



COMMITTEE OF THE WHOLE MEETING
MONDAY, NOVEMBER 18, 2024
(Immediately following the Village Board Meeting)

AGENDA

CALL TO ORDER

ROLL CALL

AUDIENCE COMMENTS

TRUSTEE COMMENTS

DISCUSSION

1. 2025 Meeting Schedule
2. Metronet Franchise Settlement Agreement
3. Aurora Area Convention and Visitor Bureau (AACVB) Agreement
4. Code Updates Pertaining to Vehicle Weights, Abandoned Vehicles, Parking and E-Bikes
5. 2024 Tax Levy

EXECUTIVE SESSION

ADJOURN

Initials: SB



Memorandum

To: Village President and Village Board of Trustees
Cc: Steve Bosco, Village Administrator
From: Natalie Stevens, Community and Board Relations Coordinator
Date: November 14, 2024
Re: 2025 Annual Village Board, C.O.W., Plan Commission, and Trustee Committee Meeting Schedules

Attached for discussion are the Annual Meeting Schedules for the North Aurora Village Board and Committee of the Whole (C.O.W.) meetings, the Plan Commission meetings, and Trustee Committee meetings for the 2025 calendar year.

As noted on the Village Board meeting schedule, there is one instance when a Village Board meeting falls on a Village observed holiday being Labor Day (September 1) where the Village Hall is closed. In this instance there will be no Village Board/C.O.W. meeting scheduled, resulting in just one meeting for September, unless the Board would like to schedule this meeting on another date.

There are no instances where Plan Commission falls on a Village observed holiday.

Also attached for approval are the 2025 Annual North Aurora Days Committee Meeting Schedule and the 2025 Beautification Committee schedule. No committee meetings fall on a Village observed holiday.

The 2025 meeting schedules for all meetings must be approved by January 1, 2025 and posted at the Village Hall and on the Village's website.



VILLAGE OF NORTH AURORA

**Holiday - Village Hall
Closed No Meetings**

2025 ANNUAL MEETING SCHEDULE

Village Board / C.O.W. / Plan Commission Meetings

Village Board & Committee of the Whole Meetings 1 st & 3 rd Mondays of each month - 7:00 pm			Plan Commission Meetings 1 st Tuesday of each month - 7:00 p.m.	
	1st Monday	3rd Monday	(unless otherwise noted)	
January	6	20	January	7
February	3	17	February	4
March	3	17	March	4
April	7	21	April	1
May	5	19	May	6
June	2	16	June	3
July	7	21	July	1
August	4	18	August	5
September	1 (None - Labor Day)	15	September	2
October	6	20	October	7
November	3	17	November	4
December	1	15	December	2

All Village Board, Committee of the Whole (C.O.W.) and Plan Commission Meetings will be held at the North Aurora Village Hall, 25 E. State St., North Aurora, IL unless posted otherwise. C.O.W. Meetings immediately follow the Village Board Meeting.



VILLAGE OF NORTH AURORA

*Holidays
Village Hall Closed
No Meetings

2025 COMMITTEE MEETING SCHEDULE

Committee	Meeting Days	Meeting Time	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
NORTH AURORA DAYS Mark Gaffino - Chairman	2nd Monday of each month	6:00 p.m.	13	10	10	14	12	9	14	11	8	13	10	8
BEAUTIFICATION Mark Gaffino - Chairman	3rd Monday Quarterly	5:00 p.m.	20			21			21			20		

All Committee Meetings will be held at the North Aurora Village Hall, 25 E. State St., North Aurora, IL unless posted otherwise.

**VILLAGE OF NORTH AURORA
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR
FROM: MIKE TOTH, BUSINESS SERVICES MANAGER
SUBJECT: METRONET CABLE FRANCHISE SETTLEMENT AGREEMENT
AGENDA: NOVEMBER 18, 2024 COMMITTEE OF THE WHOLE MEETING

DISCUSSION

Metronet currently offers data and broadband services, telecommunications services and video services in the Village. The fiber optic network supporting those services is in the Village's right-of-way. In 2017, the Village entered into a 10-year Cable Franchise Agreement with Metronet concerning their video services. As of December 10, 2024, Metronet will no longer be offering video services and will subsequently be terminating their Cable Franchise Agreement with the Village. Although the Agreement is set to expire March 31, 2027, Metronet is offering a one-time settlement payment of \$7,830.42 to cover the estimated value of the remaining payments that would have been required as part of the Agreement.

Staff has attached the documents listed below. Items #1-3 provide the background on the item while the Settlement Agreement (Item #4) would require future Board action.

1. Memorandum dated November 7, 2024, from the Village Attorney outlining the termination of the Franchise Agreement and how it could impact the Village.
2. The Cable Franchise Agreement between the Village of North Aurora and Metronet (CMN-RUS, Inc.), approved April 17, 2017.
3. Settlement Agreement cover letter submitted by Metronet, dated October 10, 2024.
4. Cable Franchise Settlement Agreement, submitted by Metronet.

Staff is seeking feedback on the Cable Franchise Settlement Agreement submitted by Metronet. In the meantime, staff will continue conversations with the Village Attorney and Metronet to determine the best course of action for Metronet's fiber optic network that will continue hosting data/broadband services and telecommunications services from the Village's right-of-way.



