# SERVICES COMMITTEE MEETING

**Monday, February 12, 2018**

**6:00 pm**

**HAMPDEN TOWN OFFICE**

## A G E N D A

1. MINUTES

    a. January 8, 2018

2. COMMITTEE APPLICATIONS

3. OLD BUSINESS

    a. Update on Kiwanis Civic Center, and anticipated proposal to extend term of modified lease for FY19
    b. Update from February 6 meeting of the Penobscot Cable Consortium regarding regional efforts to secure updated Cable Franchise Agreement with Spectrum
    c. Update on process to engage consultant for engineering and permitting (DEP and local) for work on Lura Hoit Pool and Municipal Building Site

4. NEW BUSINESS

5. PUBLIC AND STAFF COMMENTS

6. COMMITTEE MEMBER COMMENTS

# SERVICES COMMITTEE MEETING

**Monday, January 8, 2018**

**MINUTES – DRAFT**

Attending:

*Councilor Dennis Marble, Chair*
*Mayor Ivan McPike*
*Councilor Terry McAvoy*
*Councilor Mark Cormier*
*Councilor David Ryder*
*Councilor Stephen Wilde*
*Town Manager Angus Jennings*

*Shelley Abbott, Rec Director*
*Sean Currier, DPW Director*
*Steve Brown, Rec Committee*
*Jim Dyer, Rec Committee*
*Jane Jarvi, Rec Committee*

*Chairman Marble called the meeting to order at 6 p.m.*

1. **MINUTES**

   a. **December 11, 2017** – *Motion by Councilor McAvoy seconded by Mayor McPike to approve the meeting minutes. Approved 5-0.*

2. **COMMITTEE APPLICATIONS**

   a. **David Barrett – Re-appointment to Library Board of Trustees** – *Motion by Mayor McPike seconded by Councilor McAvoy to recommend Council reappointment. Approved 5-0.*

3. **OLD BUSINESS**

   a. **Review of draft Request for Qualifications to engage consultant for engineering and (DEP and local) permitting for work on Lura Hoit Pool and Municipal Building Site** – *Manager Jennings reported that there is a draft RFP in the meeting packet, and that he is looking to verify that this is the requested scope of work prior to issuing the RFP. Chairman Marble asked if this needed to be referred to Council. Manager Jennings said no, he could issue the RFP without Council or Committee recommendation but, because he knows there is disagreement about how best to proceed, he wants to ensure that there is a majority of Councilors willing to fund the work prior to issuing the RFP so as not to waste vendors' time in preparing proposals.*

      *Councilor Wilde asked for clarification about the scope and Manager Jennings said it is to bring the full site build-out through DEP permitting. Councilor Wilde noted the October 2017 Committee vote to proceed only with permitting the parking expansion, and said that motion should be*

*rescinded or there will be two competing motions. There was discussion about the procedural requirements of rescinding a vote vs. reconsidering a vote. Councilor McAvoy said it seems like we keep voting until someone gets the result they want. Chairman Marble said he would not be opposed to proceeding only with Phase 1 but he thinks it would be more cost efficient to permit the whole site.*

*Councilor Wilde said that, once permitted by DEP, work would need to proceed within 3 years, which could be extended to 7 years. He said if there is not money to build the site in that time we would be wasting money on permitting. He noted that there are other projects in town that are falling behind, such as Schoolhouse Lane, that he thinks have to come first.*

*Chairman Marble noted that there is money set aside in reserve for permitting. Mayor McPike said it appears you think we're trying to build fields. Councilor Wilde said why get permitting for fields if there is no interest to build. Councilor Ryder said we can't bring in a logger to cut trees and build a field without DEP approval, and that all we're looking for is a price on Phase 1. He noted that a price could be proposed and the Council could still decide not to proceed.*

*Councilor Wilde said that if trees are cut it'll be an eyesore and will create pressure to do something. He said he's trying to do things the right way by looking at it in phases.*

*Councilor McAvoy noted that the proposed price from Woodard & Curran to just permit and design the parking was high, so what makes us think the price will be less if we permit the whole site? Councilor Ryder said that small engineering firms didn't put in for the first one because the scope was too broad.*

*Chairman Marble invited comments on the draft RFP. Councilor Ryder asked why we're seeking construction drawings? Manager Jennings said he included this just for the parking since that is the only piece that would be expected to proceed to construction initially, and that receiving that cost will ensure that the Council will not be surprised when the time comes that there are additional engineering costs after permitting is complete. He said he would not object to leaving this out of the RFP as long as people understand that these would be additional soft costs. Councilor Ryder said he is trying to get the community involved (such as through donated labor and materials) to save money.*

*Jane Jarvi said that DEP permitting is needed for any future use of the site, and that we need to take the long view. If money has been appropriated for permitting, we should proceed with permitting.*

*Jim Dyer said that it doesn't cost money to invite firms to provide estimates. He said that progress on this effort has been incredibly slow and it seems like the Councilors are dragging their feet.*

*Councilor Wilde said that the motion made in October (to permit parking only) was not ignoring the fields, but was because he didn't see funds for fields within the 3 year DEP permit window. He said it was supposed to address parking and stormwater, while specifically taking into account potential future fields.*

*Manager Jennings noted that the need to take into account potential future fields would have a cost impact, and that part of W&C's proposed cost was to definitively establish the sub-surface depth of the pipeline so that could be taken into account in overall site design. He said this is one example of why he struggled with taking detail out of the RFP – since if this work, for instance, is valuable, it should be communicated to all potential bidders so no one is disadvantaged.*

*Councilor Ryder said that if we get it permitted we've done our job, and that it's up to a future Council to build it or not.*

*Councilor McAvoy said he didn't recall the Rec Director saying that we need more fields, and that the need has not been established. Director Abbott said that we can accommodate today's programs, but the Rec programs are at their limit and cannot grow, whether because of increase in demand or future population growth. Manager Jennings said that the Rec Director is making the Councilors aware of constraints based on existing facilities. He said that whether the goal is to expand recreational programming or not is up to the Council, but that the Council must act based on complete information including understanding that, if there is no expansion, participation in current programs would need to be limited if there is increased demand.*

*Councilor McAvoy said we should not be providing services for residents of other towns. Mayor McPike said that his neighbor's kids currently go to Bangor to play soccer because there aren't opportunities in their age group here.*

*Jane Jarvi said that the Rec programming is not meeting the needs of Hampden residents, and that participation is limited by a lack of parking. There is no programming after Grade 5 in the Town of Hampden. There have been requests for additional programming that have been turned down because there are no facilities or parking. There is no adult soccer programming. Town residents place pressure on the Rec Department.*

*Councilor Wilde said when he grew up he did rec programs at the high school, and asked why we can't use the facilities across the street, noting that these are used by the travel soccer group.*

*Chairman Marble said that the conversation was now extending beyond the scope of what is before the Committee, and said we should take action on the draft RFP.*

*Mayor McPike said we budgeted the money, but Councilor Cormier said that doesn't mean we need to spend the money.*

*Mayor McPike made a motion, seconded by Councilor Ryder, to support issuance of the RFP.*

*Councilor McAvoy said he would vote no because he thinks that full build of the site – with parking and fields everywhere – is right where we don't need to be. Mayor McPike asked why that is the wrong place to be. A vote was taken and the vote was 3-3 with Councilors Cormier, McAvoy and Wilde opposed. The motion failed for lack of a majority.*

*Jim Dyer said we just spent an hour debating a direction that was already set last month. Jane Jarvi said that the Council Rules don't allow non Committee members to vote at the Committee level. Chairman Marble said he supports moving forward but doesn't agree with doing so based on a procedural issue. He said the Council Rules should be looked at with the Town Manager and Town Clerk but Councilor McAvoy said he doesn't see what the Town Manager or Town Clerk have to do with the Council Rules.*

*Chairman Marble said that, for tonight, we're done with this issue.*

## 4. NEW BUSINESS

**a. Discussion of potential non-binding referendum regarding recreational fields and facilities; whether to propose, and if so when?** *– Chairman Marble said that the goal of this item is to talk about how we can determine how the public feels. Councilor McAvoy said this issue is nowhere near close to ready for public referendum, and that prior surveys have been completed and the prior Councils have ignored the results.*

*Mayor McPike said he spoke to several residents and they all said that there are not enough fields in town. Councilor Ryder said that he'd like to see the survey that was done 3 years ago and Manager Jennings said the results of that and other surveys are all posted to the project website (www.hampdenmaine.gov/recplanning). There was discussion about how best to get a good response to either a survey or to voting.*

*Mayor McPike said that there is another referendum coming up, regarding a turf field at RSU-22. Councilor Wilde said that field would cost $1-1.2M and that only $160k has been set aside. Mayor McPike said the lifespan of that field would be ten years, and wondered if we'd be paying to build a new field and also setting aside $80k/year to replace it when needed? Councilor McAvoy said that field was originally donated but now the expense to replace it is falling to taxpayers.*

*Chairman Marble said that if we were to go to the ballot to get voter input he'd wait until November when there would be a higher turnout.*

*Manager Jennings said he hadn't given much consideration to a potential survey. Mayor McPike asked if a survey was done, and the response was overwhelmingly in favor of more fields, would that change any votes? Councilor McAvoy said his vote would not change, but Councilor Cormier said he is there to represent the people and it could affect his vote. Councilor McAvoy said it would depend entirely on the wording, and that any question would have to say what it would cost. He noted that he passed out about 700 position papers during the fall election and spoke with about 300 people who opposed more fields.*

*Chairman Marble asked if the Town Manager could draft a question for a potential survey and Manager Jennings said that he could.*

5. **PUBLIC AND STAFF COMMENTS** – *Mr. Dyer noted that Down East magazine had named Hampden its #1 town a couple of years ago, but he feels that it has gone downhill since then. He said he doesn't see progress or a progressive town. Director Abbott said that it is disappointing that we are spinning our wheels. Manager Jennings updated the Committee regarding work to review current work plan and priorities and noted that he's working to prepare information for review by Committee Chairs in anticipation of a Goals Setting session in February.*

6. **COMMITTEE MEMBER COMMENTS** – *Councilor Cormier noted that his term will end at the end of 2018 and he invited interested citizens to consider running for the Council.*

*There being no further business, there was a motion and second approved by unanimous consent and the meeting adjourned at 7:20 PM.*

*Respectfully submitted –*
*Angus Jennings, Town Manager*

**Town of Hampden**
**106 Western Avenue**
**Hampden, Maine 04444**

**Phone: (207) 862-3034**
**Fax: (207) 862-5067**
**Email:**
**townmanager@hampdenmaine.gov**

TO: Services Committee
FROM: Angus Jennings, Town Manager
DATE: February 8, 2018
RE: Kiwanis Civic Center update

---

As you know, the Town lease of the Kiwanis Civic Center was amended in 2017 to provide for the Town to absorb the buildings operations & maintenance costs for Federal fiscal year 2018 (Oct. 1, 2017 to Sept. 30, 2018). The term of the revised lease is one year, and it was agreed that the parties would check in early in 2018 to review whether these revised terms may be extended, may revert to the prior terms, or whether there may be a different outcome (such as termination of the lease).

So far in our fiscal year, $2,675.02 in related expenses have been paid from the Host Community Benefit account, out of the total (up to $9,000) authorized by Council's vote last year.

