limited Grant**

The license is intended to convey limited rights and interests only as to those Rights-of-Way in which Municipality has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Company any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant. The license does not deprive Municipality of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on, or to regulate the use of, and to control the Right-of-Way in a non-discriminatory manner as to all users of the rights of way, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant

drainage facilities, including but not limited to, constructing, altering, removing, paving, widening, grading, or excavating.

**C. Non-Exclusivity**

Company's rights and privileges are non-exclusive and Municipality expressly reserves the right to grant other such franchise agreements in the City.

**D. Eminent Domain not Conferred**

No privilege or power of eminent domain is bestowed to Company by Municipality by this grant of this Franchise.

**6. Term**

This Franchise shall commence upon the effective date of this Agreement, July 6, 2017 and shall expire Five (5) years thereafter on July 5, 2022 unless renewed, revoked or terminated sooner as herein provided.

**7. Governing Law**

This Franchise Agreement shall be governed by and be subject to federal law, all applicable FCC rules and regulations and the laws and rules of the State of Maine. Company shall be subject to the jurisdiction of the courts of the State of Maine in any suit arising out of this Franchise Agreement except that this provision shall not limit Company's right to initiate a proceeding or to remove a proceeding to the United States District Court for the District of Maine.

**8. Effect of Acceptance**

By accepting the Franchise, Company and Municipality: (1) acknowledge and accepts each party's legal right to execute and enforce the Franchise; and (2) accept and agree to comply with the provisions of this Agreement and generally-applicable, non-discriminatory municipal ordinances; and (3) neither party will raise any procedural claims attempting to invalidate the agreement.

**9. Definitions**

1. **Affiliate or Affiliated Person:** An entity which owns or controls, is owned or controlled by, or is under common ownership with an Internet Protocol Television System Operator.
2. **Area Outage:** An area outage occurs when equipment is damaged, fails, or otherwise malfunctions (collectively called "malfunctions"), and ten or more Subscribers receiving services from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

3. **Basic Service:** The lowest service tier transmitted to all Subscribers, which includes, at a minimum, (a) all signals of domestic television broadcast stations entitled to "must carry" status under FCC rules, and (b) any public educational and governmental programming required by this Franchise Agreement to be carried on the basic tier.
4. **Broadcast:** Over-the-air transmission by a radio or television station.
5. **Cable Act:** Cable Communications Policy Act of 1984 (the "1984 Cable Act"), Public Law No. 98-549, 98 Stat. 2779 (1984), as amended by the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), Public Law No. 102-385, 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996), as the same may be amended from time to time .
6. **Cablecast:** Programming (exclusive of Broadcast signals) carried on the Cable System.
7. **Cable Service or Service:** The one-way transmission to Subscribers of video programming or other programming service, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
8. **Internet Protocol Television System:** Shall be defined in accordance with Section 602 of the Cable Act. A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide Internet Protocol Television System Service (including video programming) to multiple Subscribers within a head-end service area. This shall mean the facility serving the City owned, constructed, installed, operated and maintained by Company, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide internet protocol television system service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (d) an open video system that complies with section 653 of the Cable Act, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

9. **Channel or Video Channel:** A portion of the electromagnetic frequency spectrum which is used in an Internet Protocol Television System and which is capable of delivering a television channel.
10. **City:** The City of Bath, Maine, or its successor.
11. **Company:** Any Person or Persons owning, controlling, operating, managing or leasing an Internet Protocol Television System within the City, pursuant to any Franchise granted to it by the City. This term shall include any lawful successor(s) to the interest of such Person or Persons where consent to such successor(s) is approved under any applicable terms of the Franchise Agreement.
12. **Completion of Construction:** Where the system is being upgraded, rebuilt, or extended to a new service area, at that point in time with the Company notifies the City in writing that the cable system has been upgraded, rebuilt, or extended, and activated to a minimum capacity of 750 MHz throughout the affected area.
13. **Contractor or Subcontractor or Agent:** Any person or entity who or which directly or indirectly works for or is under the direction of "The Company" for the purpose of installation or repair of any portion of the Company's Internet Protocol Television System in the City.
14. **Conveniently Located:** A Company office that is located as agreed by both parties.
15. **Converter:** A special tuner or device attached to the Subscriber's television set that expands reception capacity and/or unscrambles coded signals distributed over the Internet Protocol Television System.
16. **Designated Access Provider:** The entity or entities which may be designated from time to time by the City to provide PEG access to the residents of the City of Bath.
17. **Downstream Channel:** A channel over which Signals travel from the Internet Protocol Television System Head end to an authorized recipient of programming.
18. **Downstream Transmission:** Signals traveling from the head-end to the Subscriber's location.
19. **Drop:** The interconnection between each home or building and the feeder cable of the Internet Protocol Television System.
20. **FCC:** The Federal Communications Commission or any successor agency.
21. **Feeder Cable:** The cable, connected to trunk cable, from which internet protocol television system television signal service is distributed to multiple Subscribers,

as distinguished from trunk cable (which distributes cable television service throughout the Franchise area) and drop cable.

22. **Franchise Agreement:** The non-exclusive Internet Protocol Television System License to be granted to Company by this instrument to include the right, privilege and franchise to construct, operate and maintain an Internet Protocol Television System, and appurtenances or parts thereof, in the Streets, roads, alleys, and other Public Ways of the City.
23. **Gross Annual Revenue:** Revenue of any form or kind received by the Company from the carriage of Internet Protocol Television System Service over the Internet Protocol Television System serving the City of Bath calculated in accordance with generally accepted accounting principles, including, without limitation: the distribution of any Internet Protocol Television System Service over the System; Basic Service monthly fees; all other Internet Protocol Television System Service fees; fees paid for pay and/or pay-per-view services, installation, reconnection, downgrade, upgrade and any other similar fees; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals, and/or leases and/or sales; all home shopping service(s) revenues; and advertising revenues. Gross Annual Revenue shall not include any taxes or fees other than franchise fees on services furnished by Company imposed directly on any Subscriber or user by any governmental unit and collected by Company for such governmental unit. In the event that an Affiliate is responsible for advertising on the Internet Protocol Television System in the City, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues excluding commissions and/or applicable agency fees, paid to the Company by an Affiliate for said Affiliate's use of the Internet Protocol Television System for the carriage of advertising. It is the intention of the parties that Gross Annual Revenues shall only include such revenue of Affiliates and/or Persons relating to the provision of Internet Protocol Television System Service over the Internet Protocol Television System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to Internet Protocol Television System services. Gross Annual Revenue shall be computed in accordance with Generally Accepted Accounting Principles.
24. **Head-end:** A company owned or leased facility through which Broadcast and cablecast signals are electronically acquired, translated, or modified for distribution over the Internet Protocol Television System.
25. **Interactive Service:** Any service that offers to Subscribers the capability of both transmitting and receiving Signals of any kind.
26. **Leased Channel or Leased Access:** A video channel which the Licensee shall make available pursuant to Section 612 of the Cable Act.

27. **Origination Point:** A connection to the Internet Protocol Television system which is provided to allow for live or recorded programming to be transmitted from that location Upstream to the Head-end and from there Downstream to the Subscribers over one or more access channels.
28. **Other Programming Service:** Information that Company may make available to all Subscribers generally.
29. **Outlet:** An interior receptacle, generally mounted in a wall, that connects a subscriber's or user's television set to the Internet Protocol Television System.
30. **Parent:** When used in reference to Company, any Person holding direct or indirect ownership or control of thirty percent (30%) or more of the rights of control of Company; and any Person holding such ownership or control of a Parent to Company.
31. **Pay or Premium Service:** Optional programming delivered for a fee or charge to Subscribers on a per-channel basis, or as a package of services.
32. **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or time basis.
33. **PEG:** Public, Educational, and Governmental; used in conjunction with Access Channels, support and facilities.
34. **Person:** Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual, or group of individuals acting in concert.
35. **Programming:** Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
36. **Public Building:** All state accredited public schools, police and fire stations, public libraries, City Hall, and other public buildings owned or leased by the City, but shall not include buildings owned by the City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.
37. **Public Way, Streets or Rights-of-Way:** The surface of, and the space above and below, any public Street, highway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, Public Way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City, in the City which shall entitle the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Internet Protocol Television

System. "Street" or "Public Way" shall also mean any easement now or hereafter held by the City within the City for the purpose of public travel, or for utility or public service use dedicated for public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Company to the use thereof for the purposes of installing or transmitting the Company's Internet Protocol Television Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Internet Protocol Television System. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the City shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

- 38. **Signal:** Any transmission of electromagnetic or optical energy which carries Programming from one location to another.
- 39. **State:** The State of Maine.
- 40. **Subscriber:** Any person, firm, corporation, or other entity who or which elects to subscribe to for any purpose, an Internet Protocol Television Service provided by the Company by means of, or in connection with, the Internet Protocol Television System.
- 41. **Subscriber Network:** The network to be owned and operated by the Company, over which Internet Protocol Television Service(s) can be transmitted to Subscribers.
- 42. **Transfer:** The disposal by the Company directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of the ownership or control of the System or of the Franchise Agreement to a Person, or a group of Persons acting in concert.
- 43. **Two-way Capability:** The ability to transmit Signals upstream and downstream on the Internet Protocol Television System.
- 44. **Upstream Channel:** A channel over which Signals travel from an origination point to a system distribution point.
- 45. **Upstream Transmission:** Signals traveling from origination points on the Internet Protocol Television System to a cable distribution point.

## **10. Construction and Maintenance**

### **A. General Provisions**

#### **1. Quality**

In the construction, reconstruction, maintenance and repair of the Internet Protocol Television System, Company shall ensure the Internet Protocol Television System meets the rules and regulations of the Federal Communications Commission.

#### **2. Compliance with Laws and Regulations**

All work, including all working conditions and facilities, associated with the construction, operation, maintenance, repair and removal of the Internet Protocol Television System shall comply with:

- a. All applicable Federal Laws, Rules and Regulations;
- b. All applicable State Laws, Rules, Regulations and Codes, including building and electrical codes; and,
- c. All generally applicable ordinances, including zoning ordinances, of Municipality.

Company shall obtain all generally applicable permits before commencing any construction, reconstruction, repair, maintenance, or other work or property use in the public rights of way. Permits for emergency work shall be obtained as soon as possible, but in no event later than one business day after the work is begun. The grant of permits by Municipality shall be timely and shall not be unreasonably withheld.

#### **3. Public Ways Hazards**

Any openings or obstructions in Streets or other municipal or public property made by Company shall be guarded and protected at all times by the placement of adequate barriers, fences, boardings or other protective devices at the sole expense of Company. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights.

#### **4. Tree Trimming**

Company shall have the authority to trim any trees upon and overhanging Municipality's Streets or Public Ways to the minimum extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of Company; provided that, except for incidental trimming done by Company employees in the course of performing their other duties, any tree trimming within the rights of way of Municipality's Streets and Public Ways done



by Company shall take place only after providing 48-hour notice to the City Manager of the Municipality or his designee. In performing tree trimming, Company shall use its best efforts to avoid any unnecessary damage or injury to trees, and shall comply in all respects with any City ordinances governing tree trimming.

**5. Restoration of Damage**

Company, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the Internet Protocol Television System, so as to return the damaged property to a condition as good as reasonably possible before the damage was done. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration. Absent force majeure, such restoration shall be made insofar as reasonably possible within fifteen business days, weather permitting, after Company's receipt of notification from the owner of the property so damaged unless otherwise mutually agreed by Company and the property owner; provided, that if any such damage involves curbs, sidewalks or driveways, the damage shall be repaired to the satisfaction of Municipality (curbs and sidewalks) or the owner or tenant in possession of the property (driveways) within ten business days. Company shall provide Municipality with immediate notice for any damage Company causes to: Streets, water-mains, storm or sanitary sewers, or other public facilities. If Company does not make the repairs to such public facilities, Company shall be financially liable for the reasonable cost of any repairs. If Company fails to make such restoration on a timely basis, Municipality may fix a reasonable time for such restoration and repairs and shall notify Company in writing of the restoration and repairs required and time fixed for performance hereof. Upon failure of Company to comply within the specified time period, Municipality may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by Municipality.