MEMORANDUM

TO: North Aurora Village Board

FROM: Drendel & Jansons Law Group

DATE: November 7, 2024

RE: Metronet Cable Franchise Termination

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On October 10, 2024, the Village received a letter from Metronet proposing a “Video Franchise Settlement Agreement” and stating that Metronet will cease providing video (cable) services in the Village of North Aurora on December 10, 2024. The letter says that Metronet will continue to provide telecommunications, data, and broadband services under a Competitive Local Exchange Carrier (CLEC) certification thereafter.

To put it another way, Metronet will be terminating the Cable Franchise Agreement and will no longer provide cable television to residents in the Village of North Aurora. The Cable Franchise Agreement term ends April 2027, so Metronet is proposing to terminate the Agreement early, and Metronet is offering a one-time settlement payment of \$7,830.42, which purportedly represents the net present value of the remaining future franchise payments, taking into account the projected decline of cable customers at a rate of three percent (3%) a year.

The Cable Franchise Agreement provides a mechanism for the *Village* to terminate the agreement if Metronet is in default, *but* it does not expressly provide a mechanism by which Metronet may terminate the agreement early. Therefore, the termination is not governed by the terms of the Franchise Agreement. Thus, Metronet is seeking a separate agreement by which the Village would consent to termination of the Cable Franchise Agreement.

If the Village does not agree to termination of the Franchise Agreement, Metronet could petition the Illinois Commerce Commission for a determination that they have a right to terminate the Agreement based on factors like changes in the market, shifts in technology, etc. If Metronet goes that route, there would be some costs to the Village to defend against their petition to terminate the Agreement (unless the Village would choose not to defend it), and the Village would have no guarantee of payment to compensate the Village for loss of revenue for term of the Agreement.

If the Village is inclined to agree to the termination of the Agreement and accept the settlement offer, there are some issues to consider: 1) To what extent does Metronet have the right to remain in the Village right-of-way; and 2) what, if any, fees would the Village be entitled to collect from Metronet for the use of municipal right-of-way.



## MEMORANDUM

### Access to the Right-of-Way

Federal and State law require municipalities to provide reasonable and nondiscriminatory access to municipal right-of-ways (ROWs) for telecommunications and broadband providers. A municipality can refuse access to the ROW for legitimate public safety concerns, interference with existing infrastructure, lack of capacity in the ROW, noncompliance with design or aesthetic standards, failure to meet permitting requirements, and noncompliance with Federal or State laws. In Metronet's case, they already have their infrastructure in the ROW, so the Village has no basis for refusing to allow Metronet to continue with facilities in the ROW.

### Fees for Access to the Right-of-Way

As for compensation, a municipality can set reasonable fees for ROW access as a general proposition. The fee must be reasonably calculated to cover the cost of administration, maintenance, and oversight. The fee structure should be reasonably tied to actual costs and must not be discriminatory. It must be applied evenly to all applicable users of the ROW.

The letter from Metronet indicates that they will continue to provide telecommunications, data, and broadband services. The Village cannot charge a fee for telecommunications and broadband services. The State Simplified Telecommunications Tax Law preempts local municipalities from charging for telecommunication services. The State collects simplified telecommunications tax (STT) from telecommunication providers, and the Village gets a percentage of the STT collected by the State. The Village is preempted from charging a fee for internet services under the Federal Internet Tax Freedom Act.

To the extent that Metronet is providing *non*-telecommunications and *non*-internet services, the Village has right under its general authority as owner of the ROW to charge a fee that is reasonably calculated to cover the cost to the Village. The letter from Metronet mentions the provision of data, in addition to telecommunications and broadband services, so the letter, itself, seems to indicate that Metronet will provide some *non*-telecommunications and *non*-internet services. My own research suggests they may provide network services as well (such as virtual private networks (VPNs)).

VILLAGE OF NORTH AURORA



VILLAGE OF NORTH AURORA  
KANE COUNTY, ILLINOIS

Ordinance No. 17-04-17-02

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**ORDINANCE APPROVING A CABLE FRANCHISE AGREEMENT  
WITH CMN-RUS, INC. (METRONET)**

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Adopted by the  
Board of Trustees and President  
of the Village of North Aurora  
this 17<sup>th</sup> day of APRIL, 2017

Published in Pamphlet Form  
by authority of the Board of Trustees of the  
Village of North Aurora, Kane County, Illinois,  
this 18 day of APRIL, 2017  
by Cynthia J. Torraco

Signed

Liz Murray



VILLAGE OF NORTH AURORA

ORDINANCE NO. 17-04-17-02

ORDINANCE APPROVING A CABLE FRANCHISE AGREEMENT  
WITH CMN-RUS, INC. (METRONET)

**WHEREAS**, CMN-RUS, Inc. ("Metronet") is a cable company desiring to have a franchise in the Village of North Aurora, Illinois; and

**WHEREAS**, Metronet has negotiated a cable franchise agreement with the Village staff ("Franchise Agreement") authorizing Metronet to serve the Village and to operate and maintain a cable television system within the jurisdictional limits of the Village consistent with the Franchise Agreement and the Cable Communications Policy Act of 1984 (47 U.S.C. 521 et seq.); and

**WHEREAS**, a public hearing has been held to consider the cable franchise needs of the community; and

**WHEREAS**, the President and Board of Trustees have determined that it is in the best interests of the Village to approve the Franchise Agreement as negotiated.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of North Aurora, Kane County, Illinois, as follows:

