I. CALL TO ORDER – On Monday, October 1, 2018 at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Lynn Copeland, Alan Minthorn, and Nathan Johnston. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening. Councilor Smart was excused this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

➢ October – National Breast Cancer Awareness Month – Mayor Lovell noted that Maine has a breast cancer awareness plate that many people have on their vehicles and that October has special awareness to breast cancer.

V. PUBLIC COMMENT

There were no public comments.

VII. AGENDA

A. CONVERSATION WITH STATE LEGISLATURE DELEGATION

Mayor Lovell invited the State Legislative Delegation to step forward and provide an update on their latest session. He noted that he learned through a Mayor’s Coalition meeting that LD1522 failed in the house by 4 votes and passed in the senate. It was a bill if passed that would allow Saco to have the City Council pass a local ordinance on lodging and meals, and I was really gratified in that because we have suffered mightily from the cuts the state has passed onto us in the school system and in municipal affairs.

Senator Justin Chenette – I represent the communities of Saco, Old Orchard Beach, Hollis, Limington, and a portion of Buxton. For the past 2 years I have served on the Taxation Committee. So, we were on the front line and there were a number of bills that came before us. One of which was the local option sales tax and also allot of property tax relief initiatives. Obviously, the major issues we were hearing in Saco and a number of other communities across the state is the over reliance on property taxes and the steady increase of property taxes. That is due to a number of factors. Number 1 if the state doesn’t meet its fair share of education dollars, its fair share for revenue sharing, you guys have a really tough decision at the local level of either what services to cut, what property taxes to raise or a combination of both. That is a really tough decision when you are limited in the amount of tools that you have at your disposal. The state has more tools at our disposal, so we need to be doing our part. Getting us closer to the 55% share of education funding for instance is one way to do that. My committee dealt with one of the referendums that was passed that dealt with education funding. Sadly, the funding mechanism wasn’t provided but we were able to use that referendum as leverage in the budget compromise debate and we were able to secure about $162 million more in education funding that we wouldn’t have received otherwise. The problem is think of that as economic stimulus for the education system. One-time monies. So, next year during budgeting, just be mindful of that. We are going to have to have the same conversation and debate on how to adequately fund our schools and invest in the next generations, that we just went through when we had the first state shutdown since the 1990’s over education funding. Some of the other things that we worked on were: Homestead exemption increased 33%, the property tax fairness credit that we most recently able to invest over $10 million to expand that initiative, which is formerly the Circuit Breaker Program which is income based. You would apply for this program around income tax time. This was part of the tax conformity package that was before my committee that I helped negotiate. It was a long process to try to figure out how the federal tax changes affect the state and our local communities. We finally arrived at a place where we negate some of the negative impacts of the federal tax changes and also help to secure more additional tax relief for middle class families. The other committee I serve on is Ethics. We will continue to push for governmental accountability and limiting the influence of lobbyists. None of my bills became law, but we will keep...
trying. One of the bills that did become law was my healthcare reform bill and that mandated health insurance companies to expand their list of covered services, particularly naturopathic care. Again, when we talk more about holistic or alternative approach to addressing our healthcare needs, it does reduce the cost of our healthcare system and at the same time your body, your health looks different than your neighbors. We need to expand our horizons beyond the big pharmaceutical companies. That bill passed overwhelmingly in the house and the senate and we overrode the governor’s veto, so it became law. Downtown revitalization as president of Saco Main Street we did try to put forward a bill to provide grants for downtown revitalization to encourage new start-up businesses to relocate to downtown centers. You don’t have to necessarily have a beautiful historic Main Street like we do in Saco. But there are other communities that are trying to attract folks. That bill passed but we are still waiting funding. We have $200 million surplus right now, so there is money there. Aside from that, we only have a month to actually introduce new legislation for or entire 2-year term. So, just keep that in mind. Basically, the month following an election is the only window where we can secure a public hearing. If there are any ideas that the Mayor, Council, or public has, now is the time to start contacting us. The 2nd year of a term is only for emergency legislation which is code for whatever leadership wants.

Representative Margaret O’Neil – District #15 – The last 2 years were difficult sessions up in Augusta. I know that the actions and inactions of the legislature have a profound impact on your processes here. Thank you for your patience and partnership to address issues of local importance. In addition to the issues that Justin flagged for you, I wanted to mention that we were able to pass LD 1719 “An Act to Implement a Regulatory Structure for Adult Use Marijuana” and that was passed in May over the Governor’s veto. The bill sought to strengthen local control and regulatory protections while honoring the will of the Maine voters. The department charged with oversight is the Department of Administrative and Financial Services is currently accepting proposals from consultants seeking to work on the rule making processes with an April 30, 2019 deadline to have the rules finalized. I wanted to mention a couple of details about the property tax fairness credit that Senator Chenette mentioned. We increased the maximum amount to from $900 to $1,200 for residents aged 65 and over and from $600 to $650 for residents under age 65. I also wanted to bring your attention to 2 bonds that will be on the November ballot. The clean water and transportation bonds under question #2 and #3. In my committee of Agriculture, Conservation and Forestry we worked on a bill that will affect the work of the municipal government. LD 858 “An Act to Strengthen the Law Regarding Dangerous Dogs and Nuisance Dogs”. To strengthen the response when a dog injures a person or another animal or damages property. It increases the licensing fee and for a dog that is determined to be dangerous or nuisance. Lastly, I wanted to flag a great program that is available. We discussed quite a bit of legislation to address food insecurity in Maine which can be shared with your constituents. The Maine Senior Farm Share Program. Thanks to a grant from the USDA the program partners with local farms to get fresh produce to low income seniors during the growing season. It is about $50 worth of produce for 8 weeks and seniors can sign up with the local farm. Participating farms in the area are: Fenderson Farm, Harris Far, Snell Farm and Frugal Farmers.

Representative Donna Bailey – District #14 – I served on the Judiciary Committee, so not allot of local municipal issues come before the judiciary. But, we did approve allot of new judges here in the State of Maine and I think that they will be great additions to the judicial department. One bill before the Taxation Committee that Senator Chenette serves is the Property Tax Deferral Program for seniors, LD 1196 that I sponsored. This was a program that was in place in the late 1980’s early 1990’s where the state would pay seniors property taxes and the state would get paid back once the property changed hands either through an estate or sale. We were able to get that out of committee and passed in the house and senate unanimously. Unfortunately, it did not get funded. But, I do intend to reintroduce that again. I know that some municipalities including Saco have at least looked at maybe doing their own deferral program if it is not done at the state level. The other piece of legislation other than the ones that have already been mentioned is that I was intricately involved in the judiciary. We have updated and totally rewritten Maine’s Probate Code. I chaired the subcommittee that looked at that legislation. That was a 400-page bill that had a 200-page amendment. I’m not going to go through it all, but I will highlight that it really does give more protections for people under guardianship and conservatorship. It also gives more protections to children who are under minor guardianship going through the adoption process and we also tried to make it easier for people who pass away and have small estates, that they don’t have to go through a formal probate process. They can use an affidavit. We also passed something which will be brand new in Maine which is a transfer upon death deed. This would be a special deed that someone could execute today to say leave their house to the son or daughter. The deed would be recorded now but it would not be effective until the person passed away. The idea would be that someone could do this in lieu of a will
and instead of a formal probate process. That was something that did get passed and signed into law and will be going into effect in July 2019.

Mayor Lovell noted that Election Day in November 6, 2018 and that absentee ballots would be available starting on Tuesday, October 9, 2018.

On November 13, 2018 the City Council will be holding a Workshop and the successful candidates for the State Legislative posts are invited to discuss legislation at that time. City Administrator Kevin Sutherland noted that the November Workshop would be to bring some ideas and discussion about changes that staff have been thinking about.

Representative Donna Bailey mentioned that it was very helpful during the session when the Mayor and representatives from city came up for the Mayor’s meeting and that was a nice way to stay in touch while the session was going on. Mayor Lovell noted that it was very impressive to see Saco’s 3 representatives working together in a very non-partisan way to support and promote the City of Saco before the legislature.

Councilor Gay noted that the city could use help with Camp Ellis erosion issue.

Representative Donna Bailey noted that they were able to pass a resolution in the house and the Mayor read that resolution at a meeting a while ago. I belong to the Coastal Caucus in the house which is a bipartisan group who are involved and care about coastal issues up and down the coast of Maine. They were very supportive as well as the whole house. I think that people across the state now understand the issues with Camp Ellis and they understand that it is not something that we did. It is caused by the jetty and the actions of the Army Corp of Engineers. They are more receptive to our plight.

Councilor Copeland – Thanked the representatives for their efforts. They have represented Saco very well. I really hope that you Representative Bailey can get that initiative funded for the seniors. Thank you for advocating for us and we will be contacting you soon for some more money for the Camp Ellis issue.

VI. CONSENT AGENDA
A. APPROVAL OF MINUTES FOR SEPTEMBER 4, 2018

Councilor Minthorn moved, Councilor Gay seconded to approve the minutes for September 4, 2018. The motion passed with six (6) yeas.

VII. AGENDA
B. HORTON WOODS CONTRACT ZONE – (PUBLIC HEARING)

Applicant Riverside Meadows, LLC proposes a 55 and over clustered subdivision on a 49 acre parcel adjacent to 464 Buxton Road. The contract zone is proposed with the goal of clustering development on a portion of the land, probably preferable to a standard two-acre lot subdivision over most of the property. This is a re-visit of a contract zone and clustered subdivision approved in 2005 and 2010, respectively, that was never built, part of a project that included the sale of a 100 acre parcel to the City, now recognized as Horton Woods, subject to a conservation easement in perpetuity for the public’s use and enjoyment.

Typically, clustered subdivisions must connect to both public sewer and water per Article 6 of the Zoning Ordinance. Public sewer is over 3 miles away, and public water is over 2 miles away, so the agreement would modify that requirement. The contract zone would also modify minimum lot size, frontage, density, and setback standards found in the Zoning Ordinance.

The Planning Board considered the proposal at its meeting on May 15, 2018 and forwards a positive recommendation. The City Council reviewed this item in Workshop on July 16, 2018 and includes changes suggested at that meeting.

Councilor Copeland moved, Councilor Gay seconded to open the Public Hearing. The motion passed with six (6) yeas.