**6. Contractors, Subcontractors and Agents**

All contractors, subcontractors and agents of Company must be properly licensed under all applicable federal, state and local laws and regulations.

**B. Cable System Location**

**1. Map of Physical Facilities**

With reasonable advanced notice to Company, Municipality shall have the right to inspect street maps which identify the location of all trunk and feeder runs including underground. These maps shall be maintained by the Company and shall be available and copies provided to the Municipality upon request.

## **2. Location of System**

Wherever available to Company on reasonable terms and conditions, the distribution system shall use the existing facilities of the public utilities. Poles shall not be installed for the sole purpose of supporting a portion of the distribution system without written justification and approval of Municipality, which approval shall not be unreasonably withheld, pursuant to Municipality's generally applicable law, ordinances, rules and regulations.

- a. Where the cable or wire facilities of the public utilities are installed underground, Company shall install its cable distribution system underground. Vaults and pedestals shall be suitably landscaped.
- b. In all areas where public utility lines are aurally placed, if subsequently during the term of this Franchise Agreement such utility lines are relocated underground, Company shall similarly relocate its cable distribution system underground at its sole expense. If other owners of utility lines or other users are entitled to reimbursement for such relocation costs and the source of funding for said reimbursement allows it, Company shall have its relocation costs reimbursed as well.

## **3. No Interference with Rights of Way**

Except during temporary construction, installation, or maintenance activities, all lines, cables and distribution structure, and equipment, including poles and towers, erected, installed or maintained by Company within the Municipality shall be located so as not to obstruct or interfere with the proper use of Streets and Public Ways and to cause minimum interference with the rights of property owners who abut any of the said Streets and Public Ways, and not to interfere with existing public utility installations. Company shall not place new poles, towers or other obstructions in Streets or Public Ways, or relocate existing poles, towers or other obstructions, without first obtaining Municipality's approval, which approval shall not be unreasonably withheld. Company shall have no vested right in any location, and such construction shall be removed by Company at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said Streets or Public Ways by the Municipality for a municipal purpose.

Company shall at all times comply with applicable state laws including but not limited to 35-A MRSA Chapter 25 (e.g., pole location permits), 23 MRSA §2351(excavation permits), and any City Ordinance requirement for excavation or street opening permits.

**4. Construction by the City**

If at any time during the term of this Franchise Agreement Municipality shall elect to alter, or change the grade or location of any Street, or shall engage in any construction, reconstruction, widening, repairs or other public works in, on or under the Streets, Company shall, upon reasonable notice by Municipality, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures ("fixtures") at its own expense, and in each instance comply with the Municipality's generally applicable, non-discriminatory standards and specifications. If other owners of utility lines or other users are entitled to reimbursement of costs for relocations required by this section and the source of funding for said reimbursement allows it, Company shall have its relocation costs reimbursed as well.

**5. No Interference with Other Fixtures**

Company shall not place fixtures above or below ground where the same will unreasonably interfere with any existing or fully permitted gas, electricity, telephone fixtures, water hydrants, or other utility use, and all such fixtures placed in or upon any Street shall be so placed as to comply with all generally applicable requirements of Municipality or other state authority.

**6. Temporary Relocations**

Company shall, on request of any Person holding a permit issued by Municipality or other appropriate authority, temporarily move its fixtures to permit the moving or erection of buildings or other objects, with the expense of any such temporary removal to be paid in advance by the Person requesting same, and Company shall be given reasonable notice to arrange for such temporary relocation. Company shall bear any expense to temporarily move its fixtures to permit the moving or erection of publicly owned or constructed buildings or other objects.

**C. Communications**

**1. Company Notice**

Except in an emergency, and except for interruptions of four hours or less, Company shall give Subscribers at least 24 hours' notice, if practical, of any interruption of service for purposes of maintenance or repair. In an emergency, Company shall give such notice as is reasonable in the circumstances. Notice given on the alphanumeric channels on Basic Service shall be considered sufficient. During the rebuild of the Internet Protocol Television System, Company shall not be required to provide 24 hour notice of any interruption of service if such interruption is the direct result of rebuild work. However, Company shall be required to provide written notification to Subscribers and Municipality of planned rebuild work schedules and when Subscribers may

experience service interruptions in excess of four hours. Company shall use its best efforts to minimize the length of any service outage due to the rebuild. Company shall promptly notify Municipality in writing of any significant interruption in the operation of the Internet Protocol Television System. For this purpose, a "significant interruption" shall mean any interruption of more than four hours to more than ten Subscribers.

**2. Subscriber Requesting Maintenance**

Subscribers may request maintenance at the Business Office of Company or by calling the toll-free telephone number each of which is required by 30-A MRSA §3010(1)(B).

**3. Company Responses**

Company responses to such requests shall be governed by the applicable standards of the Federal Communications Commission and state law. Specific reference is made to the "Customer Service Standards" of the FCC (Appendix B) and the provision of 30-A M.R.S. Sections 3009 and 3010 (Appendix C).

**4. Subscriber-Owned Equipment Excluded**

The requirements for maintenance and repair shall not apply to Subscriber television or radio receivers or other Subscriber-owned equipment.

**11. Operations**

**A. Performance Standards**

**1. System Design**

- a. Within 30 days of the signing of this Franchise Agreement, Company shall provide Municipality with a description of the current system design and operational standards. Such description shall include at a minimum, Cable materials, (i.e. coaxial cable or fiber), the bandwidth capacity of the system in MHz, the channel capacity of the system, bi-directional capability, overall measured system reliability and performance in respect to FCC requirements and any other relevant standards that the Company may wish to describe. This requirement does not preclude the Company from providing this information to the Municipality in advance of the signing of this Franchise.
- b. Upgrade Technical Standards (if any): If the Company elects to upgrade its system in the Franchise Area, the Company shall notify the Municipality.

## **2. Operations**

The Internet Protocol Television System shall be constructed, operated and maintained to comply with all applicable standards of the Federal Communications Commission. See FCC Rules 47 CFR Part 76, subpart K (76.601-640) for some of the FCC's technical standards. (APPENDIX A)

### **B. Performance Testing**

If Proof of Performance is required by the FCC, then the Municipality shall be entitled to review copies of submissions regarding Proof of Performance, upon request.

### **C. Emergency Alert System**

Company shall comply in full with the requirements for an Emergency Alert System (EAS) as provided in FCC regulations, 47 CFR Part 11, and with any applicable State emergency notification requirements not preempted by Federal law.

### **D. Subscriber Antennae**

Notwithstanding a required disconnection of Subscribers' existing antennae and down leads to receivers connected to the Internet Protocol Television System, Company shall not remove or suggest to the Subscriber the removal of such antennae and down leads.

### **E. Video Recording Device/Cable Compatibility**

Company shall comply with applicable Federal Communication Commission standards for compatibility with consumer electronics equipment. Reference is made to FCC Rules, 47 CFR, 76.630 (Appendix A).

## **12. Insurance**

### **A. Company Insurance**

1. Company shall maintain insurance throughout the term of this Franchise and any removal period, with an insurance agency authorized to conduct business in the State of Maine, protecting as required in this Franchise, Company and listing the City as an additional insured, against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Internet Protocol Television System.

- a. The amount of such insurance for liability for damage to property shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence. The amount of such insurance for excess liability shall be Two Million

Dollars (\$2,000,000.00) in umbrella form. Policy will contain a provision that the Municipality will be provided thirty (30) days written notice prior to any cancellation, material modification or non-renewal.

2. Company shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars (\$1,000,000.00). Policy will contain a provision that the City will be provided thirty (30) days written notice prior to any cancellation, material modification or non-renewal.
3. All insurance coverage, including Workers' Compensation shall be maintained throughout the period of this Franchise. All expenses incurred for said insurance shall be at the sole expense of the Company. Policy will contain a provision that the City will be provided thirty (30) days written notice prior to any cancellation, material modification or non-renewal.
4. Company shall provide the City with certificates of insurance upon execution of this Agreement or as otherwise provided by its insurance company.

**B. Insurance to be provided by Subcontractors**

All contractors and subcontractors shall provide adequate insurance coverage and be acceptable to the City.

**C. Indemnification of the City**

Company hereby indemnifies and holds the City, its councilors, officers, agents, employees, members of boards and committees, with respect to the construction, installation, operation and maintenance of the Internet Protocol Television System, harmless from and against all expenses, losses and claims, demands, payments, suits, actions, recoveries, and judgments of any nature and description, other than as a result of the negligence of the City, including reasonable attorney's fees, resulting from claims, any act or omission of Company, its agents or employees, in the construction, operation, maintenance, repair or service of its Internet Protocol Television System, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising from Company's performance under this Franchise Agreement. In the event of the commencement of any action against the City, or its councilors, officers, agents, employees, or members of boards and committees which is within the scope of this indemnification, the City will give notice thereof to Company within fifteen business days after the City is formally served in any such action, and, after consultation with the City, Company will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the City. The City's failure to give timely notice to Company of the commencement of any such action shall not relieve Company of its obligations under this section unless such failure to give timely notice causes actual prejudice to Company's ability to defend any such claim.

Except for settlements involving only the payment of money, no settlement which creates an obligation for the City, of any such action, or any claim therein, shall be made by Company or by counsel selected by Company without the approval of the City, which approval shall not be unreasonably withheld.

The extent of the indemnification agreement will not be limited by the requirements for liability insurance in this Agreement.

**D. Indemnification of Company**

The City will indemnify Company for any and all claims arising out of programming of PEG channels, except where Company or its agents or employees provided the programming.

**E. Municipal Immunities**

The provisions of this section, including the indemnity provisions in sub-section C and D and the procurement by Company of insurance policies meeting the requirements of this section 12, shall not be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or damage limits as may be available to the City by law, including but not limited to the Maine Tort Claims Act, 14 M.R.S.A. 8101 et seq

**13. Performance Bond**

**A. Performance Bond or Security Fund**

Company shall obtain and maintain during any construction project in an amount exceeding \$100,000.00 during any project for which excavation of a Right-of-Way occurs, or during the rebuild of the Internet Protocol Television System, at its sole cost and expense, and file with Municipality, an irrevocable performance bond, running to the City, with a surety authorized to do business as a surety in the State of Maine, to guarantee the faithful performance by Company of all of its construction or rebuild obligations under this Franchise Agreement. Such performance bond shall be in the amount of at least \$100,000.00.

**B. Conditions**

The performance bond shall provide, but not be limited to, the following conditions. There shall be recoverable by the City, jointly and severally from the principal and surety, subject to the provisions in Section 23(C) within 30 days after written request by the City, any and all penalties due to City's and any and all damages, losses, costs and expenses suffered or incurred by the City resulting from the failure of Company to comply with the construction or rebuild provisions of this Franchise Agreement. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees and other legal, consulting and auditing expenses. Not less than thirty days' prior notice

to the City shall be provided of Company's or the surety's intention to cancel, materially change, or not to renew the performance bond.

**C. Forfeiture**

Subject to the provisions in Section 23C, the total amount of the bond or security fund shall be forfeited in favor of the City in the event Company fails to complete its construction or rebuild obligations.