1. The recitals set forth above are adopted and incorporated herein as the material and significant findings of the President and the Board of Trustees as if fully stated herein.
2. The Cable Television Franchise Agreement By and Between the Village of North Aurora and CMN-RUS, Inc. in the form attached hereto and incorporated herein by reference as Exhibit "A" is hereby approved, subject to approval of the map exhibit of the initial required coverage area consistent with the Cable Act law for coverage required of a cable provider that is a second market entrant, which exhibit shall be approved by the Village Administrator and attached to the Agreement.
3. The Village President or his designee is hereby authorized and directed to execute the Agreement with the approved map exhibit on behalf of the Village of North, and Village staff are hereby authorized and directed to take all necessary and appropriate actions to implement the agreement as written and approved.
4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance, or any part thereof. The Village Board of Trustees hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that anyone or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

VILLAGE OF NORTH AURORA

4. This Ordinance shall take immediate full force and effect from and after its passage, approval, publication and such other acts as required by law.

Presented to the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 17th day of APRIL, 2017, A.D.

Passed by the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 17th day of APRIL, 2017, A.D.

Mark Carroll yes

Laura Curtis absent

Chris Faber yes

Mark Gaffino yes

Mark Guethle yes

Michael Lowery yes

Approved and signed by me as President of the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 17th day of APRIL, 2017, A.D.

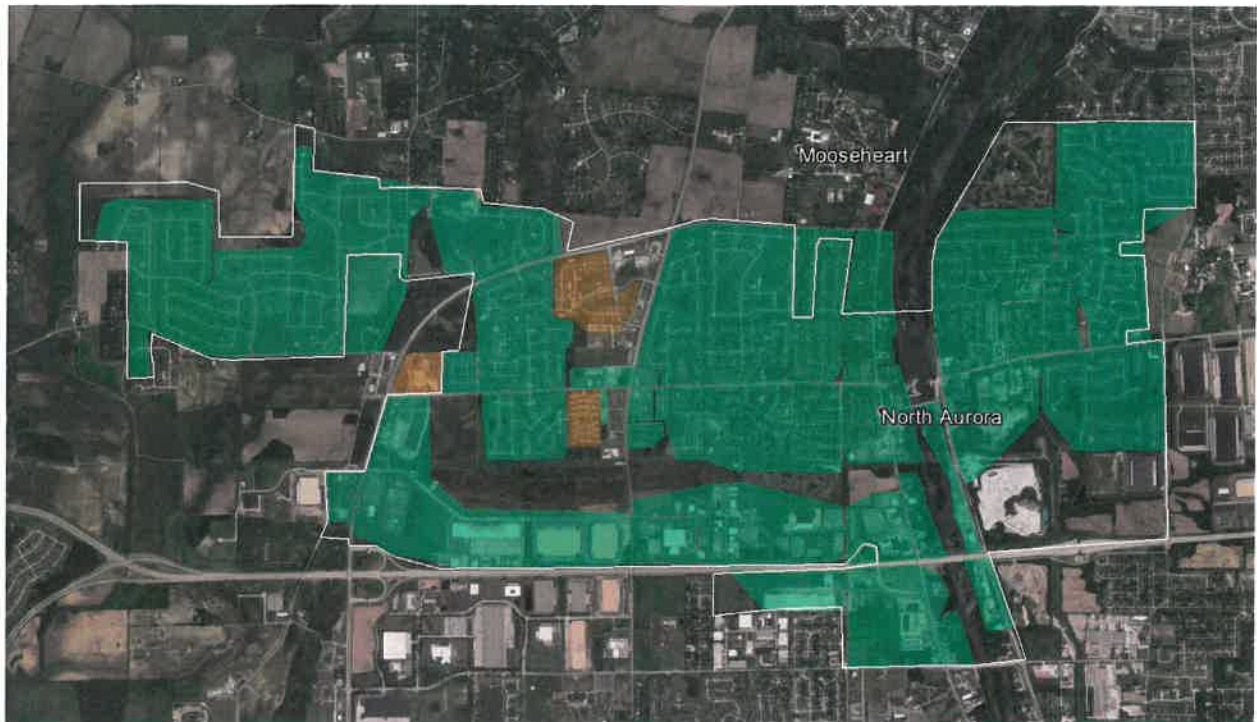
Dale Berman  
Dale Berman, Village President

ATTEST:

Lori Murray  
Lori Murray, Village Clerk

## EXHIBIT A

### PRELIMINARY MAP OF INITIAL FRANCHISE SERVICE AREA



#### **Legend**

**Green** – Subject to final network design optimization, areas that Grantee will buildout as part of the Initial Franchise Service Area.

**Orange** – Subject to final network design optimization and Grantee acquiring rights to use private property, areas that Grantee will buildout as part of the Initial Franchise Service Area.

#### **Notes**

Upon the completion of final network design optimization, Grantee will provide Grantor with a final map to incorporate into this Exhibit A. The final map may be different from the map described above based on actual engineering data, but shall not be substantially different.

For avoidance of doubt, for those areas set forth in orange on the above map, if Grantee is unable to obtain rights to use private property on reasonable terms, Grantee will not be able to buildout those areas.

**CABLE TELEVISION FRANCHISE AGREEMENT  
BY AND BETWEEN  
The  
VILLAGE OF NORTH AURORA, ILLINOIS  
And  
CMN-RUS, Inc.**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Village of North Aurora, Illinois (hereinafter, the “Village”) and CMN-RUS, Inc., (hereinafter, “Grantee”) this April day of 17, 2017 (the “Effective Date”).

