

## Board of Selectmen

36 BARTLET STREET  
ANDOVER, MA 01810

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### MEETING AGENDA

Monday, June 26, 2017

Regular Session 6:00 P.M.

SELECTMEN'S CONFERENCE ROOM, ANDOVER TOWN OFFICES, 3<sup>rd</sup> floor

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#### REGULAR SESSION

- I. Call to Order– 6:00 P.M.
- II. Opening Ceremonies/ Moment of Silence/Pledge of Allegiance – 6:00 P.M.
- III. Communications/Announcements/Liaison Reports – 6:05 P.M.
- IV. Citizens Petitions and Presentations – 6:10 P.M.
- V. Executive Session – 6:15 P.M.  
Board to go into executive session to review and authorize the Town Manager to sign PEC Agreement.
- VI. Regular Business of the Board – 6:30 P.M.
  - A. Better Chance of Andover – (5 minutes)  
Mary Pritchard of A Better Chance of Andover to present to a plaque to the Town of Andover.
  - B. PEC Agreement – (10 minutes)  
Board of Selectmen to review and vote to authorize the Town Manager to sign the PEC Agreement.
  - C. Town of Andover's Drought Management Plan – (10 minutes)  
The Director of Municipal Services is asking the Board of Selectmen permission for the Town of Andover to declare and enter into a drought management stages as needed this summer.
  - D. ID2/ID3 Task Force – (5 minutes)  
Board to support the establishment of an ID2/ID3 Task Force.
- VII. Public Hearing – 7:00 P.M.
  - A. Elm Square Oyster Company – (15 minutes)  
Rave Hospitality Group, LLC, 85 Green Street, Melrose, MA dba Elm Square Oyster Company has applied for a Transfer of an All Alcoholic Restaurant Alcoholic

Beverage License, including New Officers/Directors and a Change of Manager, at 2 Elm Square, Andover. Eric Williams of 71 Keeley Street, Haverhill, MA is the designated manager.

VIII. Public Hearing – 7:15 P.M.

A. Cable Television License Renewal – (15 minutes)

The Board of Selectmen, being the Town’s Cable Television Franchising Authority are conducting a public hearing on the proposed RENEWAL OF THE Verizon cable television license. The Selectmen will accept public comment, and consider and possibly take final action on approval of the proposed RENEWAL license.

IX. Consent Agenda – 7:30 P.M.

A. APPOINTMENTS – (Town Manager)

**That the following appointments by the Town Manager be approved:**

DEPARTMENT/ COMMITTEE	NAME	POSITION	RATE/ TERM	DOH
Recreation Services	Emma Koral	All Day Counselor	\$10.00/hr.	6/1/17
Recreation Services	Michaela McIver (new hire)	Program Assistant II	\$52,963	6/27/17
Recreation Services	Alexander Batcheller	Assistant Director/Outer Limit	\$20.00/hr.	6/19/17
Municipal Services	Amir Zamani	Temp. Seasonal/Laborer	\$11.00/hr.	6/28/17
Recreation Services	Emma Koral	All Day Counselor	\$10.00/hr.	6/1/17
Municipal Services	Jonathan Klayman	Temp. Season/Laborer	\$11.00/hr.	6/28/17
Fire Rescue	Matthew Beirne (v. T. Kennedy)	Fire Fighter	\$52,035	7/1/17
Fire Rescue	Michael Uttley (v. J. Gaunt)	Fire Fighter	\$57,239	7/1/17
Fire Rescue	James Bancroft	Fire Fighter	\$58,956	7/1/17
Library Services	Bernard Long	Library Aide- Teen Room	\$11.00/hr.	6/28/17
Youth Services	Margaret Davis	AYS Counselor 2	\$11.00/hr.	6/19/17
Youth Services	William Rui	AYS Counselor 2	\$11.00/hr.	6/19/17
Youth Services	John Barry	AYS Counselor	\$11.00/hr.	6/12/17
Municipal Services	Meredith Martin	Administrative Intern.	\$14.00/hr.	6/27/17
Municipal Services	Micaela Guglielmi	Sustainability Intern.	\$11.00/hr.	6/21/17
IT Department	Christopher Primes (New Position)	Technical Specialist 1	\$58,800.36	6/27/17

**B. CONTINUED COMMITTEES/BOARDS APPOINTMENTS - (Town Manager)**

**AUDIT COMMITTEE – 3 year term**

Steven Caron

**BALLARDALE HISTORIC DISTRICT – 3 year term**

Diane Derby

Gary Rowe

**BOARD OF HEALTH – 3 year term**

Pamela Linzer

**CONSERVATION COMMISSION – 3 year term**

Donald Cooper

**COMMISSION ON DISABILITY – 3 year term**

Stephen Surette

Joseph Connelly

**CULTURAL COUNCIL – 3 year term**

Leslie Malis

**DESIGN REVIEW BOARD - 3 year term**

Craig Gibson

Suzanne Korschun

**ELDERY TAX AIDE – 3 year term**

David Reilly

**EMERGENCY MANAGEMENT – 1 year term**

Chief Patrick Keefe

**FOREST WARDEN – 1 year term**

Chief Michael Mansfield

**GREATER LAWRENCE SANITARY DISTRICT – 1 year term**

Christopher Cronin

**GREEN ADVISORY – 3 year term**

Melanie Cutler

Anil Navkal

**HOUSING PARTNERSHIP COMMITTEE – 3 year term**

Kevin Cuff

Austin Simko

**HOUSING TRUST FUND BOARD OF TRUSTEES – 3 year term**

Susan Shepard

**KEEPER OF LOCKUP – 1 year term**

Chief Patrick Keefe

**MHL BOARD OF TRUSTEES – 3 year term**

Karen Herman

Mark Yanowitz

**MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY – 1 year term**

Paul Materazzo

Lisa Schwarz - Alternate

Jacki Byerley - Alternate

**PATRIOTIC HOLIDAY COMMITTEE – 1 year term**

Michael Burke

Michael Mansfield

Robert Hamilton

Calvin Perry

Calvin Deyermond

Stephen Wallingford

Jim Bedford

Laurie Farris

Scott Parrish

Francis Rittershaus

**PRESERVATION COMMISSION – 3 year term**

Leslie Frost

Joanne Reck

**SPRING GROVE CEMETERY TRUSTEES – 3 year term**

Donald Robb

**SCHOLARSHIP COMMITTEE – 1 year term**

Kate Allard

Caroline Hanson

Kathy Hess

Janis Hill

David Reilly

Dr. Eric Stubenhaus

Phillip Giguere

**TOWLE FUND TRUSTEES – 3 year term**

George Nugent

**VETERANS SERVICE AGENT – 1 year term**

Michael Burke

**C. APPOINTMENTS – (Board of Selectmen)**

<b>COMMITTEE/BOARD</b>	<b>NAME</b>	<b>POSITION</b>	<b>RATE/TERM Until</b>
Zoning Board of Appeals	Ellen Keller	Alternate Member	Expires 2020
Zoning Board of Appeals	Daniel Casper	Regular Member	Expires 2020
Zoning Board of Appeals	Denise Bordonaro	Alternate Member	Expires 2020
Retirement Board	Thomas Hartwell	Member	Expires 2020

X. Continued Regular Business of the Board – 7:45 P.M.

A. Goal Setting Workshop –

Board of Selectmen to discuss the FY2017 Goals.

XI. Adjournment – 10:00 P.M.

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# DROUGHT MANAGEMENT PLAN



*photo of Haggetts Pond  
Andover's drinking water supply*

Andover, Massachusetts  
Water Department – PWSID 3009000  
September 2011

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## 1.0 INTRODUCTION

Virtually every region of the United States has experienced drought and its adverse effects on public water supply systems. Even the relatively “water-rich” Commonwealth of Massachusetts, which under normal conditions receives between 40 and 50 inches of annual precipitation, is at risk of drought. Massachusetts’s droughts have ranged from extended periods of multi-year dry weather events such as experienced in the mid 1960’s to seasonal events such as the dry spring and summer of 1999, and the dry summer of 2010. History reinforces that climatic changes create uncertainty and risk to our water resources. Furthermore, the vulnerability of public water systems to drought is increasing as the population and water demands increase.

A Drought Management Plan (DMP) is a document that accomplishes the following, (1) defines the conditions under which a drought induced water emergency exists, and (2) specifies the actions that are to be taken in response. Drought indicators are parameters used to assess the status of water supplies. Some examples of indicators include: pumping capacity, storage tank elevations, reservoir levels, stream flow, groundwater levels and precipitation conditions. Drought stage triggers act as benchmarks to provide warning signals of impending water shortages; and, are developed using historical data that established water supply fluctuations distinguishing normal and water shortage conditions. Water restrictions that correspond with particular drought stages are then enforced to allow a predictable consistent response to water shortages or drought conditions.

This DMP approaches drought management recognizing that water supplies must be managed jointly along with water demands. Since drought is a natural phenomenon over which we have little, if any control it is necessary for resource planners to anticipate the occurrence of drought, consider the impacts of drought on our water supply system, and develop plans to mitigate the impacts of drought. The basic goal(s) of a drought management plan is to preserve essential public services and minimize the adverse impacts of a water supply emergency on the public’s health and safety, economic activities, environmental resources, and individual lifestyle.

## **2.0 OVERVIEW OF WATER SUPPLY**

With the exception of a few houses using private wells, the Town of Andover's residents, businesses, and industry are served by the Town's municipal drinking water supply drawn from a combination of three surface water sources. Each of these sources is discussed below.

### **2.1 Haggetts Pond**

Haggetts Pond represents Andover's major water source of water supply and storage. It is a 220-acre glaciated natural pond located southeast of the intersection of interstates Routes 93 and 495 in Essex County Andover, Massachusetts. The pond has a draw down capacity of 6 feet and a safe yield, defined as the amount of water that can be drawn during the severest drought on record, of 1.1 million gallons per day. The total watershed area of Haggetts Pond covers 1,422 acres.

### **2.2 Fish Brook**

Fish Brook is a 5.25-mile long stream, which arises in wetlands near Haggetts Pond and from the ponds in Indian Ridge Country Club. Fish Brook flows to the Merrimack River, roughly parallel to Route 93. The mouth of the brook has been dammed to retain its flow and a pump station located at the dam delivers water through a 24-inch water line upstream to Haggetts Pond. The Fish Brook Pumping Station is treated as a reservoir without storage capacity. Water is available for capture, but not storage, and inflow to Fish Brook is represented by flow data from the Merrimack River. The Fish Brook Watershed area covers 2,450 acres.

### **2.3 Merrimack River**

The Merrimack River is a major river that borders the Town of Andover on the northeast that is drainage for a 5,000 square mile watershed. Water is drawn from the Merrimack River, at the Fish Brook Station, and pumped into Haggetts Pond. This water makes up the remainder of the Town of Andover's average daily demand not supplied directly from Haggetts Pond.

### **3.0 DISTRIBUTION**

Source water transferred from Fish Brook and the Merrimack River into Haggetts Pond is drawn into the Water Treatment Plant. The plant has a design capacity to treat 24 million gallons per day (mgd) of raw water, and an operational capacity of 18 mgd. The raw water is processed via physical and chemical treatments. The water treatment plant assures a safe and consistent quality product to benefit the individual lifestyles of each consumer. Following treatment, the finished water is distributed to three different storage locations in Town.

Andover currently has 14 million gallons of storage capacity for processed (or finished) water. Six million gallons of storage exists at the Bancroft storage tanks on Bancroft Road adjacent to the Bancroft School. Four million gallons of finished water is pumped to the Wood Hill Storage Tanks located off of Haggetts Pond Road, and 4 million gallons of storage is available in the two Prospect Tanks, located at the top of Ward Hill Reservation. Combined, these storage tanks provide water to meet the need of consumers throughout the Town of Andover. Refer to Figure 3-1 for a schematic of the distribution and storage facilities.

The volume of raw water withdrawn from the water supply and processed through the Water Treatment Plant during CY 2010 was 6.98 mgd or approximately 2.55 billion gallons for the year. The volume of treated water that was delivered through 250 miles of underground distribution system pipes to end users for CY 2010 was 6.4 mgd or approximately 2.3 billion gallons. During CY 2010, 49% of the town's water demand was for residential use, followed by 19% commercial and 18% industrial. The remaining 14% is used for municipal and other miscellaneous uses. The town's average per capita residential water use for calendar year 2010 was 69 gallons per day.



**Figure 3-1. Schematic of Andover Water Dept Distribution and Storage Facilities**

## **4.0 DROUGHT INDICATORS**

### **4.1 Water Supply**

Andover's water supply is from three sources, Haggetts Pond, Fish Brook and the Merrimack River, with the pond serving as the primary storage reservoir. Analyses of the inflow and outflow of water can help to indicate drought conditions. Reservoir inflow is represented by precipitation, surface runoff, and ground water discharge; and in the case for Haggetts Pond, water that is pumped from the Fish Brook Station which represents flow from both Fish Brook and the Merrimack River. Outflow consists of withdrawals, evaporation and releases. Indicators of drought may include: Wet well level of the Fish Brook Pumping Station, and the level of Haggetts Pond. This is discussed further in Sections 7 and 8 of this document. The level of the wet well at Fish Brook Pumping Station is measured, recorded and reported continuously by the SCADA system.

### **4.2 Distribution/Demand**

Seasonal variation should be considered, as the demand for water is lower in the months of November through April and higher during May through October. Indicators of drought would include the following: the raw water operations demand and the distribution storage capacity. This is discussed further in Sections 9 and 10 of this document. The raw water operations demand and the distribution storage volumes are measured, recorded and reported in real-time by the SCADA system.

### **4.3 Palmer Drought Index**

The Palmer Index is a widely used scale for measuring drought conditions. It is based on soil moisture supply and demand and long-term records of temperature and precipitation. Normal weather has an index value of zero, in all seasons in any climatic region. Droughts have negative index values while wet periods have positive values. Consecutive negative values provide initial warning of a developing drought. Many communities use the Palmer Index to trigger phases of

their drought management plans. This is discussed further in Section 11 of this document; and the Palmer Drought Index is presented in Appendix B.

The plan's effectiveness is directly related to the frequency of monitoring indicator levels. Indicator levels should be monitored on a monthly basis during wet seasons and daily during dry seasons or periods of high demand to determine the actions and procedures for responding to a drought-related condition in advance of an actual emergency. Frequent monitoring will also lessen any perception that the utility's actions are ill considered or arbitrary. Notification of monitoring results must be made available to the appropriate utility manager and/or decision makers. Drought indicators including the pump station wet well level, storage tank capacity, and raw water operational demand are tracked in real-time using the plant's SCADA system. The Phase I watch levels are closely monitored and recorded. An example of the SCADA screen is shown in Figure 4-1.