Earlier this week I met with Curt Slininger, president of the Hampden Kiwanis Club. The Club continues its traditional activities, and the Civic Center continues to be made available for use by other community groups on a regular basis.

The Club's membership has not changed since last year, but they continue their efforts to expand membership and fundraising, and later this spring will expand these efforts. Specifically, an open house will be held on Thursday, March 15th and, leading up to that, the Club will send a mailer to Hampden businesses encouraging membership and corporate sponsorship. This will be in addition to its traditional fundraising events such as its sale of roses.

Regardless of whether the Club's activities in the coming months yield increased membership and/or fundraising, Curt anticipates that the Club may seek to extend the current lease terms for another year. However, the Club will make this decision after the March event, so this information is provided preliminarily; i.e. no request has been made.

If the lease terms are requested to be extended another year, at that time the Council will be asked to decide whether to do so; and, if so, whether to continue to pay related expenses from Host Community Benefits or whether to build this into the FY19 operating budget.

**Town of Hampden**
**106 Western Avenue**
**Hampden, Maine 04444**

**Phone:** **(207) 862-3034**
**Fax:** **(207) 862-5067**
**Email:**
**townmanager@hampdenmaine.gov**

TO: Services Committee
FROM: Angus Jennings, Town Manager
DATE: February 8, 2018
RE: Penobscot Cable Consortium update

---

On February 6 I attended a meeting of the Penobscot Cable Consortium, of which Hampden is a member. The focus of the meeting was the continuing effort to negotiate revised terms of a Cable Franchise Agreement with Spectrum. The meeting materials, including a memo from the consultant engaged by the Consortium to assist this effort, are enclosed. The next meeting of the Consortium, which is expected to include representation from Spectrum, will take place on March 20.

# Penobscot Downeast Cable Consortium

**Tuesday, February 6, 2018**

2:00 p.m.

Penobscot Room, EMDC
40 Harlow Street, Bangor Maine
207-974-3236

## MEETING AGENDA

1. Introductions
2. Approve agenda
3. Update from Michael Edgecomb: negotiating with Spectrum
4. PEG channel move discussion
5. Treasury report
6. Approve any outstanding bills/invoices
7. Other business
8. Next meeting

SEWALL
JAMES W. SEWALL COMPANY / Since 1880

January 16, 2018

Town of Hampden
RECEIVED
FEB 06 2018
Office of the
Town Manager

Penobscot Cable Consortium
C/O Mark Leonard
Town of Veazie
1084 Main Street
Veazie Maine 04401

***Re: Update***

Dear Mr. Leonard:

Just a quick update on negotiations in Bar Harbor.

Our strategy was to work with Charter, (Shelley Winchenbach), on those areas we thought that we could come to an agreement on, and pass over those provisions that both parties could not agree on.

As you reported to the committee on October 25, 2017, we have made some headway with the franchise renewal language, and now we are at an impasse. It is very clear that the local Charter folks cannot negotiate anything beyond a basic boilerplate agreement without corporate approval. On August 9, 2017, we requested a face to face meeting with the local Charter folks and those corporate decision makers. We have been ignored, and have reiterated the request for this meeting monthly since August. Charter finally acknowledged our repeated request on January 12, 2018, by replying that it would take a several weeks to set up a date. We have responded that we will wait to hear back from them with some dates.

Here is a recap of our efforts and progress since last March:

In April, Charter made an offer to provide a new proposal. They proposed discontinuing with the one under negotiation that used the 'Maine Model Franchise" as the template, and starting with new proposal. Bar Harbor indicated they would be willing to consider this. Then they replied back that they wanted to continue with the model franchise under negotiation.

However, they are unwilling to use much of the language in that model. Among the provisions they do not like:

No penalty provisions
No I-Net Language
No language that contractors hired by Charter need the appropriate licenses.

SEWALL
JAMES W. SEWALL COMPANY | SINCE 1980



They will provide no coverage Maps

They will provide no financial statement to accompany franchise fee payment.

They will not agree to add languages that the return paths for the local channels, from the studios to the head-ends will be provided at no cost.

They will not agree to 16 homes per mile for line extensions. Their stated minimum is 20 HPM.

They will not agree to 200' as a standard install distance, they insist on 125'. They have no valid technical reason for this shorter length. (Current franchises are at 300')

Please let me know if you have any questions.

Sincerely,
Michael Edgecomb

Business Development Manager
JAMES W. SEWALL COMPANY

Table of Contents. Town requires a penalties clause.
Charter was willing to review the Maine Model which Charter was not a party to in negotiations. The Maine Model is not a mandatory agreement, rather one that both parties may elect to use, amend and negotiate to fit the needs of both parties. With that said, Charter is unwilling to agree to a penalty provision in a contract. There has been no demonstrated history of non-compliance and, although averse to performance bonds for the same reason, is willing to agree to a reasonable performance bond on the condition that the penalty provision be removed.
The Town cannot agree at this time to drop the penalty language. Feel free to submit a Charter approved penalty language proposal for review. Also, please forward language for a performance bond in revised draft for review.
See memo in attachment. Performance Bond language already in draft.

Page 9 Item 24 See comment
INET Definition: "including town" was added for security reasons. Charter needs to know when and what connections are made to its I-Net.
The Town can agree to no commercial or outside attachments. Town will agree to notify Charter of any Town owned attachments. The Town shares Charter's security concerns.
See memo in attachment.

Agreed if Charter accepts sentence; "Such consent may not be unreasonably withheld."

Page 13 See comments
Understanding your comment, but as outlined in the May 19 email, this is a relationship between Charter and its contractors handled in our contractual arrangement with those parties, to which the municipality is not a party. The municipality's protections are through insurance and indemnification.
The Town can agree. Town will tag this for legal review.

Page 14 Legal review, and see comments
Maps are competitively sensitive information and can be viewed at our office.
The Town cannot understand why a simple coverage map showing the service area is competitively sensitive. A visual inspection of the municipal right of way can determine the same information.

Addressing the map issue separately at this time.

Page 17 Legal review, added language
"Agents or Contractors" is under review by Risk Management.
Understood
Accepted

Page 21/22 Legal Review see comments, added language
Subscriber numbers will not be outlined in the agreement, they are competitively sensitive information. Statements will not be provided "with payment." They are generated from different locations at Charter. If the Town wishes to have the GAR backup, it will be, upon request. There is a letter provided with the check that outlines GAR total for the quarter, half year, year (whichever is outlined in the agreement for payment purposes).

Gross Annual Revenue

Town will have a perpetual request for this back-up information, so it makes the most sense to delete "upon request.", and language that the GAR backup be sent proactively within 7 days of the payment. Please propose language to reflect this requirement.
See memo in attachment

Town will require a statement showing the basis for payment. The Town will agree to a separate document, from the different location/group, but does not wish to have to request the document at the time of each payment.

Page 24 16C Town will add a dollar amount per subscriber for PEG support.
The PEG Funding will be based on the needs of the Town by total amount and not based on "per subscriber"
Town will consider an alternate language proposal on this from Charter
The proposed language was already in the proposal. See revision in attachment

Please provide documentation from Mike Leonard qualifying the $26,762 amount inserted.

16E. See comments, Town suggests language change.
Section 16(E)1 – "local interest" accepted
Section 16(E)6 – As outlined in the 5/19 email, this was a unilateral change that was not agreed to by Time Warner Cable in the Maine State Model. These costs vary depending on what is required to connect the PEG facility to the hub.
This connection is already in place. Town needs assurance that there will not be an ongoing charge for the existing return path(s).
deleted Section 16(F) – The Cable Act states, Franchising Authority "may" include, it is not required. Language is required by the Town.

The Cable Act states that the franchise authority may include the language. It does not allow Charter to require that the town "may not" include. The Town wishes the language under Section 611 of the Cable Act be included.

new Section 16(F) – we can remove "all access channels shall be delivered to the subscriber in the digital format."
The Town can agree
Section 16(H) – the origination site will be listed in this section not an Exhibit.
The Town can agree to list in this section

Charter needs to address deletion of 16 E 6 to insure Town does not incur costs for return path for PEG Channel return signal.

Page 25/26 17 Build out. Town will accept language that keeps status quo with current franchise. Law requires extension policy to be spelled out
Charter density is 20 homes per mile – extension policy is spelled out in Section 17(1), Law does not dictate cost share requirement.
The Town cannot agree. Current language is 18 homes per mile Town will agree to 16HPM. 16 homes per mile is not unreasonable for Maine.

See memo in attachment
Standard Install will remain at 125'

The Town cannot agree, it is now 300'. Technically a drop of 200' is more than reasonable. Town will accept 200' as a compromise.

Town will require a minimum density of 16 HPM. 200' standard install. Town can accept deleting cost share language if above is accepted by Charter.

Page 27 18 I-Net. Town will accept language to maintain I-net at status quo, and establish costs to add additional sites if needed. An account # needs to be assigned to the I-net so the Town can call for maintenance issues if needed.
I-NETs are handled by Charter's commercial services. The sites, terms and conditions, including maintenance issues, will be outlined in a separate agreement between the parties.
The Town can agree to negotiate an agreement/contract with Commercial services. If the terms and conditions are to be in a seperate agreement, the Town will not sign renewal until said separate commercial services agreement is in place. Please advise on how best to get this agreement process started with commercial services as soon as possible. Regardless, the Town will insist upon a designated account contact for service issues. You should not be the go-to person for trouble calls.
The contacts would still be the same for now – Mike Duggan and Ted Millington

The issue here for emergency response/service calls. If Mike and Ted agree to accept calls 24 hours, that is acceptable. Otherwise an account needs to be established so the Town can call for service and emergency response as needed. Existing I-net service calls are not accepted by the call center. Shelley needs to be called at this point who then escalates, this is no longer acceptable. It may be most beneficial if Charter's Commercial Services drafts the service level agreement now, before franchise is finalized. Please have Commercial Services contact me as soon as they can to arrange a meeting with the stakeholders.

Page 29 Law requires complaint procedure to be spelled out. Penalty clause need to be added
Charter will provide complaint procedure language for the draft once the Town's legal review is complete and revisions are made to the draft.
The legal review will only be performed on the final draft. Please respond with complaint procedure language, as that will also be subject to final legal review.
Added language in attachment

Town can agree if clarification is made to whom the request for logs or records needs to go to.

# Where are the municipal meetings?

That's what Charter Communications cable subscribers and municipal officials will soon be asking as the Corporation rolls out its "digital encryption" project across the state. For 30 years, the local community television channels have occupied the single digit channel numbers adjacent to the commercial network channels and PBS. Charter is now moving them to the 1300 block of channels. Charter, whose cable television, internet and phone services are known as "Spectrum" for branding purposes, maintains that this move is necessary to "better maintain the integrity of its network and offer more enhanced features." Corporate public relations spokesperson Andrew Russell confirmed this statement with reporter Phil Blampied of Today River Valley on January 2nd but did not say why the local commercial channels or PBS were not also going to be moved to the 1300 block.

On October 13th of last year, Charter issued a notice to the Town of Bristol to this effect. The Selectmen subsequently issued a letter to Charter protesting that "[t]his high number (channel 1301) makes it effectively impossible to find the station by running through the channels. Keeping the channel in the vicinity of our local broadcast channels allows easy access for all viewers. We feel this is a betrayal of the principles behind our new franchise award to Charter Communications for service to the Town of Bristol."