The Village, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of the Cable Act, the Illinois Constitution of 1970, including the Village’s home rule powers, and the Illinois Municipal Code, as amended from time to time, and shall be governed by the Cable Act and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.

**SECTION 1: Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

“Cable Operator” means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"Cable Service" or “Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the

Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"Code" means the Village of North Aurora Municipal Code.

“Customer” or “Subscriber” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the Village as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean CMN-RUS, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the Village’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. In the

event there is or becomes a conflict between the lists herein described and then applicable generally accepted accounting principles, the latter shall prevail. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5<sup>th</sup> Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area set forth in Exhibit A.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Village.

"Public Way" shall mean the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the Village in the Franchise Area, to the extent that the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. Public Way shall not include any real or personal Village property that is not specifically described in this definition and shall not include Village buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

"Qualified Household" shall mean any single family residential home where a resident has agreed in writing to Grantee's standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Cable Service from Grantee.

"Right of Way Ordinance" shall mean Title 12 Chapter 20, of the Code, as amended from time to time.

"Standard Installation" means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Cable System).

"Southwest Fox Valley Cable and Telecommunications Consortium" or "Consortium" is the designee of the Village with respect to the operation of Public, Educational and Government Access Programming and related activities and the performance of duties described in that certain Intergovernmental Agreement by and between the members of said Consortium, as amended from time to time.

"Village" means the Village of North Aurora, Illinois or the lawful successor, transferee, designee, or assignee thereof.

"Video Programming" or "Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 2: Grant of Authority**

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, and Ordinance No. 04-17-17-\_\_\_, the Village hereby grants to the Grantee, subject to the terms of this Agreement, a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be from the Effective Date through and including March 31, 2027, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the provision of Cable Service. In the event this Franchise expires without being renewed or terminated, the terms and conditions described herein shall continue to apply on a month-to-month basis, as long as negotiations continue in good faith and until such time when the franchise is renewed.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Village to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (C) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the Village grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

### **SECTION 3: Construction and Maintenance of the Cable System**

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Right of Way Ordinance as may be amended from time to time.

3.2. **Aerial and Underground Construction.** At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

#### **3.3. Undergrounding and Beautification Projects.**

3.3.1. In the event the Village requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds. Grantee acknowledges that if the Village requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, and no public or private funds are allocated for the project within the meaning of the preceding sentence, Grantee shall be responsible for the costs of relocating Grantee's aerial facilities if the Village directs Grantee and other users of the Public Way to perform such relocation, and the Village shall have no financial responsibility in connection therewith.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

3.4 **Restoration of Private Property.** The Grantee shall remove all excess material and restore all turf and terrain and other property within ten (10) business days after any parcel of private property adjacent to the Public Way is disturbed, damaged or destroyed due to construction



or maintenance by the Grantee, all to the satisfaction of the Village engineer. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, or any other requirement to restore the private property to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section shall be extended a reasonable term by the Village engineer for good cause, as determined in his/her reasonable discretion.

**SECTION 4: Service Obligations**

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and, upon completion of construction, will be capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. After completion of Construction, the Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every new or existing residential home within the Franchise Area where a minimum of fifteen (15) Qualified Households have requested Cable Service within 1200 feet of the Grantee's distribution cable (e.g., a Standard Installation).

4.2.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis.

4.3. Programming. The Grantee agrees to provide cable programming services in the following broad categories:

|                 |                                   |                    |
|-----------------|-----------------------------------|--------------------|
| Children        | General Entertainment             | Family Oriented    |
| Ethnic/Minority | Sports                            | Weather            |
| Educational     | Arts, Culture and Performing Arts | News & Information |

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the Village in conducting inspections related to these standards upon reasonable prior written request from the Village based on a significant number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the Village shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or extension of the Cable System is required, the Village shall provide or cause the developer or property owner to provide notice

of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the Village's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement. Notwithstanding the foregoing, the timing of the issuance of any notice referred to in this Section 4.5 or the failure to issue the same shall not affect in any way the validity of any annexation, planned unit development ordinance, or other development-related approval issued by the Village.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), and to the extent requested by any eligible governmental entity, Grantee shall provide complimentary Basic Cable Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the Village become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the Village to the Village on an annual basis. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Village, its employees or agents in using such system.

4.8. Customer Service Obligations. The Village and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and enforcement provisions are included in Title 5, Chapter 5.50 of the Village of North Aurora Municipal Code. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*

**SECTION 5: Oversight and Regulation by Village**

5.1. Franchise Fees. The Grantee shall pay to the Village a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of

Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the Village to increase the Franchise Fee above five percent (5%), the Village shall hold a public hearing and determine if the Village should collect the additional amount. Following the determination, the Village shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the Village nor more than one hundred eighty (180) days from the receipt of such notice) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the Village increases said Franchise Fee, the Grantee shall notify its Subscribers of the Village's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the Village to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Cable Operator granted a Cable Franchise by the Village pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the Village approves the amendment by ordinance; and (c) the Village notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The Village and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems

to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. Notwithstanding the foregoing, nothing in this Agreement shall limit or prevent the Village from complying with its obligations under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or any reasonably similar law, nor shall any provision of this Agreement prevent the Village from complying with its obligations pursuant to any subpoena or discovery request directed to the Village.