**D. Replenishment**

In the event that any portion of the performance bond or security fund is forfeited or withdrawn for any reason, Company shall be required to post an additional bond or replenish the security fund in an amount equal to the forfeiture within 30 days of the date of the forfeiture or withdrawal. Failure to post an additional bond or replenish the security fund on a timely basis shall constitute a violation of a material provision of this Franchise Agreement within the meaning of Section 23 hereof.

**E. Municipality Rights**

The rights reserved to the City with respect to the Performance Bond are in addition to all other rights of the City, whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such sections shall affect any other rights the City may have.

**14. Records and Reports**

**A. Availability of Records to the City**

Upon reasonable written notice to the Company, the Municipality shall have the right to inspect Company's books and records during Normal Business Hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the material terms of this Franchise, including any federal, state, laws or regulations or generally applicable ordinances referenced herein. Records should be produced within 5 business days of receipt of written request, unless for good cause Company responds that a longer amount of time will be needed. Such written notice from Municipality shall specifically reference the section or subsection of the Franchise which is under review, so that Company may organize the necessary books and records for appropriate access by the Municipality. Company shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Company shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its books and records not relating to the provision of Internet Protocol Television Service in the Franchise Area. The Municipality shall treat any information disclosed by Company as confidential and shall only disclose it to employees, or Municipality's agents bound by a confidentiality and non-disclosure agreement reasonably acceptable to Company, or as



may be necessary to enforce the provisions hereof, subject to the Municipality's duty to disclose public information under the provisions of 1 M.R.S.A. Section 401 et. seq., the Maine Freedom of Access Law. Company shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, and 47 USC §551. Company shall at all times after the effective date maintain:

Records of all written complaints for a period of two (2) years after receipt by Company (The term "complaint" as used herein refers to complaints about any aspect of the Company's service operations, Complaints recorded will not be limited to complaints requiring an employee service call.). A record or log of all written complaints shall be maintained for the requisite period in accordance with 30-A M.R.S. Section 3010(C)(5);

Records of area outages for a period of two (2) years after occurrence, indicating date, duration, and the number of Subscribers affected, type of area outage, and cause;

Records of service calls for repair and maintenance for a period of two (2) years after resolution by Company, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

Records of installation/reconnection and requests for service extension for a period of two (2) years after the request was fulfilled by Company, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

a map showing the area of coverage for the provisioning of Internet Protocol Television System Services.

Municipality reserves its right to copy books and records as allowed under FCC regulation.

For a list of some required documents, see the index to 47 CFR Part 76, Subpart U (76.1700-1717) and the index to 47 CFR Part 76, Subpart V (1800-1805) (**APPENDIX A**) and state law (**APPENDIX C**).

## **B. Annual Report**

Upon written request from Municipality, Company shall provide to Municipality a summary of the Company's activities in the Municipality for the previous calendar year including a summary of:

1. Total number of Internet Protocol Television System subscribers;
2. Total miles of new cable plant installed;
3. Total number of service calls indicating number of dispatches and number repaired;
4. Listing of all charges and fees for cable or cable-related services;

5. All area outages, including date and duration;
6. The total revenues upon which a franchise fee (if any) is paid (broken down by major category);
7. The total franchise fee for the year;
8. Equipment or equivalent funding provided to the PEG channels(s) (if any);
9. Other information Company chooses to include.

**C. Charges for Audits or Tests**

If an inspection or audit of Company's records shows that Company underpaid the franchise fee by four percent or more for any payment period, Company shall reimburse Municipality for all reasonable costs including expert fees arising from the inspection or audit, and any additional inspection or audit until it is determined Company is in full compliance. In addition, except as federal law prevents the Municipality from enforcing any standards, if it is determined that Company has not materially complied with FCC standards, Municipality shall have the right to charge all costs arising from these tests, including expert fees, to Company until it is determined that Company is in full compliance. Notwithstanding the foregoing, the obligation to pay the Municipality's costs for tests of the performance of the Internet Protocol Television System shall only arise if the Municipality's test is (1) a test of an area where Company has represented that it has corrected a problem, and the problem was not in fact corrected; (2) a second test of an area by the Municipality, where Company had been notified of the problem and been given an opportunity to cure it; or (3) where Company challenged the validity of a Municipality test, and the Municipality agrees to retest, and the re-test confirms the validity of the initial Municipality test. These charges are incidental to the enforcement of the Franchise; they do not limit any right Municipality may have to exercise any other remedy.

## **Municipal Benefits**

**15. Franchise Fee**

**A. Amount**

Company shall provide a Franchise Fee to the Municipality or its designee, equal to five percent (5%) of its Gross Annual Revenues on a quarterly basis. Franchise Fee shall be made to the Municipality, on a [quarterly] basis, no later than sixty (60) days after the end of the calendar quarter for which payment is made. The payment for the last quarter of the last year of the term of this Franchise shall be due and payable ninety (90) days after the end of that quarter.

### **1. Payment**

The quarterly payment shall include a statement showing the basis for the payment, including a breakdown by category (e.g., basic service, home shopping channels, advertising) and source of Gross Annual Revenues for the quarter.

### **2. Late Payments**

In the event that the fees herein required are not tendered on or before the dates fixed in Section 15A above, interest due on such fee shall accrue from the date due at one and one-half percent (1.5 %) per month.

### **3. Acceptance of Payment**

Acceptance of payment by Municipality shall not be construed as accord that amount paid is the correct amount. Municipality reserves its rights to inspect relevant books and seek any underpayments due. If municipality has not begun process to challenge or audit payment of franchise fee within 24 months of receipt of final annual payment, and breakdowns provided pursuant to subsection B are verified by a company representative, payment is deemed accurate. If the breakdowns provided pursuant to subsection B are not verified, the time frame hereunder is 48 months.

## **16. Public, Educational and Governmental Access (PEG)**

### **A. Use of PEG Access Channels**

Channel capacity for public, educational and governmental ("PEG") access shall be provided in accordance with federal law, 47 USC §531 and §546, and as further set forth below.

1. The Municipality or its designee(s) shall have the exclusive use of the Municipality's access channels.
2. Use of public, educational and governmental access channels shall be for non-commercial purposes only. Use of public access channels shall be subject to such rules as the Municipality or its designee(s) may adopt.
3. Company will assure that its basic or lowest cost tier of cable customers will continue to receive the PEG channels in accordance with applicable federal law or federal regulation.
4. There shall be no charge to the City by the Company for the use of the PEG access channels

**B. Channels**

Company shall provide a minimum of one channel (the "First PEG Channel"), on the basic tier, for the exclusive non-commercial public, educational and governmental ("PEG") access use by Municipality or its designee(s). With at least 150 days' notice to Company, Municipality may require that Company to provide Municipality with up to one additional exclusive PEG access channel (the "Second PEG Channel"), if Municipality determines, in its sole discretion, that the City's and the public's use and demand for PEG access requires the dedication of an additional channel. Municipality shall not require provision of the Second PEG Channel unless Municipality determines that Municipality's then current use of the First PEG Channel involves at least 25 hours per week, on average, of non-duplicated, non-character generated programming produced in Maine.

**C. PEG Facilities Equipment Support and Technology Grant**

Pursuant to State and Federal law and as negotiated, Company shall provide to Municipality, adequate Public, Educational or Governmental access facilities and equipment or equivalent financial support to meet the needs of the community and Municipality. The support shall consist of the following payment schedule:

The Company shall pay to the Municipality in support of PEG access facilities and equipment, as a Grant, the amount of 40 cents per month, per subscriber over the term of this Contract. The Grant funds shall be paid yearly based on the average number of subscribers for that year.

.35% of Gross Annual Revenues will be provided annually to support additional cable related needs.

**D. Reimbursement for PEG Costs Associated with Relocation of Channel**

If a PEG channel is relocated by Company, Company shall reimburse the PEG provider for costs associated with changing logos, letterhead, business cards etc. to reflect a new channel number not to exceed \$ 2,000 and Company may also negotiate the promotion of this change. Company will provide Municipality with at least 30 days' notice of any relocation of any PEG channel.

**E. Standard Operating Procedures and Conditions**

Standard operating procedures and conditions for operation of the PEG channel (s) shall be in accordance with the provisions of Appendix E attached hereto.

## **17. Build-out**

### **A. Area To Be Served**

1. The Municipality and the Company understand that not all areas within the City of Bath will be serviced immediately. For all new areas to be serviced, the following density requirements will apply within the Municipality: where the minimum density is at least 20 dwelling units per aerial mile and 20 dwelling units per underground mile if existing conduit is in place and 40 dwelling units per underground mile where no conduit exists, providing however, that any plant extension is measured from the existing Trunk and Distribution System and Company is able to obtain from property owners any necessary easements and/or permits on terms and conditions acceptable to Company. Subject to the density requirement, Company shall offer Internet Protocol Television System Service at standard installation rates to all new homes or previously unserved homes located within 225 aerial feet of Company's Distribution Cable. For non-Standard Installations (those exceeding 225 aerial feet or underground) Company shall, upon receipt of payment and pending any identified construction or other issues (e.g., make ready, weather) offer said service within thirty (30) days of a Subscriber requesting such for aerial installations and sixty (60) days of a Subscriber requesting such for underground installations.

Notwithstanding the provisions of Paragraph 17(A)(1) above, the Company may elect to extend services to areas that don't meet the density and aerial feet requirements.

2. The Company shall make Internet Protocol Television System Service available to all homes and businesses located on public ways in accordance with this Section (There could be public ways that do not meet density requirements) within the City of Bath, and on private ways that meet this Contract's density requirements and where the Company can acquire appropriate easements and permissions to install its equipment, except in such instances regarding private property where the Company can demonstrate that it is not financially feasible. There shall be no charge to subscribers for the installation (extension and installation have a different meaning) of Internet Protocol Television System Service under this paragraph, or for future connections of new homes and businesses, other than the Company's standard installation charge. There shall be no special construction charges to subscribers, other than the normal installation charge, for cable drops from the Company's distribution plant to the subscriber's home up to two hundred and twenty-five feet (225').
3. Provided Company has at least ninety (90) days' prior written notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, and the density requirements outlined above are met, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. The Municipality, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely written notice of trenching and underground construction to

Company. Developer shall be responsible for the digging and back-filling of all trenches.

**18. Reserved.**

## **Consumer Issues**

**19. Rates & Services**

**A. Prices And Charges**

1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by Company for any Internet Protocol Television System Service as of the Effective Date shall be in accordance with all applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, Company shall follow the applicable FCC and State notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law. Nothing in this Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or retaining Subscribers.

Complete information concerning billing and collection procedures, including dispute resolution, procedures for ordering changes in, or termination of services, and company's discontinuation policies and procedures shall be provided to each subscriber at least annually.

2. The Municipality acknowledges that certain costs of Public, Educational and Governmental ("PEG") Access and other Renewal Franchise requirements, may be passed through to Subscribers in accordance with federal law.

**B. Basic Service**

Company shall make available a Basic Service tier to all subscribers in accordance with 47 USC §534 and applicable regulations, including 76.1618 of the FCC Rules and Regulations, and shall provide notice of the basic tier pursuant to 30-A MRSA §3010.

**C. Programming**

Pursuant to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of Company, except that pursuant to 47 USC §544(b)(2) (B) and (h) and 47 CFR §76.1603. Municipality may require "broad categories" of programming.

## **20. Rights of Individuals**

### **A. Customer Service**

Company shall comply with all customer service federal laws, regulations of the FCC and state laws as they may be amended from time to time.

### **B. Protection Of Subscriber Privacy**

Company comply with all applicable federal and state privacy laws and regulations, including 47 USC §551 and regulations adopted pursuant thereto and 30-A MRSA §3010. Company shall comply with all applicable Federal and State laws and regulations respecting subscriber privacy.