Diane Doyle, 16 Tiffany Lane – I would like to comment on some things that came up at the last meeting. 1) The 100 acres in not really tied to the subdivision. I did send a letter and the 2005 Contract Zone to the City Councilors and the Mayor which clearly shows that in 2005 the Contract Zone with 165 acres (100 to the city and 65 for the
The applicant proposed to establish a 100 acre portion of the subject property as open space. Said open space is proposed for conveying to the City of Saco and would be approved with the trail system and parking area for the use of the general public. A 100 acre portion of the subject property shall be established as open space with other access. The 100 acres shall be immediately and irrevocable passed after approval of this contract zone and no later than the final plan approval by Saco’s Planning Board with said transfer not being later than 5 days after approval. The trail system and parking area specified in 1.9 above shall be constructed by the applicant and city but in no instance shall be construction occur later than issuance of the first occupancy permit for the dwelling in the subdivision. The Horton’s and I abided by the part of the contract that we signed and that was signed by the city. The 100 acres was delivered to the city of Saco with the trails that were developed by Don Horton and all the people that he got to come and help build those trails. The parking lot was put in by the Hortons. I was not able to stay in the project because I was involved in another project. They got involved with a developer that let those permits lapse and was not the signed part of the agreement the Horton’s have with the developer to let those permits lapse. That is why we are here today. Those permits should not have lapsed. 2) There are a number of points in the 2008 Comprehensive Plan that were picked out showing that this type of subdivision which is beyond the utilities of Saco does not follow the comprehensive plan. I picked out a few parts of the comprehensive plan that do show that this type of development is indeed part of the comprehensive plan. Page 34 – Smaller household sizes coupled with a growing population have created more demand for housing and for different types of housing. The number of younger households with children is decreasing. Maintaining a balanced population and providing the housing options that are desirable to every population group will be important to fostering a diverse population and a vital community. Page 133 - The City should continue to allow housing for the elderly to be built at higher densities than other types of housing in recognition of the lower impact and established need that this type of housing has in the community. Page 174 - Higher density is promoted in the urban areas, consolidated growth that protects open space is promoted in the rural areas. Also, in the comprehensive plan it says “In the northwest corner of Saco a few clustered subdivisions have been established including the clearing in the Horton Woods. So, it is already listed in the 2018 comprehensive plan that Horton Woods is part of that. So, I just wanted to bring that up. Lastly, in looking at some of the past correspondence over the 13 years that I have had and Jean Horton has had we came up with a letter that was written to the owner John Andrews, who everybody recognizes his name and what he has done for this community. It was written to Don and Jean Horton “It was great seeing you this morning. Here is some of the data I promised. Maine has many people who have been deeply involved with conservation easements. Over a week ago I urged Mayor Johnston to place a solid conservation easement on your property to protect it against future city council that might do awful things that none of us would want to happen. I visited the Mayor after we spoke this morning. He had been concerned about the possible inappropriate action of a future council. He invites you to bring up these issues. He wants your land well protected against any future ill intentions. He then lists some people that might be able to help with the conservation easement. But, in closing he says: Be assured there are lots of wonderful people who don’t know you and will want you to succeed. Mayor Johnson is one of them. He asked me to ask you to talk with him and Peter Morelli about getting the conservation easement right. Mayor Johnson admits he is a little experienced, but he wants to get this right. So, this is about as far as I can help. We don’t want your land to be at risk of becoming a site for rock concerts, Segway racing, or football games. Good luck and thanks for what you are doing.”. Again, there are allot of people who have something to say and I would just like to say that right now the City Council has the opportunity to provide a type of housing that is desired for a type of population of Saco and for Maine. You have an opportunity to fulfill the vision of the Horton’s that was encouraged by previous councils and planning boards. You have an opportunity to have a quality development and unique subdivision built by a respected successful local developer backed by a local successful business and I hope you would encourage this type of development.

Jean Horton, 464 Buxton Road – I would like to give you a little personal anecdote about how this whole idea and project came about. In the early 2000, my husband’s ex-wife owned allot of beautiful property on the Eastern Prom on Munjoy Hill. She died. Months later we had a memorial service and in the interim all of her property was sold to a Philadelphia developer. After the service Don and I came home and those of you that have been to our property know that there is a lovely driveway that comes into the land. He stopped, and I asked him what he was doing and he said “if we go down in a plane crash what is going to happen to this property?” He said “I don’t want it to be sold to a Philadelphia developer and end up looking like Leavitt Town. So, he took 2-3 years to study projects throughout the country and Maine to come up with the best use of the best land. We had about 175 acres. Don finally got a design that he thought would work and he settled for the idea of a clustered development close to Buxton Road on
the land that is advantageous for that and to save the beautiful Stackpole Creek, marsh, river, and fields. He came to the city and talked to Peter Morelli, Bob Hamblen, and Mark Johnston and everyone was very favorable and very enthusiastic about this. So, with their help and other people in the city the project moved forward. Then Don and I learned of Ferry Landing and Don called Diane and asked her to come over and showed her the project and his ideas and the 2 of them got together and after she left, he said that he wanted Diane to build the houses. He said that he wanted a house to justify the land. So, we went forward and in 2005 we got the contract zone needed and at that point began paying taxes on 30 buildable lots and continued to do that for quite a while. Then, the financial crisis came about and we didn’t have the money to move forward etc. So, finally when the contract zone was done and everything was done and everything approved, Don went forward with the Horton Woods. These are some of the things that he did for this project. You know that Saco Bay Trails came in to maintain the property and at that point Don worked with them to set up the best rails in the best places and we do have the best Red Maple in Southern Maine by the way if anyone wants to walk over there and see that. He chose the hemlock for the bridge over the creek, and he came in with beautiful granite blocks for it. We had the Appalachian Mountain Club boys live in our barn for over 3 weeks while they were building the bridge and I would take them muffins every morning and they were very sweet boys and they did a very, very good job. Then he worked with them and he decided they would need some space, so he designated a certain portion of our barn for them to use for all of their equipment, so it would be easier for them and whatever conferences they would need etc. It began to grow into a very beautiful space and there are many, many people there come with their dogs and families etc. We hope to add acreage to that with this project. There will be an additional 15 or so acres added to that which has a lovely little waterfall down at the end. We are asking the city to do no more than keep their promise to us and to abide by our original contract. Don has always been involved with the city and at the time of his death he was on the Camp Ellis Committee where he was an oceanographic advisor. So, look at this project seriously. We want it for retired people 55 and over and people who love birds, walking trails and who will appreciate the wildlife there. Yet, he only 10 minutes from town and 20 minutes from the airport and hopefully contribute significantly to the city tax base.

Don Lauzier, Timber Oaks Lane – Mayor Lovell acknowledged that everyone had received Mr. Lauzier’s letter. In all the years that I have lived here, I have never attended a Saco Council meeting to either speak on behalf or against any project and any issue. It takes an awful lot to get me out of my house at night. And come and speak on behalf of someone that is wonderful and a project that I really believe in. Mr. Lauzier asked if everyone received his e-mailed letter and the councilors acknowledged they had. You have heard different perspectives on the project and I just want to reinforce why I’m here as a realtor. I hear every day from older folks everyday who are looking to move to properties that they can afford and easily maintained. Because, their homes that they have lived in for several years they just can’t afford to maintain any longer. This project has so much to offer to the city of Saco and to other citizens. Some of the points in my letter are: First and foremost, I understand that this project was approved some time ago by the Saco Planning Board and other members of the Saco leadership including the former Mayor Mark Johnston. The contract zone for this clustered development has been approved repeatedly over the years as you have already heard. From a realtor's perspective Horton Woods would provide an opportunity for a growing segment of our population to own property to be both affordable and manageable which has become a reoccurring theme I have dealt with and am currently working with at this time. The sentiment is also shared by other members of our real estate office. Horton Meadows would provide retirement housing with maintenance free lifestyle that much of our aging population seeks. Some of the benefits that I have seen for the city of Saco is that this development would provide over $250,000 worth of property taxes with little or no impact on other community or municipal services. Just to summarize again, I feel strongly that since this project was approved long ago, many times, and I see the benefits that it will offer the city of Saco and I hope the council will support this project.

Anne Dobson, 75 Middle Street – I have lived in Saco as a home owner for over 48 years. So, I may retire from addressing the council right after this message. This evening I’m asking for your support for the Horton Meadows Contract Zone proposed by Riverside Meadows LLC. As you know, this project is similar to the previously approved project proposed by a different developer. The previous effort was never realized, and the first developer bulldozed large swaths of land leaving ugly debris piles which disrupted game trails and left scars on the beautiful meadows. The current developer has already restored the lovely pasture and made way for deer, small animals, and birds to live near and in the proposed project area. The current developer has already agreed to extend Horton Woods trail system to include 12-15 acres in the project area. This basic project has already been approved twice and since the current proposal includes very positive new features, I urge you to vote favorably on Riverside Meadows LLC proposed contract zone. Thank you, Mr. Mayor and members of the council.
Inga Browne, 161 Simpson Road – I want to start off with some very gentle comments. I’m very sympathetic and sensitive to the Horton families long standing relationship with their land and to opening it to the public and I want to be very respectful of that. I also want to say that I have the utmost respect for Diane Doyle whom I know professionally and personally, and I can only say good things about her. I’m here before you tonight because I do oppose this project and I would like to lay out some reasons as to why. What we know about the next wave of senior housing, we know that Saco is in dire need of housing that is affordable and is pleasant to live in. I’m not an expert on senior housing, but I do pay attention to growth trends and we know that senior citizens today suffer from isolation and loneliness. We know from all of the studies that living in downtown areas where there is access to amenities such as restaurants and being able to walk, these are extremely important. There is an organization called the Senior Living Housing providers and they have just published what senior housing should look like as cities and planning departments look forward for visionary and long-term growth. So, I will quote a couple of things: “After a generation of isolation in suburban rural developments, seniors are rebelling and demanding residential options closer to the action. In beach communities, college communities, and especially urban centers. More developments will feature an array of restaurants, bars, banks, and shopping and common areas shared with colleges and elementary schools. But, the number one reason that seniors want to live closer to amenities is to access health care. There are many senior housing developers who are looking to build closer to hospitals and closer to health care. While Saco is not yet a major metropolitan area we all know very well the constraints and stressors our community is currently facing. I live in a C1 Conservation Zone and as many of you know I’m not a fan of contract zones. The city currently has 32 active contract zones. Many of my comments tonight could fall under the tag line of “If not now, then when”. If not know when then? The city is currently from what I understand organizing a subcommittee to look at the Comprehensive Zoning Ordinance and the revision process. There will be extensive public outreach, public hearing, and public engagement as we look at our zoning ordinances moving forward. We know that smart growth is incredibly important to Saco and I would like to raise a couple of points about that. I would like to see a forum where smart growth planners could come to Saco and share with us the latest in smart growth planning. There are 10 qualities related to smart growth and I’m sure that many of you know them: 1) Take advantage of compact design. Company design means making more efficient use of land that has already been developed. Encouraging development to grow up rather than out is one way to do it. Infill development. I have heard many of you talk about this. Building on empty or unutilized lots is another. Building within existing neighborhoods that can attract more people to the jobs and homes and businesses already there while also making the most of public investments and things like water and sewer lines, roads and emergency services. Another quality of smart growth is to create walkable neighborhoods. Foster distinctive and attractive communities with a strong sense of place. Preserve open space, farmland, natural beauty, and critical environmental areas. The C1 Conservation Zone in Saco has been under threat and I see that threat growing. While one clustered subdivision with some beautiful access to green space may not seem to be a huge threat, if there is another one, and another one, and another one, we don’t have a conservation zone anymore we have a highly dense population and the conservation zone becomes meaningless. Residents in Saco have to rely on their zoning. When people live in a zone they must have some assurance that the zoning for that particular area will be followed. Hop scotch zoning, cherry picking, rolling the dice, and special interest projects. That is not smart growth and that is not smart development. I want to say again that I understand that Ms. Doyle’s work in high quality and I have no issue with the integrity of her designs. But, I believe this project falls in the face of everything that Saco is trying to do. Smart growth communities provide transportation choices and they make development decisions predictable, fair, and cost effective. The last thing that smart growth does is that it encourages community and stake collaboration in development decisions. It is not possible to have smart growth without the perspective of everyone’s vested interest in a town, city or neighborhood. Smart growth is about building a future for community that everyone can participate in and gather for ideas and get feedback and support everyone in the community. I have not come out publicly to state that I’m in favor of a moratorium on contract zones but upon further reflection this week I would say that I’m in favor of a moratorium on contract zones. I believe that it is time for Saco to slow down the development and really look long term and I would like to see some outside experts come in. I can’t support this clustered subdivision. It is not close to city services, not accessible to water, and we know that that is part of the subdivision that these need to be close to city services. There is a reason that we have this type of zoning.