#### **SECTION 6: Transfer of Cable System or Franchise or Control of Grantee**

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Village.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the Village.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Metronet Holdings, LLC.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the Village containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after receiving a request for consent, the Village shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Village has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition to granting of any consent, the Village may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration

of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the Village's consent thereto in the manner described in Section 6 above.

### **SECTION 7: Insurance and Indemnity**

7.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the Village certificates of insurance in accordance with Title 12, Chapter 12.20 of the Village of North Aurora Municipal Code. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising from the Grantee's construction and operation of its Cable System within the Village. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The Village shall give the Grantee timely written notice of its obligation to indemnify and defend the Village after the Village's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the Village. If the Village elects in its own discretion to employ additional counsel, the costs for such additional counsel for the Village shall be the responsibility of the Village.

7.2.1. The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from any conduct for which the Village, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

### **SECTION 8: Public, Educational and Governmental (PEG) Access**

8.1. **PEG Capacity.** The Grantee shall provide capacity for the Village's noncommercial Public, Educational and Governmental Access Programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the Village utilizes no PEG Access Channel. The Grantee shall provide the Village with three (3) PEG Access Channels upon 180 days prior written request of the Village for (1) Government Access, (2) Public Access, and (3) Educational Access, including programming produced by and/or for Waubensee Community College. Unless otherwise agreed to by the Village and the Grantee to the extent required by applicable law, the PEG Access Channel shall be carried on the Grantee's Basic Service tier. The Village's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

8.2. Rules and Procedures for Use of PEG Access Channels. The Village shall be responsible for establishing and enforcing rules for the non-commercial use of PEG Access Channel and to promote the use and viewership of the PEG Access Channel in accordance with 47 U.S.C. § 531(d).

8.3. PEG Access Channel Signal Quality. Provided the PEG Access Channel signal feed is delivered by the Village to the designated signal input point without material degradation, the PEG Access Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.4 PEG Capital Support. At its sole discretion, the Village may designate PEG access capital projects to be funded by the Village. The Village shall send written notice of the Village's desire for Grantee to collect as an external charge a PEG Capital Fee of up to fifty-three cents (\$0.53) per customer per month charge to be passed on to each Subscriber pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge and make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment — for instance, cameras, recording devices, and other video and sound equipment related to PEG program production, or capital repairs to the PEG studio — and the Grantee shall have the opportunity to review and make recommendations upon the Village's plan prior to agreeing to collect and pay to the Village the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the Village shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the Village to make large capital expenditures, if necessary, as long as the Village spends the entire amount collected by the end of the term of this Agreement. Moreover, if the Village chooses to borrow from itself or a financial institution revenue for large PEG capital purchases or capital expenditures, the Village shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the Village's written request.

8.4.1. For any payments owed by Grantee in accordance with this Section 8.3 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JPMorgan Chase & Co., or its successor, whichever is higher, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this section.

8.4.2. Grantee and Village agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.5 Rules and Procedures for Use of PEG Access Channels. The Village shall be responsible for establishing and enforcing rules for the non-commercial use the Public, Educational and Governmental Access Channel and to promote the use and viewership of the Channel.

8.6 Allocation and Use of the PEG Channel. The PEG Channel is, and shall be, operated by the Village and the Village may at any time allocate or reallocate the usage of the PEG Channel among and between different non-commercial uses and Users. The Village shall adopt rules and procedures under which Grantee may use the PEG Channel for the provision of Video Programming if the PEG Channel is not being used for its respective purposes pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531.

8.7. Editorial Control. Grantee shall not exercise any editorial control over any use of the PEG Channel, nor shall Grantee or its Affiliates incur any criminal or civil liability pursuant to the federal, state or local laws of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws for any programs carried on the PEG Channel.

8.8. PEG Access Channel Signal Quality. Provided the PEG signal feed is delivered by the Village to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.7. Grantee Use of Unused Time. Because the Village and Grantee agree that a blank or under-utilized Access Channel is not in the public interest, in the event the Village does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the Village upon no less than sixty (60) days' notice. The programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered fallow time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) consecutive hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

#### 8.8. PEG HD Programming

8.8.1 Annual Meeting to Discuss PEG High-Definition Programming. In recognition of the Village's interest in the future distribution of the PEG Channels in high-definition (HD), Grantee will meet with the Village and/ or its PEG programming designee on an annual basis to discuss:

(i.) The status of each party's respective preparedness to produce and cablecast the PEG Access Programming in HD, taking into consideration the amount of PEG programming being produced in HD versus standard definition (SD).

(ii.) The proportion of channels cablecast in SD versus HD.

(iii.) The percentage of HD subscription penetration across Grantee's subscriber base in the member communities of the Consortium.

8.8.2 PEG Channel Migration from SD to HD. On or after the fifth anniversary date of this Agreement, the parties shall migrate PEG Access Programming from SD to HD, but only if all of the following conditions have been met and notice has been given in writing:

(i.) The Consortium is capable of producing and transmitting PEG programming in HD. For purposes of this Agreement, an HD signal refers to a television signal delivering picture resolution of 720p or 1080i. For the first PEG Channel transitioned to HD, the Channel must include a minimum of five (5) hours per day, seven (7) days per-week of HD PEG programming. Prior to the transition of each additional PEG Channel, the Consortium must accumulate a library containing a minimum of one hundred (100) hours of locally produced, original HD content, per channel.