### **C. Employee Identification Cards**

All of Company's employees, and subcontractors, including repair and sales personnel, entering private property shall be required to display an identification card issued or approved by Company indicating that employee or subcontractor is working on behalf of Company.

### **D. Monitoring**

Company may only monitor customer accounts consistent with applicable federal and state law.

### **E. Privacy Written Notice**

At the time of entering into an agreement to provide any Internet Protocol Television System Service or other service to a Subscriber, and annually thereafter to all Internet Protocol Television System Subscribers, the Company shall provide Subscribers with written notice, as required by Section 631(a)(1) of the Cable Act, (47 USC §551) which, at a minimum, clearly and conspicuously explains the Company's practices regarding the collection, retention, uses, and dissemination of personal subscriber information, and describing the Company's policy for the protection of subscriber privacy.

### **F. Subscriber's Right To Inspect And Verify Information**

1. The Company shall make available for inspection by a Subscriber at a reasonable time and place all personal subscriber information that the Company maintains regarding said Subscriber.
2. A Subscriber may obtain from the Company a copy of any or all of the personal subscriber information regarding him or her maintained by the Company. The Company may require a fee for making said copy.

3. A Subscriber may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information shall be directed to the Company. The Company shall change any such information upon a reasonable showing by any Subscriber that such information is inaccurate.
4. In accordance with 47 USC 551, as amended, Company shall not disclose personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the Subscriber or Company.

## **21. Unauthorized Connections/Continuity Of Service**

It shall be the right of all Subscribers to receive Internet Protocol Television System Service insofar as their financial and other obligations to the Company are honored, provided that the Company shall have no obligation to provide Internet Protocol Television System Service to any Person who, or which the Company has a reasonable basis to believe, is using an unauthorized equipment or is otherwise obtaining Internet Protocol Television System Service without required payment thereof or who threatens Company's employees or damages Company's equipment. The Company shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When necessary, non-routine Service interruptions in excess of four hours can be anticipated, the Company shall notify Subscribers of such interruption(s) in advance.

## **22. Subscriber Complaints**

### **A. Dispute Resolution**

The Company shall establish a procedure for resolution of Complaints by Subscribers. Said procedure shall at a minimum include the provisions of 30-A MRSA §3010.

### **B. Investigation of Complaints**

Upon reasonable notice, the Company shall expeditiously investigate and resolve all Complaints regarding the quality of Service, equipment malfunctions and similar matters. In the event that a Subscriber is aggrieved, the Municipality or its designee(s) shall be responsible for receiving and acting upon such Subscriber Complaints and/or inquiries, as follows:

1. Upon the written request of the Municipality or its designee(s), the Company shall, within ten (10) business days after receiving such request, send a written report to the Municipality with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps, if any, taken by the Company.



2. Should a Subscriber have an unresolved Complaint regarding cable television operations, the Subscriber shall be entitled to file his or her Complaint with the Municipality or its designee(s), who shall have primary responsibility for the continuing administration of this Renewal License and the implementation of Complaint procedures. The Subscriber shall thereafter meet jointly with the Municipality or its designee(s) and a representative of the Company, within thirty (30) days of the Subscriber's filing of his or her Complaint, in order to fully discuss and resolve such matter in accordance with applicable laws.

### **C. Complaint Policy**

- Company shall provide Municipality a copy of Company's complaint policy annually and no later than 30-days after any revisions. If Company maintains a publicly available website, Company's complaint policy shall be posted on its website.

## **23. Penalties**

### **A. Amounts**

Because Company's failure to comply with provisions of this Agreement will result in injury to Municipality, and because it will be difficult to estimate the extent of such injury, Municipality and Company agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury.

1. For failure to comply with the material provisions of this Agreement, One Hundred Dollars (\$100.00) per day, for each and every day that any such non-compliance continues.
2. Where damages are deemed to be inadequate to provide appropriate relief to the City, the City shall have the right to seek injunctive relief from a Court of competent jurisdiction.
3. Such liquidated damages shall not be a limitation upon, any other provisions of the Renewal License and applicable law, including revocation, or any other statutorily or judicially imposed or remedies.
4. Each of the above-mentioned cases of non-compliance shall result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult to ascertain. The Licensee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The licensee agrees that said foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by Section 622(g) (2) (A)-(D) of the Cable Act.

**B. Date of Violation, Notice**

The date of violation will be the date the Company receives written notice of the violation.

**C. Procedure for Liquidated Damages**

Before the Municipality may assess any liquidated damages under this Franchise Agreement:

1. The Municipality shall notify the Company, in writing, of the alleged failure or violation, which notice shall specify the alleged failure or violation with reasonable particularity.
2. The Company shall, within thirty (30) days after receipt of the notice or such longer period as the Municipality may specify in such notice, either cure the alleged failure or violation or, in a written response to the City Manager, either present facts and arguments in refutation or excuse of such alleged failure or violation or state that the alleged failure or violation will be cured and set forth the method and time schedule for accomplishing such cure.
3. Unless the City Manager determines that the matter has been resolved, the Company's response shall be submitted to the Elected Officials, to schedule a public hearing at which the Elected Officials shall determine (i) whether a failure or violation has occurred; (ii) whether such failure or violation is excusable; and (iii) whether such failure or violation has been or will be cured by the Municipality; and (iv) the appropriate remedy for the failure or violation.
4. The Municipality shall provide thirty (30) days' written notice of the public hearing to the Company. During the public hearing, Company shall have the right to appear and be heard, including the opportunity to present evidence, question witnesses, if any, and the hearing shall follow the procedures set forth for public hearings. If the Elected Officials determine that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a reasonable schedule satisfactory to the Elected Officials or that the failure is excusable, such determination shall conclude the matter, unless Company fails to comply with the schedule for cure.

**24. Transfers**

**A. Company's Right to Transfer**

The Franchise may be sold, assigned or otherwise transferred, (a "Franchise Transfer") in accordance with the procedure set forth in federal law and this Franchise.

**B. Municipality's Right to Approve**

Pursuant to 47 USC §537, the Municipality, as Local Franchise Authority, reserves its right to approve any sale or transfer of the Cable System. Municipal approval shall not be unreasonably withheld.

A transfer or assignment of a Franchise or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a Franchise or control thereof. An "affiliated company" is any person or entity that directly or indirectly or through one or more intermediaries controls, is controlled by, or is under common control with another person or entity.

**C. Notice to Municipality**

Company shall provide to Municipality Notice of the proposed transfer. The contents of the Notice shall include:

1. FCC Form 394, or successor form, and all identified attachments; and
2. Certification by transferee that it will accept the provisions of this Franchise Agreement for the remainder of the Franchise Term.

**D. Time to Review**

Municipality will have 120 days from receipt of the Notice to take action on the request for transfer. Municipality need not, but may, act to approve the transfer.

**E. Public Hearing**

Municipality may conduct a public hearing on the proposed transfer no later than 90 days after the receipt of the notice of transfer.

**F. No Waiver or Release**

The consent or approval of the Municipality to any Transfer of the Internet Protocol Television System or this Franchise Agreement granted to the Company shall not constitute a waiver or release of the rights of the Municipality in and shall, by its terms be expressly subordinate to the terms and conditions of this Franchise Agreement.

**25. Successors/Assigns**

The obligations of this Franchise apply to any and all successors and assigns of the Company, unless Municipality expressly and in writing agrees to release the successors and assigns from this Franchise or any portion thereof.

## **26. Renewal**

This Franchise may be renewed by the parties in accordance with state and federal law. In order for the Municipality to refuse to renew, the provisions of 47 USC §546 must be met.

## **27. Revocation and Termination**

### **A. Right to Revoke or Terminate**

In addition to all other rights and powers of Municipality by virtue of this Franchise Agreement and after notice and opportunity to cure pursuant to section 27B, Municipality may revoke this Franchise Agreement and all rights and privileges of Company hereunder in the event Company either:

1. Violates any material provision of this Franchise Agreement or any rule, order or determination of Municipality made pursuant thereto where such violation remains uncured for a period of thirty days following written notice to Company by Municipality that such violation is deemed to exist unless cure is not feasible in such time period in which event the parties shall meet and agree to a cure schedule;
2. Attempts to evade any material provision of this Franchise Agreement or practices any fraud or deceit upon Municipality;
3. Arbitrarily ceases to provide Service over the Internet Protocol Television System or fails to restore Service after ninety-six (96) consecutive hours of interrupted Service except in cases of force majeure or when approval of such interruption is obtained from the Municipality.

### **B. Procedures to Revoke or Terminate**

The Municipality shall follow the following procedures in revoking a franchise:

1. Municipality shall provide to Company Municipality's notice of intention to revoke this Franchise. The written notice shall be sent by certified or overnight mail and shall describe in reasonable detail the specific violations alleged to have occurred;
2. Company shall have 90 days from receipt of notice to either correct the alleged violation, or, dispute the Municipality's allegations. In the event that by nature of the alleged violation, such violation cannot be cured within such ninety (90) day period, the parties shall meet and agree to a cure schedule;
3. If Company disputes the Municipality's allegations, the Municipality shall review the dispute and make its determination as to whether a violation has occurred;

4. If Municipality continues to maintain that a violation did occur, Municipality shall notify Company in writing. Company shall then either remedy the violation within 90-days or notify the Municipality in writing that Company continues to dispute the allegations;
5. Upon Company's failure to remedy the violation within the time period prescribed or upon receipt of Company's written position pursuant to subsection 4, Municipality may revoke this Franchise Agreement by providing Company written notice of revocation.

#### **C. Public Hearing**

Municipality may conduct a public hearing on the revocation. Company shall have the right to participate in such hearing, present witnesses and the Municipality shall issue a written determination of its findings. Such public hearing must take place no less than 30 days prior to the decision to revoke.

#### **D. Judicial Review**

Company shall have the right to seek judicial review of Municipality's determination to revoke.

#### **28. Abandonment**

If company shall cease providing service in the Municipality pursuant to 30-A MRSA §3008(3)(B), the Company shall remove all of its supporting structures, poles, transmission and distribution systems, and other appurtenances from the Public Ways and shall restore the areas to their original condition as is reasonably possible and as soon as reasonably possible. If such removal is not complete within six (6) months of such end of service, the Municipality may deem any property not removed as having been abandoned. Upon written request of the Company, the Municipality may waive this requirement for good cause shown.

#### **29. Expiration of Agreement**

Upon the expiration and non-renewal, or revocation of this Franchise Agreement and exhaustion of all judicial appeals, the Internet Protocol Television System shall be disposed of according to 47 USC §546 and this Franchise Agreement.

#### **30. Changes in Law**

In the event a federal or state law, regulation or decision by a court of competent jurisdiction renders a provision in this Franchise Agreement void or otherwise unenforceable, the provision shall be considered preempted. This preemption will last for as long as the law, regulation or decision is effective; if the law, regulation or decision is subsequently repealed, rescinded,

amended, voided, overturned or otherwise changed so that the preemption is nullified, the provision shall thereupon return to full force and effect as provided by such proceeding and shall be binding and enforceable in accordance with the terms thereof.

### **31. Amendments**

This Franchise Agreement shall not be amended or modified except by written agreement executed in the same manner as this Franchise Agreement. Where applicable, the amendment shall be consistent with the provisions of 47 USC §545.

### **32. Miscellaneous**

#### **A. Force Majeure**

The Parties shall not be responsible for any delay or failure to perform their obligations under this Franchise Agreement if doing so is prevented by Act of God, flood, storm, fire, explosions, strikes, riots, wars whether or not declared, insurrections, epidemics, or any law, rule or act of any court of competent jurisdiction or instrumentality of government or any cause or event beyond the control of the Company.