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A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
	LOW LIF	7 DAY	7 DAY	RUN	BAN	POND	BAN	W.H.	NR	WH	F.B.	F.B.	RIVER	NORTH	READING
	FLOW	CONS.	AVG	HRS.	% CAP	LEVEL	LEVEL	LEVEL	TOTAL	% CAP	LEVEL	FLOW	LEVEL	READING	CENT ST
4	01-SEP-2011	7.947			97%	16.62	14.5	19.2	0.978	94%	12.88	8.18	0.00	0.472	0.506
5	02-SEP-2011	8.686			98%	16.63	14.7	19.8	0.912	97%	12.88	8.174	0.00	0.418	0.494
6	03-SEP-2011	8.686			96%	16.66	14.4	19.6	0.876	98%	12.86	8.174	0.00	0.386	0.490
7	04-SEP-2011	8.862			96%	16.90	14.3	19.9	0.785	98%	13.15	8.161	0.00	0.277	0.509
8	05-SEP-2011	8.873			95%	16.94	14.2	20.0	0.744	98%	13.14	8.110	0.00	0.233	0.511
9	06-SEP-2011	8.451			95%	16.97	14.2	19.7	0.992	97%	13.07	8.051	0.00	0.482	0.510
10	07-SEP-2011	7.385	8.413		96%	17.05	14.4	20.1	0.994	98%	13.04	8.018	0.00	0.484	0.510
11	08-SEP-2011	7.396	58.338	8.334	96%	17.07	14.4	19.9	0.990	98%	13.00	8.009	0.00	0.480	0.510
12	09-SEP-2011	6.998	56.651	8.093	94%	17.11	14.1	19.6	0.976	98%	12.95	8.022	0.00	0.471	0.505
13	10-SEP-2011	6.998	54.963	7.852	94%	17.12	14.1	19.6	0.956	98%	12.91	8.018	0.00	0.459	0.497
14	11-SEP-2011	7.279	53.380	7.626	95%	17.18	14.2	20.0	0.958	98%	12.88	8.026	0.00	0.454	0.504
15	12-SEP-2011	8.338	52.864	7.552	94%	17.17	14.1	19.7	0.794	97%	12.86	8.026	0.00	0.280	0.514
16	13-SEP-2011	8.850	53.263	7.609	94%	17.30	14.1	19.8	0.910	97%	12.93	7.992	0.00	0.392	0.518
17	14-SEP-2011	9.201	55.080	7.869	98%	17.44	14.7	0.0	1.028	0%	12.99	7.849	0.00	0.508	0.520
18	15-SEP-2011	9.225	56.908	8.130	95%	17.43	14.3	0.0	1.018	0%	13.14	6.152	0.00	0.511	0.507
19	16-SEP-2011	8.463	58.374	8.339	95%	17.42	14.2	0.0	0.987	0%	13.15	4.857	0.00	0.490	0.497
20	17-SEP-2011	7.654	59.030	8.433	95%	17.42	14.3	19.8	0.870	97%	13.10	4.844	0.00	0.370	0.501
21	18-SEP-2011	7.889	59.640	8.520	96%	17.35	14.4	20.0	0.996	98%	13.05	1.827	0.00	0.494	0.502
22	19-SEP-2011	8.346	59.628	8.518	90%	17.44	13.5	18.8	0.992	92%	13.18	0.000	0.00	0.495	0.498
23	20-SEP-2011	8.346	59.124	8.446	92%	17.52	13.8	19.4	0.878	95%	13.32	0.000	0.00	0.376	0.502
24	21-SEP-2011	8.334	58.256	8.322	92%	17.47	13.7	19.6	0.908	96%	13.18	0.000	0.00	0.404	0.504
25	22-SEP-2011	8.334	57.366	8.195	90%	17.43	13.6	19.5	0.904	96%	13.14	0.000	0.00	0.405	0.498
26	23-SEP-2011	7.478	56.381	8.054	90%	17.41	13.4	20.1	0.821	99%	13.11	0.000	0.00	0.321	0.500
27	24-SEP-2011	6.611	55.338	7.905	97%	17.41	14.6	19.7	0.773	97%	13.08	0.000	0.00	0.273	0.500
28	25-SEP-2011	6.670	54.119	7.731	94%	17.34	14.1	20.0	0.781	98%	13.04	0.000	0.00	0.281	0.500
29	26-SEP-2011	7.607	53.380	7.626	93%	17.31	13.9	19.0	0.781	93%	13.02	0.000	0.00	0.281	0.499
30	27-SEP-2011	7.607	52.642	7.520	92%	17.35	13.7	19.7	0.786	96%	13.17	0.000	0.00	0.285	0.501
31	28-SEP-2011	7.631	51.938	7.420	93%	17.35	13.9	19.8	0.790	97%	13.17	0.000	0.00	0.285	0.505
32	29-SEP-2011	7.631	51.235	7.319	90%	17.41	13.5	0.0	0.714	0%	13.16	0.000	0.00	0.208	0.506
33	30-SEP-2011	7.138	50.895	7.271	98%	17.43	14.7	0.0	0.733	0%	10.28	0.000	0.00	0.208	0.524
34			44.284	7.381	94%	17.47	14.1	0.0	0.796	0%	10.28	0.000	0.00	0.270	0.526
35															
36															
37	TOTAL	MAX	AVG			AVG			TOTAL		AVG	TOTAL	AVG		
38	238.933	59.640	7.962			17.230			27.422		12.874	130.492	0.000	11.754	15.667
						MIN							MIN		

Sheet1 New Sheet / Successful History definition

Figure 4-1. SCADA Screen

## 5.0 DROUGHT STAGES AND RESPONSE

### 5.1 Description of Drought Stages

A series of four stages of drought management will be used to guide the Town of Andover Water Department through the levels of action needed. These are based on the severity of a particular water shortage or drought. A drought stage level can change in one of three ways after it is reached. If conditions reach the criteria for the next drought level, the severity will be increased. If conditions persist, but do not reach the next level, the drought response will remain constant. If conditions improve, the severity can be reduced based on either site-specific information or on progress toward returning to normal. Mitigation measures are described in more detail in the following section.

American Water Works Association (AWWA) recommends managing water demand during a water shortage as a staged or phased approach, with increasing levels of savings in each successive phase. The actions taken in Phase I are in anticipation of the drought continuing and having the community benefit from increased carryover. The subsequent phases are in response to increasing supply shortages. Phase II uses some mandatory measures, and Phase IV includes extensive restrictions that would be initiated in extreme circumstances. Efforts made to reduce water consumption in the first three Phases will save residents and businesses from the potential hardships of extreme water shortages.

<b>DROUGHT STAGE</b>	<b>LEVEL</b>	<b>RESPONSE ACTION</b>
Phase I	Watch	Initiate Public Awareness of Drier than Normal Conditions and Encourage Voluntary Conservation by Largest Users, Restrict Outside Water Use at Municipal Facilities.
Phase II	Warning	Continue Public Awareness of Drier than Normal Conditions and Encourage Voluntary Conservation of All Users. Mandatory Conservation for Targeted Largest Users.
Phase III	Emergency	Mandatory Restrictions with By Law in Effect.
Phase IV	Critical	Maximum Mandatory Restrictions.

**Phase I (Watch)** involves the voluntary conservation where the municipal's 25 largest water users will be contacted and asked to implement their conservation practices. A list of major water users is updated annually. Also, restrict outside water use at municipal facilities. The demand reduction goal in this Phase is 10%-15% water use.

**Phase II (Warning)** implements a mandatory restriction of the water system's 25 largest users in conjunction with an appeal for voluntary conservation to all public users. Methods to appeal to the public may include: radio, cable television, newspapers, printed flyers, and bill stuffers. The demand reduction goal in this Phase is 15%-25% water use.

**Phase III (Emergency)** implements the Town of Andover Water Use Restriction By-Law adopted by the Town of Andover during an Annual Town Meeting held on April 29, 2002. The by-law establishes enforceable limitations on the use of municipal water during periods of water shortages or drought conditions. The purpose of the by-law is to protect, preserve and maintain public health, safety and welfare when water supply conservation is mandated or water supply emergency has been declared. The by-law is included in Appendix A. The demand reduction goal in this Phase is 25%-40% water use.

**Phase IV (Critical)** of the DMP implements maximum response to a water supply emergency. All Phases of the Drought Management Plan for conservation measures and restrictions are intensified. The by-law will enforce maximum limitations on municipal water use and emergency public agency actions will commence. The demand reduction goal in this Phase is greater than 40% water use.

## **5.2 Public Education**

Public education and outreach during a water supply shortage is a critical component of the drought management plan. The dissemination of information regarding the existing water supply shortage and current water demand will help the customers understand the need to curtail water usage so that water-use reduction goals can be achieved. Keep in mind that the water supply

situation is unpredictable and may change month-to-month. Even as precipitation increases, the effect on the water supply may not be immediate.

Initially, the Town Manager and the Assistant Town Manager will be notified by the Water department of the need to implement the Drought Management Plan, what actions will be taken, including a request to all municipal users to curtail water consumption. A decrease in municipal usage, such as restricting outdoor watering sets an example for the public and promotes cooperation and commitment. Secondly, industry and retail customers will be asked to reduce their water usage. Frequent briefings to the news media; including postings on the town website, public service announcements, postings on electronic display boards positioned on main roads in town, and postings in the local newspapers will be made to ensure timely and accurate communication. Appeals to the general public for water conservation will be made on a regular basis, with updates on the situation of the water supply, proposed actions and actions already taken to mitigate supply shortages, and how well customers are meeting the intended goals.

### **5.3 Enforcement**

Enforcement of the water use restrictions put in place based on Phase III or Phase IV of the Drought Stages will be in accordance with Chapter 9 of the Water Restriction By-Law, which states the following, “any person violating this by-law shall be subject to a warning for the first offense and thereafter shall be liable to the Town in the amount of \$50 for the second violation and \$100 for each subsequent violation...”

### **5.4 Reduction in Drought Levels**

As actual and forecasted supply conditions improve, the Town may move to a lower Drought Stage Phase, or return to “normal use.” The public and water customers will be notified of current drought conditions and the reduction in drought levels. A given drought action level can change when the conditions that led to the specific emergency have ended.

## 6.0 DROUGHT TRIGGERING LEVELS

### 6.1 Fish Brook Pumping Station

Water that is pumped from the Fish Brook Station represents flow from both Fish Brook and the Merrimack River. The various phases of the drought management plan would be triggered based on the wet well level (measured in feet) of the pump station. The typical/normal operating range of the Fish Brook Pumping Station wet well is between 10.0 and 12.5 feet. See Figure 6-1.

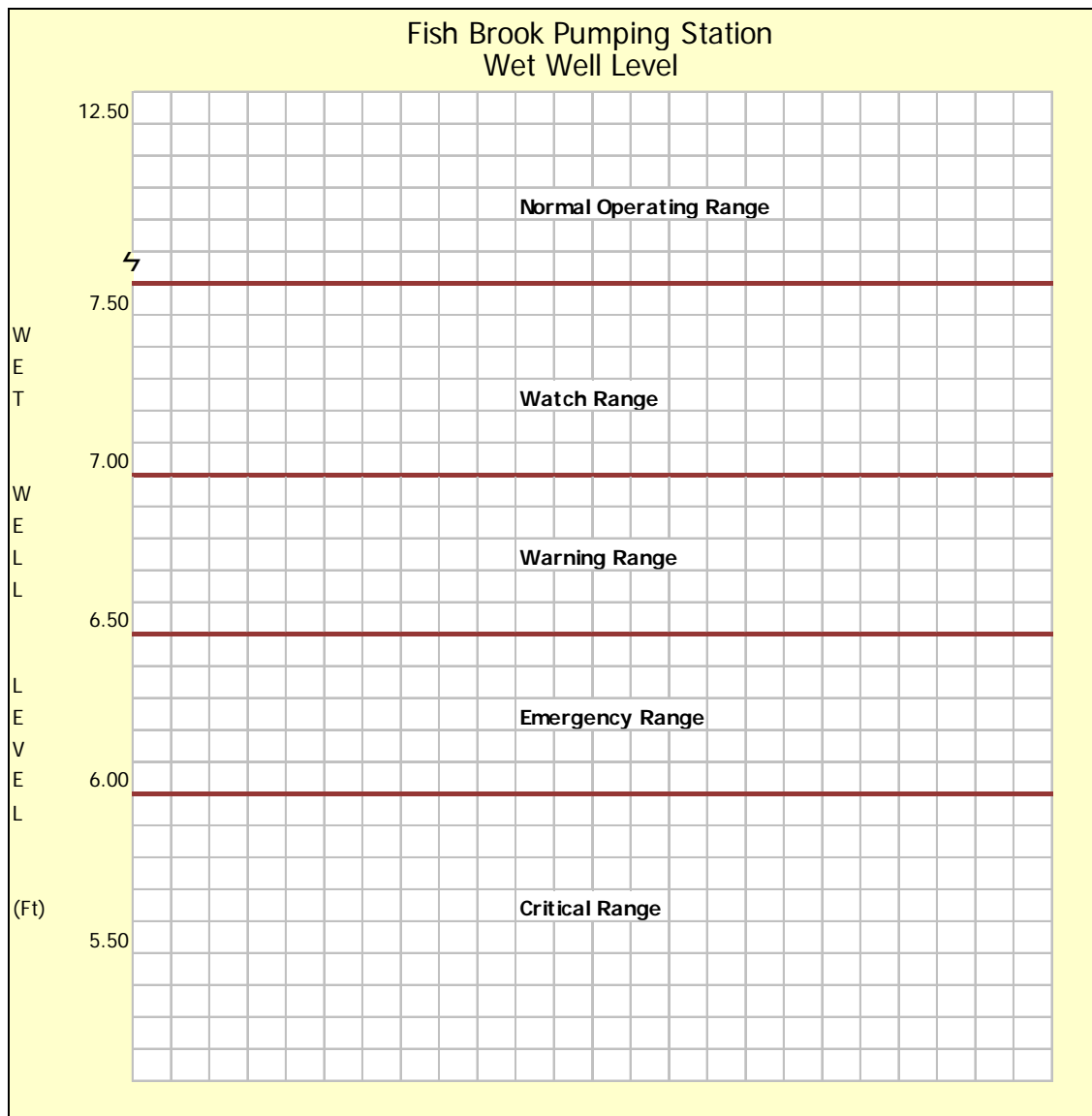
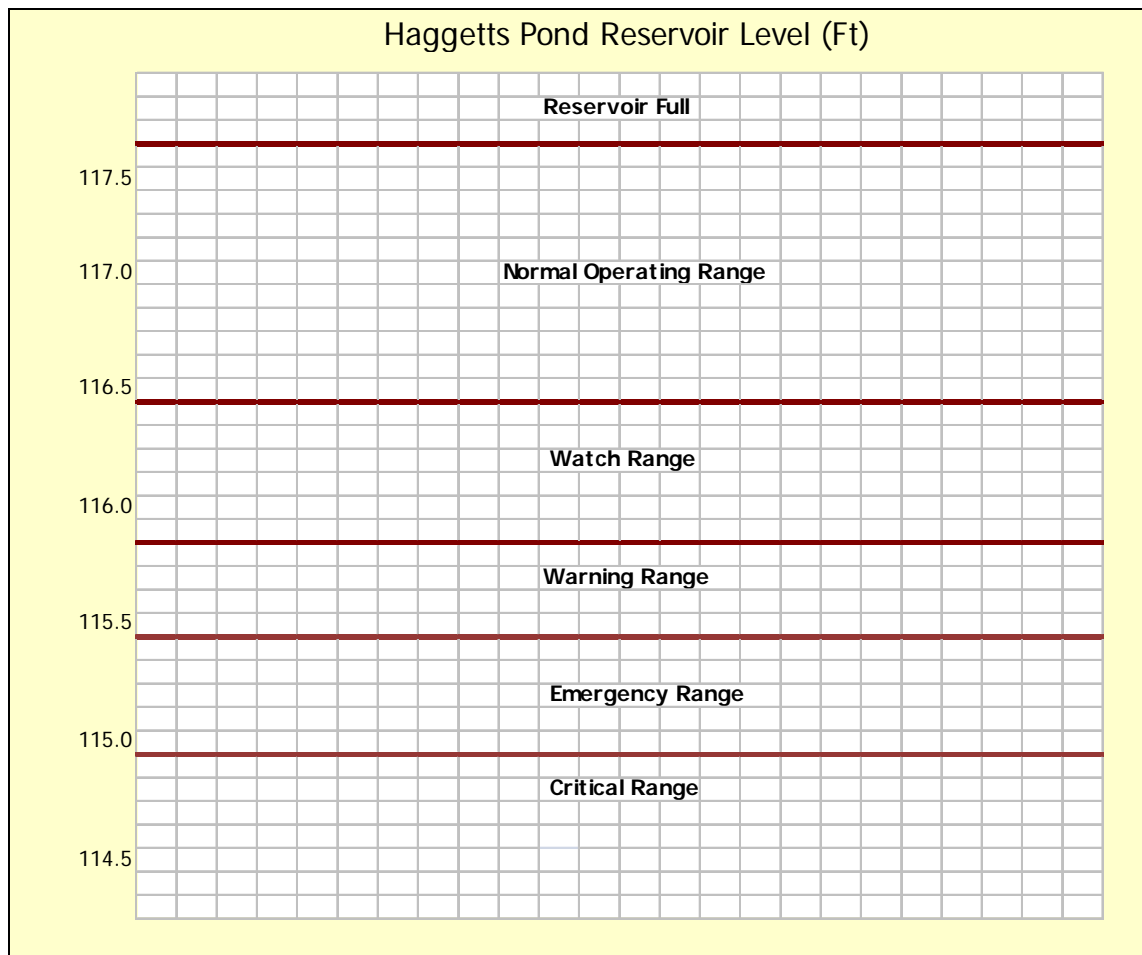


Figure 6-1. Drought Indicator: Fish Brook Pumping Station Wet Well Level

<b>Fish Brook Pumping Station</b>		
<b>Phase</b>	<b>Level</b>	<b>Trigger Level (7 day consecutive), ft</b>
Phase I	Watch	7.1 – 7.6
Phase II	Warning	6.6 – 7.0
Phase III	Emergency	6.0 – 6.5
Phase IV	Critical	Less than 6.0

## 6.2 Haggetts Pond Reservoir

Haggetts Pond is full at 117.6 ft (elevation) and the level should not drop below 113.5 ft (elevation) according to the engineering prints for the low lift flow. The various phases of the drought management plan would be triggered based on the level (measured in feet) of the reservoir. See Figure 6-2.