Dr. Richard LaRue, 20 North Street – I’m going to be straight forward as a professor in my life. It is really easy to go on and on and on and I could do that. We could be here an hour. I think there are 3-4 key points here. I think it
is that simple. You have Horton Woods, a gift to the city of Saco. An environment that allows anybody regardless of whether they are in the inner city of Saco or they are out in the community, they can take advantage of Horton Woods. Horton Meadows, the whole concept of Horton Meadows was to integrate. To create an environment that people can not only actually enjoy community that gets created over a period of time. It is just that we know it is going to happen. But, in addition to that it allows people to not just sit in their houses. They can walk out in the woods. They can enjoy the environment. They can spend time feeling better and healthier. Conversation earlier talked about health care. I don’t know any better health care than being outdoors and out walking, jogging, or just reminiscing about the beauty of the environment. My third point is that the city has already in the past approved this project. Had it not been for one individual, the first developer is someone that we should all know, Bernie Saulnier walked away from the project. Had he not walked away from that project, and done significant harm to the area, and not taken the money he was given to develop that project. That project would have been done now. You can decide whether or not you should be more concerned about Bernie Saulnier in the Waters project. But, as far as I’m concerned, this one is safe. It is a perfect project for people who are looking to retire in a community where they would prefer to be outdoors rather than in the middle of a city or at the top of a building. Quite honestly, it is a beautiful place. Why would you deny that from anybody? I predict that Horton Meadows will be a wonderful experience for Saco residents who choose to live in that environment. I think it would be a real mistake for this council to disparage the concept and vote against it.

Donna Ravn, 20 Landing Road – I had actually written to both Lynn Copeland and Nathan Johnston understanding that she is my representative and he represents the area we are talking about tonight. My apologies to other council members, I did not send you my comments. I’m probably not going to repeat them anyways because they touch on many points that have already been made. What I did want to say was that I’m obviously of the demographic that Horton Meadows would be aimed at. I currently live in Ferry Landing which many of you know is a Diane Doyle development. The reason that I’m living in Saco now rather than Old Orchard is because I chose to downsize into a development which was more manageable and is by my calculation about as far from the center of Saco as the Horton Woods development would be. So, I would like to speak to the fact that there are different models for senior living. Loneliness is not necessarily the prevue of suburban rural life. I think the loneliest part of my life was when I was newly out of college and living in the city. City life does not necessarily lead to community. A clustered development does by my experience. Also, I’m a long time Saco Bay Trails member and I’m astonished the entire membership is not here in support of this particular issue because we have benefited so greatly from the Horton Meadows and Woods trails. I have loved walking those trails and I think that anyone who likes to get outdoors and who wants to avoid nature deficit disorder deserves an opportunity like that. Thank you for your consideration and I urge you to vote “yes” in support of this.

Richard Alfred, 16 Landing Road – I’m a retired University of Michigan professor and my problem is that I can’t get enough open space to move around. I’m 74 years old and probably too healthy. Having an option like this at my age and many others my age who are very active definitely not lonely, seeking very important opportunities like this. There are more of us at this age healthier than ever who are moving around and looking for more things to do. To not have an option like this would be a real mistake and it is obvious. I’m going to leave it at that. But there are allot of me around here right now who want trails and space to walk in and who don’t want to live in congested areas downtown. We need to debunk that and live in a world with options.

Andrew Holbrook, 52 Heath Road – President of Saco Bay Trails. We maintain the trails adjacent to this new development. That 13-15 acres adjacent to the existing Horton Woods trail system and it is really really nice. It is gone to be a real good opportunity for us to run an additional trail off the existing system and it more than just that though. It will allow us to make a loop out of a trail that is currently a dead end and it also goes through some pretty unique terrain with the ravines and what not. Saco is pretty flat and often in places wet. So, it is very hard to find good land for us to put a trail in and this would be an excellent opportunity for us. With the help of other board members, we have written a letter that I would like to read as follows:
Margaret Mills, 168 Simpson Road – Is there a public bus system that goes up the Buxton Road? Is there a long-range plan to extend city water and sewer? How much will we be losing on the tax rolls for the extra 15 acres to be donated to the Horton Woods park? Does the city own Horton Woods or is it an easement? Did the city purchase that parcel from the Hortons? I also think that the Hortons and Diane Doyle are wonderful people to work with and that we are very lucky to have them in our community. On the other hand, I also see that a Comprehensive Plan is supposed to mean something, and it does seem as though it has been chopped up to be meaningless when the rural areas are just used indiscriminately. I see that this is a complex question, but I would like to know some answers to those questions.

Councilor Copeland moved, Councilor Doyle seconded to close the Public Hearing and further move to set the final reading of the contract zone document entitled ‘Contract Zone Agreement By and Between Riverside Meadows, LLC and the City of Saco,’ for the property adjacent to 464 Buxton Road as authorized by Section 1403 of the Zoning Ordinance, pursuant to 30A M.R.S.A. Section 4352(8), for October 15, 2018. The motion passed with six (6) yeas.
3. A copy of a Purchase and Sale Agreement Warranty Deed is submitted by the Buyer, identified as Riverside Meadows, LLC, P.O. Box 108, Portland ME 04112 as evidence of right, title and interest.

4. The Subject Property is in the C-1 zoning district.

5. The Applicant has submitted a written statement authorizing the Applicant to represent their property before the City of Saco.

6. The Subject Property has an area of 49.54 acres. The minimum lot area requirement in the C-1 zoning district is 80,000 square feet. The Subject Property is a conforming parcel with respect to minimum lot area.

7. The Subject Property has 448.80 feet of frontage on Buxton Road. The minimum frontage requirement for a parcel in the C-1 zoning district is two hundred (200) feet. The Subject Property is a conforming lot with respect to the frontage requirement.

8. The Applicant proposes to develop a clustered residential subdivision with thirty (30) single-family dwellings on the Subject Property. The project is proposed as a Clustered Residential Subdivision that would comply with requirements found in Article 6 of the Zoning Ordinance, save for two three; the Applicant recognizes that neither public water nor public sewer are readily available to service the Subject Parcel, as required by §230-602.C and 230-602.D, respectively. Instead, the Applicant proposes to provide on-site drilled wells and subsurface septic systems.

9. The Applicant proposes to establish 33.3 acres of the Subject Property as open space for use by residents of the subdivision.

II. This contract amends the Saco Zoning Ordinance as follows:

1. Section 230-602.C is amended to allow dwelling units in a cluster development that are not connected to the Maine Water Company system, and instead dependent on private wells.
2. Section 230-602.D is amended to allow dwelling units in a cluster development that are not connected to the municipal sanitary sewer system, and instead serviced by private systems.
3. Table 412-1 is amended to establish a minimum lot size of 10,000 square feet for individual building lots within this cluster development.
4. Table 412-1 is amended to establish a minimum frontage requirement of fifty (50) feet for individual building lots within this cluster development.
5. Table 412-1 is amended to establish a minimum front yard setback requirement of fifteen (15) feet for individual building lots within this cluster development.
6. Table 412-1 is amended to establish a minimum side and rear yard setback of ten (10) feet for individual building lots within this cluster development.

7. **Table 412-1 is amended to reduce the Minimum Net Residential Acreage per Dwelling Unit to 65,000 square feet per unit, a reduction of 15,000 s.f. from the otherwise required 80,000 s.f. per unit.**

III. This Contract Zone is subject to the following conditions and restrictions, as provided for in Section 230-1405 of the Saco Zoning Ordinance:

1. Development of a clustered residential subdivision by the Applicant is allowed on the Subject Property.
2. Requirements found in Sections 230-602.C and 230-602.D of the Zoning Ordinance that all dwelling units in a cluster development shall be connected to the Maine Water Company and to the municipal sanitary sewer system, respectively, shall be waived.
3. Minimum lot and yard requirements established in Table 412-1 of the Zoning Ordinance shall be reduced in accordance with Section II.3-6 above.
4. No more than twenty-seven (27) single family residences shall be permitted in the clustered residential subdivision allowed by this Contract Zone.
5. A 12-15 acre portion of the Subject Property shall be established as **public** open space, with access limited to the owners of lots, which will then be donated to the city of Saco prior to the issuance of any certificates of occupancy.
6. A homeowners association shall be established in order to maintain the open space, common facilities, and any other issues deemed necessary by the Planning Board, the developer, and/or owners of lots within the subdivision.
7. Except as addressed in this Contract Zone document, the project shall adhere to all other applicable provisions of the City of Saco Zoning Ordinance and Subdivision Regulations.

8. All details shown on the plans and submitted as application materials are hereby incorporated into this contract by reference. The site shall be developed in conformance with those plans and materials, while recognizing that the plan is subject to subdivision review by the Saco Planning Board. Minor changes may be approved by the staff of the City of Saco. If it is determined that the changes constitute a change in the contract, then the developer shall be required to obtain City Council approval of the changes.

9. This Document and Contract Zone affect only the parcel of land identified as Tax Map 123, Lot 21-3 on City of Saco tax maps.

10. This contract and its provisions shall specifically and exclusively apply to the Contract Zone request submitted by the Applicant.

11. This Document and the Contract Zone it creates shall not be transferable prior to development as proposed by the Applicant. However, in the event that the Applicant chooses to pursue the conveyance of the property to another party prior to or during development as proposed herein, said Party is required to demonstrate to the Planning Board’s satisfaction that the Party’s technical and financial capacity to own, manage and complete the project is acceptable.

12. Failure of the Applicant to submit application for a clustered residential subdivision as proposed to the Planning Department for review and approval by the Planning Board within two (2) years of the approval of this Contract Zone shall render this Agreement null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicant, this deadline may be extended by one (1) year upon written request submitted by the Applicant.