Municipal meetings are typically carried on the basic tier of the local cable system along with Educational channels from the local schools and Public Access channels from non-profits and the community at large. Federal Statutes designate these as "PEG" channels for the Public, Educational and Governmental programing they provide. There are 72 PEG channels in Maine and most are operated by volunteers or employees of the Towns and school districts.

Tom Handel, Executive Director of the Portland Media Center said recently “These PEG channels have always been on the lowest tier, next to other local commercial channels for the convenience of their viewers, particularly homebound seniors who watch for municipal meetings and events. Moving them to the 1300 block is an affront to democracy and a great disservice to viewers’ ability to watch locally produced PEG programming.”

Melinda Kinney of the Charter Communications Portland Office claimed that by moving the channels to the 1300 block, it will be "consistent statewide and nationally."

Further research indicates that Charter has already made this move in other States, seemingly without regard to the needs of the community, prompting the term "channel slamming." In addition, Charter has been accused of violating Franchises in Massachusetts that specifically assign PEG channels to certain numbers where they have been located for more than 25 years.
http://acommunitytv.org/2014/10/charter-slams-northbridge-massachusetts-peg-channels-in-violation-of-franchise-agreement/

Written testimony from PEG station managers in Massachusetts that have been affected by this move by Charter has been independently verified by the Community Television Association of Maine (CTAM), www.ctamaine.org, an affiliate of Maine Municipal Association.

Speaking for CTAM, Secretary Brian Knoblock said that “Charter considers the 1300 block of channels as part of their ‘basic’ tier, which seems illogical, since you will not be able to see the PEG channels no matter what kind of a TV you own unless you rent a cable box from them and know where to locate the channel. We already know there will be a loss of viewership as demonstrated several years ago when many areas across the State became all digital with Time Warner. They moved

the PEG channels to the 121 block which impacted people without a cable box. Folks didn't know where to find the local channels and even if they knew the number, i.e. 121-1, most seniors could not navigate to it before the TV defaulted back to the channel they were on" Knoblock said.

Patrick Bonsant, Manager of Saco River Community Television in Hollis noted that "Of the four plans offered by Charter, the basic tier offering about 20 channels is the most affordable option. For around $30, subscribers get about 20 channels, and in our service area, SRC-TV has always tried to make this most affordable cable package the best value possible by offering not just municipal and school meetings but a wide variety of community profiles, documentaries, local talent forums, historical society presentations, public service announcements, graduation ceremonies, sporting events, fishing and gardening shows, church services, political opinion programs and local musical talent showcases among many other offerings. Now we're being slammed into the 1300 series and I believe this is a deliberate attempt to stifle the public interest and marginalize our community channels in the name of corporate profit. By requiring a box, Charter is improving yet another source of revenue from those who can least afford it, at the same time making the lucrative single digit channel slots formally occupied by PEG channels, available for lease to the highest bidders such as QVC" Bonsant said.

Another concern raised by Sally Hebert, President of CTAM, is that "all the commercial channels on their 'basic' tier are easily received by any 'Smart' flat screen TV but not the PEG channels in the 1300 block, so there may be cause for discriminatory action there as well." Tony Vigue, retired manager of South Portland Community Television, has contacted Melinda Kinney at Charter on behalf of CTAM but she has not responded to this discrimination inquiry as of the date of publication.

"A bill will be proposed to the legislature that would prevent this from happening statewide," Hebert said, "and we are hoping the legislature

will make it retroactive in the next session. Basically, the proposed bill would duplicate the wording which is in use by the States of California and Illinois to prevent this regrettable action by Charter. Further, it will be recommended that this paragraph be added to Maine State Statute Title 30-A §3010, Paragraph 5. Several Representatives and Senators have been contacted and are receptive to this initiative," Hebert said.

Randy Visser, Co-Founder of CTAM, remarked "For the past thirty years we've been working to de-commercialize the television medium and introduce the concept of locally produced, community-based content that is unique to the places we live. This move will make it more difficult, and impossible in some cases, for seniors and working families to find these channels to watch their local meetings and community events. We should be treating these providers like the common-carrier utilities they've become. Cable companies use the same public right-of-ways the telephone industry uses. It's all data now. Why can't the State of Maine hold these powerful companies accountable in situations like this? We need to convince enough legislators that this action by Charter is not only detrimental to the municipality's ability to communicate with its citizens, but it also impacts the culture of the community," Visser said. He continues, "I travel around the country visiting these channels for my work as a video engineer. When the channels are properly funded and managed, the impact is huge. People understand that there is a neutral, non-commercial communication platform that is accessible to everyone. It keeps the political system, and the people managing our governmental systems, accountable. Video coverage neutralizes the traditional power-base and gives average people a voice. Local channels are becoming the real vanguard of our future communications democracy. It's time we began to pay attention to these important local conduits." Visser said.

Vigue also said in a recent interview at the Portland Media Center, "folks have relied on these channels being adjacent to the local commercial channels for 30 years and seniors are the primary viewers. They will be the last to know where to look for their municipal and

school board meetings. Charter garners no revenue from their legal requirement to carry PEG channels so they are moving them to the least desirable location. It’s simple economics. The back story is, the fewer people that watch these channels, the less likely the towns will require increased franchise fees for operational funding and capital grants for programming equipment from the cable operator at franchise renewal time. PEG channels also provide free advertising for non-profits who provide valuable services in the community. That is considered to be ‘lost revenue’ to the cable operator who could be charging them for the ads. It is in their best economic interest to marginalize and minimize the importance of these sources of local non-commercial information in the community. For the most part, municipalities do not have the legal or monetary resources to challenge this action in court.”

# CABLE TV FRANCHISE AGREEMENT
# Between the Town of Bar Harbor, Maine and Time Warner Cable Northeast, LLC

## Table of Contents


1. Statement of Agreement ..... 3
2. Title ..... 3
3. Parties ..... 3
4. Notices (Communications) ..... 4
5. Grant of Authority ..... 4
6. Term ..... 5
7. Governing Law ..... 5
8. Effect of Acceptance ..... 5
9. Definitions ..... 6~~5~~
10. Construction and Maintenance ..... 12~~11~~
11. Operations ..... 16~~15~~
12. Insurance ..... 17~~16~~
13. Performance Bond ..... 19~~18~~
14. Records and Reports ..... 20~~19~~
15. Franchise Fee ..... 22
16. Public, Educational and Governmental Access (PEG) ..... 23
17. Build-out ..... 25
18. Networking ..... 26~~27~~~~27~~
19. Rates & Services ..... 28~~27~~
20. Rights of Individuals ..... 28
21. Unauthorized Connections/Continuity Of Service ..... 29
22. Subscriber Complaints ..... 29

~~23. Penalties ..... Error! Bookmark not defined. 30~~

23~~4~~. Transfers ..... 30~~31~~
24~~5~~. Successors/Assigns ..... 31~~32~~
25~~6~~. Renewal ..... 33~~32~~~~32~~
26~~7~~. Revocation and Termination ..... 33~~32~~~~32~~
27~~8~~. Abandonment ..... 33~~34~~
28~~9~~. Expiration of Agreement ..... 33~~34~~

2930.Changes in Law..... 34
301. Amendments ..... 3534~~34~~
312. Miscellaneous ..... 34~~35~~

**Commented [ME1]:** Will need to add penalties back in. Does not have to be original language, but Town requires a penalty clause

**Commented [WS2R1]:** Penalty language is not acceptable to Charter.

## Administrative Issues

**1. Statement of Agreement**

This Franchise Agreement (the "Franchise") is made and entered as of _____ between the Town of Bar Harbor, Maine (the "Town") and Time Warner Cable Northeast, LLC (hereinafter "Company" or "Time Warner Cable") a _____ 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 "Bar Harbor Cable Television Franchise". Within this document it shall also be referred to as "this Franchise" or "the Franchise".

**3. Parties**

**A. Town**

1. Name: Town of Bar Harbor
2. Contact: Town Manager
3. Mailing Address: 93 Cottage Street Suite 1
   Bar Harbor, ME 04609
4. Telephone 207- 288-4098

**B. Company**

1. Name: Time Warner Cable Northeast, LLC
2. L/K/A: Charter Communications
3. Contact: Director, Government Affairs
4. Mailing Address: 400 Old County Road, Rockland ME 04841
5. Telephone: 1-800-833-2253

With a copy to:

Charter Communications
Attn: Vice President, Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

**C. Company Local Business Office**

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: 444 Perry Road, Bangor ME 04401
2. Toll-free Customer Service Number: 1-800-833-2253

**D. 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. Town: to the Town 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 applicable federal law, and subject to the terms and conditions set forth herein, the Town of Bar Harbor as the Local Franchise Authority, hereby grants a non-exclusive, revocable cable television franchise to Time Warner authorizing and permitting the Company to own, construct, upgrade, install, operate and maintain a Cable Television System within the Town of Bar Harbor.

**A. Franchise Area**

Company is hereby granted by the Town, where it has the right to do so, the right and privilege to own, construct, reconstruct, erect, operate and maintain, in the Town of Bar Harbor (herein called the "Franchise area" or Town), in, upon, along, across, above, over and under the Rights of Way now laid out or dedicated, and all extensions thereof and additions thereto, poles, wires, cables, antennae, optical fibers, underground conduits, manholes and other television and radio conductors and fixtures used for maintenance and operation of physical facilities located in the Rights of Way, including the ~~necessary for the installation, maintenance and operation of a~~ Cable System. In the event of annexation by the Town, any new territory shall become part of the area covered upon sixty (60) days advance written notice by the Town to the Company. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

**Commented [ME3]:** Will need Legal review

**B. Limited Grant**

This Franchise is intended to convey ~~limited~~ rights and interests in accordance with applicable law ~~only~~ as to those Rights-of-Way in which the Town 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 Town reserves 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 Town expressly reserves the right to grant other such franchise agreements in the Town, provided however, that any such additional agreements shall not be on terms and conditions that are ~~, taken as a whole, are materially~~ more favorable or less burdensome than those provided for herein. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Town or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Town, the Town shall ensure that the terms applicable to such other provider are no more favorable or less burdensome than those applicable to Company. Upon the effective date of any such franchise, the requirements imposed by the less costly or less burdensome obligations in such competing provider's authorization shall replace the corresponding provision in Company's franchise.

**Commented [ME4]:** Legal review

**D. Eminent Domain Not Conferred**

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

**6. Term**

This Franchise shall commence upon the effective date of this Agreement, _____ and shall expire fifteen (15) years thereafter on _____ unless renewed, revoked or terminated sooner as herein provided.

**7. Governing Law**

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

**8. Effect of Acceptance**

By accepting the Franchise, Company and the Town: (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.~~ except the Bar Harbor Communications Regulatory Ordinance.

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 differ from or are in conflict with definitions in applicable Federal law, it is the express intent that the definition in applicable Federal or State law shall take precedence.

**Commented [ME5]:** Legal review

1. **Affiliate or Affiliated Person:** An entity which owns or controls, is owned or controlled by, or is under common ownership with a Cable Operator.

2. **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.

3. **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.

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

5. **Cable Act:** Cable Communications Policy Act of 1984 (the "1984 Cable Act"), Public Law No. 98-549, 98 Stat. 2779 (1984), as amended by the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), Public Law No. 102-385, 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996), as the same may be amended from time to time .