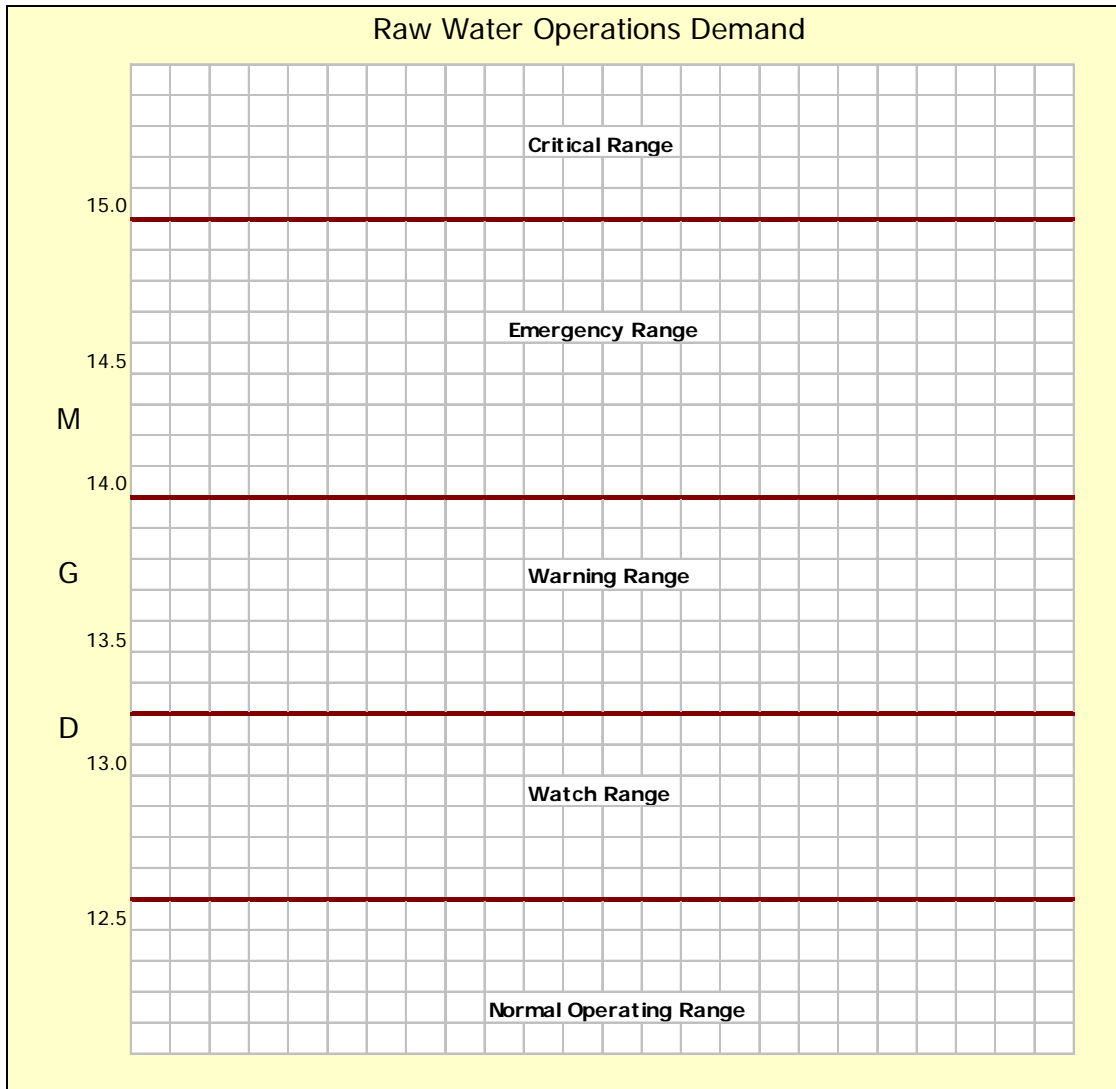
**Figure 6-2. Drought Indicator: Haggetts Pond Reservoir Level**

<b>Haggetts Pond Reservoir</b>		
<b>Phase</b>	<b>Level</b>	<b>Trigger Level (7 day consecutive), ft</b>
Phase I	Watch	115.9 – 116.4
Phase II	Warning	115.5 – 115.8
Phase III	Emergency	115.0 – 115.4
Phase IV	Critical	Less than 115.0

### **6.3 Raw Water Operations Demand**

The average daily water volume pumped by the low lift pumps at the water treatment plant is 6.98 mgd. A daily peak volume of raw water pumped during the warmer months (May to September) may be as high as 13.8 mgd. The various phases of the drought management plan would be triggered based on the demand for raw water to be pumped at the water treatment plant for seven consecutive days. Refer to Figure 6-3.

<b>Raw Water Operations Demand</b>		
<b>Phase</b>	<b>Level</b>	<b>Trigger Level (7 day consecutive), mgd</b>
Phase I	Watch	12.5 – 13.1
Phase II	Warning	13.2 – 13.9
Phase III	Emergency	14.0 – 14.9
Phase IV	Critical	15.0 - >



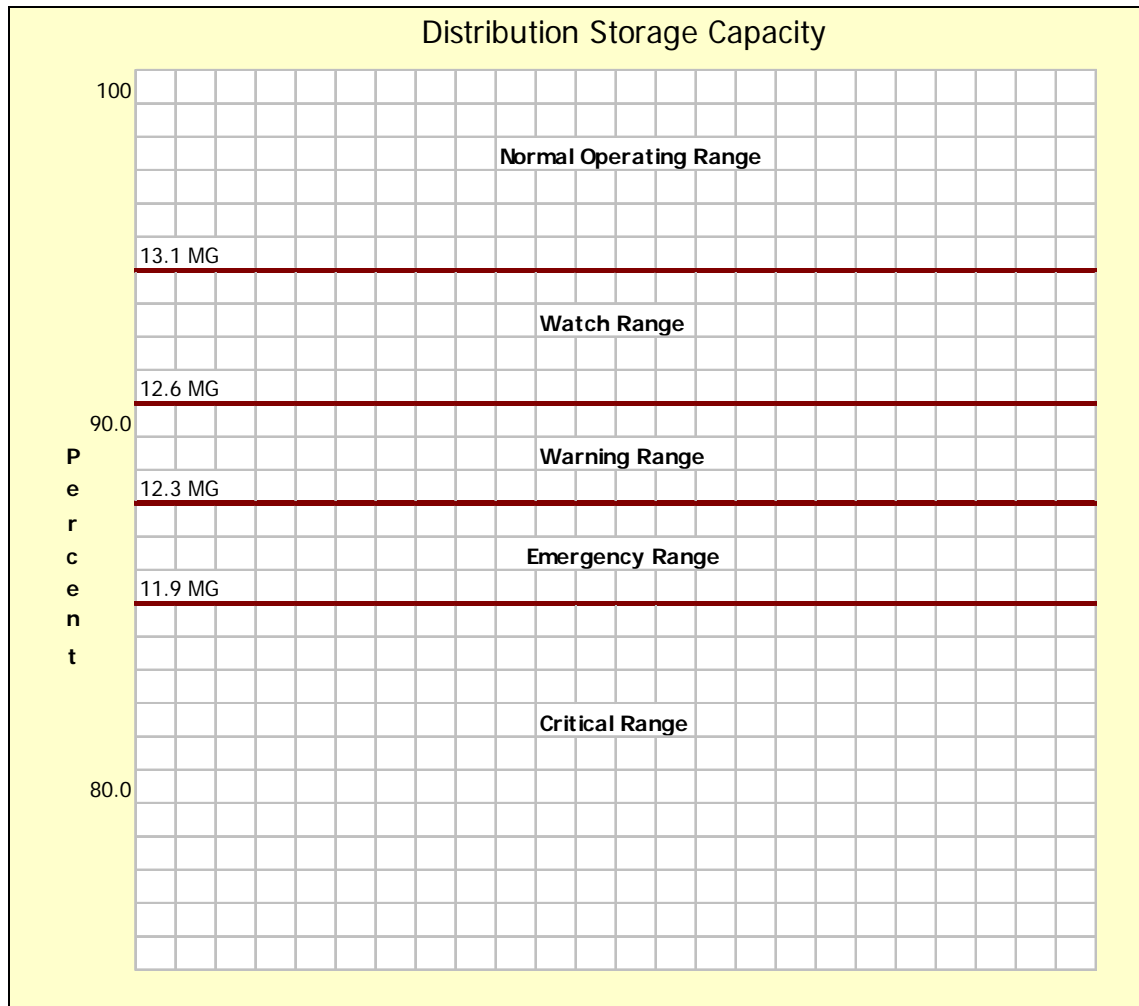
**Figure 6-3. Drought Indicator: Raw Water Operations Demand**

#### **6.4 Distribution Storage Capacity**

Andover currently has 14 million gallons of storage capacity for processed (or finished) water. Combined, these storage tanks provide water to meet the need of consumers throughout the Town of Andover. Six million gallons of storage exists at the Bancroft storage tanks. Four million gallons of finished water is pumped to the two Wood Hill Storage Tanks, and 4 million gallons of storage is available in the two Prospect Tanks.

Figure 6-4 illustrates the drought trigger level for the entire distribution storage capacity of Andover’s water system. Response actions to each Phase of the drought management plan would be triggered when plant operations cannot maintain the percentage of distribution storage for three consecutive days.

<b>Distribution Storage Capacity for Entire System</b>		
<b>Phase</b>	<b>Level</b>	<b>Trigger Level (% full for 3 consecutive days)</b>
Phase I	Watch	94.0 – 90.1
Phase II	Warning	90.0 – 88.1
Phase III	Emergency	88.0 – 85.1
Phase IV	Critical	Less than 85.0



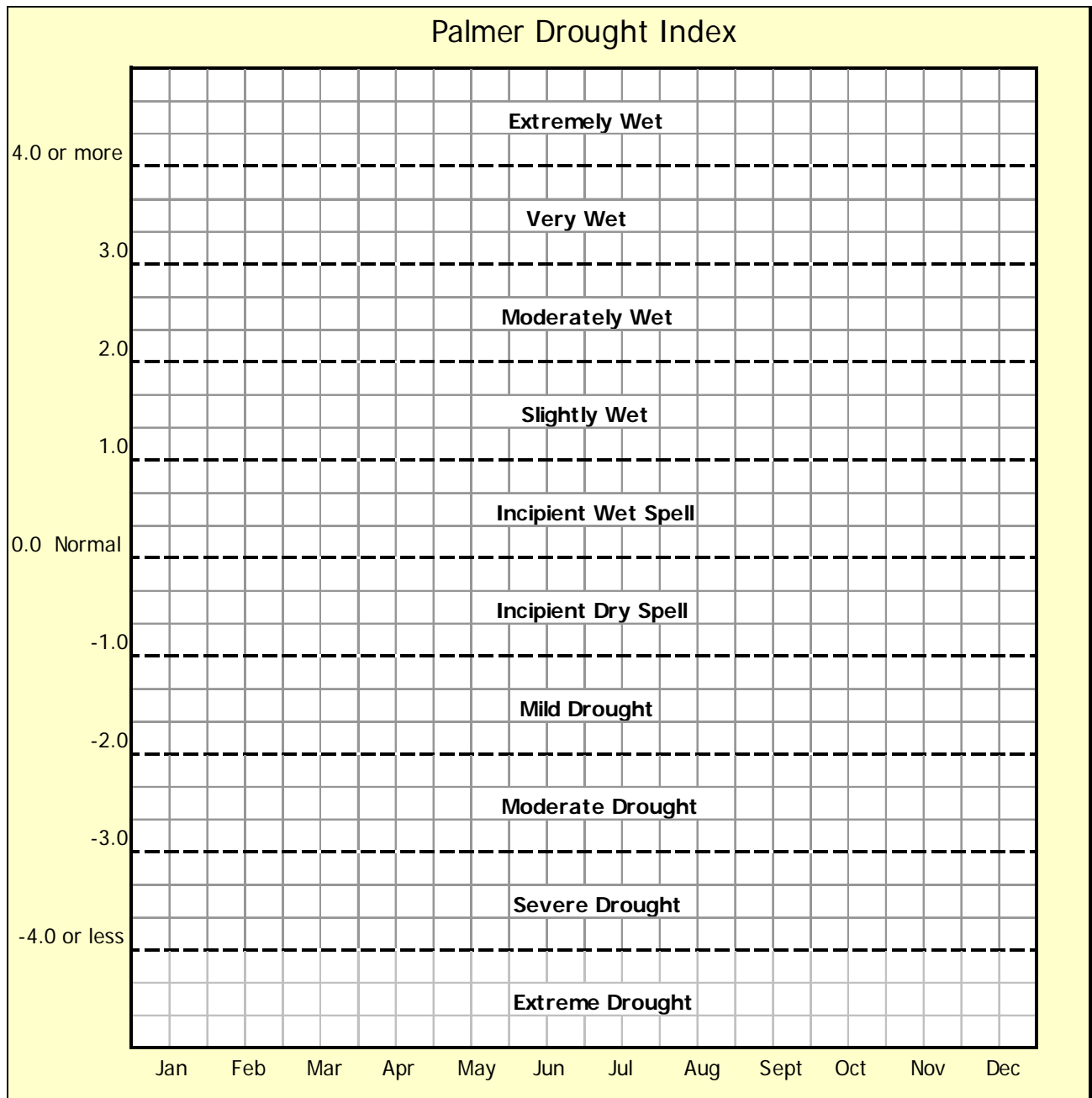
**Figure 6-4. Drought Indicator: Distribution Storage Capacity for Entire System**

There are, however, three pressure zones that make-up the entire distribution capacity: Bancroft Storage Reservoir, Wood Hill Storage Tanks and the Prospect Storage Tanks. A problem with storage capacity in any of these three zones could trigger response actions for the drought management plan. There is a critical level (corresponding to volume of finished water in each tank) that must be maintained for each storage tank. This is detailed in the table below. Phase II (Warning) response of the DMP is immediately triggered if the finished water level falls below this level for any one of the storage tanks, for three consecutive days. Phase II implementation includes a mandatory restriction of the water system’s 25 largest users in conjunction with an appeal for voluntary conservation to all public users. Methods to appeal to the public may include: radio, cable television, newspapers, printed flyers, and bill stuffers. The goal in Phase II is a 15%-25% reduction in water use.

<b>Storage Tank</b>	<b>Critical Tank Level</b>
Bancroft Storage Reservoir	10 feet (for 3 consecutive days)
Wood Hill Storage Tanks	14 feet (for 3 consecutive days)
Prospect Storage Tanks	10.5 feet (for 3 consecutive days)

## **6.5 Palmer Drought Index**

The Palmer Drought Index is calculated based on precipitation and temperature data, as well as the local available water content of the soil. It is useful as a drought monitoring tool and may be used to trigger actions associated with Drought Contingency Plans by providing decision makers with a measurement of the abnormality of recent regional weather. It provides an opportunity to place current conditions in historical perspective while providing spatial and temporal representations of historical droughts. The objective of the index is to provide measurements of moisture conditions that are standardized to comparisons between regional locations and months of the year. Weekly index values are available on the Climatic prediction Center website at [http://nic.fb4.noaa.gov/products/analysis\\_monitoring/regional\\_monitoring/palmer.gif](http://nic.fb4.noaa.gov/products/analysis_monitoring/regional_monitoring/palmer.gif).