#### **B. Severability**

If any provision of this Franchise Agreement is held by any court or Federal or State agency of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof, all of which shall remain in full force and effect for the term of this Franchise Agreement.

#### **C. Effect on Prior Agreements**

This Franchise Agreement shall supersede any prior franchise agreements between the parties. Immediately upon the taking effect of this Franchise Agreement, all prior franchise agreements and any and all extensions thereof, shall terminate and shall have no further force and effect; provided, however, that any vested rights relating to billings and the Municipality's rights to receive franchise fees shall not be affected thereby.

#### **D. Non-Enforcement Not Waiver**

Neither party shall be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of either party upon one or more occasions to insist upon or to seek compliance with any such terms or conditions. No course of dealing between the Company and the Municipality, nor any delay on the part of the Municipality or Company in exercising any rights hereunder, shall operate as a waiver of any such

rights of the Municipality or Company or acquiescence in the actions of the Company or Municipality in contravention of such right, except to the extent expressly waived by either party or expressly provided for in this Franchise Agreement. No decision by the Municipality or Company to invoke any remedy under this Franchise Agreement or under any statute, law or ordinance shall preclude the availability of any other such remedy. This provision does not extend any applicable statute of limitations.

**E. Company Warranties**

Company warrants, represents and acknowledges that, as of the Execution Date of this Franchise Agreement:

1. The Company is duly authorized to do business under the laws of the State;
2. The Company has the requisite power and authority under applicable law and its bylaws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the execution date of this Franchise Agreement, to enter into and legally bind Company to this Franchise Agreement and to take all actions necessary to perform all of its obligations pursuant to this Franchise Agreement;
3. This Franchise Agreement is enforceable against Company in accordance with the provisions herein; and
4. There is no action or proceedings pending or threatened against Company that would interfere with performance of this Franchise Agreement.

**F. No Third Party Beneficiary**

Nothing in this Franchise is intended to confer third-party beneficiary status on any member of the public, Person or private entity not a party to this Franchise and any such member of the public, Personal or private entity shall not have third party status hereunder to enforce the terms of this Franchise:

## **Execution**

### **33. Signatures**

CITY OF BATH

LINCOLNVILLE  
COMMUNICATIONS, INC.

---

By: William D. Giroux  
Its: City Manager

---

By:  
Its:



# **Appendix A – United States Code of Federal Regulations (USC)**

## **TITLE 47--Telecommunication**

### **PART 76--MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

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Appendix Alphabetical Index --Part 76

## **Appendix B – FCC Regulations**

47 CFR Part 76.309

### **§ 76.309 Customer service obligations.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall

be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) *Normal business hours* —The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions* —The term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator 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 cable operator 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.

(iii) *Service interruption* —The term “service interruption” means the loss of picture or sound on one or more cable channels.

Note to §76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996; 65 FR 53615, Sept. 5, 2000; 67 FR 1650, Jan. 14, 2002]

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**§ 76.1602 Customer service—general information.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

**§ 76.1603 Customer service—rate and service changes.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by §76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.



(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

Note 1 to §76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Note 2 to §76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

Note 3 to §76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

[65 FR 53617, Sept. 5, 2000, as amended at 66 FR 16554, Mar. 26, 2001]

#### **§ 76.1619 Information on subscriber bills.**

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

## Appendix C – Maine Statutes

### STATE LAW

(As listed on the state website)

#### 30-A MRSA §3008

<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3008.html>

##### **A. §3008. Ordinances relating to cable television systems**

##### **1. State policy.** It is the policy of this State, with respect to cable television systems:

A. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interests of local citizens are adequately met; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. That each municipality, when acting to displace competition with regulation of cable television systems, shall proceed according to the judgment of the municipal officers as to the type and degree of regulatory activity considered to be in the best interests of its citizens; [2007, c. 548, §1 (AMD).]

C. To provide adequate statutory authority to municipalities to make franchising and regulatory decisions to implement this policy and to avoid the costs and uncertainty of lawsuits challenging that authority; and [2007, c. 548, §1 (AMD).]

D. To ensure that all cable television operators receive the same treatment with respect to franchising and regulatory processes and to encourage new providers to provide competitive pressure on the pricing of such services. [2007, c. 548, §1 (NEW).]  
[ 2007, c. 548, §1 (AMD) .]

**1-A. Definitions.** For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings:

A. "Cable system operator" has the same meaning as "cable operator," as that term is defined in 47 United States Code, Section 522(5), as in effect on January 1, 2008; [2007, c. 548, §1 (NEW).]

B. "Cable television service" has the same meaning as "cable service," as that term is defined in 47 United States Code, Section 522(6), as in effect on January 1, 2008; and [2007, c. 548, §1 (NEW).]

C. "Cable television system" has the same meaning as "cable system," as that term is defined in 47 United States Code, Section 522(7), as in effect on January 1, 2008. [2007, c. 548, §1 (NEW).]  
[ 2007, c. 548, §1 (NEW) .]

**2. Ordinances.** A municipality may enact any ordinances, not contrary to this chapter, governing franchising and regulation of cable television systems using public ways. Systems located in accordance with those ordinances, franchises and regulations are not defects in public ways.

The municipal officers of municipalities have the exclusive power to enact all ordinances authorized by this section. They shall give 7 days' notice of the meeting at which those ordinances are to be proposed in the manner provided for town meetings. Those ordinances take effect immediately.

[ 1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

**3. General requirements.** The following requirements apply generally to cable television systems governed by this section.

A. Any cable television system must be constructed and operated in accordance with Federal Communications Commission regulations. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Notwithstanding any provision in a franchise, a cable system operator may not abandon service or a portion of that service without having given 6 months' prior written notice to the franchising municipality, if any, and to the municipalities affected by that abandonment. When abandonment of any service is prohibited by a municipal franchise, a cable system operator may not abandon that service without written consent of the municipal officers. Any cable system operator that violates this paragraph commits a civil violation for which a fine of \$50 a day for each day that the violation continues may be adjudged. [2007, c. 548, §1 (AMD).]

C. Neither the cable system operator whose facilities are used to transmit a program produced by a person other than that operator, under Federal Communications Commission regulations or municipal ordinance, nor the officers, directors or employees of any such cable system operator are liable for damages arising from any obscene or defamatory statements or actions or invasion of privacy occurring during any program when that cable system operator does not originate or produce the program. [2007, c. 548, §1 (AMD).]

D. [2007, c. 548, §1 (RP).]

E. A municipality is entitled to injunctive relief in addition to any other remedies available by law to protect any rights conferred upon the municipality by this section or any ordinances enacted under this section or section 3010. [2007, c. 548, §1 (AMD).]  
[ 2007, c. 548, §1 (AMD) .]

**4. Franchise procedures.** Pursuant to subsection 2, a municipality may enact ordinances governing the procedures for granting franchises to cable system operators. These ordinances must be enacted before granting any such franchise or franchises and must be designed to ensure that the terms and conditions of a franchise will adequately protect the needs and interests of the municipality. The ordinances must include, but are not limited to, provisions for the following:

A. A mechanism for determining special local needs or interests before issuing a request for proposals, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. A reasonable opportunity for public input before granting franchises; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. The assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]  
[ 2007, c. 548, §1 (AMD) .]

**5. Franchise agreements or contracts.** The State specifically authorizes municipal officers pursuant to ordinances to contract on such terms and conditions and impose such fees as are in the best interests of the municipality, including the grant of exclusive or nonexclusive franchises for a period not to exceed 15 years, for the placing and maintenance of cable

television systems and appurtenances, or parts thereof, along public ways and including contracts with cable system operators that receive the services of television signal transmission offered by any public utilities using public ways for such transmission. A public utility may not be required to contract with the municipal officers under this subsection. Each franchise must contain the following provisions:

A. The area or areas to be served; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. A line extension policy; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. A provision for renewal, the term of which may not exceed 15 years; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. Procedures for the investigation and resolution of complaints by the cable system operator; and [2007, c. 548, §1 (AMD).]

E. Any other terms and conditions that are in the best interests of the municipality. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]  
[ 2007, c. 548, §1 (AMD) .]

**6. Current ordinances and agreements.**

[ 2007, c. 548, §1 (RP) .]

**7. Model franchise agreement.** The Department of Administrative and Financial Services, Office of Information Technology, referred to in this subsection as "the office," shall develop a model franchise agreement for use by any municipality and any cable system operator that mutually choose to adopt the model franchise agreement or any of its provisions. The office shall make the model franchise agreement available on its publicly accessible website. In the development of the model franchise agreement, the office shall, at a minimum, consider the following issues:

A. Franchise fees; [2007, c. 548, §1 (NEW).]

B. Build-out requirements; [2007, c. 548, §1 (NEW).]

C. Public, educational and governmental access channels and reasonable facility support for such channels; [2007, c. 548, §1 (NEW).]

D. Customer service standards; [2007, c. 548, §1 (NEW).]

E. The disparate needs of the diverse municipalities in this State; and [2007, c. 548, §1 (NEW).]

F. The policy goal of promoting competition in the delivery of cable television service. [2007, c. 548, §1 (NEW).]

This subsection does not allow the office to establish prices for any cable television service or to regulate the content of cable television service.

[ 2007, c. 548, §1 (NEW) .]

**SECTION HISTORY**

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 2007, c. 548, §1 (AMD).

**30-A MRSA §3010**

<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3010.html>

**B. §3010. Consumer rights and protection relating to cable television service**

This section applies to every franchisee. For purposes of this section, "franchisee" means a cable system operator that is granted a franchise by a municipality in accordance with section 3008. For purposes of this section, "cable system operator" and "cable television service" have the same meanings as in section 3008. [2007, c. 548, §2 (AMD).]

**1. Credits and refunds for interruption of service.** Credits and refunds for interruption of cable television service of a franchisee must be as follows.

A. In the event service to any subscriber is interrupted for 6 or more consecutive hours in a 30-day period, the franchisee will, upon request, grant that subscriber a pro rata credit or rebate. [2007, c. 548, §2 (AMD).]

B. An office of the franchisee must be open during usual business hours, have a listed toll-free telephone and be capable of receiving complaints, requests for adjustments and service calls. [2007, c. 548, §2 (AMD).]

C. The franchisee shall provide subscribers with 30 days' advance written notice of an increase in rates, changes in billing practices or the deletion of a channel. [2007, c. 548, §2 (AMD).]  
[ 2007, c. 548, §2 (AMD) .]

**1-A. Service disconnection.** A franchisee must discontinue billing a subscriber for a service within 10 working days after the subscriber requests that service disconnection unless the subscriber unreasonably hinders access by the franchisee to equipment of the franchisee on the premises of the subscriber to which the franchisee must have access to complete the requested disconnection.  
[ 2007, c. 548, §2 (AMD) .]

**2. Notice to subscribers regarding quality of service.** Notice to subscribers regarding quality of service must be as follows.

A. For each new subscriber, and annually thereafter, every franchisee shall cause to be mailed to each of its subscribers a notice that:

(1) Informs subscribers of how to communicate their views and complaints to the cable system operator, the proper municipal official and the Attorney General;

(2) States the responsibility of the Department of the Attorney General to receive consumer complaints concerning matters other than channel selection and rates;

(3) States the policy regarding and method by which subscribers may request rebates or pro rata credits as described in subsection 1, paragraph A; and

(4) Informs subscribers of their right to request basic-tier, nonpremium programming service and the cost of that service. [2007, c. 548, §2 (AMD).]

B. The notice must be in nontechnical language, understandable by the general public and in a convenient format. On or before January 30th of each year, the franchisee shall certify to the franchising authority and to the Department of the Attorney General that it has distributed the notice during the previous calendar year as required by this section. [2007, c. 548, §2 (AMD).]  
[ 2007, c. 548, §2 (AMD) .]