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

7. **Cable Service or Service:** The one-way transmission to Subscribers of video programming or other programming service, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

8. **Cable System:** Shall be defined in accordance with Section 602 of the Cable Act. A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide Cable Service (including video programming) to multiple Subscribers within a head-end service area. This shall mean the facility serving the Town 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 which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (d) an open video system that complies with section 653 of this title, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

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

10. **Town**: The Town of Bar Harbor, Maine, or its successor.

11. **Company:** Time Warner Cable Northeast LLC and any lawful successor(s) to the interest of such Person or Persons.

12. **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 Town.

13. **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.

14. **Designated Access Provider:** The entity or entities which may be designated from time to time by the Town to provide PEG access to the residents of the Town of Bar Harbor.

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

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

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

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

19. **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.

20. **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 Town.

21. **Gross Annual Revenue:** Revenue of any form or kind received by the Company from the carriage of Cable Service over the Cable System serving the Town of Bar Harbor calculated in accordance with generally accepted accounting principles, 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 Town, 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.

22. **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.

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

24. **Institutional Network or I-Net:** A communication network which is ~~generally~~ available only to municipal and educational institutions for non-commercial purposes and may not be interconnected with the facilities of any other party, including Town, without Company's prior written consent. Such Consent may not be unreasonably withheld.

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

26. **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.

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

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

29. **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.

30. **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.

31. **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or time basis.

32. **PEG Programming:** Public, Educational, and Governmental programming that is of local interest and non-commercial.

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

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

35. **Public Building:** State accredited public schools, police and fire stations, public libraries, Town Hall, and other public buildings owned or leased by the Town, but shall not include buildings owned by the Town but leased to third parties or

**Commented [ME6]:** Explain intent of (including Town) Town has a requirement to interconnect some town owned facilities (Waste Water Plant for example), to the I-Net where the Company has not run I-net fiber.

**Commented [WS7R6]:** Town agreed to language on 6/29. However, the comment that the Town will agree to notify Charter in insufficient, prior approval is necessary.

**Commented [ME8]:** 1.Added "Such Consent may not be unreasonably withheld."

buildings such as storage facilities at which government employees are not regularly stationed.

36. **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 Town, in the Town 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 Town within the Town 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 Town that its property rights are sufficient to permit its use for any purpose, or that the Town shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

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

38. **State:** The State of Maine.

39. **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.

40. **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.

41. **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.

42. **Two-way Capability:** The ability to transmit Signals upstream and downstream on the Cable System.

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

44. **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 generally applicable building and electrical codes; and,

c. All generally applicable ordinances, including zoning ordinances, of the Town.

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 Town 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 Town'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 Town's Streets and Public Ways done by Company shall take place only after providing 48-hour notice to the Town Manager. In performing tree trimming, Company shall use its best efforts to avoid any unnecessary damage or injury to trees, and shall comply in all respects with any Town ordinances governing tree trimming.

**5. Restoration of Damage**

Company, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the 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 insofar as reasonably possible within fifteen business days, weather permitting, after Company's receipt of notification from the owner of the property so damaged unless otherwise mutually agreed by Company and the property owner; provided, that if any such damage involves curbs, sidewalks or driveways, the damage shall be repaired to the satisfaction of the Town (curbs and sidewalks) or the owner or tenant in possession of the property (driveways) within ten business days. Company shall provide the Town 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 Town 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 Town 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 Town.

**6. ~~Contractors, Subcontractors and Agents~~**

**Commented [ME9]:** This has nothing to do with contract with vendors. For example, if a new power supply needs to be connected, a licensed electrician would need to perform the work. Can add "if such license is required by federal or state law" or similar language.

**B. Cable System Location**

**1. Map of Physical Facilities**

With reasonable advanced notice to Company, the Town 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 for review at Company's office upon request.

**Commented [ME10]:** Coverage Maps are important. Town should be able to request and receive basic coverage maps. Need language to allow coverage maps to be provided to Town. Does not have to identify trunk and feeder runs, just where service is available.

**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 Town, which approval shall not be unreasonably withheld, pursuant to the Town's generally applicable law, ordinances, rules and regulations.

a. Where the cable or wire facilities of the public utilities are installed underground at the time of Cable System construction, 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. 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 Town 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 Town's approval, which approval shall not be unreasonably withheld. As with all other users of the public rights of way, 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 Town for a municipal purpose (except a service competitive with that of Company) and further provided that all other users of the public rights of way at such location are required to remove their facilities in the same time frame, manner and under the same conditions.

**Commented [ME11]:** Explain this addition

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 Town**

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

**6. Temporary Relocations**

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

**C. Communications**

**1. Company Notice**

Except in an emergency, and except for interruptions of four hours or less, Company shall give Subscribers notice, if practical, of any interruption of service for purposes of maintenance or repair in accordance with applicable law. 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 any 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 Town 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 Town 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 written request via electronic or regular mail, Company shall provide the Town 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 Town.

**2. Operations**

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

**B. Performance Testing**

The Town 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 company authorized to conduct business in the State of Maine, protecting as required in this Franchise, Company and listing the Town 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 by Grantee, agents or contractors..

The amount of such insurance for liability for damage to property shall be ~~no less than~~ One Million Dollars ($1,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be One Million Dollars ($1,000,000.00) 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. Insurance carrier will endeavor to provide cancellation notice to the Town in accordance with the policy provisions.

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

**Commented [ME12]:** Legal review

**Commented [ME13]:** Added

**Commented [WS14R13]:** Accepted

Million Dollars ($1,000,000.00). Insurance carrier will endeavor to provide cancellation notice to the Town in accordance with the policy provisions.

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. Insurance carrier will endeavor to provide cancellation notice to the Town in accordance with the policy provisions.

4. Company shall provide the Town with certificates of insurance upon execution of this Agreement and at any time thereafter upon request.

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

**B. Indemnification of the Town**

Company hereby indemnifies and holds the Town, its councilors, 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 Town, ~~including reasonable attorney's fees,~~ resulting from ~~claims,~~ any negligent act 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 Town, or its councilors, officers, agents, employees, or members of boards and committees which is within the scope of this indemnification, the Town will give notice thereof to Company within ~~thirty~~ ten business days after the Town is formally served in any such action, and, after consultation with the Town, Company will have the right to suggest counsel for the defense of any such action, at no cost or expense to the Town. The Town'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 Town, or any such action, or any claim therein, shall be made by Company or by counsel suggested by Company without the approval of the Town, which approval shall not be unreasonably withheld.

**Commented [ME16]:** Legal review

**Commented [ME17]:** Legal review

The extent of the indemnification agreement will not be limited by the requirements for liability insurance in this Agreement, or for any other reason.

**C. Indemnification of Company**

The Town 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.

**D. Municipal Immunities**

The provisions of this section, 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 not be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or damage limits as may be available to the Town by law. No third party shall be, or may claim to be, benefited by the rights and obligations of the Town as described herein.

## 13. 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 Town, an irrevocable performance bond, running to the Town, 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 Town, jointly and severally from the principal and surety, subject to the provisions in Section 23(C), within 30 days after written request by the Town, any and all penalties due to the Town and any and all damages, losses, costs and expenses suffered or incurred by the Town resulting from the failure of Company to comply with the 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 Town 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 Town in the event Company fails to complete any construction or rebuild obligations or breaches any material provision of this Franchise Agreement.

**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. Town Rights**

The rights reserved to the Town with respect to the Performance Bond are in addition to all other rights of the Town, 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 Town may have.

**14. Records and Reports**

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

Upon reasonable written notice to the Company, the Town 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 five (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 Town 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 Town. 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 Town shall treat any information disclosed by Company as confidential and shall only disclose it to employees, or the Town'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 Subscriber information in violation of Section 631 of the Communications Act, and 47 USC §551, or any other information that it is prohibited by law from disclosure to third parties.

Company shall at all times after the effective date maintain records of written complaints from subscribers in accordance with 30-A MRSA §3010 (4).

**B. Annual Report**

Upon written request from the Town, Company shall provide to the Town a summary of the Company's activities in the Town 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**

Subject to applicable law, 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 Town for all reasonable costs including expert fees arising from the inspection or audit. No auditor engaged by the Grantor shall be compensated on a success based formula (e.g., payment based on a percentage of an underpayment, if any, and any additional inspection or audit until it is determined Company is in full compliance. In addition, except as federal law prevents the Town from enforcing any standards, if it is determined that Company has not materially complied with FCC standards, the Town 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 Town's costs for tests of the performance of the Cable System shall only arise if the Town'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 Town, 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 Town test, and the Town agrees to retest, and the re-test confirms the validity of the initial Town test. These charges are incidental to the enforcement of the Franchise; they do not limit any right the Town may have to exercise any other remedy.

**Commented [ME18]:** Legal review

## Municipal Benefits

**15. Franchise Fee**

Company shall provide a Franchise Fee to the Town or its designee, equal to five percent (5%) of Company's Gross Annual Revenues in the Town. Upon ninety (90) days notice to the Company, the Town, by action of its Town Council, may change the Franchise Fee, subject to the maximum of five percent (5%) of Company's Gross Annual Revenues.

**A. Payment**

Company shall pay the Franchise Fee to the Town 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 sixty (60) days after the end of that quarter. Upon request, Company shall provide ~~with payment~~ ~~The quarterly payment shall include~~ a statement showing the basis for the payment, ~~number of subscribers~~~~number of subscribers~~, including a breakdown by category (e.g., basic service, home shopping channels, advertising) and source of Gross Annual Revenues for the quarter.

**B. Late Payments**

In the event that the fees herein required are not tendered on or before the dates fixed in Section 15(A) above, interest due on such fee shall accrue from the date due at a rate per year equal to the prime interest rate published in the Wall Street Journal.

**C. Acceptance of Payment**

Acceptance of payment by the Town shall not be construed as accord that amount paid is the correct amount. The Town reserves its rights to inspect relevant books and seek any underpayments due. If the Town has not begun process to challenge or audit payment of franchise fee within 24 months of receipt of final annual payment, and breakdowns provided pursuant to Section 15(A) are certified, payment is deemed accurate. If the breakdowns provided pursuant to Section 15(A) are not certified, the time frame hereunder is 48 months.

**Commented [WS19]:** Upon request will remain in the proposal. It will not be sent proactively because it's sent from a different location and group.

**Commented [A20]:** Delete upon request

**Commented [ME21]:** Added Language

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

### A. Use of PEG Access Channels

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

### B. Channels

Company shall continue to provide the Town with three (3) channels for public, educational and governmental ("PEG") access programming. Said PEG channels shall be located on the Company's basic tier of service.

### C. PEG Facilities and Equipment Support

Within sixty (60) days of the Effective Date of this Franchise Agreement, Company shall provide to the Town a capital payment in the amount of $26,762 ~~Per subscriber~~ to assist the Town in acquiring, constructing, and equipping Public, Educational or Governmental access facilities and equipment to meet the needs of the community and the Town.

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

If a PEG channel is relocated by Company, Company shall reimburse the PEG provider for documented out of pocket costs associated with changing logos, letterhead, business cards etc. to reflect a new channel number, provided that such reimbursement shall not exceed three hundred dollars ($300) for each such relocation. The Town and Company may also negotiate the promotion of this change. Company will provide the Town with at least 30 days' notice of any relocation of any PEG channel.