**Figure 6-5. Drought Indicator: Palmer Drought Index**

## **7.0 PLAN ASSESSMENT**

As with all aspects of a drought plan, the assessment criteria for conservation and restriction measures must be updated as the utility gains actual experience with the effectiveness of measured implementation.

The DMP is designed for the Water Department to serve as a guideline for levels of action needed to respond to a particular water shortage or drought condition. In any voluntary or mandatory water use curtailment, equity in enforcement of the water reduction goals is of real concern to consumers. For this reason, everything possible must be done to eliminate any perception of inequity in the program. Enforcement must be directed toward achieving the goals of the DMP. It is also important to emphasize that the Water Department and other Town Departments should set a positive example by complying with water use restrictions and taking all reasonable measures to reduce water use during all phases of the plan.

# Appendix A

## Water Restriction By-Law

CODE OF THE TOWN OF ANDOVER MASSACHUSETTS, v20 Updated 08-30-2008

PART II BY-LAWS

Article XV, WATER

### Article XV, WATER

[HISTORY: Adopted by the Town of Andover 4-29-2002 Annual Town Meeting, Art. 40. Amendments noted where applicable.]

#### **§ 1. Authority.**

This by-law is adopted by the Town under its police powers to protect public health and welfare and its powers under Massachusetts General Laws Chapter 40, Section 21 et seq. and implements the Town's authority to regulate water use pursuant to Massachusetts General Laws Chapter 41, Section 69B. This by-law also implements the Town's authority under Massachusetts General Laws Chapter 40, Section 41A, conditioned upon a declaration of water supply emergency issued by the Massachusetts Department of Environmental Protection.

#### **§ 2. Purpose.**

The purpose of this by-law is to protect, preserve and maintain public health, safety and welfare whenever there is in force a state of water supply conservation or state of water supply emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Massachusetts Department of Environmental Protection.

#### **§ 3. Definitions.**

As used in this by-law, the following terms shall have the meanings indicated:

**DIRECTOR** -- The Director of Public Works for the Town of Andover.

**PERSON** -- Any individual, corporation, trust, partnership or association, or other entity.

**PUBLIC WATER SUPPLY SYSTEM** -- The Andover municipal water supply system withdrawing water from Haggetts Pond.

**STATE OF WATER SUPPLY CONSERVATION** -- A state of water supply conservation declared by the Town pursuant to § 4 of this by-law.

**STATE OF WATER SUPPLY EMERGENCY** -- A state of water supply emergency declared by the Massachusetts Department of Environmental Protection under Massachusetts General Laws Chapter 21G, Sections 15 through 17.

**WATER USERS OR WATER CONSUMERS** -- All public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility/location.

**§ 4. Declaration of state of water supply conservation.**

The Town, through the Board of Selectmen, may declare a state of water supply conservation within the Town's public water supply system upon a determination by the Director that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice, of a state of water supply conservation shall be given under § 6 of this by-law before it may be enforced.

**§ 5. Restricted water uses.**

A declaration of a state of water supply conservation may include one or more of the following restrictions, conditions or requirements limiting the use of water either Town-wide or as limited by the Selectmen as necessary to protect the public water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under § 6.

1. Outdoor water use hours: Outdoor water use by water users is permitted only during daily periods of low demand, at night or early morning.
2. Odd/even day outdoor water use: Outdoor water use by water users with odd-numbered addresses is restricted to odd numbered days. Outdoor water use by water users with even-numbered addresses is restricted to even-numbered days.
3. Outdoor water use ban: Outdoor water use by water users is prohibited.
4. Filling swimming pools: Filling of swimming pools is prohibited.
5. Automatic sprinkler use: The use of automatic sprinkler systems is prohibited.

**§ 6. Public notification of state of water supply conservation.**

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of Town water of the state of water supply conservation. Any restriction imposed under § 5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

**§ 7. Termination of state of water supply conservation; notice.**

A state of water supply conservation may be terminated by vote of the Board of Selectmen upon a determination that the water supply shortage no longer exists. Public notification of the termination of a state of water supply conservation shall be given in the same manner required by § 6.

**§ 8. State of water supply emergency; compliance with DEP orders.**

Upon notification to the public that the Massachusetts Department of Environmental Protection has issued a state of water supply emergency, no person shall violate any provision, restriction,

requirement or condition or any order approved or issued by the Department intended to bring about an end to the state of water supply emergency.

**§ 9. Violation and penalties.**

Any person violating this by-law shall be subject to a warning for the first offense and thereafter shall be liable to the Town in the amount of \$50 for the second violation and \$100 for each subsequent violation, which shall inure to the Town for such uses as the Board of Selectmen may direct. Fines shall be recovered by indictment, or on complaint before the District Court, or by noncriminal disposition in accordance with Section 21D of Chapter 40 of the provisions of the Massachusetts General Laws. For purposes of noncriminal disposition, the enforcing person(s) shall be any police officer of the Town of Andover. Each day of violation shall constitute a separate offense.

**§ 10. Severability.**

The invalidity of any portion or provision of this by-law shall not invalidate any other portion or provision thereof.

## Appendix B

# Palmer Drought Severity Index

**The Palmer Index** was developed by Wayne Palmer in the 1960s and uses temperature and rainfall information in a formula to determine dryness. It has become the semi-official drought index.

The Palmer Index is most effective in determining long term drought—a matter of several months—and is not as good with short-term forecasts (a matter of weeks). It uses a 0 as normal, and drought is shown in terms of minus numbers; for example, minus 2 is moderate drought, minus 3 is severe drought, and minus 4 is extreme drought. At present, Texas, eastern New Mexico and Georgia are at a minus 4.0 point.

The Palmer Index can also reflect excess rain using a corresponding level reflected by plus figures; i.e., 0 is normal, plus 2 is moderate rainfall, etc. At present, South Dakota and sections of New England are at a plus 4.0 level.

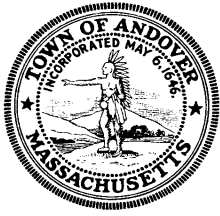
The advantage of the Palmer Index is that it is standardized to local climate, so it can be applied to any part of the country to demonstrate relative drought or rainfall conditions. The negative is that it is not as good for short term forecasts, and is not particularly useful in calculating supplies of water locked up in snow, so it works best east of the Continental Divide.

For weekly monitoring of Palmer Drought index go to:

*Weekly maps:* [http://www.cpc.ncep.noaa.gov/products/analysis\\_monitoring](http://www.cpc.ncep.noaa.gov/products/analysis_monitoring)

Palmer Classifications	
4.0 or more	extremely wet
3.0 to 3.99	very wet
2.0 to 2.99	moderately wet
1.0 to 1.99	slightly wet
0.5 to 0.99	incipient wet spell
0.49 to -0.49	near normal
-0.5 to -0.99	incipient dry spell
-1.0 to -1.99	mild drought
-2.0 to -2.99	moderate drought
-3.0 to -3.99	severe drought
-4.0 or less	extreme drought





**Town of Andover  
BOARD OF SELECTMEN**

**License and Permit Application Public Hearing Questionnaire**

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Please be willing and able to address these questions before the Board of Selectmen during your hearing.

**Liquor License Application, Renewal, Change of Designated Manager**

<b>Name</b>	Eric Williams
<b>Address</b>	71 Keeley Street, Haverhill, MA 01830
<b>Title</b>	Manager
<b>Company</b>	RAVE Hospitality Group, LLC d/b/a Elm Square Oyster Co.
<b>Are all employees who will be serving alcohol TIPS certified?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Does the establishment or any employees have any prior violations in terms of liquor license compliance?</b>  <b>If yes, please describe the nature of any violations</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Please describe your business and the plans that have brought you before the Board this evening.</b>	RAVE Hospitality Group, LLC, d/b/a Elm Square Oyster Co., is applying to the Town of Andover Board of Selectmen for a Transfer of an All Alcohol Restaurant Alcoholic Beverage License, including New Officers/Directors and a Change of Manager, at 2 Elm Square, Andover, Massachusetts.
<b>Please provide an overview of qualifications, certifications, and experience of the designated manager of the establishment.</b>	Eric Williams: The Sheraton Hotel 1991 – 1992 Myrtle Beach Executive sous chef The Sheraton Hotel 1990 – 1991 Andover, Ma Banquet & executive sous chef Culinary Institute of America 1989 Lanam Club 1985 – 1988 Andover, Ma Dishwasher to line cook CPR Certified TIPS Certified

Rave Hospitality Group, LLC. MOTIONS

MOTION #1

I move to approve the application of Rave Hospitality Group, LLC., 85 Green Street, Melrose, MA, d/b/a/ Elm Square Oyster Company, for a transfer of an All Alcoholic Restaurant Alcoholic Beverage License, including New Officers/Directors and a change of Manager at 2 Elm Square, Andover; and for the appointment of Eric Williams, 71 Keeley Street., Haverhill, MA., as designated Manager, subject to the condition that all other requirements of the Town are met prior to issuance.

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

Voted \_\_\_\_\_ to \_\_\_\_\_

MOTION #2

I move the Board find that the application of Rave Hospitality Group, LLC, d/b/a Elm Square Oyster Co. for an All Alcoholic Restaurant Alcoholic Beverage License at, 2 Elm Square, Andover is not detrimental to the educational and spiritual activities of the Free Christian Church at 31 Elm Street, Andover; and the Andover Baptist Church, 6 Essex and Central Streets, Andover.

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

Voted \_\_\_\_\_ to \_\_\_\_\_

**CABLE TELEVISION  
RENEWAL LICENSE**

**GRANTED TO  
VERIZON NEW ENGLAND INC.**

**June 26, 2017**

**BOARD OF SELECTMEN  
TOWN OF ANDOVER,  
MASSACHUSETTS**

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**EXHIBITS**

EXHIBIT A -- MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B -- PEG CHANNELS

EXHIBIT C -- GROSS REVENUE REPORTING FORM

EXHIBIT D -- CUSTOMER SERVICE STANDARDS

EXHIBIT E -- PERFORMANCE BOND

THIS CABLE LICENSE RENEWAL AGREEMENT (this “License”) is entered into by and between the Board of Selectmen of the Town of Andover, as Issuing Authority for the grant of the cable television license pursuant to the Massachusetts Cable Law (M.G.L. c. 166A), and Verizon New England Inc., a corporation duly organized under the applicable laws of the State of New York (the “Licensee”).

WHEREAS, the Issuing Authority is a “franchising authority” in accordance with Title VI (as hereinafter defined) (see 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable licenses pursuant to the Massachusetts Cable Law;

WHEREAS, the Issuing Authority granted to Licensee effective as of September 25, 2006, a nonexclusive Final License to install, maintain, extend, and operate a Cable System in the Town for a term of ten (10) years (the “Final License”);

Whereas, the Licensee has operated a Cable System in accordance with the Final License as of the effective date on its existing Telecommunications Facilities consisting of Fiber to the Premises Telecommunications Network (“FTTP Network”) in the Town which also transmits Non-Cable Services pursuant to authority granted by M.G.L. c. 166 and Title II, which Non-Cable Services are not subject to the Massachusetts Cable Law or Title VI;

WHEREAS, pursuant to and in accordance with applicable federal and State law, the Issuing Authority undertook a process to determine whether it should renew the Final License with Licensee and the terms for such a renewal;

WHEREAS, the Issuing Authority has examined the past performance of Licensee and has determined that Licensee is and has been in material compliance with the Final License and applicable law;

WHEREAS, pursuant to and in accordance with applicable federal and State law, the Licensee submitted to the Issuing Authority a proposal to renew the Final License to operate a Cable System in the Town; and

WHEREAS, following good faith negotiations between the parties, the Issuing Authority and Licensee have agreed on the terms for a renewal License under which Licensee will continue to operate its Cable System in the Town;

NOW, THEREFORE, in consideration of the Issuing Authority’s grant of a renewal License to Licensee, Licensee’s promise to continue providing Cable Service to residents of the Town pursuant to the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

**THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:**

## 1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act are incorporated herein and shall apply in this License. For the purpose of this License, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning in which case such other meaning shall apply. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include 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. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Licensee shall make available to the Town or its designee(s) without charge for non-commercial public, educational, or governmental use for the transmission of Video Programming as directed by the Town.

1.2. *Access Corporation, Access Designee or Access Provider*: A PEG Access Designee as defined below.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Licensee.

1.4. *Basic Service*: Any service tier which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this License.

1.5. *Cable Division*: The Cable Television Division of the Massachusetts Department of Telecommunications and Cable.

1.6. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.7. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

1.8. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.9. *CMR*: The Code of Massachusetts Regulations.

1.10. *Communications Act*: The Communications Act of 1934, as amended (47 U.S.C. § 101 et seq.), which includes the Cable Communications Policy Act of 1984, as amended (including as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996).

1.11. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.12. *Educational Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for the use of the local public schools in the Town and/or of a non-profit entity, as designated by the Issuing Authority.

1.13. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.14. *Force Majeure*: An event or events reasonably beyond the ability of Licensee or the Issuing Authority to anticipate and control. With respect to the Licensee, Force Majeure includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Licensee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Licensee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.15. *Franchise Fee*: Shall have the meaning as set forth in Section 622 (g) of the Communications Act (47 U.S.C. §542(g)).

1.16. *FTTP Network*: Shall have the meaning set forth in the recitals of this License.

1.17. *Government Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for use of the Issuing Authority and/or its designee(s).

1.18. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Licensee and/or its Affiliates from the operation of the Cable System to provide Cable Service in the Town, including, without limitation, the following items: fees, charges and payments collected from Subscribers for Cable Services (including, but not limited to basic and premium Cable Services and pay-per-view Cable Services); installation, reconnection, change-in-service (upgrades, downgrades, etc.) and similar charges; revenues received from rentals or sales to Subscribers of converters, remote controls, and other Subscriber equipment used to provide Cable Service over the Cable System; fees from third parties for leased access programming; revenues that the Licensee receives from home shopping channels for the use of the Cable System to sell merchandise as prorated to include such revenue attributable to the Cable System in the Town; advertising revenues as prorated to include such revenue attributable to the Cable System in the Town based on the number of Subscribers; and all fees imposed on the Licensee by this License and applicable law that are passed through and paid to the Licensee by Subscribers (including the License Fee (Section 6.1) and the PEG Access Support (Section 5.4)). For the avoidance of doubt, Gross Revenue shall include the amount of Licensee's gross advertising revenue (i.e., without netting advertising commissions paid to third parties), calculated in accordance with generally accepted accounting principles. Gross Revenue shall include revenue of an Affiliate only to the extent that such Affiliate revenue relates to the provision of Cable Services over the Cable System in the Town, and not the revenues of any such Affiliate that are not related thereto. In no event shall

revenue of an Affiliate be Gross Revenue to the Licensee if such revenue is otherwise subject to Franchise Fees and paid to the Issuing Authority. If Cable Services are provided to Subscribers in conjunction with Non-Cable Services, then the calculation of Gross Revenues shall be adjusted, if needed, to include only the value of the Cable Services billed to Subscribers, as reflected on the books and records of the Licensee in accordance with FCC rules, regulations, standards or orders. Notwithstanding the foregoing, if the Licensee bundles Cable Service with Non-Cable Service, the Licensee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading payments under this franchise. The parties agree that tariffed telecommunications services that cannot be discounted by state or federal law or regulation are to be excluded from the bundled discount allocation basis.