**2-A. Notice on subscriber bills; credits and refunds.** Every franchisee shall include on each subscriber bill for service a notice regarding the subscriber's right to a pro rata credit or rebate for interruption of service upon request in accordance with subsection 1. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the franchisee to request the pro rata credit or rebate for service

interruption. The notice must be in nontechnical language, understandable by the general public and printed in a prominent location on the bill in boldface type.

[ 2007, c. 104, §1 (NEW) .]

**3. Franchise document clearinghouse.**

[ 1999, c. 581, §2 (RP) .]

**4. Recording subscriber complaints.** Recording subscriber complaints must be as follows.

A. Every franchisee shall keep a record or log of all written complaints received regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters. These records must be maintained for a period of 2 years. [2007, c. 548, §2 (AMD) .]

B. The record must contain the following information for each complaint received:

- (1) Date, time and nature of the complaint;
- (2) Name, address and telephone number of the person complaining;
- (3) Investigation of the complaint;
- (4) Manner and time of resolution of the complaint;
- (5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and

(6) Consistent with subscriber privacy provisions contained in the Cable Communications Policy Act of 1984, Public Law 98-549, every franchisee shall make the logs or records of complaints available to any authorized agent of any franchising authority having a franchise with that franchisee or any authorized agent of a municipality considering a franchise with that franchisee upon request during normal business hours for on-site review. [2007, c. 548, §2 (AMD) .]

[ 2007, c. 548, §2 (AMD) .]

**5. Franchises.** All franchises must be nonexclusive. All franchises must include provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels subject to the definitions and requirements of the Cable Communications Policy Act of 1984, Public Law 98-549 or related requirements or regulations of the Federal Communications Commission.

[ 2007, c. 548, §2 (AMD) .]

**6. Rights of individuals.** A cable system operator may not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

[ 2007, c. 548, §2 (AMD) .]

**6-A. Subscriber privacy.** A cable system operator may not intrude upon the privacy of a subscriber by installing or using any equipment that allows the cable system operator to observe or to listen to what is occurring in an individual subscriber's household or to monitor the viewing habits of the subscriber without express, prior written consent of the subscriber. A cable system operator may not sell, disclose or otherwise make available, or permit the use of, lists of the names or addresses of its subscribers, or any list or other information that identifies by name or address subscribers or subscriber viewing habits, to any person or agency for any purpose whatsoever without the prior written consent of the subscriber except that the cable system operator may make such lists available to persons performing services for the cable system operator in connection with its business or operations, such as a billing service, when the availability of such lists is necessary to the performance of such services if, in either case, the persons or entity receiving such lists agree in writing that they will not permit them to be made available to any other party.

[ 2007, c. 548, §2 (AMD) .]

**6-B. Late fees.** A cable system operator may not charge a late fee or other penalty or charge for late payment of any bill that exceeds 1.5% per month of the amount due in the bill. If the bill includes separate charges for different levels of service, a late fee or other penalty or charge must be calculated on the total amount overdue for all levels of service and may not be calculated separately for each level of service. A payment is not late under this subsection until at least 30 days after those services to which the late fee applies have been received by the consumer.

[ 2007, c. 548, §2 (AMD) .]

**7. Penalty.** A violation of any provision of this section is a violation of Title 5, chapter 10.

[ 2007, c. 548, §2 (AMD) .]

**8. Filing of franchise agreements.** A cable system operator that maintains a publicly accessible website shall post on that website a copy of the most recently executed franchise agreement for each franchise that it has been granted by a municipality in the State.

[ 2007, c. 548, §2 (NEW) .]

#### SECTION HISTORY

1989, c. 352, (NEW). 1991, c. 358, (AMD). 1991, c. 657, §1 (AMD). 1993, c. 219, §1 (AMD). 1993, c. 513, §1 (AMD). 1993, c. 676, §§1,2 (AMD). 1999, c. 581, §2 (AMD). 2007, c. 104, §1 (AMD). 2007, c. 548, §2 (AMD).

## Appendix D – United States Code

### FEDERAL STATUTES

(Source for these provisions)

<http://caselaw.lp.findlaw.com/casecode/uscodes/47/chapters/5/subchapters/v-a/parts/iii/toc.html>

- TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
  - CHAPTER 5 - WIRE OR RADIO COMMUNICATION
  - SUBCHAPTER V-A - CABLE COMMUNICATIONS
  - Part I. General Provisions
  - Part II. Use Of Cable Channels And Cable Ownership Restrictions
  - Part III. Franchising And Regulation
    - PART III - FRANCHISING AND REGULATION
    - Section 541. General Franchise Requirements
    - Section 542. Franchise Fees
    - Section 543. Regulation Of Rates
    - Section 544. Regulation Of Services, Facilities, And Equipment
    - Section 544a. Consumer Electronics Equipment Compatibility
    - Section 545. Modification Of Franchise Obligations
    - Section 546. Renewal
    - Section 547. Conditions Of Sale
    - Section 548. Development Of Competition And Diversity In Video Programming Distribution
    - Section 549. Competitive Availability Of Navigation Devices
      - Part Notes
  - Part IV. Miscellaneous Provisions
  - Part V. Video Programming Services Provided By Telephone Companies
  - Subchapter Notes

Below is the source used for the CFRs.

<http://www.gpoaccess.gov/uscode/index.html>



## **Appendix E - PEG**

### **1. Exclusive Use, Channel Designations and Interconnectivity**

(a.) Municipality, or its designee(s), shall have the exclusive use of PEG Access Channels. Use of PEG Access Channels shall be subject to such rules as the Municipality, or its designee(s), may adopt.

(b.) There shall be no charge by Company for the use of the PEG Access Channels.

(c.) Company shall not appropriate PEG programming for use by Company on any other channel or in any other jurisdiction covered by the Company without the consent of the originating PEG producer.

(d.) Unless otherwise agreed to by the parties, PEG channels shall be carried on the basic tier at no additional cost.

(e.) Company shall include appropriate designation of the Municipality's PEG Access Channels on channel cards and channel listings provided to Subscribers in a manner comparable to which it identifies other Channels. This provision does not obligate Company to list PEG programming content on said channel cards and channel listings. If Channels are selected by a viewer through a menu system, Company shall display the Municipality's PEG Access Channels designation in a similar manner as other channels.

(f.) With respect to any new or existing PEG channel as defined in this franchise and subject to 30-A MRSA §3008 (7) (C) and (E), the equipment associated with the interconnection of PEG transmission facilities between a PEG facility and the Company's head end within the Company's cable system as well as the formatting of PEG programming for transmission to the subscriber is considered PEG facility or equipment and the costs thereof shall be borne by the Company.

(g.) Upon request, from the City of Bath, Company shall make its best efforts, to the extent technically feasible, to provide interconnectivity or consolidation with other PEG channels in neighboring communities.

### **2. Unused Channels**

Pursuant to 47 U.S.C. §531(d), the following is the procedure to be followed by Municipality to permit Company to use PEG channel capacity not being used by Municipality and to cease such permission.

(a.) Company shall request in writing that Municipality permit Company to use a designated PEG channel granted to Municipality.

Request shall include:

- Channel number requested;
- Timeframe as to when the channel is needed; 24-hour/365-day use or lesser amount;
- How Company will use channel (e.g., intended content)
- Duration for which Company seeks use (in months).

(b.) Municipality will either grant or deny permission in writing within 60 days of receipt of request; or as soon as reasonably possible if an urgent programming request is submitted.

(c.) Municipality may revoke permission, for any cause, by providing Company no less than 6-months written notice.

### **3. Reserved**

### **4. Minimum PEG Signal Quality and Transmission Standards**

The PEG access signal and channel capacity shall be of similar quality and functionality to that offered on Cable System's commercial channels. The Company shall distribute the PEG Access Channel(s) on its Cable System in standard definition format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the head end in color, stereo audio signals received at the head end in stereo, and properly formatted closed captioned signals received at the head end.

### **5. Other PEG Transmission Conditions As Negotiated**

(a.) PEG Studio Return Feeds: Company shall upgrade to and/or install, and maintain, an activated direct fiber optic return feed, and supply and maintain all necessary transmission equipment (laser), from the PEG Access studio location(s) to the company's head end. This fiber optic feed shall be adequate to permit the simultaneous transport of PEG channels to the Company's head end. In the event that the PEG Operator moves its PEG studio from its current location to a new location or any PEG Access Channel's primary cable casting site is established at or moves to a new location, Company shall provide necessary fiber optic feeds to the new location to enable the cable casting signals for any such channel to be transmitted to the Company's head end for distribution on the subscriber network.

Upgrades or the initial installation of a fiber optic return feed shall be completed within sixty (60) days of commencement. In the event of a cable system rebuild, upgrade or installation such fiber optic return feeds shall be completed at the same time as the system rebuild.

(b.) PEG Live Remote Return Feeds: Company will also provide and maintain equipment and/or facilities to permit live programming from the remote site(s) back to the PEG studio facilities. In addition to current remote feed locations at the Bath City Hall Council Chambers, Morse High School, and the Bath Middle School, the Company

will provide cable access for an origination point at the Bath City Hall Auditorium, upon the request of the City of Bath.



**CITY OF BATH, MAINE**

450 Oak Grove Avenue  
Bath, ME 04530

**DEPARTMENT OF PUBLIC WORKS**

Lee Leiner, P.E., Director  
[lleiner@cityofbath.com](mailto:lleiner@cityofbath.com)  
207.443.8357  
fax 207.443.8352

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**MEMORANDUM**

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**TO:** BATH CITY COUNCIL  
**FROM:** LEE LEINER, PUBLIC WORKS DIRECTOR  
**SUBJECT:** 2017 PUBLIC VOTE TO APPROVE A BOND TO FUND STREET AND SIDEWALK IMPROVEMENTS  
**DATE:** AUGUST 31, 2017  
**CC:** PETER OWEN, INTERIM CITY MANAGER

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The City is proposing a bond in the amount of \$2.8 million be put to the voters in November 2017 to fund street and sidewalk improvements for the next 3-5 years. A bond is an appropriate vehicle to fund these long term, long-life, capital expenses. A voter-accepted bond has the benefit of indicating the public's acceptance and support of the importance of continued investment in the City's infrastructure, and includes some financial benefits not available to a council-approved bond expenditure plan.

Staff has done preliminary investigation to generate a broad cost estimate for sizing the bond request. If the bond is approved by the voters, more detailed investigations and planning will be necessary to identify a list of streets and sidewalks for improvements. An approved bond also provides a funding source for the City to leverage additional funds available through grant programs with other entities such as the Maine Department of Transportation. Already there are two projects in the Route 1 corridor that will require the City to match funds to make the project a reality.

The bond will be used to fund street and sidewalk improvements including safety upgrades throughout the city. The bond will fund MDOT projects matching requirements and enable the city to leverage funds by applying for new grants that will assist in additional projects in the future.

There is extensive precedent for the City to fund these types of infrastructure improvements through voter-approved bonds.



## ORDER

Be it ORDERED by the City Council of the City of Bath as follows:

Pursuant to and in accordance with Section 1014 and Section 617 of the Bath City Charter, the following proposition for the enactment of an Ordinance funding sidewalks and street and road improvements in the City, said Ordinance being attached hereto or included with the minutes of this meeting as Attachment A, be submitted to the voters of the City of Bath at a municipal referendum election to be held on Tuesday, November 7, 2017:

“Shall a Bond Ordinance be Enacted Authorizing the City’s General Obligation Bonds in the Amount of \$2,800,000 to Finance Sidewalks and Street and Road Construction, Reconstruction and Paving Projects?”