(ii.) Forty-Two percent (42%) of channels comprising the Basic Service Tier are cablecast in HD. For the purpose of calculating this condition, any networks which are simulcast in HD and SD shall be counted as only one channel.

(iii.) The percentage of HD subscription penetration across the Grantee's subscriber base in the Consortium's member communities is equivalent to eighty percent (80%).

8.8.3. If all of the conditions above have been met, Grantee will be provided up to six (6) months to transition the PEG programming on the eligible PEG Channel to HD.

8.8.4. In no instance, shall the PEG Channels be cablecast in both SD and HD.

8.8.5 In the event the metrics haven't been met by the fifth anniversary of this agreement and upon request, the party which has control over the metric measured by the foregoing conditions shall give the other party notice within thirty (30) days as to whether it has reached attainment or completion of such condition. For example, the Consortium shall give notice to the Grantee for criteria (i) and the Grantee shall give notice to the Village/ City and the Consortium for criteria (ii) and (iii) upon request.

## **SECTION 9: Enforcement of Franchise**

9.1. Notice of Violation or Default. In the event the Village believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Village's written notice: (A) to respond to the Village, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Village of the steps being taken and the projected date that the cure will be completed.



9.3. **Enforcement.** Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Village shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Village has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The Village shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Village shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the Village shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the Village shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the Village's decision.

9.4. **Remedies Not Exclusive.** In addition to the remedies set forth in this Section 9, the Grantee acknowledges the Village's ability pursuant to Section 4.8 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law enacted by Title 5, Chapter 5.50 of the Village of North Aurora Municipal Code to enforce the Grantee's compliance with the Village's requirements regarding "Construction of Utility Facilities in the Rights-Of-Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Village to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Village.

## **SECTION 10: Miscellaneous Provisions**

10.1. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the

Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Village:

The Village of North Aurora  
25 East State Street  
North Aurora, IL 60452  
ATTN: Village Administrator

To the Grantee:

CMN-RUS, Inc.  
8837 Bond Street  
Overland Park, KS 66214  
ATTN: Legal Department

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The Village may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the

validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate ordinance by the Village, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.11. Severability. In the event any provision hereof is nonetheless found by a final, non-appealable judicial order to be invalid or unenforceable in the manner in which it is applied or implemented by the parties hereto, the parties agree that the change in interpretation and performance of this Agreement shall be solely prospective from the effective date of the order and shall not give rise to any retroactive claims for a party's actions in reliance on this Agreement preceding the date of such order unless such order clearly addresses the retroactive and prospective application of such order.


10.12 Authority to Sign Agreement. Grantee warrants to the Village that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the Village that s/he is authorized to execute this

Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the Village of North Aurora:**

**For CMN-RUS, Inc.**

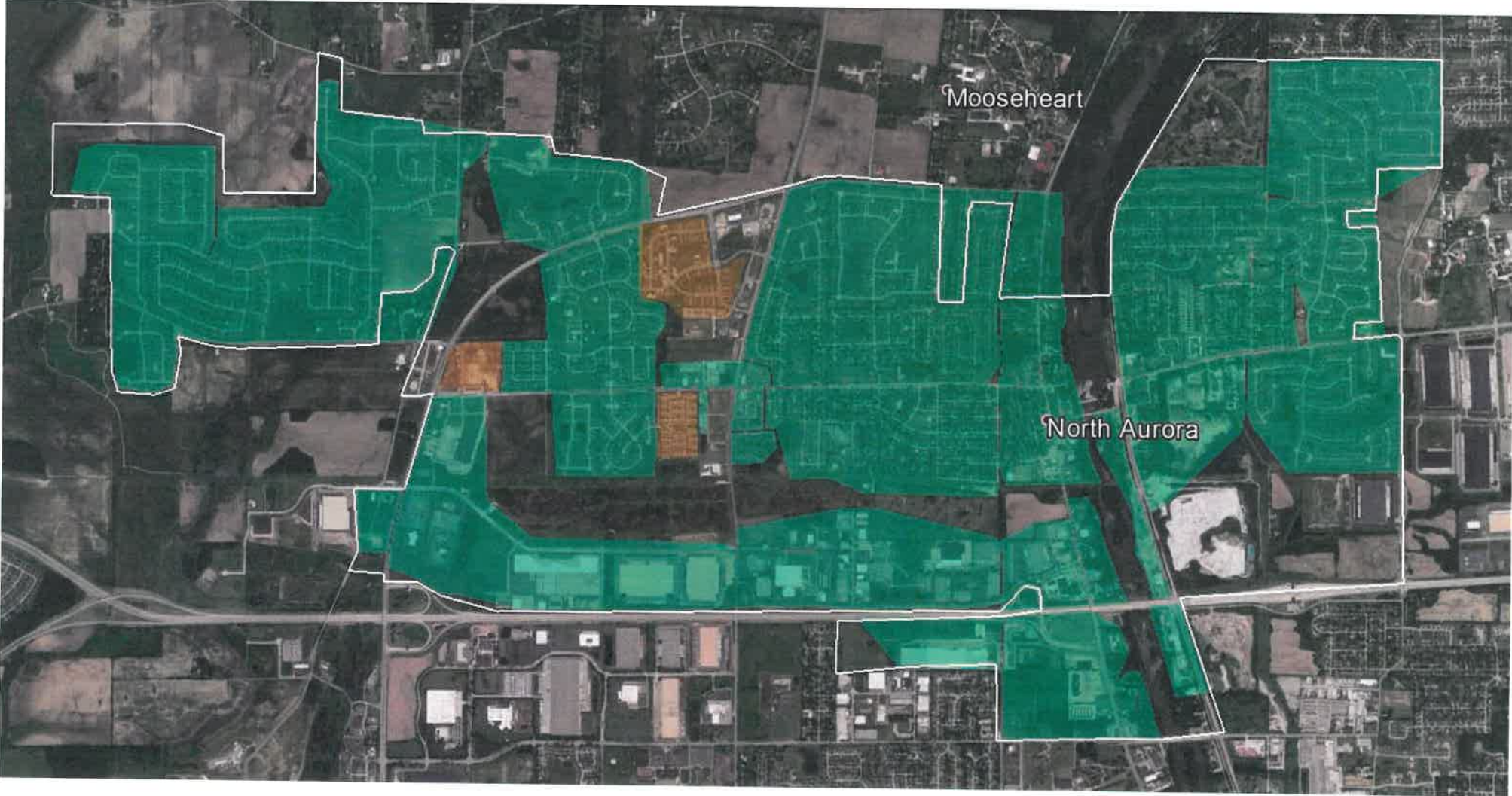
By:   
Name: Steven Bosco  
Title: Village Administrator  
Date: 6-29-17