Provided, however, that Gross Revenue shall not include:

1.18.1. Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Licensee to provide Cable Service over the Cable System, except to the extent that such revenues are derived from the operation of the Cable System to provide Cable Service in the Town;

1.18.2. Bad debts written off by Licensee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.18.3. Refunds, rebates or discounts made to Subscribers or other third parties;

1.18.4. Any revenues classified as Non-Cable Services revenue under federal or State law including, without limitation, revenue received from Telecommunications Services; or revenue received from Information Services, including, without limitation, Internet Access Service, electronic mail service, electronic bulletin board service, or similar online computer services;

1.18.5. Any revenue of Licensee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.18.6. Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller is required by law to pay (and does pay) Franchise Fees and other cable license fees to the Town on the resale of the Cable Services. Nothing under this Section is intended to limit the rights of the Town pursuant to Section 622(h) of the Communications Act (47 U.S.C. § 542(h));

1.18.7. Any tax of general applicability imposed by a Town, state, federal or any other governmental entity and required to be collected from Subscribers by Licensee and remitted to the taxing entity (including, but not limited to, sales/use taxes and non-cable license fees);

1.18.8. Any revenue foregone as a result of the Licensee's provision of free or reduced cost Cable Services as required by this License to any Person, including without limitation, employees of Licensee and public institutions or other institutions as required or permitted herein and to other customers which are exempt, as required or allowed by the Town; provided, however, that such foregone revenue which Licensee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.18.9. Revenues from the sales of capital assets or sales of surplus equipment;

1.18.10. Program launch fees; and

1.18.11. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

1.19. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(20).

1.20. *Internet Access Service*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.21. *Issuing Authority*: The Board of Selectmen of the Town of Andover.

1.22. *License Fee*: The payments to be made by the Licensee to the Town, which shall have the meaning as set forth in Section 9 of the Massachusetts Cable Law.

1.23. *Licensee*: Verizon New England Inc., and its lawful and permitted successors, assigns and transferees.

1.24. *Massachusetts Cable Law*: Chapter 166A of the General Laws of the Commonwealth of Massachusetts.

1.25. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services, including, but not limited to, Information Services and Telecommunications Services.

1.26. *Normal Business Hours*: Those hours during which Licensee's retail locations in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.27. *Normal Operating Conditions*: Those service conditions which are within the control of the Licensee. Those conditions which are not within the control of the Licensee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of the Licensee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.28. *PEG*: Public, educational, and governmental.

1.29. *PEG Access Designee*: Any entity or entities designated by the Issuing Authority for the purpose of owning and/or operating the equipment and facilities used in the production and/or broadcast of PEG Access Channel programming for the Issuing Authority, including but not limited to any Access Corporation.

1.30. *PEG Channel*: An Access Channel that the Licensee provides to the Town pursuant to the terms and conditions of this License, and managed by the Issuing Authority and/or its designee(s).

1.31. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.32. *Public Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for the use by the residents in the Town and managed by the Issuing Authority and/or its designee(s).

1.33. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Town.

1.34. *Service Area*: The entire existing territorial limits of the Town.

1.35. *State*: The Commonwealth of Massachusetts.

1.36. *Subscriber*: A Person who lawfully receives Cable Service in the Town.

1.37. *Telecommunications Facilities*: Licensee's existing Telecommunications Services and Information Services facilities, including the FTTP Network.

1.38. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.39. *Title II*: Title II of the Communications Act, Common Carriers.

1.40. *Title VI*: Title VI of the Communications Act, Cable Communications.

1.41. *Town*: The Town of Andover.

1.42. *Transfer*: Any transaction in which:

1.42.1. an ownership or other interest in Licensee is transferred or assigned, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Licensee is transferred; or

1.42.2. the rights held by Licensee under the License are transferred or assigned to another Person or group of Persons.

1.42.3. Notwithstanding Sections 1.42.1. and 1.42.2. above, and subject to Article 11 below, a Transfer of this License shall not include transfer of an ownership or other interest in Licensee to the parent of Licensee or to another Affiliate of Licensee; transfer of an interest in this License or the rights held by the Licensee under the License to the parent of Licensee or to another Affiliate of Licensee; any action which is the result of a merger of the parent of the Licensee; or any action which is the result of a merger of another Affiliate of the Licensee.

1.43. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

1.44. *Video Service Provider or VSP*: Any entity using a significant portion of the Public Rights-of-Way to provide Video Programming services to multiple subscribers within the territorial boundaries of the Town, for purchase, barter, or free of charge, regardless of the transmission method, facilities or technologies used. A VSP shall include, but is not limited to, any entity making significant use of the Public Rights-of-Way that provides Cable Services, multi-channel multipoint distribution services, broadcast satellite services, satellite delivered services, wireless services, and internet-protocol based services within the territorial boundaries of the Town.

## **2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this License and the Massachusetts Cable Law, the Issuing Authority hereby grants the Licensee the right to operate and maintain a Cable System within the Town, for the purpose of providing Cable Service. Reference herein to "Public Rights-of-Way" 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 Licensee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town or which is inconsistent with the purposes for which it was taken, purchased and/or dedicated. This License grants no authority for the Licensee to use the Public Rights-of-Way within the Town for any other purpose unless otherwise provided herein. However, nothing in this License shall be construed to prohibit the Licensee from offering any service over the Cable System that is not prohibited by federal or State law provided that any requirements for Town authorization or permitting not inconsistent with federal and State law are satisfied. The Licensee's FTTP Network in the Public Rights-of-Way, which the Licensee has upgraded under its Title II authority, is subject to M.G.L. c. 166 and as such is subject to regulation by the Town consistent with that law, including all lawful and applicable Town bylaws and regulations regarding rights-of-way and public works matters, including rights-of-way management requirements with regard to public safety and other legitimate municipal concerns. Nothing in this Section 2.1 shall be deemed to prohibit the right of the Licensee to challenge the legality of such a Town bylaw or regulation. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this License.

2.2. *Issuing Authority Does Not Regulate Telecommunications:* The parties recognize that the Licensee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the Town over such Telecommunications Facilities is restricted by federal and State law, and the Town does not assert jurisdiction over the Licensee's FTTP Network in contravention of those limitations. Therefore, the Issuing Authority's regulatory authority under Title VI is not applicable to the construction, installation, maintenance or operation of the FTTP Network to the extent the FTTP Network is constructed, installed, maintained and operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services

2.3. *Term:* This License shall become effective on June 26, 2017 (the "Effective Date"). The term of this License shall be seven (7) years from the Effective Date unless this License is earlier revoked or terminated as provided herein.

2.4. *Modification/Termination Based on VSP Requirements:*

2.4.1. If there is a change in local law that reduces any material financial and/or operational obligation that the Issuing Authority has required from or imposed upon a VSP, or if the Issuing Authority after the effective date hereof enters into any franchise, agreement, license, or grant of authorization to a VSP that is not an Affiliate of Licensee to provide Video Programming services to a significant number of residential subscribers in the Town with terms or conditions materially less burdensome than those imposed by this License, Licensee and the Issuing Authority shall, within sixty (60) days of the Issuing Authority's receipt of Licensee's written notice, commence negotiations to modify this License to create reasonable competitive equity between Licensee and such other VSPs taking into account the conditions under which the other VSP and Licensee provide video programming and the materiality of same. Any modification of the License pursuant to the terms of this section shall not trigger the requirements of 207 CMR 3.07. PEG and Cable-Related Grant payments and PEG and Cable-Related Access Support, as provided in Section 5, will not be subject to modification under this Section 2.4.1 or 2.4.2.

2.4.2. Licensee's notice pursuant to Section 2.4.1 shall specify the change in law and the resulting change in obligations or, if applicable, the terms of any franchise, agreement, license, or grant of authorization to a VSP subject to 2.4.1 and the basis of Licensee's assertion of lack of reasonable competitive equity. Licensee shall respond to reasonable information requests from the Town, as may be necessary to review the change in obligations resulting from the cited law or as necessary to provide information relevant to the requested negotiations to establish reasonable competitive equity as between another VSP and Licensee.

2.4.3. In the event the parties do not reach mutually acceptable agreement on a modification requested by Licensee under Section 2.4.1, Licensee shall, at any time and in its sole discretion, have the option of exercising any of the following actions:

a. Commencing license renewal proceedings in accordance with 47 U.S.C. 546 with the License Term being accelerated, thus being deemed to expire thirty-six (36) months from the date of Licensee's written notice to seek relief hereunder;

b. Terminating the license not sooner than thirty-six (36) months, at Licensee's sole discretion, from written notice to the Issuing Authority;

c. If agreed by both parties, submitting the matter to commercial arbitration by a mutually-selected arbitrator in accordance with the rules of the American Arbitration Association; or

d. Submitting the matter to mediation by a mutually-acceptable mediator.

2.4.4. Modification of PEG and Cable-Related Grant payments and PEG and Cable-Related Access Support under this License shall be in accordance with the terms and conditions set forth in Sections 5.3 and 5.4 hereunder. PEG and Cable-Related Grant payments and PEG and Cable-Related Access Support are not subject to modification under Section 2.4.1.

2.5. *Grant Not Exclusive:* This License and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Issuing Authority reserves the right to grant other Licenses for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this License. Any such rights shall not be in conflict with the authority as granted by this License. Disputes between the Licensee and other parties regarding use of Public Rights-of-Way shall be resolved in accordance with applicable law.

2.6. *License Subject to Federal and State Law/Preemption:* Notwithstanding any provision to the contrary herein, but subject to the provisions of Section 14.7 of this License, this License is subject to and shall be governed by all applicable provisions of federal and State law and regulations as they may be amended, including but not limited to the Communications Act and the Massachusetts Cable Law. In the event that federal or State law, rules, or regulations preempt a provision or limit the enforceability of a provision of this License, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the parties hereto.

2.7. *No Waiver:*

2.7.1. The failure of the Issuing Authority on one or more occasions to exercise a right or to require compliance or performance under this License, the Massachusetts Cable Law or any other applicable law, bylaw or lawful regulation shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Issuing Authority, nor to excuse Licensee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Issuing Authority.

2.7.2. The failure of the Licensee on one or more occasions to exercise a right under this License or applicable law, or to require performance under this License, shall not be deemed to constitute a waiver of such right or of performance of this License, nor shall it excuse the Issuing Authority from performance, unless such right or performance has been specifically waived in writing by the Licensee.

2.8. *Construction of Agreement:*

2.8.1. The provisions of this License shall be construed to effectuate their objectives.

2.8.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.8.3. Should any change to local bylaws, rules or regulations cause the Licensee's provision of Cable Services in the Town to be commercially impracticable, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate such commercial impracticability. If the parties cannot reach agreement on the above-referenced modification to this License, then, at the Licensee's option the parties shall submit the matter to binding arbitration.

2.9. *Police Powers:* Nothing in this License shall be construed to prohibit the reasonable, necessary and lawful exercise of the Town's police powers. However, if the reasonable, necessary and lawful exercise of the Town's police powers causes the Licensee's provision of Cable Services in the Town to be commercially impracticable, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate such commercial impracticability. If the parties cannot reach agreement on the above-referenced modification to this License, then, at the Licensee's option, the parties shall submit the matter to binding arbitration.

**3. PROVISION OF CABLE SERVICE**

3.1. *Service Area:* Subject to the Town's issuance of all necessary permits requested by the Licensee, the Licensee shall continue to offer Cable Service to all residential households in the Town, except: (A) for periods of Force Majeure; (B) for periods of delay resulting from the Licensee's inability to obtain authority from the Town to access Public Rights-of-Way in the Service Area; (C) in developments or buildings that are subject to claimed exclusive arrangements with other cable providers; (D) in developments or buildings that the Licensee cannot access under reasonable terms and conditions after good faith negotiations, as determined in good faith by the Licensee; and (E) in developments, buildings or other residential dwelling units where the Licensee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis or where the Licensee determines, in good faith, that providing such service is not commercially reasonable..

3.2. *Availability of Cable Service:* Licensee shall make Cable Service available to all residential dwelling units within the Town in conformance with Section 3.1 and Licensee shall not discriminate between or among any individuals in the availability of Cable

Service. In the areas in which Licensee provides Cable Service, the Licensee shall be required to connect, at Licensee's expense, all residential dwelling units that are within one hundred fifty (150) feet of trunk or feeder lines not otherwise already served by Licensee's FTTP Network. Where a residential connection exceeds such length, the Licensee shall be allowed to recover from such Subscriber the actual cost of connection attributable to the distance in excess of one hundred fifty (150) feet, and Licensee shall not undertake any such connection until the Subscriber consents to reimburse Licensee for the cost.

3.3. *Availability of Cable Service To Businesses:* The Licensee, may make Cable Service available to businesses. The Licensee may recover the actual cost incurred to connect any business to the Cable System for the provision of Cable Service.

3.4. *Cable Service to Public Buildings:*

3.4.1. Licensee shall comply with Section 5(e) of the Massachusetts Cable Law with respect to providing a cable drop and an outlet at no cost to public buildings in the Town. Without limiting the foregoing, subject to Section 3.1, Licensee shall provide the below referenced Cable Service and related equipment, if requested by the Issuing Authority pursuant to written notice to Licensee, without charge, within the Town, at those public buildings set forth in **Exhibit A** and up to two (2) additional public buildings as designated by the Issuing Authority during the term of this License:

3.4.1.1 The first service drop for each site;

3.4.1.2 One Subscriber digital converter activated for the most commonly subscribed to digital tier; and

3.4.1.3 One service outlet activated for the most commonly subscribed to digital tier. The parties recognize that this only pertains to the flat rate digital tier offered by the Licensee and does not include any pay per view services or similar services.

3.4.2. The Licensee shall not be responsible for the cost of any "terminal equipment" including TV monitors, VCRs/DVD/DVRs and/or computers, and shall not be responsible for any lost, stolen or damaged converters or other equipment.

3.4.3. The cost of inside wiring, additional drops or outlets, and additional converters requested by the Issuing Authority within the public buildings is the responsibility of the Town (or its designee). The Licensee shall coordinate the location of each outlet with representatives for each of the buildings receiving service pursuant to this Section 3.4.

**4. SYSTEM FACILITIES**

4.1. *System Characteristics:* Licensee's Cable System shall meet or exceed the following requirements and/or have at least the following characteristics:

4.1.1. The Cable System shall be operated with an initial digital passband of 50-860 MHz.

4.1.2. The Cable System shall be operated to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

4.1.3. The Cable System shall comply with applicable FCC technical standards, as such standards may be amended from time to time.

4.1.4. The Cable System shall conform in all material respects to the following standards to the extent applicable: Occupational Safety and Health Administration regulations, the Massachusetts Electrical Code, the National Electrical Code, the National Electrical Safety Code, the Massachusetts State Building Code, and the rules and regulations of the Cable Division and the FCC.

4.2. *Interconnection With Other Cable Systems:*

4.2.1. The Licensee shall operate its Cable System so that it may be interconnected with other cable systems in the Town. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.2.2. The Licensee shall in good faith cooperate with the Issuing Authority in implementing interconnection of the Cable Service with communications systems beyond the boundaries of the Town; provided that the cost of any such interconnection shall be borne by the Issuing Authority and/or the party seeking such interconnection, subject to Issuing Authority and/or the party seeking such interconnection requesting such interconnection and consenting in writing to the cost thereof prior to interconnection.

4.3. *Emergency Alert System:* Licensee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC and applicable state and local EAS Plans in order that emergency messages may be distributed over the System.

4.4. *Parental Control Capability:* The Licensee shall comply with all applicable requirements of federal law(s) governing Subscribers' capability to control the reception of any channels being received on their television sets.

**5. PEG SERVICES AND SUPPORT**

5.1. *PEG Channels:*

5.1.1. In order to ensure universal availability of PEG programming, Licensee shall provide capacity on its Basic Service tier for three (3) Channels for Public Access, Educational Access and Government Access (collectively, “PEG Channels”) at no charge to the Town and PEG Access Designee and shall transmit all Andover PEG Channels and PEG programming to its Subscribers consistent with the terms of this License.

5.1.2. The PEG Channel designations (i.e. Public Access Channel, Educational Access Channel or Government Access Channel) for each of the PEG Channels set aside by the Licensee are reflected on **Exhibit B**. The Issuing Authority hereby authorizes the Licensee to transmit such programming within the Town’s jurisdictional boundaries and outside the Town’s jurisdictional boundaries to other areas that are served out of the same central offices

as those that serve the Town. Licensee shall assign the PEG Channels on its channel line-up as set forth in such **Exhibit B**, to the extent such channel assignments do not interfere with Licensee's existing or planned channel line-up or Licensee's contractual obligations. Licensee specifically reserves the right to make or change such assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the Town or its designee for a period of 120 days, the Licensee may utilize such PEG Channel, in its sole discretion, until such time as the Town elects to utilize the PEG Channel for its intended purpose. In the event that the Town determines to again use such PEG capacity, the Town shall provide Licensee with 120 days' prior written notice.