13. Breach of these conditions, restrictions and/or Agreement by the developer shall constitute a breach of the contract. Said breach of contract shall constitute a zoning violation, subject to enforcement action by the City of Saco.

14. Developer, for itself, and its successors and assigns, including any lot purchasers herein specifically, knowingly and intentionally releases City from any and all claims related to or in any way concerning or arising from water, water quality and water quantity at the project site, and the use of common wells. As consideration for this Contract Zone, Developer herein releases and holds the City harmless from such claims, demands, suits, etc., it being understood and agreed that and all remedies related to water, water quality and water quantity are the sole responsibility of Doyle Enterprises, its successors and assigns, including lot owners; and, that this condition shall be recorded in the Registry of Deeds by Developer for notice purposes.

IV. Pursuant to authority found in 30A M.R.S.A. Section 4352 (8), and the City of Saco Zoning Ordinance, Section 230-1405, and by vote of the Saco Planning Board on May 15, 2018, and the Saco City Council on __________, 2018, the following findings are hereby adopted:

A. City Tax Map 123, Lot 21-3 is a parcel of an unusual nature and location, for the following reasons:

1. The Subject Property when originally conceived for a clustered, residential subdivision was part of a 165 acre parcel, bisected by Stackpole Creek and associated wetlands. The portion of the original parcel now proposed for development is in the Stackpole Creek watershed. The City’s Comprehensive Plan, Zoning Ordinance and Zoning Map recognize Stackpole Creek as a valuable natural resource that is protected via its designation as a Resource Protection zone.

2. The owners of the original Subject Property and the City of Saco negotiated the purchase of a 100.04 acre parcel, conveyed to the City in February, 2006, and subject to a permanent conservation easement for the benefit of the public.

3. The original Subject Property is a topographically diverse parcel, home to a variety of ecosystems including ridges forested with oak and maple, pine and hemlock groves, a ten-acre marsh, and a one-acre heath. Wildlife includes beaver, deer, moose, fisher, bobcat and waterfowl.

B. The proposed rezoning is consistent with the Saco Comprehensive Plan, based on the following goals:

Chapter 5: Community Goals and Policies
A. Population and Demographics
2. The City should continue to provide for the construction of a wide range of types of housing at a variety of densities and types to assure that a diversity of people can continue to live in the City including younger households.
The City of Saco submitted a Community Development Block Grant (CDBG) Public Service application to fund training programs in Cultural Sensitivity, Direct Support Professional Dual Diagnosis Certification, and Technology Security Protection within the City of Saco for Port Resources, a non-profit organization based in South Portland and working in Saco that supports people with developmental and behavioral health challenges live meaningful lives in their communities.

The State of Maine Office of Community Development has invited us to the Project Development Phase. As part of the project development process, we will be holding a public hearing and then requesting a council resolution for the city to accept these funds. The public hearing notice and invitation to the project development phase are included as exhibit items below.

Stuart Simon from Port Resources will be in attendance at the public hearing to help answer any questions you may have.

Councilor Archer moved, Councilor Minthorn seconded to open the public hearing on the Community Development Block Grant for a workforce training program. The motion passed with six (6) yeas.

Stu Simon, 123 Lizotte Road, Lebanon – Mr. Simone is the Director of Development and Grant Writer for Port Resources. I wanted to be here this evening to thank the council and the city of Saco for working with us to facilitate the $35,000 CDBG Public Service Grant recently that was awarded. It will have a profound effect on our ability to provide stellar services for the people we serve. The grant will fund 2 programs. Our dual diagnosis certification and training for our residential managers and direct support staff is one of the programs. The vast majority of the 80 or so people we serve who live in our 20 group homes including 1 in Saco have a dual diagnosis of a development
disability and a mental illness. This program will provide specialized training and will allow Port Resources to enhance its ability to support this very challenging population. All of our direct support staff and managers and anyone who works with our residential homes have to receive a certification to do that. But, a specific additional certification is something that will really help us do our job as best as we can. We have a very distinct population that we serve folks with developmental disability and mental illness. And it takes a certain amount of education and knowledge to work well with those folks. The second program is a multicultural sensitivity training program for residential managers and direct support staff. Over 70% of Port’s staff level direct support work force is made up of new Mainers. This percentage will increase as almost all direct support job applicants we now interview are new Mainer immigrants from nations in Africa. Communication between our new Mainer direct support staff managers and clients is hindered by cultural sensitivity issues. This affects the quality of care of Port’s underserved population of adults with developmental disabilities and mental illness. Existing cultural and communication barriers make it difficult for our new Mainer work force to be put in the best position for them to succeed and to provide the best care. Funding from this grant will provide Port the opportunity to offer quarterly trainings over a 2 year period for our managers and staff. The training includes a variety of different modules and including tools for working effectively in American culture in intercultural competence development and intercultural conflict styles. I want to again thank you the city and the council and Mr. Sutherland and for working with Port Resources to make this happen. Our mission is to enhance the lives of people with developmental disabilities and mental health challenges. These 2 training programs will go a very long way in supporting that mission.

Councilor Archer moved, Councilor Doyle seconded to close the public hearing and further move to set the council resolution for the Public Service Community Development Block Grant for October 15, 2018. The motion passed with six (6) yeas.

Mayor Lovell recessed the meeting for 5 minutes at 7:45 p.m.
Mayor Lovell called the meeting back to order at 7:49 p.m.

D. CDBG ECONOMIC DEVELOPMENT GRANT – MAINE SEAFOOD VENTURES – (PUBLIC HEARING)

The City of Saco submitted a Community Development Block Grant (CDBG) Economic Development application to help fund the purchase of new technology that will enable the Ready Seafood and Maine Seafood Ventures business cluster to hire and retain more full-time year-round employees than previously possible. With the building of their new facility and procurement of this new technology, Ready Seafood and Maine Seafood Ventures are investing in the City of Saco.

The State of Maine Office of Community Development has invited us to the Project Development Phase. As part of the project development process, we will be holding a public hearing and then requesting a council resolution for the city to accept these funds. The public hearing notice and invitation to the project development phase are included as exhibit items below.

Brian Skoczenski and Curt Brown from Ready Seafood will be in attendance at the public hearing to help answer any questions you may have.

Councilor Doyle moved, Councilor Gay seconded to open the public hearing on the Community Development Block Grant for a low/moderate income job creation program. The motion passed with six (6) yeas.

Kurt Brown, 4 Channel View Road, Cape Elizabeth – Mr. Brown is the Marine Biologist for Ready Seafood and Maine Seafood Ventures. I’m here tonight to offer our sincere thank you to the council and the city of Saco and Brandon in particular along with Emily Roy for all your hard work helping us secure a CDBG Economic Development Grant in the amount of $210,000. Without your expertise and persistence, we would not have received this grant and would not be here tonight. This grant will enable us to purchase a high pressure processing machine which will be a real game changer for not only our company but for our industry and our state. It will allow us to hire more full time year round team members and allow us to process more lobsters right here in the City of Saco and it will allow us to develop a number of new lobster products which our state is in dire need of. Our sincere thank you to all of you. It is much appreciated.
Councilor Doyle moved, Councilor Archer seconded to close the public hearing and further move to set the council resolution for the Economic Development Community Development Block Grant for October 15, 2018. The motion passed with six (6) yeas.

E. ZONING CHANGE FOR KENNELS IN MU-3 – (PUBLIC HEARING)

Kendall Beal of 58 Shadagee Rd in Saco has, by petition, asked the city to consider amending the MU-3 zoning district to add the already defined use of “Boarding Kennel” as a permitted use. This could be accomplished via simple amendment by adding “Boarding Kennel” as a permitted use to Section 230-410.6 of the Saco Zoning Ordinance.

Boarding Kennels are currently allowed as a permitted use in the B-2a, B-2b, B-6, and C-1 zones only.

The Planning Board held a public hearing for this request on August 7, 2018. After discussion, the Planning Board decided the Boarding Kennel use is more appropriately added in the MU-3 zoning district as a conditional use, rather than a permitted use. The Planning Board then voted unanimously to forward a positive recommendation to the City Council to add the already-defined use of “Boarding Kennel” as a conditional use in the MU-3 zone district.

Councilor Gay moved, Councilor Minthorn seconded to open the Public Hearing. The motion passed with six (6) yeas.

There were no public comments.

Councilor Gay moved, Councilor Minthorn seconded to close the Public Hearing and further move to set the final reading of the proposed amendments to the Zoning Map that amends the MU-3 zoning district to include the use of boarding kennels as a conditional use for October 15, 2018.

City Administrator Kevin Sutherland noted that the applicant is no longer under contract on the land.

Mayor Lovell called for a vote on the motion. The motion failed with six (6) nays.

Councilor Minthorn moved, Councilor Copeland closed public hearing and not set any further reading of this measure. The motion passed with six (6) yeas.

F. CABLE COMMITTEE – (SECOND & FINAL READING)

City of Saco and Charter Communications Renewal Cable Television Franchise Agreement.

The City of Saco Cable Committee has identified the needs of the community through the Vision Plan and Ascertainment Report. These will be the documents that we base our Franchise Agreement on.

The exhibit items are fluid until all negotiations are final.

Councilor Minthorn moved, Councilor Doyle seconded “Be it ordered that the City Council approve the second and final reading of ‘City of Saco and Charter Communications Renewal Cable Television Franchise Agreement’. Further move to approve the order. The motion passed with six (6) yeas.

Draft Agreement:
5. Grant of Authority ................................................................. 5
A. Franchise Area ................................................................. 5
B. Limited Grant ................................................................. 5
C. Non-Exclusivity ............................................................... 6
D. Eminent Domain not Conferred ........................................... 6
6. Term .............................................................................. 6
7. Governing Law ................................................................... 6
8. Effect of Acceptance .......................................................... 6
9. Definitions ................................................................------- 6
10. Construction and Maintenance ........................................... 13
A. General Provisions ......................................................... 13
B. Cable System Location ..................................................... 15
C. Communications ............................................................. 17
11. Operations ................................................................. 17
A. Performance Standards .................................................. 17
B. Performance Testing ....................................................... 18
C. Emergency Alert System ................................................. 18
D. Video Recording Device/Cable Compatibility .................... 18
12. Insurance ................................................................. 18
A. Company Insurance ....................................................... 18
B. Insurance to be provided by Subcontractors ...................... 19
C. Indemnification of the City ............................................... 19
D. Indemnification of Company ............................................. 20
E. Municipal Immunities ..................................................... 20
13. Performance Bond ......................................................... 20
A. Performance Bond .......................................................... 20
B. Conditions ...................................................................... 20
C. Forfeiture ....................................................................... 21
D. Replenishment ............................................................... 21
E. City Rights ..................................................................... 21
14. Records and Reports ....................................................... 21
A. Availability of Records to the City ................................. 21
B. Annual Report ............................................................... 23
C. Charges for Audits or Tests .............................................. 23
15. Franchise Fee ................................................................. 24
A. Payment ........................................................................ 24
B. Late Payments ............................................................... 25
C. Acceptance of Payment ................................................. 25
16. Public, Educational and Governmental Access (PEG) ........... 25
A. Use of PEG Access Channel ............................................. 25
B. Channels ........................................................................ 25
C. Exclusive Use, Channel Designations and Interconnectivity ... 26
D. PEG Facilities and Equipment Support; ............................ 27
E. Minimum PEG Signal Quality and Transmission Standards .. 27
F. PEG Promotion ............................................................... 28
17. Build-out ....................................................................... 28
A. Area To Be Served ......................................................... 28
18. Cable Service to Municipal Buildings ................................. 29
19. Rates & Services ............................................................. 30
A. Prices and Charges ......................................................... 30
B. Basic Cable Service ....................................................... 30
C. Programming ................................................................. 30
20. Rights of Individuals ....................................................... 31
A. Customer Service .......................................................... 31
B. Protection of Subscriber Privacy ..................................... 31
C. Employee Identification Cards ....................................... 31
Administrative Issues

1. Statement of Agreement

This Franchise Agreement (the “Agreement”) is made and entered as of ______ between the City of Saco, Maine (the “City”) and Time Warner Cable Northeast LLC, LKA Charter Communications (hereinafter “Company” or “Time Warner Cable”) a Delaware corporation organized and existing in good standing under the laws of the State of Maine.