The question shall also contain a Treasurer’s Statement as required under 30-A MRS §5772(2-A).

This Order shall constitute the City's declaration of official intent within the meaning of Treasury Regulation §1.150-2.





Attachment A**BOND ORDINANCE**

Authorizing the City's General Obligation Bonds in the Amount of \$2,800,000 to Finance Sidewalks and Street and Road Construction, Reconstruction and Paving Projects

Be it ORDAINED by the City of Bath as follows:

- Section 1. That the City Treasurer is hereby authorized, in the name of and on behalf of the City, to borrow up to \$2,800,000 for the purpose of funding sidewalks and street and road construction, reconstruction and paving projects (the "Projects").
- Section 2. That under and pursuant the City Charter and 30-A MRSA §5772 and all other authority thereto enabling, to evidence such borrowing, there is hereby authorized the issue and sale of the City's general obligation bonds, at one time and from time to time, in an amount not to exceed \$2,800,000, the proceeds of which, including premium, if any, and investment earnings thereon, may be used and are hereby appropriated to pay the costs of the Projects.
- Section 3. That the City Treasurer is hereby authorized to issue temporary notes of the City in anticipation of the forgoing bond issue.
- Section 4. That any and all bonds or notes in anticipation thereof issued pursuant to this Ordinance are issued pursuant to Section 1014 and Chapter 8 of the City Charter and shall be signed by the City Treasurer and countersigned by the Chair of the City Council and the City Manager, sealed with the seal of the City, and attested by its Clerk.
- Section 5. That any and all bonds issued pursuant to this Ordinance shall be payable in annual installments, which need not be equal, pursuant to Section 807 of the City Charter.
- Section 6. That the term of any bonds issued pursuant to this Ordinance shall not exceed 22 years.
- Section 7. That the City Treasurer shall determine the date or dates, maturities (not to exceed the maximum term specified above), denominations, interest rate or rates and any other details of any bonds or any notes in anticipation thereof to be issued pursuant to this Ordinance, such approval to be conclusively evidenced by her execution thereof.
- Section 8. That the bonds or notes in anticipation thereof issued pursuant to this Ordinance shall be general obligations of the City, backed by the full faith and credit and taxing power of the City.
- Section 9. That pursuant to 30-A M.R.S.A. §5772(6), the City Treasurer is hereby authorized to make any bonds or notes in anticipation thereof issued pursuant to this Ordinance

subject to call for redemption with or without premium prior to the stated maturity date at the election of the City.

- Section 10. That the City Treasurer be and hereby is authorized and directed to covenant and certify in the name of and on behalf of the City that no part of the proceeds of the issue and sale of the bonds or notes authorized to be issued hereunder or the Projects financed therewith shall be used directly or indirectly in a manner that would cause such bonds or notes to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141 and 148 of the Internal Revenue Code of 1986, as amended (the "Code").
- Section 11. That the City Treasurer is hereby authorized to take all such action as may be necessary to designate any bonds or notes in anticipation thereof issued pursuant to this Ordinance (to the extent such designation is available) as qualified tax-exempt obligations for purposes of Section 265(b) of the Code.
- Section 12. That the term "cost" or "costs" as used herein and applied to the Projects, or any portion thereof, includes, but is not limited to: (1) the cost to design, construct, renovate, refurbish, improve, acquire, replace, furnish and equip the Projects; (2) the cost of land, easements and other real property interests, landscaping and site preparation, utility extensions, all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Projects; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Projects; (4) issuance costs, including premiums for insurance, capitalized interest and other financing charges, fees and expenses relating to the financing transaction.
- Section 13. That in the event the City Treasurer elects to issue such bonds through the Maine Municipal Bond Bank (the "Bond Bank"), that the City Treasurer and the Chair of the City Council and the City Manager be and hereby are authorized, on behalf of the City, to enter into a loan agreement with the Bond Bank in conjunction with the issuance of the bonds, in the aggregate principal amount not to exceed \$2,800,000 with a term not to exceed the term of the bonds, said loan agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with the applicable loan program, which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the City Treasurer may approve, her approval to be conclusively evidenced by the execution thereof.
- Section 14. That the City Treasurer is authorized to do or cause to be done all such acts and things, and to execute and deliver any and all contracts, agreements, certificates, and other documents as may be necessary or advisable, including but not limited to an Arbitrage and Use of Proceeds Certificate and a Continuing Disclosure Certificate, to carry out the provisions of this Ordinance in connection with the issuance and delivery by the City of the bonds or notes in anticipation thereof.

Section 15. That if the City Treasurer, Chair of the City Council, City Manager, or Clerk are for any reason unavailable to approve, execute and deliver the bonds or notes in anticipation thereof issued pursuant to this Ordinance, any loan agreement or any related financing documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.

Section 16. That if any of the officers or officials of the City who have signed or sealed the bonds or notes hereinbefore authorized shall cease to be such officers or officials before the bonds or notes so signed and sealed shall have been actually authenticated or delivered by the City, such bonds or notes nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such bonds notes had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed in the name of and on behalf of the City by those persons who, at the actual date of the execution of such bonds or notes, shall be the proper officers and officials of the City, although at the nominal date of such bonds or notes any such person shall not have been such officer or official.

Section 17. That during the term any of the bonds authorized hereby are outstanding, the City Treasurer is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed the maturity of the original bonds to be refunded) and all other details of such refunding bonds, including the form and manner of their sale and award. The City Treasurer is hereby further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the City Treasurer and countersigned by the Chair of the City Council and the City Manager, sealed with the seal of the City, and attested by its Clerk.

Section 18. That in accordance with Sections 221 and 1014 of the City Charter, this Ordinance shall become effective upon a favorable vote of a majority of those voting thereon at a referendum election to be called by the City Council.

### **Treasurer's Certificate**

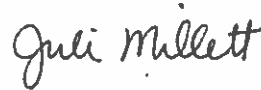
In accordance with 30-A MRSA §5772(2-A), the City Treasurer hereby provides the following statement with respect to the City's debt, as of June 30, 2017:

1. Bonds outstanding and unpaid:	\$22,953,261
2. Bonds authorized but unissued:	\$10,121,000
3. Additional bonds to be issued the Ordinance is ratified by the voters:	\$2,800,000
4. Estimated total interest cost on the additional bond:	\$720,510*

5. Estimated total principal and interest  
cost to maturity on the additional bonds: \$3,520,510

\*The amount of interest to be paid will vary depending upon the rate of interest and the years of maturity at the time the additional bonds are issued. The City has assumed an interest rate of 2.5% and a 20-year bond.

The validity of the bonds and of the voters' ratification of the bonds may not be affected by any errors in the estimate made above. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the electors is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.



Juli Millett  
Treasurer, City of Bath

## **ORDER**

### **FOR PUBLIC HEARING AND NOTICE OF PUBLIC HEARING**

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT THE CITY COUNCIL, AS MUNICIPAL OFFICERS OF THE CITY, HAVING DETERMINED IN ACCORDANCE WITH THEIR AUTHORITY UNDER 30-A M.R.S. § 2104(1), THAT THERE ARE CERTAIN AMENDMENTS TO THE BATH CITY CHARTER THAT SHOULD BE CONSIDERED, DOES HEREBY PROVIDE BY THIS ORDER FOR NOTICE TO BE GIVEN OF A PUBLIC HEARING RELATING TO THE PROPOSED CHARTER AMENDMENTS, SAID PUBLIC HEARING TO BE HELD ON MONDAY THE 18<sup>TH</sup> DAY OF SEPTEMBER, 2017, AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS ON THE 3<sup>RD</sup> FLOOR OF THE BATH CITY HALL, 55 FRONT STREET, BATH, MAINE. THE CLERK IS INSTRUCTED TO CAUSE A NOTICE OF THIS PUBLIC HEARING TO BE PUBLISHED IN A NEWSPAPER HAVING A GENERAL CIRCULATION WITHIN THE CITY OF BATH AT LEAST SEVEN (7) DAYS PRIOR TO THE DATE OF THE HEARING. THE NOTICE SHALL CONTAIN THE TEXT OF THE PROPOSED CHARTER AMENDMENT WITH A BRIEF EXPLANATION, ALL IN ACCORDANCE WITH THE PROVISIONS OF 30-A M.R.S. § 2104(5). SUCH NOTICE SHALL ALSO BE POSTED IN THE SAME MANNER AS REQUIRED OF ORDINANCES UNDER § 221 OF THE CHARTER OF THE CITY OF BATH. THE TEXT OF THE PROPOSED CHARTER AMENDMENTS IS ATTACHED TO THIS ORDER AND WILL BE ATTACHED TO THE NOTICE OF PUBLIC HEARING.



E4

## NOTICE PUBLIC HEARING

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE SAID CITY COUNCIL, BEING THE MUNICIPAL OFFICERS OF SAID CITY, WILL HOLD A PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF BATH ON MONDAY, SEPTEMBER 18, 2017 AT 6:00 PM IN THE COUNCIL CHAMBERS ON THE THIRD FLOOR OF THE BATH CITY HALL. THE PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF BATH WILL BE IN SUBSTANTIALLY THE FORM BELOW:

**Voter Instructions:** A mark in the “For the Charter Amendment” oval means you favor the Amendment. A mark in the “Against the Charter Amendment” oval means that you are opposed to the Amendment.

### CHARTER CITY OF BATH

#### CHARTER AMENDMENT – QUESTION ONE

“SHALL THE MUNICIPALITY APPROVE THE CHARTER AMENDMENT SHOWN BELOW?”

(voting oval goes here)

FOR THE CHARTER AMENDMENT

(voting oval goes here)

AGAINST THE CHARTER AMENDMENT

AMEND AS FOLLOWS:

### CHAPTER IX

#### NOMINATION & ELECTIONS

SUMMARY: This proposed Charter amendment brings City elections concerning nomination deadlines for municipal candidates in line with State Law.

**Sec. 905. Filing of Nomination Petitions.**

For municipal offices scheduled after November 7, 2017, the nomination petitions for any candidate shall be united into one petition and filed with the City Clerk not earlier than the third

Tuesday of August, and no later than 5:00 P.M.close of business on the third Tuesday of September. No nomination shall be valid unless the candidate shall file with the City Clerk, no later than 5:00 P.M.close of business the third Tuesday in September his written

consent accepting the nomination, agreeing not to withdraw, and if elected, to qualify. (7/02/82)

For municipal elections for candidates for municipal offices scheduled after November 7, 2017, the nomination petitions for any candidate shall be united into one petition and filed with the City Clerk not earlier than the third Tuesday of July, and no later than close of business on the third Tuesday of August. No nomination shall be valid unless the candidate shall file with the City Clerk, no later than close of business the third Tuesday in August a written consent accepting the nomination and agreeing not to withdraw, and if elected, to qualify. Where the municipal officers determine to fill a vacancy pursuant to Section 209 of this Charter and 30-A M.R.S. Section 3602, which must be filled by election, the municipal officers may designate a shorter time frame for the availability of nomination papers, but not less than ten (10) days before the filing deadline, and may designate a shorter time period for the final date for filing nomination papers, but not less than fourteen (14) days before the election. (11/07/17)

## **CHARTER AMENDMENT – QUESTION TWO**

“SHALL THE MUNICIPALITY APPROVE THE CHARTER AMENDMENT SHOWN BELOW?”

(voting oval goes here)      **FOR THE CHARTER AMENDMENT**

(voting oval goes here)      **AGAINST THE CHARTER AMENDMENT**

AMEND AS FOLLOWS:

### **CHAPTER III**

### **CITY MANAGER**

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SUMMARY: This proposed Charter amendment allows the City Manager to reside outside the City limits but only with the specific approval of a majority of the City Council.