5.2. *PEG Interconnection and Cablecasting:* The Licensee shall continue to connect to equipment owned by the Town and/or the PEG Access Designee at 36R Bartlet Street, Andover, Massachusetts, for the purpose of Licensee's transmitting PEG Access programming to Subscribers on the cable system PEG Access channels at no charge to the Town or PEG Access Designee, and Licensee shall maintain, repair and replace equipment on its side of the demarcation to implement the foregoing. The Issuing Authority or, if designated by the Issuing Authority in writing to Licensee, the PEG Access Designee, shall be required to pay Licensee for all costs associated with: (i) any equipment upgrade where the need for the upgrade is initiated by the Issuing Authority or PEG Access Designee; (ii) relocating any connection where the need for relocation is initiated by the Issuing Authority or PEG Access Designee; (iii) re-installing and/or replacing any connection at an existing location where the need for such re-installation/and or replacement is initiated by the Issuing Authority or PEG Access Designee; or (iv) installing any new connection if initiated by the Issuing Authority or PEG Access Designee; provided, however, that Issuing Authority and/or PEG Access Designee responsibility for the foregoing costs is subject to the Issuing Authority's express written consent, and subject further to Licensee's prior disclosure of such costs and prior consent to same by the Issuing Authority or PEG Access Designee. The demarcation point between the Licensee's signal processing and transport equipment (which the Licensee shall own, install, maintain and replace if and as needed) and the Town's PEG equipment shall be at the output of the Town's signal processing equipment at 36R Bartlet Street, Andover, Massachusetts. The Town and/or PEG Access Designee shall be solely responsible for operating its switching equipment and the picture and audio quality of all PEG access programming up to the demarcation point and for ensuring all PEG access programming is inserted on the appropriate upstream PEG Access Channel. All PEG access programming shall be transmitted to the Licensee in baseband or SD-SDI format (unless otherwise agreed in writing by the parties) with either mono or stereo audio signals, and with signals received by Licensee in stereo cablecast by Licensee in stereo. Notwithstanding the foregoing, the Licensee shall not be obligated to provide the Town or PEG Access Designee with either cablecast equipment and facilities or the personnel responsible for maintaining and operating equipment and facilities on the Town's side of the demarcation point and used to generate or administer any PEG Access signals, except as necessary to implement the Licensee's responsibilities specified herein. The Issuing Authority and the Licensee shall work together in good faith to resolve any connection issues. If the Issuing Authority issues a license to, or renews a license with, a competing VSP, the competing VSP may not connect its system to the Licensee's System for the purposes of obtaining PEG Access programming from the Licensee's PEG Access Channels without Licensee's prior written consent. The Licensee shall monitor the PEG Access Channels for technical quality to maintain them at standards which apply to Cable System commercial Channels, provided, however, that the Licensee is not responsible for the

production quality of PEG Access programming productions, nor for any deficiencies in the source signal it receives from any party over which the Licensee has no control, nor for any PEG Access equipment not owned by the Licensee.

### 5.3. *PEG and Cable-Related Grant:*

Commencing within 45 days of the Effective Date, Licensee shall pay to the Town a PEG and cable-related Grant on a per-subscriber basis, to be used for PEG and Town cable-related equipment and facilities allocated to PEG and/or cable-related purposes as determined by the Issuing Authority. The amount of the PEG Grant shall be equal to twenty-eight cents (\$0.28) per Subscriber per month; provided however, that if the Issuing Authority enters into any new or renewed cable license agreement with any other VSP which contains obligations associated with a PEG and Cable-Related Grant or other comparable program that are lesser in per subscriber amount or aggregate value than the Licensee would pay on an annual basis at the per Subscriber rate of twenty-eight cents (\$0.28), the Licensee's obligations under this Section shall be reduced, on an annual basis and upon the effective date of said agreement, to an amount equal to the lowest per subscriber payment made by any such VSP to the Issuing Authority and its access designee(s). The relief available in the event of the foregoing is equitable relief going forward, and the Licensee shall not recover amounts already paid to the Issuing Authority. Notwithstanding the foregoing, if at any time during the term of this License any other VSP with a cable license agreement ceases to provide cash grants to the Issuing Authority in support of the production of local PEG programming in accordance with the terms of its respective cable license agreement, then Licensee's PEG and Cable-Related Grant obligation shall also cease or, if applicable, be suspended for the time period during which, and to the extent, such other licensee is not making such payments. Upon written request of Licensee, the Issuing Authority shall provide notification to Licensee within thirty (30) days of such other provider's failure, if any, to provide a cash grant in accordance with the schedule set forth in such provider's license agreement with the Issuing Authority. Equipment, services and other in kind, non-monetary contributions to the Issuing Authority by such other VSP shall not count towards the cash grants referenced in this paragraph.

The twelve (12) month period applicable under the License for the computation of the PEG Grant shall be a calendar year. Such payments shall be made no later than March 15<sup>th</sup> of each applicable year. Licensee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the PEG Grant remittances within ninety (90) days following the PEG Grant payment date for which such payments were applicable subject to Licensee providing documentation reasonably acceptable to the Town supporting such refund. The PEG Grant shall not be counted against either the PEG Access Support payment required by Section 5.4, or any License Fee required by Section 6.1. The Issuing Authority and/or PEG Access Designee shall own all facilities and equipment purchased with the PEG Grant. The Licensee shall have no obligation to maintain, repair, replace or insure any equipment or facilities purchased with the PEG Grant.

### 5.4. *PEG Access and Cable-Related Support:*

5.4.1. The Licensee shall provide annual funding to the Issuing Authority and/or its designee(s) for any cable related purpose, including, but not limited to, PEG Access operating support and/or other PEG Access and cable-related costs and expenses in the amount of five percent (5%) of the Licensee's annual Gross Revenue, subject to the limitation in Section 6.2; provided, however, that if the renewal license of the incumbent cable operator (or its successor or assign) in the Town, provides for the incumbent to pay a lower percentage during a time period, then the percentage of the Licensee's PEG Access support payments shall be reduced to match such lower percentage over that same time period. Each such payment shall be accompanied by a Gross Revenue reporting form substantially similar to **Exhibit C**. The PEG Access payments made directly to the Issuing Authority shall be placed by the Issuing Authority in a restricted account for cable related purposes as determined by the Issuing Authority subject to applicable law, which account will be under the control of the Issuing Authority.

5.4.2. The PEG Access Support payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Licensee shall be allowed to submit or correct any payments that were incorrectly omitted, or shall be refunded any payments that were incorrectly submitted, in connection with the quarterly remittances within ninety (90) days following the close of the calendar year for which such payments were applicable subject to Licensee providing documentation reasonably acceptable to the Town supporting such refund. For purposes of the PEG Access Support payment, the period for determining Gross Revenues shall be the preceding quarter

5.4.3. In no case shall said five percent (5%) payment(s) include: (i) the PEG Grant required by Section 5.4 above; (ii) the costs of PEG interconnection and cablecasting obligations required by Section 5.2 above; or (iii) any other fees or payments required by applicable law; provided, however, that said five percent ( 5%) payments shall be a Franchise Fee, and subject to the five percent (5%) cap on Franchise Fees pursuant to Section 622(b) of the Communications Act (47 U.S.C. §542(b)).

5.5. *PEG Operational Rules:* The Issuing Authority or its designee shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize the Licensee to transmit programming consistent with this License. The Issuing Authority or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, Section 611 of the Communications Act (47 U.S.C. § 531).

5.6. *Recovery of Costs.* To the extent permitted by federal law, the Licensee shall be allowed to recover the costs of the PEG Grant (Section 5.3), costs of PEG interconnection (Section 5.2), the PEG Access Support payments (Section 5.4), and any other costs arising from the provision of PEG services and related payments, required by this License, from Subscribers and to accurately reflect such costs as a separately billed line item on each Subscriber's bill.

5.7. *Late Payments:* In the event that the PEG Grant (Section 5.3), the PEG Access Support fee (Section 5.4) or the License Fee (Section 6.1) is not paid on or before the due date set forth in this License for such payments, then interest shall accrue from the due date until the date paid at the rate equal to the lesser of (i) two percent (2%) per annum above the Prime Rate, or (ii) eighteen percent (18%) per annum, in either case compounded annually.

5.8. *Listing of PEG Access Channels On Licensee's Electronic Program Guide:* If the Licensee lists PEG Access programming on its electronic program guide in any other city or town in the State (other than on a test or trial basis), then it shall, upon request of the Issuing Authority, discuss in good faith with the Issuing Authority the suitability of listing the Town's PEG Access programming on the Licensee's electronic program guide.

5.9. *PEG Access Video-On-Demand:* If the Licensee provides any other city or town in the State with PEG Access "video-on-demand" (VOD) (other than on a test or trial basis), it shall, upon request of the Issuing Authority, discuss in good faith with the Issuing Authority the provision of PEG Access VOD in the Town, provided that, as a result of said discussions, the Licensee shall be under no obligation to provide PEG Access VOD in the Town.

5.10. *High Definition PEG Access Channel:* Within thirty-six (36) months of the Effective Date and upon written request, the parties shall discuss Licensee's capability to make available to the Issuing Authority and/or PEG Access Designee capacity for one (1) PEG Access Channel in High Definition (HD). Notwithstanding the foregoing, however, as a result of said discussions, the Licensee shall not be required to transmit any PEG Access Channel in HD.

5.11. *Censorship:* Subject to Section 611(e) of the Communications Act (47 U.S.C. § 531(e)), the Licensee shall comply with applicable federal laws restricting censorship or control of the content of PEG Access programming over the Cable System.

5.12. *Leased Access:* The Licensee shall comply with Section 612 of the Communications Act (47 U.S.C. § 532) with respect to designating channel capacity for commercial use.

5.13. *Non-Commercial Programming:* The Issuing Authority and its designee(s) shall not use the PEG Access channels to provide for-profit commercial programming. Nothing in this Section 5.12 shall prohibit the Issuing Authority or its designee(s) from having memberships, sponsorships, underwriting or acknowledgements (such as underwriting and acknowledgements accepted by PBS), to the extent not otherwise prohibited by applicable law and regulation.

5.14. *No PEG Access Designee Rights:* The Issuing Authority and the Licensee herein acknowledge and agree that any PEG Access Designee is not a party to this License and that any provisions herein that may affect a PEG Access Designee are not intended to create any rights on behalf of any PEG Access Designee.

## **6. FRANCHISE AND LICENSE FEES**

6.1. *License Fee:* Pursuant to Massachusetts Cable Law, (M.G.L. c. 166A, Section 9), the Licensee shall pay to the Town, throughout the term of this License, a license fee equal to fifty cents (\$.50) per Subscriber per year (the "License Fee"), or such other amount as may in the future be designated by applicable State law.

6.2. *Maximum Franchise Fee Obligation:* The Licensee shall not be liable for a total Franchise Fee, pursuant to this License and applicable law in excess of five percent (5%) of its annual Gross Revenues; provided that said five percent (5%) shall include (i) the License

Fee payable to the Town (Section 6.1), (ii) the License Fee payable to the State pursuant to Section 9 of the Massachusetts Cable Law, and (iii) the PEG Access Support funding (Section 5.4), but it shall not include: (A) the PEG Grant (Section 5.3), (B) PEG interconnection costs (Section 5.2), (C) any payments, expenses, or replenishment of the performance bond pursuant to Article 10 below; and (D) any other exclusions to the term “Franchise Fee” pursuant to Sections 622(g)(2) of the Communications Act.

6.3. *Payment Information:* In determining the License Fee, the number of Subscribers shall be measured as of December 31<sup>st</sup> of the preceding calendar year. The License Fee shall be paid no later than March 15<sup>th</sup> of each year during the term of this License.

6.4. *Limitation on Actions:* The parties agree that the period of limitation for recovery of any payment obligation under this License shall be three (3) years from the date on which payment by Licensee is due.

6.5. *Method of Payment:* The PEG Grant, the PEG Access Support and the License Fee shall be made payable to the Town and provided to the Issuing Authority, unless the Licensee is otherwise notified in writing by the Issuing Authority.

6.6. *Other Payment Obligations and Exclusions:*

6.6.1. Unless otherwise required by applicable law, the License Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges of general applicability which Licensee or any Affiliate shall be required to pay to the Town, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the License Fee payments all of which shall be separate and distinct obligations of the Licensee and each Affiliate.

6.6.2. In accordance with Section 622(h) of the Communications Act (47 U.S.C. § 542(h)), nothing in the Communications Act or this License shall be construed to limit any authority of the Issuing Authority to impose a tax, fee or other assessment of any kind on any Person (other than the Licensee) with respect to Cable Service or other communications service provided by such Person over the Cable System for which charges are assessed to Subscribers but not received by the Licensee. For any twelve (12) month period, the fees paid by any such Person with respect to any such Cable Service or other communications service shall not exceed five percent (5%) of such Person’s gross revenues derived in such period from the provision of such service over the Cable System.

6.7. *Affiliates Use of System:* Use of the Cable System and the provision of Cable Services within the Town by Affiliates shall be in compliance with applicable federal and State laws and regulations.

6.8. *Tender and Acceptance:* Tender or acceptance of any payment made pursuant to Articles 5 or 6 shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Issuing Authority may have for additional sums, including interest payable under this License.

## **7. CUSTOMER SERVICE**

Customer Service Requirements are set forth in **Exhibit D**, which shall be binding unless amended by written consent of the parties. Licensee shall comply with the billing and termination of service provisions set forth in 207 CMR 10.00, as amended, which shall supersede any conflicting provisions set forth in **Exhibit D**.

## **8. REPORTS AND RECORDS AND PERFORMANCE EVALUATIONS**

8.1. *Open Books and Records*: Upon reasonable written notice to the Licensee and with no less than thirty (30) business days written notice to the Licensee, the Issuing Authority or its designated authorized representative(s) shall have the right to inspect Licensee's books and records including all documents in whatever form maintained, including electronic media, pertaining to the Cable System or the Licensee's provision of Cable Service in the Town at any time during Normal Business Hours and on a nondisruptive basis as are reasonably necessary to ensure compliance with the terms of this License. Such notice shall specifically reference the purpose of the review, so that Licensee may organize the necessary books and records for appropriate access by the Issuing Authority. Licensee shall not be required to maintain any books and records for License compliance purposes longer than three (3) years, except if required by applicable law or regulation. If any books, records, Service Area maps, plans, or other requested documents are too voluminous, not available locally, or for security reasons cannot be copied and moved, then the Licensee may request that the inspection take place at the Licensee's designated offices within the State (or other location mutually agreed to by the Issuing Authority and the Licensee), provided that (i) the Licensee must make necessary arrangements for copying documents selected by the Town after its review; and (ii) the Licensee must pay all travel and additional copying expenses incurred by the Town (above those that would have been incurred had the documents been produced in the Town) in inspecting those documents or having those documents inspected by its designee.

8.2. *Proprietary Books and Records*: If Licensee believes that the requested information is confidential and proprietary, the Licensee must provide the following documentation to the Town: (i) specific identification of the information; (ii) statement attesting to the reason(s) Licensee believes the information is confidential; and (iii) statement that the documents are available at the Licensee's designated offices within the State for inspection by the Town. The Town shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other Town-requested documents that are provided to the extent they are designated as such by the Licensee in accordance herewith, including, without limitation, cooperating with the Licensee's exercise of its rights to protect its confidential information from public disclosure.

8.3. *Privacy*: The Licensee shall take all reasonable steps required to ensure that it is able to provide the Town with all information that must be provided or may be requested under this License or applicable law, including the issuance of appropriate Subscriber privacy notices. The Licensee shall be responsible for redacting any data that applicable law prevents it from providing to the Town. Nothing in this Article 8 shall be read to require a Licensee to violate federal or State law protecting Subscriber privacy.

8.4. *Copying of Books and Records:* The Town shall have the right to copy any such books and records, at the Town's expense, except to the extent that the Town's review as the Issuing Authority is prohibited pursuant to applicable law.