2. Title

This Franchise Agreement shall be known and cited as the “Saco, ME Cable Television Franchise”. Within this document it shall also be referred to as “this Franchise” or “the Franchise”.

3. Parties

A. City

1. Name: City of Saco
2. Contact: 
3. Mailing Address: 300 Main Street, Saco, ME 04072
4. Telephone: (207) 282-1032

B. Company

1. Name: Charter Communications Corporation
2. D/B/A: Time Warner Cable Northeast LLC
3. Contact: Local Franchising
4. Mailing Address: 400 Old County Road
   Rockland, ME 04841
5. Telephone: 800-833-2253
As required by 30-A M.R.S.A. §3010 (1)(B) and 47 CFR §76.309(c)(1)(v), Company shall maintain a 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: 118 Johnson Road, Portland, ME 04102
2. Toll-free Customer Service Number: 1-800-233-2253

C. Addresses

Such addresses 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
2. City: to the City contact at mailing address in Section 3

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 Saco as the Local Franchise Authority, hereby grants a non-exclusive, revocable cable television franchise to the Company authorizing and permitting the Company to own, construct, upgrade, install, operate and maintain a Cable Television System within the City of Saco.

A. Franchise Area

Company is hereby granted by the City, where it has the right to do so, the right and privilege to own, construct, reconstruct, erect, operate and maintain, in the City of Saco (herein called the “Franchise area” or “City of Saco”), in, upon, along, across, above, over and under the Rights of Way as defined in the Saco Cable Ordinance 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 a Cable 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 City 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 the City 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 the City 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 the City expressly reserves the right to grant other such franchise agreements in the City provided, however, that any such additional franchise shall not be on terms and conditions that are materially more favorable or less burdensome than those provided for herein.

D. Eminent Domain not Conferred

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

6. Term

This Franchise shall commence on ____2018 (the “Effective Date”), and shall expire fifteen (15) years thereafter, on ____2033, 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 and the City of Saco. 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 the City: (1) acknowledge and accept 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

For the purpose of this Franchise Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, words used in the present tense included the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory, except where noted. Where the following definitions are in conflict with definitions in law, it is the express intent that the definition in applicable Federal or State law shall take precedence.

1. "Access" or "Access Cablecasting": Cablecasting on the Cable System's access channels for the following purposes: (i) non-commercial and non-discriminatory use by the public; (ii) carriage of non-commercial educational programs or information; and (iii) non-commercial use for governmental purposes in accordance with the Cable Act.

2. "Access Channel(s)"; A video channel(s) which the Cable Operator shall make available to the City of Saco, without charge, for the purpose of transmitting programming by/or members of the public, City departments, boards and agencies, public schools, educational, institutional, non-profit and similar organizations in accordance with the Cable Act.

3. Affiliate or Affiliated Person: An entity which owns or controls, is owned or controlled by, or is under common ownership with a Company.

4. Area Outage: An area outage occurs when cable or 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.

5. Basic Cable 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 and (c) any additional video programming signals added to the basic tier by the Cable Operator in its sole discretion.

6. Broadcast: Over-the-air transmission by a radio or television station.


8. Cablecast: Programming (exclusive of Broadcast signals) carried on the Cable System.

9. Cable Programming Service: Any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment
used for the receipt of such video programming, other than (1) video programming carried on the Basic Service Tier, and (2) video programming offered on a pay-per-channel or pay-per-program basis.

10. **Cable 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.

11. **“Cable Operator”:** Any Person or Persons owning, controlling, operating, managing or leasing a Cable System within the City, pursuant to the Cable Ordinance of the City, and 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 the provisions of the City of Saco Cable Ordinance and under any applicable terms of a Franchise Agreement entered into pursuant to said Ordinance.

12. **Cable System:** Shall be defined in accordance with Section 602 of the Cable Act. This means a facility serving the City which is 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 cable service including video programming and which is provided to multiple subscribers within a head end service area. Such term does not include (a) a facility that serves only 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 this title, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

13. **Channel or Video Channel:** A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

14. **Company:** Any Person or Persons owning, controlling, operating, managing or leasing a Cable 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.

15. **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 Cable system in the City.

16. **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 Cable System.

17. **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 Saco.

18. **Downstream Channel:** A channel over which Signals travel from the Cable System Head end to an authorized recipient of programming.

19. **Downstream Transmission:** Signals traveling from the head-end to the Subscriber’s location.

20. **Drop or Cable Drop:** The interconnection between each home or building and the feeder cable of the Cable System.

21. **FCC:** The Federal Communications Commission or any successor agency.

22. **Feeder Cable:** The cable, connected to trunk cable, from which cable 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.
23. **Franchise Authority:** The City Council of the City of Saco.

24. **Franchise Agreement:** The non-exclusive Cable Television License to be granted to Company by this instrument to include the right, privilege and franchise to construct, operate and maintain a Cable System, and appurtenances or parts thereof, in the Streets, roads, alleys, and other Public Ways of the City.

25. **Gross Annual Revenue:** Revenue of any form or kind received by the Company from the carriage of Cable Service including, without limitation: the distribution of any Cable Service over the System; Basic Service monthly fees; all other Cable 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 Cable 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 Cable System for the carriage of advertising. It is the intention of the parties here to that Gross Annual Revenues shall only include such revenue of Affiliates and/or Persons relating to the provision of Cable Service over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to Cable services. Gross Annual Revenue shall be computed in accordance with Generally Accepted Accounting Principles.

26. **Head-end:** A company owned or leased facility through which Broadcast and cablecast signals are electronically acquired, translated, or modified for distribution over the Cable System.

27. **Interactive Service:** Any service that offers to Subscribers the capability of both transmitting and receiving Signals of any kind.

28. **Institutional Network or I-Net:** A communication network which is generally available only to municipal and educational institutions for non-commercial purposes.

29. **Leased Channel or Leased Access:** A video channel which the Licensee shall make available pursuant to Section 612 of the Cable Act.

30. **Origination Point:** A connection to the cable 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, also referred to in this Agreement as a return feed.

31. **Other Programming Service:** Information that Company may make available to all Subscribers generally.

32. **Outlet:** An interior receptacle, generally mounted in a wall, that connects a subscriber’s or user’s television set to the Cable System.

33. **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.

34. **Pay Cable or Premium Service:** Optional programming delivered for a fee or charge to Subscribers on a per-channel basis, or as a package of services.

35. **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or time basis.
36. **PEG Programming**: Public, Educational, and Governmental programming that is non-commercial, used in conjunction with Access Channels, support and facilities.

37. **Person**: Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual, or group of individuals acting in concert.

38. **Programming or Video Programming**: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

39. **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.

40. **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 Cable 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 Cable 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 Cable 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.

41. **Signal**: Any transmission of electromagnetic or optical energy which carries Video Programming from one location to another.

42. **State**: The State of Maine.

43. **Subheadend**: A building or shelter, usually smaller than a headend, which takes an already processed video signal from a headend and transmits it to a local community (or multiple communities), and is the middle point between the head end and the nodes that feed individual homes in a Cable System.

44. **Subscriber**: Any person, firm, corporation, or other entity who or which elects to subscribe to for any purpose, a Cable Service provided by the Company by means of, or in connection with, the Cable Television System.

45. **Subscriber Network**: The 750 MHz bi-directional-capable network to be owned and operated by the Company, over which Cable Service(s) can be transmitted to Subscribers.

46. **City**: The City of Saco organized and existing under the laws of the State of Maine and all territory within its existing and future territorial corporate limits.

47. **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.

48. **Two-way Capability**: The ability to transmit audio and video signals upstream and downstream on the Cable System.

49. **Upstream Channel**: A channel over which Signals travel from an origination point to a system distribution point.

50. **Upstream Transmission**: Signals traveling from origination points on the Cable System to a cable distribution point.
10. Construction and Maintenance

A. General Provisions

1. Quality

In the construction, reconstruction, maintenance and repair of the Cable System, Company shall ensure the Cable 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 Cable 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 the City.

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 the City 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 the City’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 the City’s Streets and Public Ways done by Company shall take place only after providing 48-hour notice to the City of Saco Public Works Department. In performing tree trimming, Company shall notify the abutting owner, or owner in possession, of the property (driveways) within ten business days. Company shall provide the City 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, the City 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, the City may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by the City.

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 Cable 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 as soon as practicable 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 the City (curbs and sidewalks) or the owner or tenant in possession of the property (driveways) within ten business days. Company shall provide the City 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, the City 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, the City may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by the City.
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.

7. **Emergency Power**

   The Cable System shall incorporate equipment capable of providing standby powering of the Headend and all Subheadends for a minimum of four hours.

B. **Cable System Location**

1. **Map of Physical Facilities**

   With reasonable advanced notice to Company, the City shall have the right to inspect street maps which identify the location of all trunk and feeder runs including underground. Said maps will be maintained by Company and available 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 the City, which approval shall not be unreasonably withheld, pursuant to the City’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 aerially 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 structures, and equipment, including poles and towers, erected, installed or maintained by Company within the City 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 the City’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 City for a municipal purpose.

   Company shall at all times comply with applicable state laws including but not limited to 35-A M.R.S.A. Chapter 25 (e.g., pole location permits) and 23 M.R.S.A. §2351(excavation permits).

4. **Construction by the City**

   If at any time during the term of this Franchise Agreement the City 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 the City, remove and relocate its poles, wires, cables, conduits,
malleable and other fixtures ("fixtures") at its own expense, and in each instance comply with the City’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 the City or other state authority.