### E. Exclusive Use, Channel Designations and Interconnectivity

1. Town, or its designee(s), shall have the exclusive use of PEG Access Channels. Use of PEG Access Channels shall be for the exclusive benefit of Company's Subscribers and for local~~ly~~ interest ~~produced~~, provided non-commercial purposes and subject to such rules as the Town, 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.

4.

**Commented [ME22]:** Town needs to make sure this does not prohibit simulcast on web

**Commented [ME23]:** Delete locally produced. Can insert "local interest" or "locally provided." Charter cannot dictate programming on channel. 1st amendment issues.

**Formatted:** Strikethrough

5. Company shall make good faith efforts to include appropriate designation of the Town'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.

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

**Commented [ME24]:** Town can agree to remove 'new" But language covering existing channels needs to specify that the Town will not incur costs for transport back to hub/head-end

~~**F. Unused Channels**~~

~~G.~~F. **Minimum PEG Signal Quality and Transmission Standards**

The PEG access signal and channels shall meet FCC Technical Standards commensurate with those offered on adjacent channels. All access channels shall be delivered to the subscriber in the digital format.

**Commented [ME26]:** This will need more discussion.

~~1. Company shall not take any actions that alter or otherwise adversely affect the transmission of PEG programming that result in deterioration of the PEG signals, the transmission of PEG programming, the picture quality, or the absence of closed captions and Secondary Audio Programming as compared to adjacent channels.~~

~~H.~~G. **PEG Studio Origination Points**

Company shall ~~install and~~ maintain, the activated Origination Point~~s (return feeds)~~s ~~as listed in Exhibit A, and supply and maintain all necessary transmission equipment~~, from the following site~~s~~ to the Company's head end: Bar Harbor Town Office, located at 93 Cottage Street ~~and an access production facility at a location to be designated by the City~~. This~~ese~~ Origination Point~~s~~ shall be adequate to permit the simultaneous transport of up to three (3) PEG channels to the Company's head end at a quality standard that meets FCC Technical Standards. ~~Any of the above return feeds that are not installed as of the Effective Date of this Franchsie Agreement shall be installed no later than ninety (90) days from Company's receipt of a written request for installation from the City.~~

**Commented [ME27]:** Added an Exhibit A listed insertion points

~~I.~~H. **PEG Promotion**

In the event that the Company implements local advertising sales on Channels received by Subscribers within the Town, the Town 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 Town 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 Town where the minimum density is at least eighteen (18) twenty (20) sixteeneighteentwenty (18620) single family dwelling units occupied on a year round basis per aerial mile and twenty (20) dwelling units per underground mile providing however, that any plant extension is measured from the existing Trunk and Distribution System Company's closest technologically feasible tie-in point that is delivering Cable Service as of the date of such request for service 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 Three threeone hundred twenty five twenty-fivefifty (301250) (300) 125 aerial feet of Distribution Cable. For non-Standard Installations (those exceeding 125 three hundred 300 3001250 aerial feet or underground) Company shall, 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.

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 18 homes per mile, Company and those residents requesting cable services will each bear their proportionate share of construction costs. For example, if there are ten single family homes per mile who agree to subscribe to cable service, Company shall share 55% 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.

2. Company shall have the right, but not the obligation, to extend the Cable System in to any portion of the Town where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Company shall not be obligated to provide service to any areas where it is financially or technically infeasible to do so, except as outlined above in 17A 1(a). Company at its discretion may make Cable

**Commented [ME28]:** Current franchise is 18 Town will not accept less.

**Commented [WS29R28]:** Charter does not go below 20HPM

**Formatted:** Strikethrough

**Commented [ME30]:** Existing franchise is 300

**Formatted:** Strikethrough

**Commented [ME31]:** This section required by Title 30-A §3008. 5. A. The area or areas to be served; B. A line extension policy; This can be discussed further.

**Commented [WS32R31]:** Agreement outlines a line extension policy, Charter does not agree to cost share language in franchises

**Commented [ME33]:** added

Service available to businesses within the Service Area. ~~Regardless of the~~

~~3. Installation costs shall conform to the Cable Act. Any dwelling unit within an aerial 300 150 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.~~3. Provided Company has at least ninety (90) days' prior written notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, and the density requirements outlined above are met, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. The Town, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely written notice of trenching and underground construction to Company. Developer shall be responsible for the digging and back-filling of all trenches.

**18. Networking Service to Municipal Buildings ~~(To be discussed)~~**

~~Company shall maintain, throughout the term of this Franchise Agreement, the Institutional Network as described in Section 5(b) of the prior franchise agreement dated as of September 16, 1998 between the City and Frontiervision Operating Partners, L.P., and shall comply with all of the requirements contained in said Section 5(b) all is if set forth herein. Company shall maintain at its cost the existing I-NET drops at City Hall, the Belfast Boathouse on Commercial Street, and the Belfast Area High School on Waldo Avenue. The City shall have the right to additional I-NET drops at Company's cost of installation.~~ The Town currently has locations ~~identified in Exhibit A~~ connected to an institutional network ~~as identified in Exhibit B.~~ The Town will work with the Company's commercial services department ~~Government/Educational Department~~ to determine its needs with respect to these existing connections, ~~establish costs,~~ and ~~the costs and conditions of~~ any additional connections it should determine to make over the term of this Agreement. ~~Such costs, if any, shall be itemized in exhibit B.~~

**Commented [ME34]:** Existing I-Net locations outlined in Exhibit B

**Commented [ME35]:** Town needs language to outline costs and conditions of I-net additions

**Commented [WS36R35]:** 6/8 Email Comments, I-nets are handled by Charter's commercial services. The sites, terms and conditions, including maintenance issues, will be outlined in a separate agreement between the parties. Mike Duggan and Ted Millington are BC contacts.

## 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.

2. Subject to applicable law, 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 Town acknowledges that certain costs of Public, Educational and Governmental ("PEG") Access and other Franchise imposed costs, 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 to the extent required by 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 (h) and 47 CFR §76.1603 the Town 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 Subscriber 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 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.

## 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. To the extent required by applicable law, 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**

Subject to applicable law, 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.

**Commented [ME37]:** Procedure needs to be outlined here. This section required by Title 30-A §3008. 5 D. Procedures for the investigation and resolution of complaints by the cable system operator;. Can amend deleted language but a procedure must be outlined

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

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

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

~~**B. Investigation of Complaints**~~

**C.~~B~~~~C~~. Complaint Policy**

Company shall provide the Town 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~~4~~. Transfers**

Commented [ME38]: Will need a penalty clause

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

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

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

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

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 Town**

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

1. FCC Form 394, or successor form, and all identified attachments; and

2. Certification by transferee that it will accept the provisions of this Franchise Agreement for the remainder of the Franchise Term.

**D. Time to Review**

Subject to applicable federal law, the Town will have 120 days from receipt of the Notice to take action on the request for transfer. The Town need not, but may, act to approve the transfer.

**E. Public Hearing**

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

**F. No Waiver or Release**

The consent or approval of the Town 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 Town in, and shall by its terms be expressly subordinate to, the terms and conditions of this Franchise Agreement.

**24. Successors/Assigns**

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

**25. Renewal**

This Franchise may be renewed by the parties in accordance with state and federal law.

**26. Revocation and Termination**

**A. Right to Revoke or Terminate**

In addition to all other rights and powers of the Town by virtue of this Franchise Agreement and after notice and opportunity to cure pursuant to section 26B, the Town may revoke this Franchise Agreement and all rights and privileges of Company hereunder in the event Company either:

1. Violates one or more ~~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 days following written notice to Company by the Town 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. Practices any fraud or deceit upon the Town; or

3. 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 Town.

**Commented [ME39]:** Legal review

**B. Procedures to Revoke or Terminate**

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

1. The Town shall provide to Company the Town's notice of intention to revoke this Franchise. The written notice shall be sent by certified or overnight mail and shall describe in reasonable detail the specific violations alleged to have occurred;

2. Company shall have ninety (90) days from receipt of notice to either correct the alleged violation, or, dispute the Town's allegations. In the event that by nature of the alleged violation, such violation cannot be cured within such ninety (90) day period, the parties shall meet and agree to a cure schedule;

3. If Company disputes the Town's allegations, the Town shall review the dispute and make its determination as to whether a violation has occurred;

4. If the Town continues to maintain that a violation did occur, the Town shall notify Company in writing. Company shall then either remedy the violation within ninety (90) days or notify the Town in writing that Company continues to dispute the allegations;

5. Upon Company's failure to remedy the violation within the time period prescribed or upon receipt of Company's written position pursuant to subsection 4, Town may revoke this Franchise Agreement by providing Company written notice of revocation or by following the procedure outlined in Section C below.

**C. Public Hearing**

The Town may conduct a public hearing on the revocation. Such hearing shall provide the Company with due process, including the ~~shall have the~~ right to participate in ~~such~~ the hearing and present evidence and examine and cross-examine witnesses. The Town shall issue a written determination of its findings based solely on the evidence presented at the hearing and applicable law. Such public hearing must take place no less than 30 days prior to the decision to revoke.

**D. Judicial Review**

Company shall have the right to seek judicial review of the Town's determination to revoke and the reviewing court shall review the Town's determination *de novo*. ~~to the extent provided by law~~.

**27. Abandonment**

If company shall cease providing service in the Town pursuant to 30-A M.R.S.A. §3008(3)(B), the Company shall remove all of its supporting structures, poles, transmission and distribution

**Formatted:** Font: Italic

**Commented [ME40]:** Legal review

**Commented [ME41]:** Legal review

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 Town may deem any property not removed as having been abandoned. Upon written request of the Company, the Town may waive this requirement of removal for good cause shown.

**28. 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.

**29. 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. In the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Town to obtain a franchise, then Company shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Company chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law ~~whether or not~~ ~~, whether or not~~ unless such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

**Commented [ME42]:** Deleted "whether or not" Added unless

**30. 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.

**31. 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, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Company's Cable System is attached, unavailability of materials and/or qualified labor to perform the work necessary, 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 Town 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, including the Bar Harbor Cable Communications Regulatory Ordinance, ~~except for paragraph 5(b) of the prior 1998 Franchise Agreement as referenced in paragraph 18 herein~~, and any and all extensions and modifications thereof, shall terminate and shall have no further force and effect; provided, however, that any vested rights relating to billings and the Town's rights to receive franchise fees shall not be affected thereby.

**Commented [ME43]:** Need legal review

**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 Town, nor any delay on the part of the Town or Company in exercising any rights hereunder, shall operate as a waiver of any such rights of the Town or Company or acquiescence in the actions of the Company or the Town 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 Town 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.