8.5. *Complete and Accurate Records:* The Licensee shall keep complete and accurate books of account and records of its business and operations under and in connection with the License. Unless otherwise provided in this License or by applicable law, all such materials and information shall be maintained for a period of three (3) years. Said records shall include, but not be limited to the following:

8.5.1. Records of all written complaints for a period of three (3) years after receipt by Licensee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Licensee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.5.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.5.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Licensee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.5.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Licensee, indicating the date of request, date of acknowledgment, and the date and time service was extended;

and

8.5.5. Records relating to Gross Revenues.

8.6. *Additional Reports:* The Licensee shall provide the Issuing Authority with a copy of any reports required to be provided to the Issuing Authority pursuant to applicable State law and regulation. In addition, the Licenses shall, upon written request by the Issuing Authority, provide the Issuing Authority with a copy of any documents or forms filed by the Licensee with the FCC and/or the DTC that materially pertain to the Licensee's Cable System in the Town.

8.7. *Proof of Performance Tests:* Upon written request of the Issuing Authority, the Licensee shall provide copies of performance tests required by applicable law

8.8. *Performance Evaluations:*

8.8.1. The Issuing Authority may conduct a performance evaluation related to Licensee's performance of its obligations under this License no more than once every

two (2) years during the term. Any performance evaluation shall be initiated through written notice to Licensee by the Issuing Authority and the Issuing Authority or consultant employed by the Issuing Authority shall submit its complete request for records within one (1) month of the Issuing Authority providing written notice of a performance evaluation.

8.8.2. The Issuing Authority shall not be entitled to conduct a performance evaluation of Licensee unless the Issuing Authority also requires that all cable operators providing Cable Service in the Town are subject to a performance evaluation under terms that are substantially similar to the provisions of this article.

## **9. INSURANCE AND INDEMNIFICATION**

### **9.1. *Insurance:***

9.1.1. Licensee shall maintain in full force and effect, at its own cost and expense, during the term of this License, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of six million dollars (\$6,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Licensee's Cable Service business in the Town.

9.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

9.1.2. The Town shall be included as an additional insured as their interest may appear under this License on the Commercial General Liability Insurance and Automobile Liability Insurance required herein.

9.1.3. Licensee shall not cancel any required insurance policy without submitting documentation to the Issuing Authority verifying that the Licensee has obtained alternative insurance in conformance with this License.

9.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State, with a B+ or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition or its successor.

9.1.5 Upon written request, Licensee shall deliver to the Issuing Authority Certificates of Insurance showing evidence of the required coverage.

9.2. *Indemnification:*

9.2.1. The Licensee shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, officers, boards, committees, employees and agents, (hereinafter referred to as the “Town” for purposes of this Section 9.2) against any and all claims, suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of or from the installation, operation, or maintenance of the Cable System. Notwithstanding the foregoing, Licensee shall not indemnify the Town for any portion of damages, liability or claims resulting from the willful misconduct or negligence of the Town, its officers, agents, employees, or for any activity or function conducted by any Person other than Licensee, its officers, agents or employees, in connection with PEG Access or the Emergency Alert System.

9.2.2. The Town shall provide the Licensee with timely written notice of a claim or action for which it seeks indemnification under this Section 9.2; provided that in any event the Town shall provide the Licensee with such written notice within a period of time that allows the Licensee to take action to avoid entry of a default judgment and does not prejudice the Licensee’s ability to defend the claim or action.

9.2.3. With respect to Licensee’s indemnity obligations set forth in this Article 9, Licensee shall, at its own expense, provide the defense of any claims, suits, causes of action, or proceedings brought against the Town by selecting counsel of Licensee’s choice to defend the claim, subject to applicable professional ethics laws and standards and the consent of the Town, which shall not unreasonably be withheld, delayed or conditioned. The Licensee shall, subject to the consent of the Issuing Authority as described herein, have the right to defend, settle or compromise any claim or action arising hereunder, so long as the settlement includes a full release of the Town with respect to the claim giving rise to Licensee’s indemnification obligation. In the event that the Town does not consent to the terms of any such settlement or compromise, the Licensee shall not settle the claim or action but its obligation to indemnify the Town shall in no event exceed the amount of the otherwise agreed upon settlement.

9.2.4. In the event that Licensee fails, after notice pursuant to Section 9.2.3, to undertake the Town’s defense of any claims encompassed within this Section 9.2, then the Town may provide a second written notice to the Licensee. In the event that the Licensee fails to undertake the Town’s defense within a reasonable time after receipt of said second notice, then Licensee’s indemnification obligation under this Section 9.2 shall include the Town’s costs of defending such claim, suit, cause of action or proceeding, including, but not limited to, reasonable attorneys’ fees.

9.2.5. Neither the provisions of this Section 9.2, nor any damages recovered by the Town shall be construed to limit the liability of the Licensee or its subcontractors for damages under this License or to excuse the faithful performance of obligations required by this License, except to the extent that any monetary damages suffered by the Town have been satisfied by a financial recovery under this section or other provisions of this License.

## **10. PERFORMANCE BOND**

10.1. Licensee shall provide to the Town, and shall maintain throughout the remainder of the term of this License and at no less than the following minimum amount, a performance bond in the Town's favor in the amount of thirty thousand dollars (\$30,000) securing the performance of Licensee's obligations under this License. The Town may not attempt to collect under this bond unless thirty (30) days have passed since the Town provided the Licensee with written notice of its intent to collect under this bond. If within this thirty (30) day time frame, Licensee gives written notice it disputes entitlement to payments from Licensee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

10.2. The performance bond shall be in substantially the same form as attached hereto as **Exhibit E**, however, notwithstanding any provision in **Exhibit E**, nothing shall permit the amount of the bond or any replacement bond to be less than the minimum amount required by Section 10.1 above. The Licensee shall not permit the performance bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the Town a substitute, renewal or replacement bond in conformance with applicable law. The Licensee shall not materially change the terms of said bond without the prior written consent of the Issuing Authority.

10.3. There shall be recoverable by the Town from the principal and surety, any and all amounts due to the Town and any and all damages, losses, costs, and expenses incurred by the Town resulting from the failure of the Licensee to comply with the material provisions of this License, to comply with all orders, permits and directives of any Town agency or body having jurisdiction over its acts or defaults, to pay fees, or penalties due to the Town, or to pay any claims, taxes or liens due to the Town. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses, provided that the total of such losses, costs and expenses recovered from the bond shall not exceed the amount of such bond.

## **11. TRANSFER OF LICENSE**

11.1. *Town Approval Required:* Subject to Section 617 of the Communications Act (47 U.S.C. §537) and Sections 11.2 and 11.3 below, Licensee shall not Transfer this License, voluntarily or involuntarily, directly or indirectly, to any other Person, without the prior written consent of the Issuing Authority, which consent shall not be arbitrarily or unreasonably withheld or delayed. Such consent shall be given only upon a written application therefore on forms prescribed by the Cable Division and/or the FCC.

11.2. *No Consent Required For Transfers Securing Indebtedness:* The Licensee shall not be required to file an application or obtain the consent or approval of the Town for a Transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Licensee in this License, the Licensee or Cable System in order to secure indebtedness. However, the Licensee will notify the Town within thirty (30) business days if at any time there is a mortgage or security interest granted on substantially all of the assets of the

Cable System. The submission of the Licensee's audited financial statements prepared for the Licensee's bondholders shall constitute such notice.

11.3. *Consent Required For Any Affiliate Transfer:* Unless required by applicable federal or State law, the Licensee shall not be required to file an application or obtain the consent or approval of the Town for: any Transfer of an ownership or other interest in Licensee, the Cable System, or the Cable System assets to the parent of Licensee or to another Affiliate of Licensee; any Transfer of an interest in the License or the rights held by the Licensee under this License to the parent of Licensee or to another Affiliate of Licensee; any action which is the result of a merger of the parent of Licensee; or any action which is the result of a merger of another Affiliate of the Licensee. In the event such consent or approval of the Town is required by federal or State law, the Licensee shall notify the Town within thirty (30) business days if at any time a Transfer covered by this Section 11.3 occurs. The transferee of any Transfer covered by this Section 11.3 shall be legally qualified to hold, and shall be bound by the terms and conditions of, this License.

11.4. *Transfer Procedures:* Subject to applicable law, the Licensee shall submit to the Issuing Authority an original and a copy of the application and FCC Form 394 requesting any such Transfer consent. Pursuant to 207 CMR 4.03, the consent of the Issuing Authority shall be given only after a public hearing to consider the written application for Transfer. The Issuing Authority shall have 120 days from the filing of a completed FCC Form 394 to take final action on it. After 120 days, the application shall be deemed approved, unless said 120 day period is extended pursuant to applicable law. The Licensee shall reimburse the Town for its reasonable costs associated with the Transfer, assignment or disposition of the License, up to a maximum of Three Thousand Five Hundred Dollars (\$3,500). The Licensee shall make said payment within thirty (30) days of the Town providing the Licensee with documentation of the same.

11.5. *Non-Waiver:* The consent or approval of the Issuing Authority to any Transfer shall not constitute a waiver or release of any rights of the Town under this License, whether arising before or after the date of said Transfer.

## **12. RENEWAL OF LICENSE**

The Town and Licensee agree that any proceedings undertaken by the Town that relate to the renewal of this License shall be governed by and comply with the provisions of Section 626 of the Communications Act (47 U.S.C. § 546), and the applicable provision of the Massachusetts Cable Law.

## **13. ENFORCEMENT/TERMINATION OF LICENSE**

13.1. *Notice of Violation:* If at any time the Issuing Authority believes that Licensee has not complied with the terms of this License, the Issuing Authority shall informally discuss the matter with Licensee. If these discussions do not lead to resolution of the problem in a reasonable time, the Issuing Authority shall then notify Licensee in writing of the exact nature of the alleged noncompliance (for purposes of this Article, the "Noncompliance Notice").

13.2. *Licensee's Right to Cure or Respond:* The Licensee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the Issuing Authority, if Licensee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance as soon as reasonably possible and notify the Issuing Authority of the steps being taken and the date by which they are projected to be completed, all of which shall be to the reasonable satisfaction of the Issuing Authority. If the Licensee believes it has cured the subject non-compliance, it shall provide written notice of such to the Issuing Authority. The Town shall provide the Licensee with a written response as to whether such cure has been effected.

13.3. *Public Hearing:* In the event that the Licensee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or in the event that the alleged noncompliance is not remedied within thirty (30) days or the date projected pursuant to Section 13.2(iii) above, and if the Town seeks to continue its investigation into the alleged noncompliance, then the Issuing Authority shall schedule a public hearing. The Issuing Authority shall provide the Licensee with the following minimum written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Licensee the opportunity to be heard: (i) for a hearing for which the Issuing Authority states in the written notice that that revocation of the License shall not be a possible consequence – thirty (30) days written notice, and (ii) for a hearing for which the Issuing Authority does not state in the written notice that that revocation of the License shall not be a possible consequence – forty-five (45) days written notice.

13.4. *Enforcement:* Subject to applicable federal and State law, in the event the Issuing Authority, after the public hearing set forth in Section 13.3, determines that Licensee is in default of any provision of this License, the Issuing Authority may:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

13.4.2. Commence an action at law for monetary damages or seek other equitable relief;

13.4.3. Submit a claim against an appropriate part of the performance bond pursuant to Section 10 above.

13.4.4. In the case of a substantial noncompliance of a material provision of this License, revoke this License in accordance with Section 13.5; and/or

13.4.5. Invoke any other lawful remedy available to the Town.

13.5. *Revocation Hearing:*

13.5.1. At the designated public hearing in which revocation is a possible consequence, the Licensee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or

consultants of the Issuing Authority, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made by the Issuing Authority of such hearing with the cost shared by the parties.

13.5.2. Following the public hearing where revocation is a possible consequence, the Licensee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the Issuing Authority in writing and thereafter the Issuing Authority shall determine (i) whether an event of default has occurred under this License; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured by the Licensee. The Issuing Authority shall also determine whether it will revoke this License based on the information presented, or, in the reasonable discretion of the Issuing Authority, grant additional time to the Licensee to effect any cure. If the Issuing Authority determines that it will revoke this License, the Issuing Authority shall promptly provide Licensee with a written determination setting forth the Issuing Authority's reasoning for such revocation. In accordance with applicable law, Licensee may appeal such written determination of the Issuing Authority to the Cable Division or to an appropriate court, which shall have the power to review the decision of the Issuing Authority *de novo*, if permitted by applicable law. Licensee shall be entitled to such relief as the Cable Division or court finds appropriate. Such appeal must be taken within sixty (60) days of Licensee's receipt of the written determination of the Issuing Authority.

13.5.3. The Issuing Authority may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Issuing Authority's rights under this License in lieu of revocation of this License.

## **14. MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by the Town or Licensee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner.

14.2. *Binding Acceptance:* This License shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Captions and Headings:* The captions and headings to sections throughout this License are intended solely to facilitate reading and reference to the sections and provisions of the License. Such captions and headings shall not affect the meaning or interpretation of the License.

14.4. *Exhibits:* The Exhibits to this License attached hereto, and all portions thereof, are, except as otherwise specified in such Exhibits, incorporated herein by reference and expressly made a part of this License. The procedures for approval of any subsequent amendment or modification to said Exhibits shall be the same as those applicable to any amendment or modification hereof, except as specified in such Exhibit or elsewhere in this License.

14.5. *Recitals:* The recitals set forth in this License are incorporated into the body of this License as if they had been originally set forth herein.

14.6. *Equal Employment Opportunity:* The Licensee shall adhere to applicable Equal Employment Opportunity regulations of the FCC and to all federal, State and local laws pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Licensee.

14.7. *Force Majeure:* The Licensee shall not be held in default under, or in noncompliance with, the provisions of the License, nor suffer any enforcement, liquidated damage, or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by a Force Majeure, provided that the Licensee takes reasonable steps under the circumstances to comply with the obligations of the License to the maximum extent possible without endangering the health or safety of the Licensee's employees or property, or the health or safety of the Town or the public, or their property. In the event that any such delay in performance or failure to perform affects only part of the Licensee's capacity to perform, the Licensee shall perform to the maximum extent it is able to do so in as expeditious a manner as possible under the circumstances.

14.8. *Delivery of Payments:* Licensee may use electronic funds transfer to make any payments to the Town required under this Agreement subject to the Town having a system in place for same and subject to Town consent, which consent shall not be unreasonably withheld.

14.9. *Acts or Omissions of Affiliates:* During the term of this License, the Licensee shall be liable for the acts or omission of its Affiliates to the extent arising out of any such Affiliate's installation, maintenance or operation of the Cable System in the Town pursuant to this License.

14.10. *Warranties:* The Licensee represents and warrants to the Issuing Authority that, as of the Effective Date:

14.10.1. The Licensee is duly organized, validly existing and in good standing under the laws of its incorporation and is authorized to do business in the State;

14.10.2. The Licensee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and other corporate authority to enter into and legally bind the Licensee to this License and to take all actions necessary to perform all of its obligations pursuant to this License;

14.10.3. This License is enforceable against the Licensee in accordance with the provisions herein, subject to applicable State and federal law; and

14.10.4. There is no action or proceedings pending against the Licensee that would reasonably interfere with its performance of this License.

14.11. *Notices:* Unless otherwise expressly stated herein, notices required under this License shall be forwarded in one of the following ways: (i) hand delivered (signature required), (ii) sent by express mail (signature required) or (iii) by certified mail/return receipt requested to, to the addressees below. Each party may change its designee by providing written notice to the other party.

Notices to Licensee shall be mailed to:

Verizon New England Inc.  
125 High Street  
Oliver Tower, Floor 7, Boston, MA 02110  
Attention: Donna C. Cupelo, Region Vice President

with a copy to:

Verizon Legal Department  
140 West Street, 6th Floor  
New York NY 10007  
Attention: Monica Azare, Vice President and Deputy General  
Counsel

Notices to the Issuing Authority shall be mailed to:

Board of Selectmen  
Town of Andover  
Andover Town Hall  
36 Bartlet Street  
Andover, MA 01810

with a copy to:

Cable Advisory Committee, Chairman  
Andover Town Hall  
36 Bartlett Street  
Andover, MA 01810

14.12. *Entire Agreement*: This License and the Exhibits hereto constitute the entire agreement between Licensee and the Town, and it supersedes all prior or contemporaneous agreements, representations or understandings (written or oral) of the parties regarding the subject matter hereof.