6. **Temporary Relocations**

Company shall, on request of any Person holding a permit issued by the City 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. The City shall have the power at any time to order and require a Cable Operator to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that a Cable Operator, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or relocate the same at the sole cost and expense of the Cable Operator.

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 Cable Service shall be considered sufficient. During the rebuild of the Cable 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 the City 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 the City in writing of any significant interruption in the operation of the Cable 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 M.R.S.A. §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.

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. Upon request, Company shall provide the City 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.

b. If the Company elects to upgrade its system in the Franchise Area, the Company shall notify the City.

2. Operations

The Cable System shall be constructed, operated and maintained to comply with all applicable standards of the Federal Communications Commission.

D. Performance Testing

The City is entitled to review copies of FCC 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. Video Recording Device/Cable Compatibility

Company shall comply with applicable Federal Communication Commission standards for compatibility with consumer electronics equipment.

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 Cable System.

The amount of such insurance for liability for damage to property shall be on a replacement cost basis, no less than Three Million Dollars ($3,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than Three Million Dollars ($3,000,000.00) as to any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars ($5,000,000.00) in umbrella form. 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.

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.

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 of Company shall maintain adequate insurance coverage in the same amounts as listed in Section 12.A and shall name the City as an additional insured in all policies.
C. Indemnification of the City

Company hereby indemnifies and holds the City, its officers, agents, employees, members of boards and committees, with respect to the construction, installation, operation and maintenance of the Cable 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 or omission of Company, its agents or employees, in the construction, operation, maintenance, repair or service of its Cable 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 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, or 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

Nothing herein, including the indemnity provisions in sub-sections C and D and the procurement by Company of insurance policies meeting the requirements of this section 12, shall be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or limitation of liability as may be available to the City by law including, without limitation, the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101-8118.

3. Performance Bond

A. Performance Bond

Company shall obtain and maintain during the term of this Franchise Agreement, at its sole cost and expense, and file with City, 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 obligations under this Franchise Agreement. Such performance bond shall be in the amount of at least one hundred thousand dollars ($100,000).

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 the City 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 material 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
any construction or rebuild obligations or breaches any material provision of this Franchise Agreement. Neither the provisions of this Section, nor any bonds accepted by the City pursuant hereto, nor any damage recovered by the City thereunder, shall be construed to excuse unfaithful performance by the Cable Operator or limit the liability of the Cable Operator under this Ordinance or the Franchise Agreement for damages, either to the full amount of the bond or otherwise.

D. Replenishment

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

E. City 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 City shall have the right to inspect Company’s books and records during Normal Business Hours and on a non-disruptive basis, as are 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 the City 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 City. 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 Cable Service in the Franchise Area. The City shall treat any information disclosed by Company as confidential and shall only disclose it to employees, or the City’s agents bound by a confidentiality and non-disclosure agreement reasonably acceptable to Company, or as may be necessary to enforce the provisions hereof. Company shall not be required to provide Subscribers information in violation of Section 631 of the Communications Act, and 47 USC §551.

Company shall at all times after the Effective Date maintain:

1. 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.);

2. 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;

3. 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;

4. 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

5. a map showing the area of coverage for the provisioning of Cable Services.
The City reserves its right to copy books and records as allowed under FCC regulation.

B. Annual Report

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

1. Total miles of new cable plant installed;
2. Total number of service calls indicating number of dispatches and number repaired;
3. Listing of all charges and fees for cable or cable-related services;
4. All area outages, including date and duration;
5. Equipment or equivalent funding provided to the PEG channels(s) (if any);
6. 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 the City 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 City from enforcing any standards, if it is determined that Company has not materially complied with FCC standards, the City 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 City’s costs for tests of the performance of the Cable System shall only arise if the City’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 City, 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 City test, and the City agrees to retest, and the re-test confirms the validity of the initial City test. These charges are incidental to the enforcement of the Franchise; they do not limit any right the City may have to exercise any other remedy.

Municipal Benefits

15. Franchise Fee

Company shall provide a Franchise Fee to the City or its designee, equal to five percent (5%) of Company’s Gross Annual Revenues. Upon ninety (90) days’ notice to the Company, the City, by action of its City Council, may increase or decrease the Franchise Fee, up to a maximum of five percent (5%) of Company’s Gross Annual Revenues.

A. Payment

Company shall pay the Franchise Fee to the City on a quarterly basis, no later than forty-five (45) 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 forty-five (45) days after the end of that quarter. 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.

The City shall be furnished a statement with each payment, prepared by a financial representative of the Cable Operator, and verified as correct, reflecting the total amount of Gross Annual Revenues generated by all activities within the City, and the above charges, deductions and computations, for the three month payment period covered by the payment. The Cable Operator shall prepare and maintain financial information and records in accordance with generally accepted accounting principles and generally accepted auditing standards in the cable television industry.
At City’s option, the information provided by the Company shall be subject to audit by an outside firm of certified public accountants selected by City. Any such audit shall be at City’s expense except unless such audit shall disclose an underpayment of any franchise fees of more than four percent (4%) payable for the period of the audit, in which event the Company shall reimburse City for the expense of such audit. Repeated failure to pay the franchise fee on a timely basis is a violation of a material provision of the Franchise Agreement for purposes of the termination provisions of this Franchise.

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<tr>
<th>Due Date</th>
<th>Quarter</th>
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<tbody>
<tr>
<td>May 15</td>
<td>First (January 1 – March 31)</td>
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<tr>
<td>August 15</td>
<td>Second (April 1 – June 30)</td>
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<tr>
<td>November 15</td>
<td>Third (July 1 – September 30)</td>
</tr>
<tr>
<td>February 15</td>
<td>Fourth (October 1 – December 31)</td>
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B. Late Payments

In the event that the fees herein required are not tendered on or before the dates fixed in Section 15A above, interest shall accrue on any and all overdue franchise fees at the rate of twelve percent (12%) simple interest per annum.

C. Acceptance of Payment

Acceptance of payment by the City shall not be construed as accord that amount paid is the correct amount. The City reserves its rights to inspect relevant books and seek any underpayments due. If the City has not begun process to challenge or audit payment of franchise fee within 36 months of receipt of final annual payment, and breakdowns provided pursuant to subsection A are certified, payment is deemed accurate. If the breakdowns provided pursuant to subsection A are not certified, the time frame hereunder is 48 months.

16. Public, Educational and Governmental Access (PEG)

A. Use of PEG Access Channel

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

B. Channels

Company shall continue to provide the City with two shared channels for public, educational and governmental (“PEG”) access programming. A third channel shall be available, subject to the provisions herein, before the tenth (10) year anniversary of the effective date of this Renewal Franchise. In order to obtain said third Access Channel, the City of Saco shall provide written notice to the Company that the existing Access Channel(s) have been substantially programmed with non-duplicated, non-character generated programming of community interest for six (6) hours per day, five (5) days per week, during the previous three (3) months, and that there is a need for a third Access Channel in order to provide additional programming for the benefit of City subscribers. The City of Saco shall provide documentation to verify such programming, including, but not be limited to, program logs that list (i) program titles, (ii) length of program and (iii) whether the program is original or repeat. In the notification to the Company, the City of Saco shall state, in good faith, that such a third Access Channel (i) will be substantially programmed with non-duplicated, non-character generated programming and (ii) is necessary to accomplish the stated Access Programming goals of the City. Such a third Access Channel will not be used simply to repeat Access Programming that is already carried on the other Access Channels, but will be used to carry substantially new Access Programming. The City of Saco agrees that such a third Access Channel shall not be utilized solely to carry character-generated messages; provided, however, that the City may use said third Access Channel to carry character-generated messages along with other new Access Programming.

All PEG access Channels shall at all times be accessible to all of Franchisee’s subscribers in the City of Saco.
To facilitate live programming within the City of Saco, Company shall install and maintain video and audio origination points at the public buildings and public locations as designated below:

1. Saco City Office 300 Main Street
2. Thornton Academy 438 Main Street
3. Saco Parks and Recreation
4. (other)

C. Exclusive Use, Channel Designations and Interconnectivity

1. City, or its designee(s), shall have the exclusive use of the PEG Access Channels. Use of PEG Access Channel shall be for locally produced, non-commercial purposes and subject to such rules as the City, or its designee(s), may adopt.

2. There shall be no charge by Company for the use of the PEG Access Channels.

3. Company shall not appropriate PEG programming for use by company on any other channel without approval by the PEG originating source.

4. Unless otherwise agreed to by the parties, PEG channels shall be carried on the basic tier.

5. PEG channels shall not be separated numerically from other local broadcast channels carried on the cable operators’ basic cable or video service offerings or tiers and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator, unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the PEG Originator, unless the change is required by federal law. This requirement shall be retroactive such that any PEG channels that have been moved without the consent of the PEG Originator will be restored to their original location and number.

6. Company shall include appropriate designation of the City’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 City’s PEG Access Channels designation in a similar manner as other channels.

7. Within 90 days of request by the City, Company shall install the video return feed connection and transmission equipment from the Saco City Hall to the designated PEG Access provider to permit the transmission of the PEG programming on the PEG channel to (at a minimum) the cable subscribers in the City of Saco. In the event of a relocation of the facilities, Company shall provide a connection to the relocated facility. Provided that Company has existing unutilized fiber available and the connection involves a standard aerial drop of 150 feet.

D. PEG Facilities and Equipment Support:

No later than 90 days from the execution of this Franchise, Company shall provide to the City of Saco a PEG capital grant in the amount of $100,617.00 to be utilized by the City of Saco to purchase Public Educational and Governmental access facilities and equipment determined by the parties during renewal discussions. An additional $52,000.00 shall be provided to the City at the onset of years 5, 10 and 15. Such amounts, to the extent utilized in accordance with the provisions of federal law, are in addition to and may not be counted as an offset from any Franchise Fee imposed on Company.

E. Minimum PEG Signal Quality and Transmission Standards

The PEG access signal and channel shall meet FCC Technical Standards. PEG channels shall be afforded the same quality format as provided to other local broadcast channels on the basic cable or video service offerings or tiers. That is, if a high definition or current technology signal is sent to the cable operator by the PEG Originator, the cable operator shall not diminish, down convert or otherwise tamper with the signal quality or format provided to them. Said channel signals as delivered
to the subscriber shall be of equivalent quality and format to the primary local broadcast signals carried on the system if provided as such by the PEG Originator. All cable television operators shall simultaneously carry each PEG access channel in both a high definition format and a standard digital format in the same manner as the primary local broadcast channels are provided, unless prohibited by federal law.

With respect to any new or existing PEG channel as defined in this franchise and subject to 30-A MRSA §3010 (5), and 47 U.S.C. §522 Definitions, the equipment associated with the interconnection of PEG transmission facilities between a PEG facility and the Franchisee’s head end within the Franchisee’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 and maintenance thereof shall be borne by the Company.