## Execution

Signatures:

**Date: ____, 2017**

**Town of Bar Harbor**

By:_____

**Date: ____, 2017**

**TIME WARNER CABLE NORTHEAST, LLC**
**L/K/A Charter Communications**

By:_____

Its:

**Town of Hampden**
**106 Western Avenue**
**Hampden, Maine 04444**

**Phone:** **(207) 862-3034**
**Fax:** **(207) 862-5067**
**Email:**
**townmanager@hampdenmaine.gov**

TO: Services Committee
FROM: Angus Jennings, Town Manager
DATE: February 8, 2018
RE: Pool and Municipal Building site update

---

On request of Chairman Marble, I prepared for him the following summary of actions taken by the Services Committee in recent months related to the topic above. Excerpts of meeting minutes documenting the Committee's motions and votes follow:[1]

> Oct. 10
> *"There was a vote on the motion (to invite a cost proposal to proceed with permitting and design for Phase 1 only), and the vote passed 5-1 with Councilor Cormier opposed."*
>
> Dec. 11
> *"Mayor McPike offered a motion to direct the Town Manager to solicit pricing to bring the plan through permitting. There was discussion to clarify the motion. The revised motion was to seek pricing for design and engineering for the stormwater management for the full buildout, and for phase 1 (parking only). Manager Jennings asked if the goal was to seek pricing for both full build and for phase 1, and Councilor Ryder said yes.*
>
> *A vote was taken and the motion passed 3-2, with Councilors McAvoy and Cormier opposed. Councilor McAvoy said he would prefer to see some flexibility in the footprints of uses on the plan. Councilor Ryder said that at some point we'll need majority support of Councilors to proceed with a concept plan. Manager Jennings said he would work on a draft scope and once available would circulate to Councilors for review via email."*
>
> Jan. 8
> *"Mayor McPike made a motion, seconded by Councilor Ryder, to support issuance of the RFP.*
>
> *Councilor McAvoy said he would vote no because he thinks that full build of the site – with parking and fields everywhere – is right where we don't need to be. Mayor McPike asked why that is the wrong place to be. A vote was taken and the vote was 3-3 with Councilors Cormier, McAvoy and Wilde opposed. The motion failed for lack of a majority."*

Upon review of these motions and votes, the question came up regarding whether the Jan. 8 vote had the effect (intentionally or not) of rescinding the Dec 11 vote – which had already been taken and which directed the solicitation of pricing – and if so, whether this was procedurally appropriate.

---

[1] Complete meeting minutes are online at http://www.hampdenmaine.gov/services

The Town Clerk placed this question to MMA Legal and received the following response:

---------- Forwarded message ----------
From: **Legal Services Department**
Date: Wed, Feb 7, 2018 at 10:09 AM
Subject: RE: Hampden - Fwd: Prior motions
To: Paula Scott

Dear Paula,

If I understand correctly, at its December 11, 2017 meeting, the Services Committee in effect voted 3-2 to direct the Town Manager to prepare a draft RPF for the project in question. Then, at its January 8, 2018 meeting, the committee voted 3-3 to issue the RFP, the motion failing for lack of a majority. The question posed is whether the January 8 vote had the effect of rescinding the December 11 vote, or whether only a motion expressly doing so could have rescinded the earlier vote. In my opinion, the two votes were on two separate (though related) matters, and the second vote neither expressly nor impliedly rescinded the first.

As noted above, the motion on December 11 vote was to *prepare* an RFP – it passed narrowly. The motion on January 8 vote was to *issue* the RPF – it failed on a tie vote. The preparation and issuance of the RFP were two different actions and were clearly treated as such by the committee. The failure of the second motion (to issue the RPF) cannot, in my view, be read as somehow reversing the first motion (to draft the RFP), not only because these are two separate and distinct acts but also because the second motion, having received only a tie vote, constituted no action at all. Only a motion explicitly rescinding the December 10 vote and receiving a majority vote could have produced that result.

I hope this explanation is clear and helpful, Paula. Please let me know if you have any further questions.

Best regards,
**Richard P. Flewelling, Senior Staff Attorney**
**Legal Services Department**
**Maine Municipal Association**

This opinion indicates that the results of the December 11 vote stand, and were unaffected by the January 8 vote. Therefore on the basis of that direction, and upon Chairman Marble's request, I have resumed work on the draft RFP, an updated copy of which is attached.

**Town of Hampden**
**106 Western Avenue**
**Hampden, Maine 04444**

**Phone:** **(207) 862-3034**
**Fax:** **(207) 862-5067**
**Email:**
**townmanager@hampdenmaine.gov**

## Request for Proposals – DRAFT

Engineering and Permitting Services for Municipal Building and Pool Site

The Town of Hampden seeks consulting services for engineering and permitting for expanded parking, recreational facilities, and stormwater infrastructure for the Town-owned site at 106 and146 Western Avenue which includes the Municipal Building, the Lura Hoit Pool, athletic fields and undeveloped land. The Post Office site is owned by the Town but is subject to a multi-year lease for use as the Post Office. The Town has been advised that DEP will consider the Post Office in its review of a Site Location of Development Permit. With that included, the parcel has ~3 acres of impervious surface so will require MaineDEP Site Location of Development Act (SLODA) permitting to add any new parking or other impervious surface.

Required permitting also includes local Site Plan Review before the Hampden Planning Board. Based on schematic planning in 2017, and 2016 mapping of regulated natural resources on site, it is not anticipated that Natural Resources Protection Act (NRPA) and Army Corps of Engineers permits will be required. If additional permitting is found to be needed, this would be addressed through an amendment to project scope and budget based on advance agreement to terms.

A public planning process undertaken in 2017 produced a schematic plan for additional parking and stormwater facilities to serve existing site uses, and potential long-term site development including additional multi-purpose recreational fields, associated parking, practice space, walking trails, out buildings and other infrastructure ("potential full build plan"). The planning process also produced a schematic plan of a "parking-only" phase with additional parking to serve the existing uses on the site, and the Town Council Services Committee's nearer-term intent is to only proceed with construction of this initial phase.

The Town Council's Services Committee intends to bring the potential full build plan through DEP and local permitting, including engineering required to do so, with the intent to then bid out the permitted parking-only plan for construction. Therefore the engineering for only the parking-only phase would be advanced to construction drawings upon completion of prior scope tasks.

Engineering and permitting for either plan would include all stormwater infrastructure required to secure permitting, including (for SLODA) new or modified stormwater infrastructure related to existing development on the site.

Schematic plans and preliminary cost estimates prepared during the 2017 work are attached.

The Town invites proposals from qualified engineers. Submittals shall include:

1) A statement of qualifications for all personnel who would be assigned to the project, including all prior experience preparing plans for SLODA approvals.
2) Based on review of existing project materials (online at _____), a proposed scope of work including proposed schedule, staffing plan (i.e. estimated labor hours and cost per

task), and use of sub-contractors (if any). Proposed scope of work shall be responsive to the Scope of Work included herein, and include add/alternate scope items if the vendor believes they will be or may become necessary to secure required permitting. Likewise, proposals should specify if there are items included in this RFP's Scope of Work that the bidder believes are or may be unnecessary to achieve the Town's objectives.

3) A proposed minimum budget, including underlying assumptions (billing rates; personnel hours; number of meetings, public meetings, and public hearings (for Site Plan Approval); direct expenses, etc.), including whether work is proposed on a lump sum or a time and materials basis. The proposal shall also include a Not-to-Exceed amount.
4) A statement of any assumptions the proposal relies upon regarding work to be completed by others (Town or its agents); adequacy of base data (i.e. wetlands delineations, site topo, existing schematic plans, pipeline easements, etc.) to secure permitting without additional field survey (other than specified herein); etc.

Prospective bidders are invited to attend a **pre-bid informational meeting on [date TBD], 2018 at __ PM** at the Hampden Municipal Building, 106 Western Ave., Hampden, ME.

Prospective bidders may submit questions regarding this RFP to the Town Manager on or before [date TBD] at ____. Questions will be answered as received and distributed to all prospective bidders that participate in the pre-bid meeting, or who notify the Town Manager that they wish to be considered a prospective bidder. Verbal responses to questions not submitted in writing will also be written up, with the question, and circulated to prospective vendors.

Sealed bids, clearly marked "Design, Engineering and Permitting Services, Town Building & Pool Site" must be received **no later than [date TBD] at ____** addressed to:

Town Manager
Town of Hampden
106 Western Avenue
Hampden, ME 04444

Proposals will be publicly opened at the Hampden Municipal Building Conference Room at that time. A Statement of Bidders Qualifications (Attachment A) must be submitted. All price proposals shall be submitted on the form supplied by the Town (Attachment B). Any proposal received after the date and time of opening will be rejected and returned unopened to the bidder. **Proposals may not be submitted by email.**

Upon review of qualifications and proposals, which is expected to include interviews with two or more vendors, the Town Manager shall recommend a vendor and budget to the Town Council's Finance Committee. The Town Manager's recommendation will be based on:

1) Demonstrated successful completion of projects of comparable scope.
2) Established competence and experience of proposed project team members.
3) History of client satisfaction based on reference checks.
4) Proposed schedule including estimated progress before June 1, 2018.
5) Ability to provide realistic constructed cost estimates for prevailing wage procurements.
6) Proposed compensation terms and budget.

DRAFT

Based on the Town Manager's recommendation, and based on its own review which may, at its option, include Committee interview with two finalist vendors, the Town Council's Finance Committee will make a recommendation to the Town Council. Upon Council authorization to execute a contract and to use budgeted reserve funds, the Town Manager will execute a contract with the selected vendor. The anticipated date of contract award is [date TBD], 2018. Prior to execution of a contract, the vendor must provide proof of workers compensation insurance, and of liability insurance with a $400,000 minimum coverage, and shall provide a certificate naming the Town of Hampden as additionally insured.

The Town reserves the right to reject any and all proposals, in whole or in part, and to negotiate the terms and conditions with any proposer and to accept any proposal, in whole or in part, which the Town deems, in its sole opinion, to be in the best interest of the Town of Hampden.

Scope of Work:

1. Background Review and Confirmation of Scope.
    a. Review documents on file with Town related to previous schematic planning, and development and permitting history of the site.
    b. Participate in scope clarification meeting with representatives of the Town of Hampden. Confirm agreement with applicable permitting requirements as determined based on work completed during the prior phase in 2017 (summary memo attached); or revise if needed with associated contract amendment.
    c. With Town, participate in SLODA Pre-Application meeting with MaineDEP.

2. Boundary Survey, Detailed Design Development and Preparation of Construction Cost Estimates. After confirming applicable regulatory and permitting requirements, the selected consultant will undertake site engineering as necessary to secure project permitting. Tasks to include but will not necessarily be limited to:
    a. Provide certified property boundary survey with deed references.
    b. Provide a soil survey, mapping and Class B report (if needed for DEP permitting).
    c. Design stormwater management facilities including, if required for permitting, watershed pre- and post-development hydrology modeling and plans, design of drainage structure and channels, and design of treatment and detention features.
    d. Design as required for permitting all proposed new and upgraded existing parking lots and recreational fields including plan, profile and detail drawings, grading plans, signage/pavement marking plans and lighting plans, as applicable.
    e. Design and detail utilities including public water and sanitary sewer, if required for permitting. Coordinate with local power and phone utilities and show proposed pole layout, if any. Utility deliverables to include draft specifications with design development drawings.
    f. Prepare a construction cost estimate for the project, broken down by phases determined in consultation with the Town of Hampden.
    g. During design development, conduct and facilitate periodic project progress meetings with Town representatives at the Hampden Town Office.

3. Permitting Services.
    a. Prepare and submit an application for (including all applicable plans, agency letters and exhibits) and facilitate approval of a MaineDEP SLODA Permit.