**Sec. 301. Appointment; Qualifications; and Compensation.**

The City Council shall appoint a City Manager for an indefinite term and fix his compensation. The City Manager shall be chosen by the City Council on the basis of his character, executive, and administrative qualifications. At the time of his appointment, he need not be a resident of the City of Bath or the State of Maine, but during his tenure of office he may not reside outside the City of Bath, except where a majority of the City Council approves residence outside the City limits. (11/07/17)



E5

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MEMORANDUM

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**TO:** BATH CITY COUNCIL  
**FROM:** STEVE BALBONI, PARKS & RECREATION DIRECTOR  
**SUBJECT:** LAMBERT PARK COMMUNITY CENTER LEASE RENEWAL  
**DATE:** AUGUST 30, 2017

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Enclosed in your packet is an order to renew the Lambert Park Community Lease to Terri Crocker. For those that don't know, while the original intent of the community center was to have a public space in the Lambert Park area, it created great financial burden on the city to operate such a facility with no income. Over ten years ago we decided to lease the space to Terri Crocker to operate a day care out of the facility. It has been highly successful in an area with such a great child care need.

In the best interest of the City I recommend approving the lease.



ES

## ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE AGREEMENT TO RENEW LEASE WITH TERRI CROCKER FOR USE OF A PORTION OF THE LAMBERT PARK COMMUNITY CENTER FOR THE CONDUCT OF A DAY CARE PROGRAM AND A BEFORE/AFTER SCHOOL PROGRAM, FOR A PERIOD OF THREE (3) YEARS COMMENCING RETROACTIVELY ON JULY 1, 2016 AND RUNNING THROUGH JUNE 30, 2019, IN ACCORDANCE WITH TERMS AND CONDITIONS OF THE RENEWAL AGREEMENT ATTACHED HERETO, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SAID AGREEMENT TO RENEW LEASE ON BEHALF OF THE CITY OF BATH.



ES

## AGREEMENT TO RENEW LEASE

KNOW ALL MEN BY THESE PRESENTS, that we, The City of Bath, a municipal corporation, located in the County of Sagadahoc, and State of Maine, hereinafter referred to as the "Landlord", and Terri Crocker, of Bath, in the County of Sagadahoc, and State of Maine, hereinafter referred to as the "Tenant", parties to a Lease, dated April 30, 2007, for approximately 2,800 square feet located in the Lambert Park Community Center, in Bath, in the County of Sagadahoc, and State of Maine, hereby agree to renew said Lease with the following modifications:

2. Term.

A. Renewal Term. The renewal term of this Lease shall commence retroactively on the 1<sup>st</sup> of July, 2016 and run through the 30<sup>th</sup> day of June, 2019.

B. Additional Terms. This Lease may be renewed for additional terms. Notice of renewal shall be given by the Tenant on or before April 1<sup>st</sup> in advance of each renewal and the City shall respond on or before April 15<sup>th</sup>. Such renewal shall be on terms and conditions as may be mutually agreed by the parties.

6. Rent.

A. Renewal Term. For the renewal term of this Lease, the rental cost shall be in accordance with the following schedule, to be paid on a monthly basis in advance:

<u>Period</u>	<u>Cost Per Sq. Ft.</u>	<u>Yearly Amt.</u>	<u>Monthly Amt.</u>
7/16-6/19	\$9.3857	\$26,280.00	\$2,190.00

All other terms, covenants and conditions contained in said Lease are to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement to Renew Lease this \_\_\_\_ day of September, 2018.

WITNESS:

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LANDLORD:  
CITY OF BATH

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By: Peter H. Owen  
Its: City Manager

TENANT:

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Terri Crocker



**CITY OF BATH, MAINE**

450 Oak Grove Avenue  
Bath, ME 04530

**DEPARTMENT OF PUBLIC WORKS**

Lee Leiner, P.E., Director  
[lleiner@cityofbath.com](mailto:lleiner@cityofbath.com)  
207.443.8357  
fax 207.443.8352

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**MEMORANDUM**

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**TO:** BATH CITY COUNCIL  
**FROM:** LEE LEINER, PUBLIC WORKS DIRECTOR  
**SUBJECT:** PRESENTATION FROM SOLID WASTE ADVISORY COMMITTEE ON SINGLE-USE PLASTIC BAGS AND POLYSTYRENE  
**DATE:** AUGUST 30, 2017  
**CC:** PETER OWEN, INTERIM CITY MANAGER


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The purpose of this presentation is to update the Council on the work done by the Solid Waste Advisory Committee in the last few months. The committee has been studying whether Bath should adopt rules to reduce the volume of waste generated from single-use bags and polystyrene. Both of these items are found as litter in the environment as they do not break down. They foul waterways, impact wildlife, and clog storm drains. The manufacture of these items uses fossil fuels and causes the generation of greenhouse gases.

Single-use bags are those typically used by a business at the point of sale in which a customer would carry their purchased goods. Those goods may include groceries, house wares, clothing, jewelry, hardware items, etc. Businesses that may use these types of bags include grocery stores, convenience stores, drug stores, hardware stores, etc. The term single-use bag includes compostable and biodegradable bags, including paper bags, but does not include reusable bags, produce bags, or product bags. The proposal currently includes a ban on the use of single-use plastic bags and a fee on single-use paper bags.

Polystyrene means and includes blown polystyrene and expanded and extruded foams (sometimes referred to as Styrofoam®; a Dow Chemical Company trademarked form of polystyrene foam insulation). This material is typically used in food sales. The proposal would ban the use of cups and packaging made of polystyrene. There are exceptions for certain food items and other uses.






# **City of Bath**

# **Bring Your Own Bag Program**

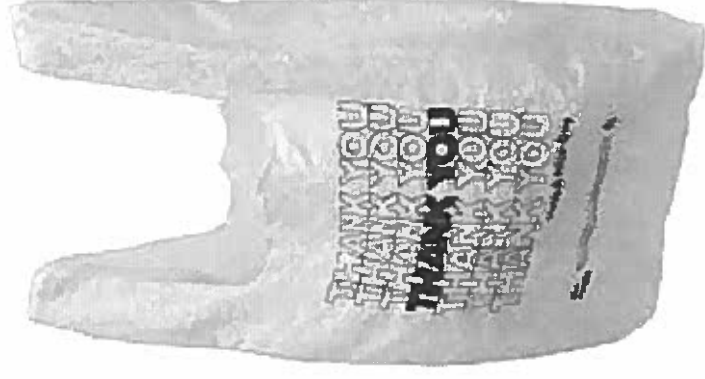
**Solid Waste Advisory Committee**  
**September 2017**





# Agenda

- Goals
- Background
- Proposal
- Applicability
- Exceptions
- Reusable bags
- Paper bags
- Examples from other Maine communities
- Process





# Goals

- Reduce litter
- Reduce public expenses in cleaning up litter
- Reduce use of fossil fuels
- Reduce greenhouse gas emissions
- Start a shift from a throw-away society to a culture of reuse
- Educate the public about the impact of plastic in the environment





# Background

- Single Use Plastic Bags
- Create litter in trees, wetlands, and waterways
- Clog storm drains
- Require use of public funds for cleanup
- Impact wildlife
- Require the use of fossil fuels for manufacture and transportation
- Contribute to a throw-away culture
- Supports green efforts in comprehensive plan





# Background (cont'd)

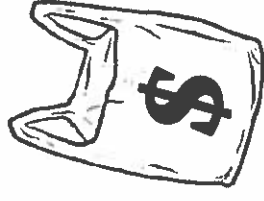
- Single use plastic bags are one of the most common forms of plastic, all of which contribute to a litter problem
- There are many other forms of plastic that could be added in the future
- This is a first step





# Proposal

- Ban single-use plastic bags not meeting the reusable bag standard from distribution at a cash register at all businesses in Bath
- Assess an escalating charge on the use of paper bags
  - \$0.05 per bag to start
  - Rising to \$0.10 after one year
  - Rising to \$0.15 after two years
- Revenues from fees will be kept by the business
- All stores must post fees at register and itemize a bag purchase separately







# Applicability

- A drug store, pharmacy, grocery store, convenience food store, food mart, or other entity located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.
- A hardware store, home improvement supplier, clothing store, print shop, entertainment retailer, personal care product retailer including jewelry, gifts, house wares and crafts.
- A farmer's market and/or its tenant participants or other temporary and/or seasonal retail entities.



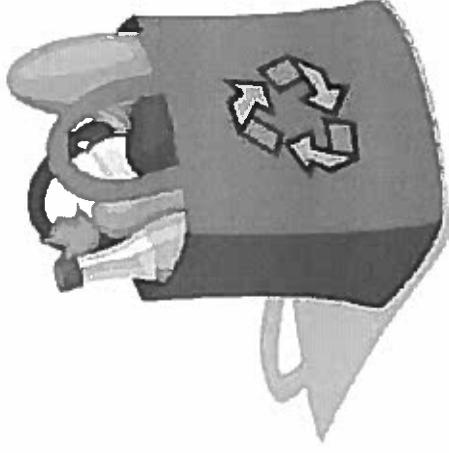
# Exceptions

- Product bags
- Any bag without handles used to carry
  - Produce
  - Meat
  - Seafood
  - Prescriptions
- Within the store to the point of sale
- Businesses
  - Fairs, festivals, craft or flea markets, or other events of an infrequent and short-term nature.



# Reusable bags

- Designed and manufactured to withstand repeated uses
- Is washable or made from a material that can be cleaned and disinfected regularly
- If plastic, has a minimum thickness of 2.25 mils, has handles, and can carry at least 18 pounds





# Paper Bags

- Many believe paper bags would be a good substitute for plastic bags
- Paper
  - Biodegrades in the environment
  - Is made from renewable resources
- However no paper bags are manufactured in Maine
- The manufacturing of paper bags requires greater use of water and energy than plastic
- Paper is heavier and requires more fossil fuels for transportation





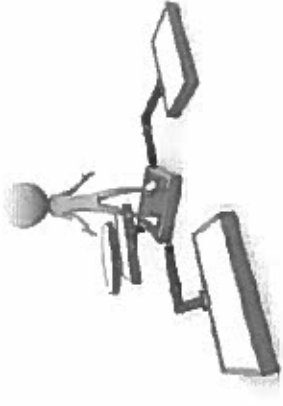
## Other Maine Examples


- Brunswick - \$0.05 fee on plastic bags
- Topsham - \$0.05 fee on plastic and paper bags
- Freeport – ban on plastic bags; \$0.05 fee on paper bags
- Falmouth - \$0.05 fee on plastic and paper bags at stores over 10,000 SF
- Portland - \$0.05 fee on plastic and paper bags
- Kennebunk – ban on plastic bags at all retail stores
- York - ban on plastic bags at all retail stores
- Saco - ban on plastic bags at all retail stores



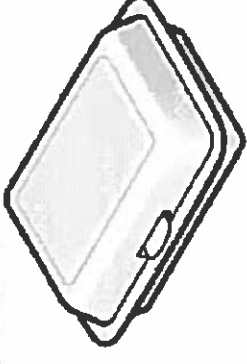
# Process

- Gather feedback from the public and business community at these public meetings
- Modify proposal
- Present proposal to Bath City Council
- Council votes on proposed ordinance
- If passed, implementation will be several months out
- Community education program between passage and implementation





# Polystyrene



- Proposed ordinance: ban the use of polystyrene foam containers for food sale or preparation
- Sale of raw and live seafood and raw meat is exempt
- Manufacture and transportation of polystyrene foam containers consumes fossil fuels and creates greenhouse gases
- Polystyrene foam contributes to litter around Bath and in area waterways
- Polystyrene foam does not break down in the environment and is a hazard to wildlife
- Alternatives to polystyrene foam containers are available