F. PEG Promotion

In the event that the Company implements local advertising sales on Channels received by Subscribers within the City, the City or its designee(s) may want to seek time for non-commercial PEG Access program or service promotional spots on said channels. Nothing in this section shall be construed to require the Company to provide access to promotional spots at no cost to the City or its designee(s).

17. Build-out

A. Area To Be Served

1. Company shall make Cable Service available to every residential dwelling unit within the City where the minimum density is at least fifteen (15) year round single family residences per aerial mile 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 Cable Service at standard installation rates to all new homes or previously unserved homes located within 150 aerial feet of Company’s Distribution Cable. For non-Standard Installations (those exceeding 150 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.

2. Regardless of the density requirements outlined above, Company shall provide a cost-sharing arrangement as follows. On the request of a resident desiring service, Company shall prepare an engineering survey and cost analysis to determine the cost of plant extension required to provide service to the subscriber. If a request for extension of service into a residential area requires the construction of cable plant that does not pass at least twenty homes per mile (aerial), Company and those residents requesting cable services will each bear their proportionate share of construction costs. For example, if there are five single family homes per mile (aerial) who agree to subscribe to cable service, Company shall share one-half of the construction cost and the remaining cost will be shared equally among the residents requesting cable services. Company may require advance payment of the customer pro-rata cost prior to commencing construction.

3. Installation costs shall conform with the Cable Act. Any dwelling unit within an aerial 150 feet of the Trunk and Distribution Cable shall be entitled to a Standard Installation rate in accordance with applicable federal and state laws. Underground installations are considered non-standard installations. All non-standard installations shall be provided at a rate established by the Company in accordance with applicable federal and state laws.

4. 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 City, 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.

5. Additional roads to be serviced by virtue of the execution of this Franchise are:
   a. Specify
   b. etc

18. **Cable Service to Municipal Buildings**

Company shall provide and maintain one cable drop, including standard installation of basic cable service to municipally owned and occupied facilities serviceable by a standard aerial drop located within 150 feet of Company’s distribution system and capable of an aerial drop. The Municipality shall be responsible for equipment charges, if any.

The following buildings are required to have courtesy cable TV drops.

- City Office; 300 Main Street
- Thornton Academy: 438 Main St.
- Station 1 Fire; (address)
- Station 2 Fire; (address)
- EMS; (Address)
- Public Works; (Address)
- (Add other municipal buildings as required)

**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 Cable 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 City acknowledges that certain costs of Public, Educational and Governmental (“PEG”) Access and other Franchise imposed costs, at the Company’s option may be passed through to Subscribers in accordance with federal law.

   **B. Basic Cable Service**

   Company shall make available a Basic Cable 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 M.R.S.A. §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 (b) and 47 CFR §76.1603 the City 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 shall comply with all applicable federal and state privacy laws and regulations, including 47 USC §551 and regulations adopted pursuant thereto and 30-A M.R.S.A. §3010.

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 Cable Service or other service to a Subscriber, and annually thereafter to all Cable 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.

21.  Unauthorized Connections/Continuity of Service

It shall be the right of all Subscribers to receive Cable Service insofar as their financial and other obligations to the Company are honored, provided that the Company shall have no obligation to provide Cable Service to any Person who, or which the Company has a reasonable basis to believe, is using an unauthorized Converter or is otherwise obtaining Cable 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 M.R.S.A. §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 City or its designee(s) shall be responsible for receiving and acting upon such subscriber complaints and/or inquiries, as follows:
Upon the written request of the City or its designee(s), the Company shall, within ten (10) business days after receiving such request, send a written report to the City 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.

Should a subscriber have an unresolved complaint regarding cable television operations, the subscriber shall be entitled to file his or her complaint with the City 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 City 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.

Complaint Records: Company shall maintain records of all oral and written complaints regarding quality of service, equipment malfunctions, billing procedure, and similar matters that requires further action on the part of the Company. Such records shall show the exact date and time of receipt of all such customer complaints, identifying the subscriber, the nature of the complaint and the exact time action was taken by the Company in response thereto, together with a description of such action. Company shall also maintain a record of all whole or partial system outages, including the date, approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records shall be available at the Company's local office for at least two (2) years, for inspection by City as it may from time to time request, during regular business hours and upon reasonable notice, subject to any privacy restrictions imposed by law. Company shall, within ten (10) days after receiving a written request therefore, send a written report to City with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

C. Complaint Policy

Company shall provide the City 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. Credits and refunds, notice on subscriber bills

Pursuant to 30-A M.R.S.A. §3010 (2-A), “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. 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”.

24. Transfers

A. Company’s Right to Transfer

Neither this Franchise Agreement, nor any rights or obligations of the Company in or pursuant to this Franchise Agreement or the Cable System shall be transferred in part or as a whole, by assignment, trust, lease, sublease, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person, nor shall any change in control of the Company or the Cable System occur, either by any act of the Company or by any parent company of the Company, by operation of law or otherwise, in each such case without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be expressed in writing, subject to reasonable and lawful conditions, including, but not limited to, curing any Franchise non-compliance. Any
assignment or transfer without such prior written consent or without “deemed consent” under applicable federal law shall constitute a violation of a material provision of any Franchise Agreement.

No consent will be required for a transfer in trust, mortgage or hypothecation to secure an indebtedness, provided that such transaction will not in any respect prevent the Company or any successor from complying with all of its obligations under this Franchise Agreement, but the exercise of any right to foreclose or seize such pledged assets shall be subject to the provisions of this paragraph. No transfer of control will be deemed to have taken place if the transfer is to an entity under common control with the Company provided such entity has equal or greater financial resources than the transferor and provided the transfer does not involve a change in the management or day to day operations of the Company.

B. City’s Right to Approve

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

For purposes of this Section, any sale, assignment or any other disposition of a twenty percent (20%) ownership interest of the Company or parent company of the Company to any one Person or group of Persons acting in concert, in one transaction or a series of related transactions, shall be deemed to be a change of control of the Franchisee. The word “control” as used in this section is not limited to major stockholders but includes actual working control in whatever manner exercised. A transfer or assignment of a Franchise or control thereof between entities under common control, 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 City

Company shall provide the City with reasonable Notice of the proposed transfer. The contents of the Notice shall include:

1. An original and three (3) copies of its FCC Form 394 (or such other or successor form used to request consent to any such Transfer or assignment), which form shall fully describe the action or proposed action and clearly state the basis on which the Transfer or assignment should be approved. The Company shall include with the application complete responses to the informational requests attached to this Franchise Agreement as Exhibit A. The request for approval of Transfer or assignment shall also contain all reasonably appropriate documentation and such additional information as the City may reasonably require, provided that to the extent the City requests additional information other than as described in Exhibit A, the City shall issue such request to the Company within thirty (30) days of receipt of the application, and the Company shall respond to such requests for additional information within thirty (30) days. The Transfer or assignment form shall be signed by the Company and by the proposed transferee or by its representative, evidence of whose authority shall be submitted with such petition.

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

The City shall have 120 days from receipt of the Notice to take action on the request for transfer. The City need not, but may, act to approve the transfer. If the City does not act within 120 days of receipt of Notice, the transfer shall be deemed approved.

E. Public Hearing

The City’s consent to transfer shall be given only after a public hearing, if such a hearing is deemed necessary by either the City or the transferee, to consider the written request for Transfer. The City shall complete review of the request for Transfer and make a decision thereon no later than one hundred twenty (120)
days after receipt of the request for Transfer. If the City fails to render a final decision on such request within said 120 days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time. In the event the City makes a reasonable request for additional information and the Company fails to provide responses within thirty (30) days of receipt of such request, the City’s deadline to make a decision on the transfer request, and the date by which such transfer request is deemed granted, shall be thirty (30) days after the City’s receipt of such responses. The City may conduct a public hearing on the proposed transfer no later than 90 days after the receipt of the notice of transfer.

F. City Consent

For purposes of determining whether it shall consent to any such change of control and ownership, the City shall inquire into the legal, financial, management and technical qualifications of the prospective controlling or owning Person, and including, but not limited to, such Person's cable-related experience and service record, if any, in other communities, the changes, if any, it intends to make in the operations, maintenance, technology and services of the Cable System serving Saco, any and all matters relative to the ability and likelihood of such Person adhering to all of the terms and conditions of this Franchise Agreement, and whether the proposed change of control and ownership is in the public interest.

G. Transferee Obligations

Any proposed controlling or owning Person or transferee approved by the City shall be subject to all of the terms and conditions contained in the Franchise Agreement, including curing any Franchise non-compliance.

H. Costs

The Company shall reimburse the City for its reasonable expenses (including reasonable attorney’s fees) incurred as a result of the reviewing and acting upon the Company’s request to transfer. The Company’s liability for reimbursing the City shall not exceed Two Thousand and Five Hundred Dollars ($2,500).

I. No Waiver or Release

The consent or approval of the City to any Transfer of the Cable System or this Franchise Agreement granted to the Company shall not constitute a waiver or release of the rights of the City 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 the City 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. The City may assess reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the City in acting upon applications for renewal Franchise agreements.

27. Revocation and Termination

A. Right to Revoke or Terminate

In addition to all other rights and powers of the City by virtue of this Franchise Agreement and after notice and opportunity to cure pursuant to section 27B, the City 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 the City made pursuant thereto where such violation remains uncured for a period of thirty (30) days following written notice to Company by the City 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 the City; or

3. Fails to provide or maintain in full force and effect the insurance coverages and the performance bond as required by the City Cable Ordinance and the terms of the Franchise Agreement, where such violation remains uncured for a period of thirty (30) days or,

4. Arbitrarily ceases to provide service over the Cable 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 City.

B. Procedures to Revoke or Terminate

1. If the condition(s) giving rise to the City’s termination of the Franchise Agreement are not cured within the time frames set forth in Section 27.A, the Agreement shall be terminated and the City may initiate the process for revoking the Franchise under the City of Saco Cable Television Ordinance.

28. Abandonment

If company shall cease providing service in the City pursuant to 30-A M.R.S.A. §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 City may deem any property not removed as having been abandoned. Upon written request of the Company, the City may waive this requirement of removal 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 Cable 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 may be amended in the future by written agreement of both parties to reflect changed circumstances, including changes in federal or state law. 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 City or 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 City’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 City, nor any delay on the part of the City or Company in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or Company or acquiescence in the actions of the Company or the City 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 City 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.
5. The Company has the financial and technical capability to carry out the obligations set forth in this Franchise Agreement.

Execution

Signatures:

Date: ____, 2018

CITY OF SACO, MAINE

By: ____________________________

By: ____________________________

By: ____________________________

Date: ____, 2018

TIME WARNER CABLE NORTHEAST LLC

By: Mark FitzPatrick
SVP, CFO Residential Services
EXHIBIT A

INFORMATION TO BE PROVIDED WITH ANY FUTURE REQUESTS FOR APPROVALS OF SALES, TRANSFERS, CHANGES IN CONTROL

1. Identify any circumstances in the past ten years when Buyer/Transferee was unable to pay any of its debts when due including the date, creditor, matter at issue, amount and current status.