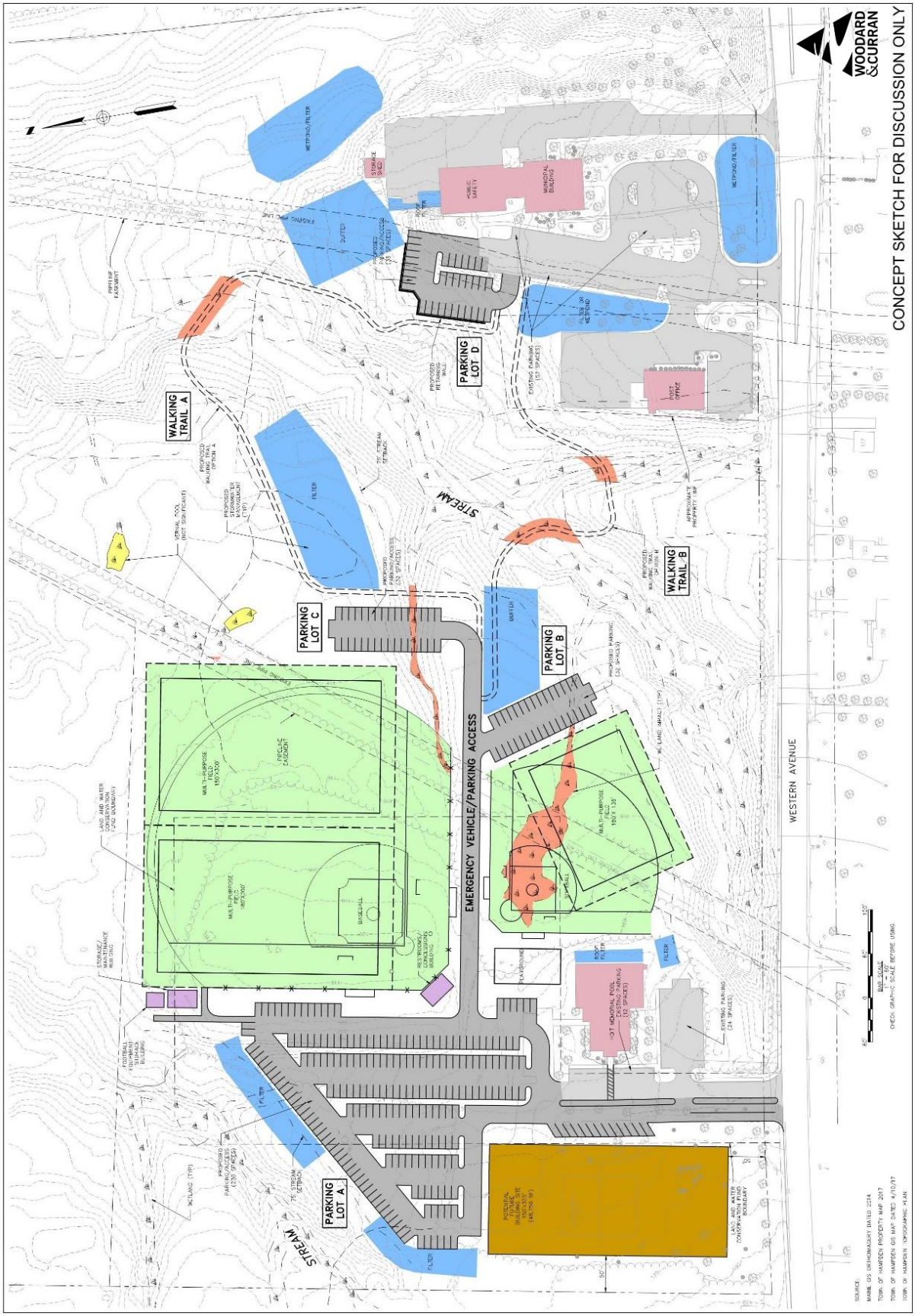
DRAFT

b. Prepare and submit an application for Site Plan Approval with the Planning Board and attend required meetings or public hearings regarding same.

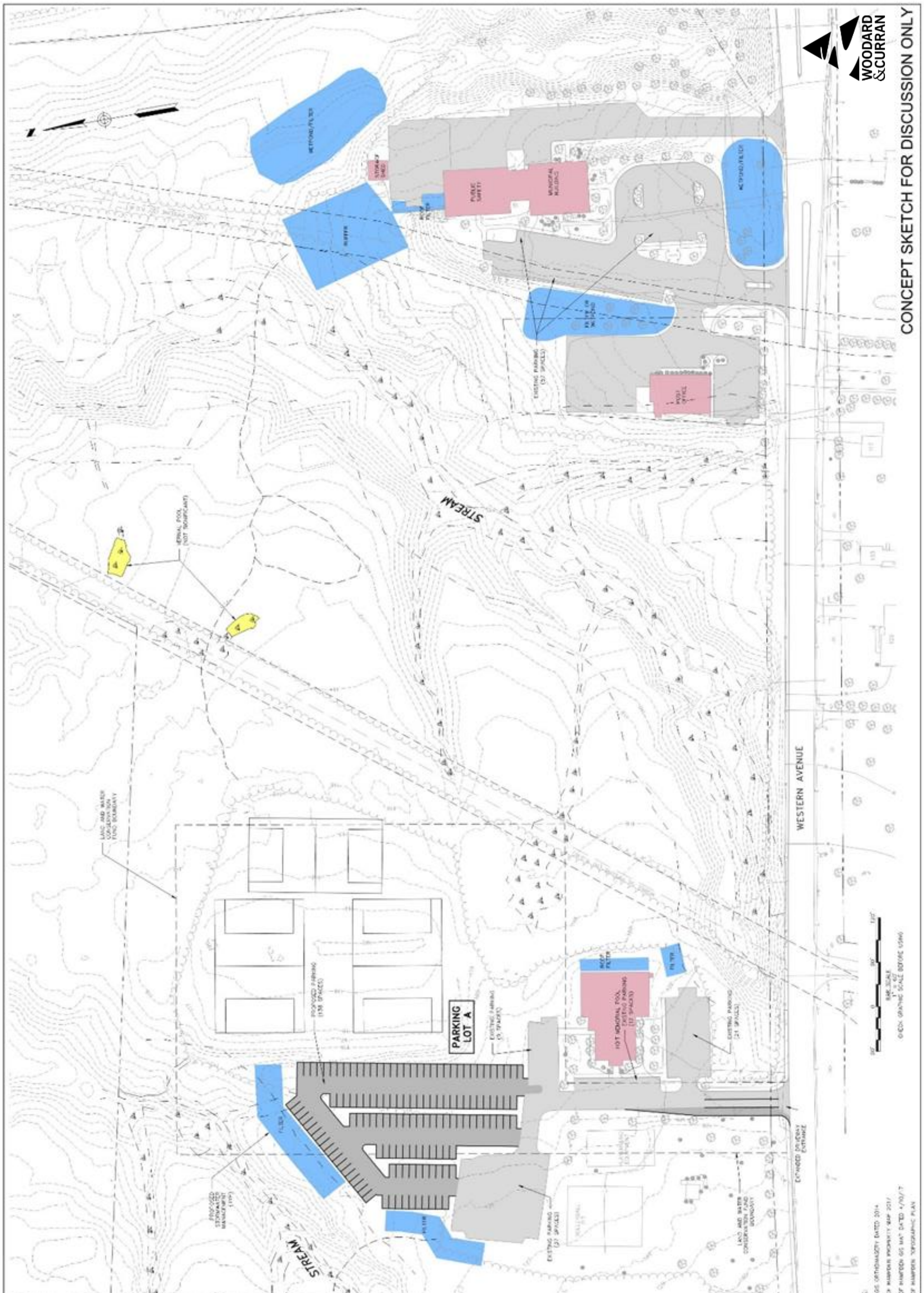
4. Detailed Design Development and preparation of Contract Documents (for the parking-only phase of the project).
   a. Prepare contract bid and construction documents consistent with the approved project design. At a minimum the project plan set will include cover sheet, existing conditions, erosion control, layout and materials, grading and drainage, landscape plans, utilities plans, and all related detail sheets. The project manual will include the Town's non-technical requirements (including related to construction timing and/or phasing to minimize disruption of Recreation Department programming on the site) and required technical specifications.
   b. During the design development phase, attend a minimum of two project team progress meetings.

DRAFT

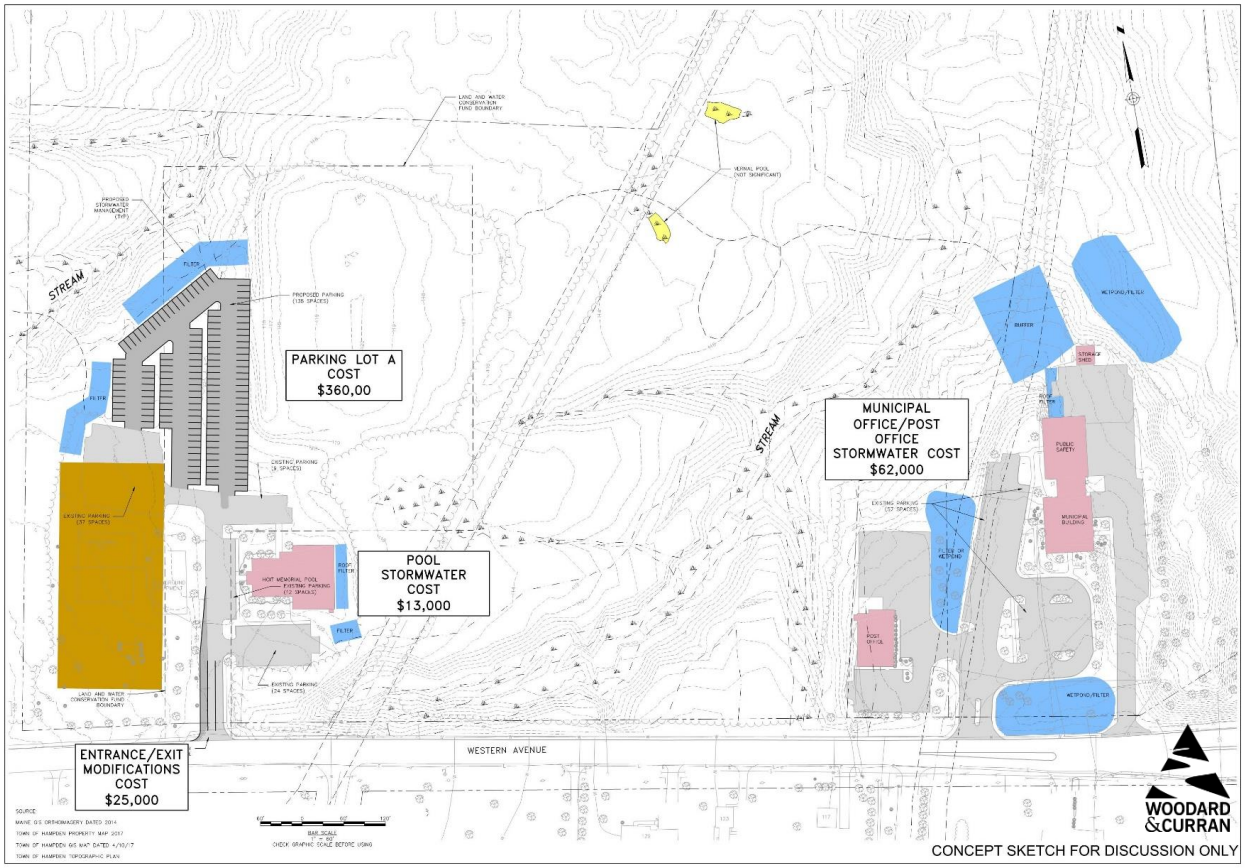
## EXHIBIT A: "Potential Full Build Plan"