14.13. *Amendments*: Amendments or modifications to this License shall be mutually agreed to in writing by the parties.

14.14. *Severability*: If any section, subsection, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unenforceable by any court of competent jurisdiction or by any State or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this License.

14.15. *No Third Party Beneficiary*: Nothing in this License shall be construed to create or confer any rights or benefits to any third party.

14.16. *No Recourse Against Issuing Authority*: Pursuant to Section 635A(a) of the Communications Act (47 U.S.C. §555a), the Licensee shall have no recourse against the Issuing Authority, the Town and/or its officials, members, employees or agents, other than injunctive relief or declaratory relief, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this License.

14.17. *Town's Right of Intervention*: The Town hereby reserves the right, as authorized by applicable law and/or regulation, to intervene in any suit, action or proceeding involving this License, or any provision in this License; provided, however, that this section shall not restrict the right of the Licensee to oppose such intervention, pursuant to applicable law.

14.18. *FTTP Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, or denial of renewal of this License or any other action to forbid or disallow Licensee from providing Cable Services, shall Licensee or its assignees be required to sell any right, title, interest, use or control of any portion of Licensee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the Town or any third party. Licensee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, or denial of renewal or any other action to forbid or disallow Licensee from providing Cable Services.

14.19. *Interpretation*: The Town and Licensee each acknowledge that it has received independent legal advice in entering into this License. In the event that a dispute arises over the meaning or application of any term(s) of this License, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the License.

14.20. *Jurisdiction*: Except as otherwise set forth in Section 2.8.3 and Subsection 2.9 of this License, exclusive jurisdiction and venue over any dispute arising out of this License shall be in a court of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts, and the parties hereby agree to be subject to the personal jurisdiction of said court for the resolution of any such dispute. This provision is not intended to limit the right of either party to remove a matter to federal or State court in Massachusetts as permitted by law.

**[SIGNATURE PAGE FOLLOWS]**

AGREED TO THIS 26<sup>th</sup> DAY OF JUNE, 2017.

TOWN OF ANDOVER  
By its Board of Selectmen:

\_\_\_\_\_  
Paul J. Salafia, Chair

\_\_\_\_\_  
Alexander J. Vispoli, Vice Chair

\_\_\_\_\_  
Daniel H. Kowalski, Secretary

\_\_\_\_\_  
Robert A. Landry

\_\_\_\_\_  
Laura M. Gregory

Approved as to legal form:

\_\_\_\_\_  
William August, Esq.  
Special Cable Counsel

VERIZON NEW ENGLAND INC.

By: \_\_\_\_\_  
Donna C. Cupelo, Region Vice President

Approved as to Form:

\_\_\_\_\_  
Law Department

## EXHIBITS

EXHIBIT A – MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B – PEG CHANNELS

EXHIBIT C – GROSS REVENUE REPORTING FORM

EXHIBIT D – CUSTOMER SERVICE STANDARDS

EXHIBIT E – PERFORMANCE BOND

## **EXHIBIT A**

### **MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE**

1.	Andover High School	80 Shawsheen Road
2.	Ballardvale Fire Station	163 Andover Street
3.	Bancroft School	15 Bancroft Road
4.	Doherty Middle School	50 Bartlet Street
5.	Memorial Hall Library	3 Main Street
6.	Municipal Maintenance Building	90 Red Spring Road
6a.	Municipal Service Facility	5 Campanelli Drive
7.	Old Town House	20 Main Street
8.	Police/Fire Station	32 Main Street
9.	Public Works Yard	11 Lewis Street
10.	Sanborn School	90 Lovejoy Road
11.	School Administration Building	36R Bartlet Street
12.	Shawsheen School	18 Magnolia Avenue
13.	South School	55 Woburn Street
14.	Town Office Building	36 Bartlet Street
15.	Water Treatment Plant	397 Lowell Street
16.	West Andover Fire Station	200 Greenwood Road
17.	West Elementary School	60 Beacon Street
18.	West Middle School	70 Shawsheen Road
19.	High Plain Elementary School	High Plain Road
20.	Wood Hill Middle School	Cross Street

21. Spring Grove Cemetery

Spring Grove Road

## **EXHIBIT B**

### **PEG CHANNELS**

- Channel 43 - Educational Access Channel
- Channel 47 - Public Access Channel
- Channel 45 - Governmental Access Channel

# EXHIBIT C

## GROSS REVENUE REPORTING FORM

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### PEG Report 1st Quarter [YEAR]

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#### *Sample Town*

*Verizon - fBA*

*MA*

**PEG Fee Rate:**

%

	MONTH	MONTH	MONTH	Quarter Total
Monthly Recurring Cable Service Charges (e.g. Basic, Enhanced Basic, Premium and Equipment Rental)				
Usage Based Charges (e.g. PayPer View, Installation)				
Advertising				
Home Shopping				
Late Payment				
Other Misc. (Leased Access & Other Misc.)				
License Fee Billed				
PEG Fee Billed				
Less:				
Bad Debt				
Total Receipts subject to PEG Fee Calculation				
PEG Grant Before Adjustment				
Adjustment				
PEG Grant				

Verizon New England Inc. is hereby requesting that this information be treated as confidential and proprietary business information in accordance with the terms of the Cable Television Renewal License granted to Verizon New England Inc. This information is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided herein, would cause substantial harm to competitive position of Verizon in the highly competitive video marketplace if disclosed, is intended to be proprietary confidential business information and is treated by Verizon as such.

*\*In the event of an inconsistency between this form and the definition of Gross Revenues at Section 1.17 above, the definition of Gross Revenues shall control and revenue categories to be included under such definition shall be included in the calculation of total Gross Revenues in this form.*

## **EXHIBIT D**

### **CUSTOMER SERVICE STANDARDS**

These standards shall, apply to the Licensee to the extent it is providing Cable Services over the Cable System in the Town.

#### **DEFINITIONS**

- A. **Respond:** Licensee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. **Service Call:** The action taken by the Licensee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. **Service Interruption:** The loss of picture or sound on one or more cable Channels.
- D. **Significant Outage:** A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- E. **Standard Installation:** Installations where the Subscriber is within one hundred fifty (150) feet of trunk or feeder lines.

#### **SECTION 1: BILL PAYMENT AND EQUIPMENT RETURN**

The Licensee shall have a location convenient to the Town that shall be open during Normal Business Hours and accessible to Subscribers to make bill payments. For Subscriber equipment pick-up, the Licensee shall provide for one or more of the following methods: (i) setting a specific appointment time or four (4) hour time period during Normal Business Hours, during which Licensee's representative(s) shall visit the Subscriber's premises to pick-up or exchange Subscriber equipment, (ii) using a mailer, or (iii) establishing a reasonably convenient location for the pick-up and exchange of Subscriber equipment.

#### **SECTION 2: TELEPHONE AVAILABILITY**

A. The Licensee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Town and/or residents regarding Cable Service. Licensee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to customer telephone inquiries during normal business hours. Licensee representatives shall identify themselves by name when answering this number. After normal business hours, the toll-free number may be answered by an Automated Response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained representative on the next business day.

B. The Licensee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this License by the Licensee.

C. Licensee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU shall forward the call to a queue for a live representative. The Licensee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Licensee shall be answered within thirty (30) seconds. The Licensee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Licensee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

E. Under Normal Operating Conditions, callers to the Licensee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Upon written request from the Town, but in no event more than twice annually following the end of each quarter, the Licensee shall report to the Town the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity shall be made available to the Town for review upon reasonable request.

G. The measurements and reporting above may be based on calendar or accounting periods at the Licensee's option.

### **SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS**

A. All installations shall be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Licensee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal (“ONT”) on the customer’s premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer’s premises. The Licensee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the customer’s premises. Notwithstanding the foregoing sentences, all Standard Installations shall be performed within fourteen (14) business days after an order is placed.

C. The Licensee shall provide the Town with a report upon written request from the Town, but in no event more than twice annually following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity shall be made available to the Town for review upon reasonable request.

The measurements and reporting above may be based on calendar or accounting periods at the Licensee’s option.

D. The Licensee shall offer Subscribers “appointment window” alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Licensee’s discretion, the Licensee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

### **SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES**

A. The Licensee shall promptly notify the Town of any Significant Outage of the Cable Service.

B. The Licensee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Licensee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the Town and each affected

Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage.

C. Licensee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, the Licensee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Service Area.

(2) The Licensee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the Town of a Cable Service problem.

E. Under Normal Operating Conditions, the Licensee shall complete Service Calls within seventy-two (72) hours of the time Licensee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. The Licensee shall meet the standard in Subsection E of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. The Licensee shall provide the Town with a report upon written request from the Town, but in no event more than twice annually following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity shall be made available to the Town for review upon reasonable request. The measurements and reporting above may be based on calendar or accounting periods at the Licensee's option.

H. Under Normal Operating Conditions, the Licensee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of twenty-four (24) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Licensee to verify the problem if requested by the Licensee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Licensee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected

Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Licensee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

J. With respect to service issues concerning cable services provided to Town facilities, Licensee shall Respond to all inquiries from the Town within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Licensee shall notify the Town in writing as to the reason(s) for the delay and provide an estimated time of repair.

K. Licensee may provide all notices identified in this Section electronically or on-screen.

### **SECTION 5: CUSTOMER COMPLAINTS**

A. Under Normal Operating Conditions, the Licensee shall investigate Subscriber complaints referred by the Town within seventy-two (72) hours. The Licensee shall notify the Town of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The Town may require reasonable documentation to be provided by the Licensee to substantiate the request for additional time to resolve the problem. For purposes of this Section, “resolve” means that the Licensee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer’s complaint and advise the Customer of the results of that investigation.

B. To the extent required by Section 10 of the Massachusetts Cable Law and 207 CMR 2.03(3), the Licensee shall notify the Issuing Authority on Cable Division Form 500 on an annual basis with respect to Subscriber complaints.

### **SECTION 6: BILLING**

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges, and shall include the information required by 207 CMR 10.03(1) in clear, concise and understandable language and format. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Licensee shall, without limitation as to additional line items, be allowed to itemize as separate line items, License fees, taxes and/or other governmentally imposed fees. The Licensee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Licensee shall be given at least five (5) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Licensee within thirty (30) days after the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

E. The Licensee shall notify the Subscriber of the result of its investigation of any complaint and shall give an explanation for its decision within 30 business days after the receipt of the complaint. The Subscriber shall forfeit any rights under 207 CMR 10.07 if he or she fails to pay the undisputed balance within 30 days. Any Subscriber who disagrees with the results of Licensee's investigation shall promptly inquire about and take advantage of any complaint resolution mechanism, formal or informal, available under this License or through the Issuing Authority before the Cable Division may accept a petition. The Subscriber or Licensee may petition the Cable Division to resolve disputed matters within 30 days of any final action.

F. The Licensee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the Town upon request.

G. The Licensee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Licensee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Licensee, the payment alternative may be limited.

H. In accordance with 207 CMR 10.05(2), a Subscriber account shall not be considered delinquent until a minimum of thirty (30) days has passed after the bill due date.

## **SECTION 7: DEPOSITS, REFUNDS AND CREDITS**

A. The Licensee may require refundable deposits from Subscribers with 1) a poor credit or poor payment history, 2) who refuse to provide credit history information to the Licensee, or 3) who rent Subscriber equipment from the Licensee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Licensee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Licensee may charge for Subscriber equipment is the cost of the equipment which the Licensee would need to purchase to replace the equipment rented to the Subscriber.

B. The Licensee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period.

C. Under Normal Operating Conditions, refund checks shall be issued within the next available billing cycle following the resolution of the event giving rise to the refund (e.g., equipment return and final bill payment).

D. Credits for Cable Service shall be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Licensee or its' authorized agent. Appropriate time considerations shall be included in the Licensee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

## **SECTION 8: RATES, FEES AND CHARGES**

A. The Licensee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Licensee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Licensee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Licensee's equipment (for example, a dog chew).

B. The Licensee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

## **SECTION 9: DISCONNECTION /DENIAL OF SERVICE**

A. The Licensee shall not terminate Cable Service for nonpayment of a delinquent account unless the Licensee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice of termination shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Licensee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Licensee's equipment, abusive and/or threatening

behavior toward the Licensee's employees or representatives, or refusal to provide credit history information or refusal to allow the Licensee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service shall be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Licensee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Licensee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Licensee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Licensee and to receive Cable Service or other multi-channel video service from another Person or entity.

## **SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS**

A. All Licensee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers at the homes of such Subscribers or potential Subscribers shall wear a clearly visible identification card bearing their name and photograph. The Licensee shall make reasonable effort to account for all identification cards at all times. In addition, all Licensee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Licensee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Licensee vehicles shall have the Licensee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Licensee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Licensee.

B. All contact with a Subscriber or potential Subscriber by a Person representing the Licensee shall be conducted in a courteous manner.

C. The Licensee shall notify Subscribers annually that any complaints or inquiries not satisfactorily handled by the Licensee may be referred to the Town.

D. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber;

(2) A separate electronic notification;

(3) A separate on-screen notification; or

(4) Any other reasonable written means.

E. The Licensee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Licensee, and the Licensee shall provide a copy of the notice to the Town including how and where the notice was given to Subscribers.

F. The Licensee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Licensee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Licensee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) To the extent applicable, Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address and telephone number of the Town, but with a notice advising the Subscriber to initially contact the Licensee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Licensee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of the Licensee's office to which complaints may be reported.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

H. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Licensee where the Subscriber can receive additional information about their account and discuss the pending termination.

I. The Licensee shall comply with all applicable federal and State laws relating to Subscriber privacy, including the provisions of Section 631 of the Communications Act (47 U.S.C. §551).

#### **SECTION 11: SUBSCRIBER PRIVACY**

The Licensee shall comply with applicable federal and state law and regulations regarding Subscriber privacy, including 47 U.S.C. §551.

## **EXHIBIT E**

### **FORM OF PERFORMANCE BOND**

Franchise Bond  
Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:** That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Obligee), in the full and just sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal and Obligee have entered into a License Agreement dated \_\_\_\_\_ which is hereby referred to and made a part hereof.

**WHEREAS**, said Principal is required to perform certain obligations under said Agreement.

**WHEREAS**, the Obligee has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

**PROVIDED HOWEVER**, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
  
2. This Bond shall be effective \_\_\_\_\_, 20\_\_\_\_, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee.



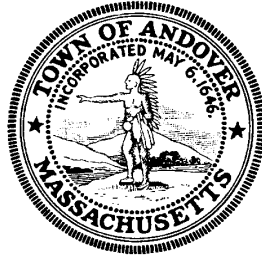


# TOWN OF ANDOVER

## Town Clerk's Office

36 Bartlet Street  
Andover, MA 01810  
978-623-8255  
townclerk@andoverma.gov

TOWN OF ANDOVER



## LEGAL NOTICE

### TOWN OF ANDOVER CABLE TELEVISION LICENSE RENEWAL PUBLIC HEARING

The Board of Selectmen of the Town of Andover, Massachusetts, being the Town's Cable License Franchising Authority, hereby gives notice that on June 26, 2017, 7:15 p.m. the Selectmen will hold a public hearing pursuant to 207 CMR 3.05 at Town Offices Building, 36 Bartlet Street, Andover, on the cable television license renewal proposal of Verizon New England, Inc. The purpose of the proceeding is to accept public comment, formally consider and possibly take final action on approval of the proposed license, a copy of which is available for public inspection and copying c/o of the Town Clerk. Public comment is invited. For further information and copies of the proposed license and Verizon's License Application (Form 100), contact John Mangiaratti, Deputy Town Manager, c/o Town Manager's Office. By order of the Board of Selectmen as Cable Television License Franchising Authority.

Lawrence J. Murphy  
Town Clerk

Date of Issues: Thursday, June 8 and June 15, 2017