2. Provide evidence of Buyer/Transferee’s authority to conduct business in Maine, including a copy of all filings made to obtain such authority.

3. Describe in detail the ownership and management structure of the Seller/Transferor’s Maine cable systems upon completion of the transaction with Buyer/Transferee. Provide an ownership flowchart that identifies the legal entities that will be in the chain of ownership of the Buyer/Transferee upon completion of the transaction, including the nature of each entity and who will own each such entity.

4. Identify all cable systems currently owned, managed or operated by Buyer/Transferee, including the locations and numbers of subscribers for each, and a list of the name and address of all municipal franchise authorities with a contact person with each franchise authority.

5. Describe in detail Buyer/Transferee’s plans for any rebuilds or upgrades of the cable system serving Saco after the closing, including (a) the specific time schedule for the rebuild or upgrade (b) the anticipated cost of the rebuild or upgrade, (c) a detailed description of the nature of the rebuild or upgrade, and (d) a detailed description of the architecture of the rebuilt system.

6. Provide a copy of the anticipated complete rate schedules and service offerings to be offered to subscribers in Saco by Buyer/Transferee after the closing of the transaction.

7. Provide a copy of any Buyer/Transferee customer service standards, repair or maintenance policies, complaint resolution policies, or other similar customer policies or protocols that will be in Saco after acquisition by Buyer/Transferee.

8. Describe in detail any and all planned management changes, operational changes, technical changes, changes to customer service functions (including changes in the telephone, MIS and billing systems), and changes in engineering and technical support, for the cable system serving Saco.


G. BUDGET AMENDMENT #2 CAMP ELLIS JETTY

The Saco Bay Erosion Working Group has been meeting for the past year to advocate for a resolution to the Camp Ellis Jetty and the expansion of a spur. As a part of its draft report in July, the District Office for the Army Corps of Engineers has proposed a plan to add a perpendicular 750 foot spur to the Jetty and require the City of Saco to maintain the structure and provide sand nourishment going forward (known as Option 6).

The City does not believe this is the best plan for protecting Camp Ellis for the long-term and that another project identified in the report, Option 25A could be afforded with the same allocation of $26.9 million outlined in the 2007 Water Resource Development Act (WRDA) from technical review by a third party.

This $25,000 budget amendment would provide resources to further analyze and price out options from the 2006 Wood Hole Group report and further review the federal law language that would need to be changed to provide the best possible outcome for Saco. The money will be appropriated into its own special revenue fund dedicated to Section 111 Camp Ellis Jetty Erosion Mitigation to ensure unused funds are available without continuing Council Motion in future years.

Councilor Copeland moved, Councilor Minthorn seconded “Be it Ordered that City Council approves the second and final reading of ‘Budget Amendment #2 FY2019.’” Further move to approve the order. The motion passed with six (6) yeas.
VIII. ADMINISTRATIVE UPDATE

Request for Proposals
Council recently updated the City’s Purchasing Policy (July 23, 2018). In that document, it gave department the opportunity to publicly announce RFP’s through the administrative update (E.5.d.(i.3) on page 8).

Zoning Ordinance Revision
The City of Saco is soliciting proposals for the assessment, revision, and rewriting of Saco’s existing Zoning and Subdivision Ordinances. Proposals must include responses to all requirements contained within this RFP in a sealed envelope marked “Zoning Ordinance Revision”. Proposals will be accepted until 11:00 AM on Friday, October 19, 2018 at the Finance Office, Attn: Denise Clavette at Saco City Hall, located at 300 Mair Street, Saco, Maine, 04072. There will be a public opening of all proposals received at that time.

Any questions regarding the project specifications should be directed to Denise Clavette, Planning and Development Director, by emailing DClavette@sacomaine.org. Link to the RFP

Marketing and Communications

Website
In order to address some of the feedback we have received regarding the website, we are moving forward with a redesign. Our primary focus during this process will be threefold. Firstly, we have heard that our website is difficult to navigate. We will create a more intuitive search function and organize the site differently to help improve the customer service experience. As part of this, Emily will be scrubbing old pages and working with departments to update content. Secondly, we will redesign the site to be fully ADA compliant. There are certain standards and criteria we must meet to satisfy this. Lastly, we will be adding the SSL Website Security Certificate to make sure we are considered a secure site. As part of this redesign, the only component that comes at an additional cost is the security certificate. Our contract with Revize will extend to October of 2022. This redesign process is expected to take about 15 weeks.
Charter Amendment Videos
We have partnered with Kenneally and Company to produce six informational videos about the proposed charter amendments. These are in the editing stage and will be ready for distribution congruent with the availability of absentee ballots. We have also issued a Request for Proposals for Video Production Support. This will enable Emily to move forward with a departmental video series as well as some Economic Development related materials. These proposals are due Wednesday, and staff will have a decision by the end of the week.

Public Works

Public Meeting
Last Thursday evening 9/27, nearly every seat in the auditorium was occupied when the Saco Route 112/Exit 36 area transportation study public meeting number two took place. Including the update from the engineers, many concerns were raised by residents about traffic and continued housing development. The term housing moratorium was used a bit and I would want to caution the Council not to move in that direction too quickly. Staff intend to bring a suggestion forward at a future Council meeting – ideally at the December workshop. This would create a window to allow the completion of this study but also assist in the completion of our rezoning efforts.

Facilities

City Hall Renovations
Our next major renovation will occur with the Finance team on the first floor. It’s been on hold a bit because of the printer change out and the decision to get a workflow assessment completed before any structural changes were made. This assessment is taking place this week.

Staffing Shifts
Human Resources moved out to the City Hall Annex a few weeks ago; the space previously occupied by HR has become the Finance Director’s office, and the Director of Planning and Development has moved into that office here on the second floor to make room for our new Economic Development Specialist Emily Cole Prescott who started at the end of last week.

These changes should have no impact on the general public.

After the Finance team renovations are complete, I’ll be asking Facilities to begin working on the other half of the Annex to accommodate the planning and development staff for the longer term.

City Hall departments have begun working through the mounts of paper to determine what HAS to be retained, what can be retained electronically, and what can be disposed of. I am hoping the number of permits and the demands on staff are somewhat reduced this winter in order to free up time to work on this. I fully understand and appreciate how much work everyone has put in this year and if the demand does not decrease, I will be coming to Council to request additional resources to hire temps to assist in this effort.

Anything that remains will find its new home on the stage in the auditorium.

City Hall Parking Lot:

Lastly, working with the Police department, HR, and Finance, we’ll be looking to make the City Hall parking lot employee only M-F 7:30 – 5pm. This change will require a vote from the Traffic Safety Committee. In the interim, I’ve asked the Police Chief to approve a temporary placement of a sign and for Finance and HR to work out a process and placard system going forward.

Long-term? I’ll be asking the Economic Development team to work with Saco Main Street and the downtown businesses to identify all of the parking agreements and see if the demand for a parking garage could become viable in the coming years. Any future housing development in the downtown may put as over that threshold.
Information Technology

Auditorium Audio

Concerns were raised during the School Board meeting last Wednesday about the quality of the sound system here in the auditorium. I spoke to our IT staff on Thursday and gathered some information that I’d like to share.

1. There are three devices to support persons with hearing disabilities – they were tested this morning and are operational.
2. The audio system works very well as long as the person in the booth recording the meetings is actively managing volume controls. When the city’s IT department records meetings, staff are actively listening and when there are low talkers those inputs are adjusted for output.
3. Crackling and popping is output on the speakers when volumes are not adjusted for louder speakers.
4. Echo in the chambers is very difficult to manage as we would have to add sound dampening to the walls to absorb this; however, it absorbs all sound not just echo which would then cause audio to sound lower.
5. The speakers ideally would not be facing the microphones they are picking up audio from as that creates the loop and feedback. So the speakers are aimed towards the audience.

The hearing impaired devices have been available to anyone; however, it seems the headphones for the devices were missing and have now been ordered to be replaced.

➢ Councilor Johnston – I think that an audio induction loop system maybe better. It works with existing hearing devices. This would amplify the sound around the room for people with hearing devices. Each hearing aid is tuned to the specific hearing loss the individual has to whatever those sound waves have. Not every person just has hearing loss. They have certain wave lengths and this device works with the device they have, and they are more likely to use it because often times people with hearing aids feel stupid wearing the headphones.
➢ Councilor Minthorn – Worthy to note that at the last meeting with our joint session that the microphones were not set up at the tables, so we really weren’t utilizing the sound system at all like we should have been. I believe that was the bulk of the issue that evening. Mayor Lovell stated the School Board said their issue occurred during the meeting. So, that people could hear others around the table. The School Board members Stan Mozden who was addressing does wear hearing aids and he was speaking about the impact for someone who does wear hearing aids and has a problem with the public addressing the system using the microphones.
Councilor Minthorn noted that the microphones should be used during workshops as well as the meetings. If nothing more than to have the sound amplified throughout the building for us up here and for everyone else.

XI. COUNCIL DISCUSSION AND COMMENT
➢ Councilor Archer – As Council Liaison to the Chamber of Commerce I just wanted to give an update on the Executive Director position. We hired Jim Labelle. His experience is that he was Vice President of fish sales. It will be interesting to see that when Ready Seafood comes onboard our chamber president has many years selling seafood. His background is marketing and branding, so the chamber should see good things to
➢ Councilor Gay - Will there be a workshop on the fee for 3 cubic yards on the transfer station? Mayor Lovell noted that the city is not looking at changing it at this point. We wouldn’t be changing the fee schedule until we get to next year’s budget.
➢ Councilor Doyle – In light of all the good work that Saco Main Street does I just want to put a plug out for October 20th Pumpkin Harvest Festival. Come on down and enjoy great times with some of your fellow residents.
➢ Councilor Copeland – We had some people talking today about Saco Bay Trails, Donna Ravn and Andrew Holbrook. Saco Bay Trails is a gem of an organization and I wanted to encourage people to join and participate. They are having a lull right now. It is important that we support them because they are integral to the outdoors enjoy and health of our community and our trails. Their family membership $25, very low, individual $15 and students $10 and I would encourage people to go for a $500 lifetime membership. Family level and above you get a free trail guide. Website: sacobaytrails.org.
X. EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Doyle seconded “Be it Ordered that the City Council enter into executive session, Pursuant to [M.R.S.A. 36, Chapter 105, Subchapter 8, §841 (2)] (E) Hardship or Poverty. The motion passed with six (6) yeas. Time: 8:24 p.m.

XI. REPORT FROM EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Doyle seconded to come out of Executive Session at 8:37 p.m. The motion passed with six (6) yeas.

Mayor Lovell, all the Councilors and the City Administrator were present.

There was no report this evening.

XII. ADJOURNMENT

Councilor Minthorn moved, Councilor Copeland seconded to adjourn the meeting at 8:37 p.m. The motion passed with six (6) yeas.

Attest:_____________________________________

Michele L. Hughes, City Clerk