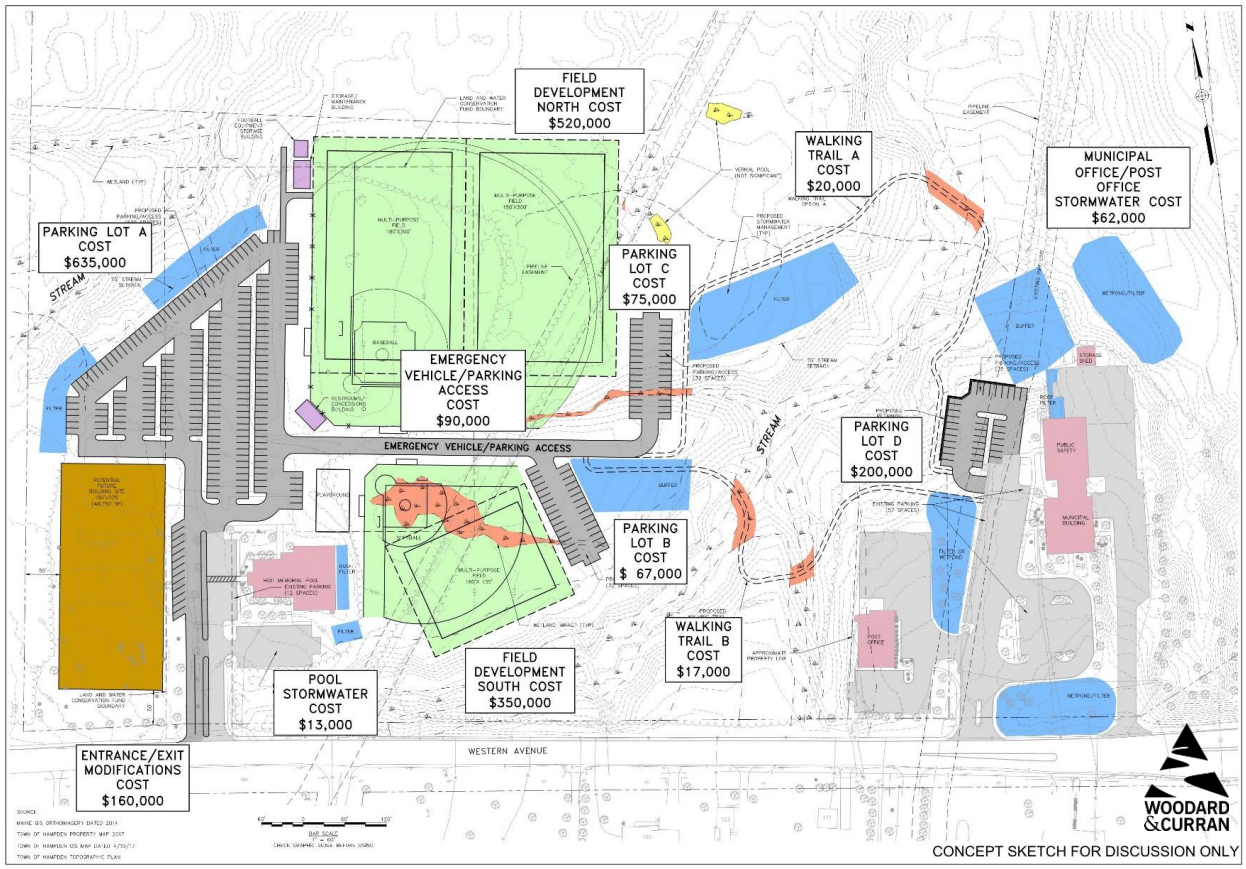


## EXHIBIT B: "Parking-Only Plan"



## EXHIBIT C: Phase 1 Consultant Estimated Range of Costs



## Range of Costs

| $465,000 | $3,000,000 |
|---|---|
| **Parking / Entrance Improvements** | **Complete Build-Out** |
| ▪ Parking Lot A $360k | ▪ Parking Expansion $977k |
| ▪ Entrance Modifications $25k | ▪ Entrance Modifications $160k |
| ▪ Pool Stormwater Features $13k | ▪ Pool Stormwater Features $13k |
| ▪ Town Office / Post Office Stormwater Features $62k | ▪ Town Office / Post Office Stormwater Features $62k |
| | ▪ Emergency/Parking Access $90k |
| | ▪ Field Development $870k |
| | ▪ Trails $37k |
| | ▪ Miscellaneous Improvements $790k |

WOODARD &CURRAN

DRAFT

## EXHIBIT D

## Phase 1 Consultant Memo Regarding Anticipated Permitting Requirements

DRAFT

**COMMITMENT & INTEGRITY**
**DRIVE RESULTS**

One Merchants Plaza | Suite 501
Bangor, Maine 04401
www.woodardcurran.com

T 800.564.2333
T 207.945.5105
F 207.945.5492

January 8, 2018

Mr. Angus Jennings
Town Manager
Town of Hampden
106 Western Avenue
Hampden, ME 04444

Re: Municipal Building and Pool Site Improvements – Permitting Review

Dear Angus:

Woodard & Curran has worked with the Town of Hampden to develop numerous conceptual layouts to expand the athletic field capacity at the Town property, which includes the Town offices, Public Safety departments, the building currently leased to the US Postal Service, and the Lura Hoit pool complex.

Based on the conceptual layouts and data gathered during that phase of work, permits for the athletic fields project will be required from the Maine Department of Environmental Protection (DEP), Town of Hampden, and possibly Army Corps of Engineers. Required permits from the DEP will include Site Location of Development (SLOD) and possibly Natural Resources Protection Act (NRPA). In addition, a Planning Board Permit will be required from the Town of Hampden.

Prior development on the Town property has created just under three acres of "non-revegetated" area since 1970, which is the trigger for applicability under the Site Location of Development law (Title 38, Chapter 3, §§ 481-490). The entire site is included in the analysis because all development on the site is considered "common scheme of development". Meaning, the property is owned by the Town, and the facilities and activities on the site are all related to municipal functions and resources.

Because the Town properties included in this complex are so close to the three-acre trigger for Site Law applicability, the Town and DEP have agreed that any future development on the site will require review of the whole site under Site Law. This review will require that the site meet Chapter 500 Stormwater Standards, and that the SLOD permit application provide the analysis and design details to demonstrate compliance with these standards for both existing and proposed elements of the site.

Depending on the final layout of the new project, including any required stormwater treatment facilities, there could be wetland impact. If there is wetland impact, then permitting under the NRPA rules with the Army Corps of Engineers would be required. Permittable wetland impact could include impact within the vernal pool habitat zones for the two vernal pools mapped on the site. Though neither of these pools is considered significant under DEP jurisdiction, the pools are still under Army Corps jurisdiction. Impacts within 100 feet of the pools will trigger review by the Army Corps.

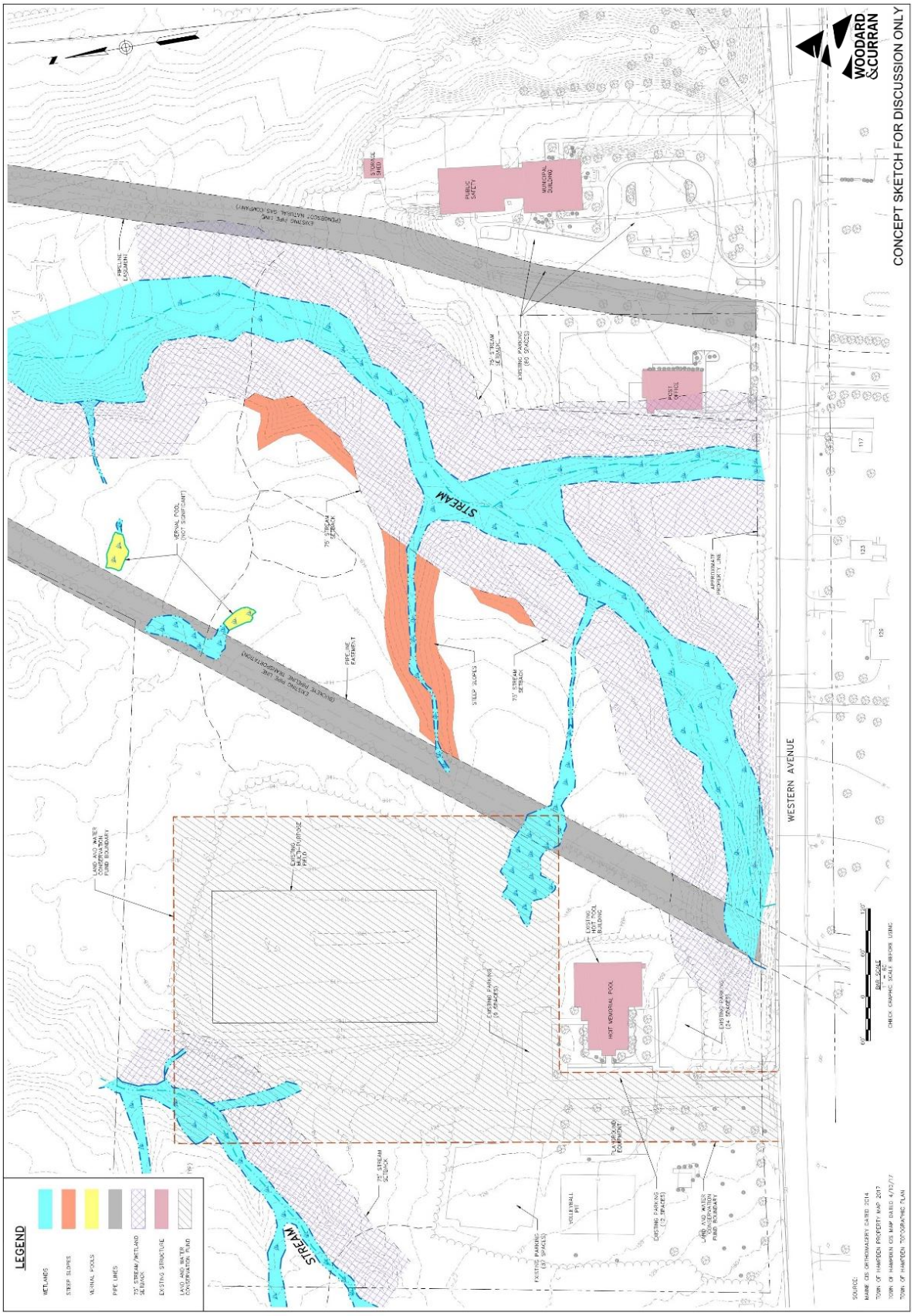
If you have any questions, please do not hesitate to contact me at 945-5105 or via e-mail at jwilson@woodardcurran.com.

Sincerely,

WOODARD & CURRAN

James D. Wilson, P.E.
Senior Project Manager / Senior Principal

JDW/jeh

PN: 0230786.00

## EXHIBIT E: "Site Constraints"