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



EXHIBIT A  
INITIAL FRANCHISE AREA

**Exhibit A**  
**Initial Franchise Area**



October 10, 2024

Via Email

Mr. Mike Toth  
Business Services Manager  
Village of North Aurora  
25 E. State St.  
North Aurora, IL 60542

Re: Video Franchise Settlement Agreement

Dear Mr. Toth,

Consistent with your prior communications with Kathy Scheller, this letter is accompanied with a Settlement Agreement confirming that CMN-RUS, LLC f/k/a Cinergy Metronet, Inc. ("Metronet") will cease providing video services in the Village of North Aurora on **December 10, 2024**. Metronet will continue to provide telecommunications, data and broadband services in our North Aurora service footprint pursuant to our statewide Competitive Local Exchange Carrier (CLEC) certification.

Along with terminating the April 17, 2017 Non-Exclusive Cable Television Franchise Ordinance, the Settlement Agreement also contains other requirements of Metronet to assist North Aurora and it's constituents in this transition. Prior to the termination of service, Metronet will provide sufficient notice to our video customers in North Aurora. We will also help impacted customers identify, and even transition to, new video service options.

Within thirty (30) days of execution of this Settlement Agreement, Metronet will also pay North Aurora a one-time payment of \$7,830.42. This payment represents the net present value of the remaining value of future franchise payments, taking into account the on-going three percent (3%) churn of video customers.

Please reach out to Kathy M. Scheller at 812-760-9228 or [kathy.scheller@metronet.com](mailto:kathy.scheller@metronet.com) if there are any questions.

Respectfully,



Scott Wenger  
Commercial Operations Attorney



## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_ 2024, by the Village of North Aurora, Illinois ("Village") and CMN-RUS, Inc. (hereinafter "Metronet"). The Village and Metronet shall sometimes be referred to herein individually as a "Party" or collectively as the "Parties."

### **RECITALS**

1. The Village granted a Non-Exclusive Cable Television Franchise Ordinance ("Franchise") to Metronet on April 17, 2017.
2. The Franchise term is set to expire on March 31, 2027 ("Expiration Date").
3. Metronet has notified the Village that it does not intend to continue to offer cable television services in the Village due to escalating costs and low customer adoption rates.
4. Metronet therefore desires to terminate the Franchise prior to the Expiration Date and the Village is not opposed subject to terms of this Agreement.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, considerations, and mutual promises contained herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties agree as follows:

### **AGREEMENT**

1. **FRANCHISE TERMINATION DATE.** The Parties hereby agree to terminate the Franchise effective December 10, 2024 ("Termination Date").
2. **NOTICE TO CUSTOMERS.** Prior to the Termination Date, Metronet shall notify all customers in the Village of its intention to cease offering cable television services and shall provide any assistance to the Village to address any customer complaints or request for additional information related to Metronet's termination of cable services.
3. **CONTACT.** Metronet will provide a phone number and e-mail address for an employee who may be contacted for technical questions or customer services issues related to the termination of cable television services by Metronet.
4. **FEES AND COSTS.** Metronet shall, within thirty (30) days of the date of adoption of this Agreement, tender a one-time payment of seven thousand eight hundred thirty dollars and forty-two cents (\$7,830.42) to terminate this Agreement and fully reimburse the Village for the Village's reasonable costs and expenses, including attorney fees, in connection with the preparation and review of this Agreement.
5. **VOLUNTARY AGREEMENT.** This Agreement is freely and voluntarily executed by each Party, without any duress or coercion, and after each Party has consulted with its counsel. Each Party has carefully and completely read all the terms and provisions of this Agreement.



6. **BINDING EFFECT.** This Agreement will inure to the benefit of and be binding upon the Parties and respective successors and assigns. The Parties for themselves and their respective successors, assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Agreement.

7. **GOVERNING LAW.** This Agreement, and any controversies arising hereunder, shall be interpreted and adjudicated in accordance with the laws of the State of Illinois, whose courts shall have exclusive jurisdiction thereof.

8. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding and agreement between the parties as to the subject matter hereof and may be modified or waived only by a separate writing.

9. **HEADINGS.** All headings are herein provided for the convenience of reference only and do not affect the meaning or interpretation of this Agreement.

10. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is an original and all of which together constitute one and the same document.

11. **COPIES.** PDF copies of the executed Agreement may be treated as original documents.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

**VILLAGE OF NORTH AURORA, IL**

**CMN-RUS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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**VILLAGE OF NORTH AURORA  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR  
**FROM:** MIKE TOTH, BUSINESS SERVICES MANAGER  
**SUBJECT:** AURORA AREA CONVENTION AND VISITORS BUREAU AGREEMENT  
**AGENDA:** NOVEMBER 18, 2024 COMMITTEE OF THE WHOLE MEETING

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**DISCUSSION**

The Aurora Area Convention and Visitor Bureau (AACVB) serves as a non-profit organization that is dedicated to promoting and marketing the Aurora area as a visitor destination. North Aurora has been a member of the AACVB since its inception in 1987. The AACVB is made up of ten local municipalities (Aurora, Batavia, Big Rock, Hinckley, Montgomery, North Aurora, Oswego, Plano, Sugar Grove, and Yorkville).

Per state statute, hotel/motel tax must be used to promote tourism and conventions or attract nonresident overnight visitors to a municipality. The Village currently contributes 90% of the 3% hotel/motel tax collected from hotel stays to the AACVB to promote tourism and conventions and attract nonresident overnight visitors. The Village provided \$94,044 to the AACVB the previous fiscal year.

The Village's five-year intergovernmental agreement with the AACVB expired on December 15, 2022. Moving forward, the AACVB is moving away from agreements that include term lifecycles with the participating communities and moving towards agreements that are ongoing. The attached draft reflects an ongoing agreement, but also includes a 45-day notice of intent to terminate the agreement. Staff is soliciting feedback from the Village Board on the draft agreement.

Per the Agreement, the Village is entitled to maintain two seats on the Board of Directors. The first seat will be designated for municipal representation and appointed by the Mayor and the second seat being designated for a hotel representative of the Village's choice.

## **TOURISM INVESTMENT AGREEMENT**

**WHEREAS**, the Aurora Area Convention and Visitors Bureau is an Illinois not-for-profit corporation (the "Visitors Bureau"), certified by the Illinois Department of Commerce; and,

**WHEREAS**, the Village of North Aurora is a non-home rule Illinois municipal corporation ("Village"); and,

**WHEREAS**, the Illinois Constitution of 1970, Article VII, Section 10 authorizes municipalities to cooperate in the performance of their respective duties and responsibilities by contract and other agreements with other municipalities, individuals, or corporations; and,

**WHEREAS**, the Visitors Bureau participates in a Cooperation Agreement with multiple local municipal governments (collectively referred to herein as the "Municipalities") for the purpose of promoting travel to, youth and amateur sports, group tour, meetings and tourism activities and other such related activities for the benefit of the Municipalities.

**WHEREAS**, the Visitors Bureau and the City each desire to enter into this Agreement to set forth the basis by which the Visitors Bureau will promote tourism on behalf of the Village and the Visitors Bureau service area, and how the Village will in part fund such efforts and by this Agreement, the Village agrees to be a party to the Agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED BE IT AGREED BY THE VILLAGE AND THE VISTORS BUREAU AS FOLLOWS:

### **SECTION 1 HOTEL/MOTEL TAX**

The Village has previously adopted a hotel-motel tax under the Hotel Operators' Occupation Tax Act (the "Act") (35 ILCS 145/1) in the amount of three percent of the gross rental receipts (the "Hotel-Motel Tax"). The Village shall not reduce the amount of the Hotel-Motel Tax but is free to increase the rate of tax as permitted by the Act. Ninety percent of the first three percent of the Hotel-Motel Tax collected by the Village shall be paid to the Visitors Bureau on a monthly basis. The remaining Hotel-Motel Tax collected pursuant to the Hotel-Motel Tax may be spent by the Village in its absolute discretion as authorized by law.

### **SECTION 2 ADVERTISING**

Upon the Village meeting all participation requirements of this Agreement, the Visitors Bureau will expend 40% of the funds received from the Village from the Hotel-Motel Tax to promote a Municipal Marketing Partnership. A Municipal Marketing Partnership is a unique program in which the Visitor's Bureau creates and administers a dedicated tourism marketing plan specific to the participating municipality. The Visitor's Bureau works with the Village assigned staff to develop a specialized tourism-marketing plan to meet the unique needs of the Village. The Plan will expend 40% of City funds budgeted to the Visitor's Bureau on an annual basis to administer the Municipal Marketing plan. The Visitor's Bureau will deliver a marketing report at the conclusion of the annual plan.

### **SECTION 3 RECORDS**

The Visitors Bureau and the Village shall each make their books and records open to the other Party to the extent necessary to demonstrate compliance with this Agreement and the requirements of the Illinois Freedom of Information Act.

### **SECTION 4 BOARD OF DIRECTORS**

The Village will be entitled to hold and maintain two (2) seats on the Board of Directors and will be provided full voting rights as ascribed to other Board Members as detailed in the Visitor's Bureau's Bylaws. The first seat will be designated for municipal representation and filled by the City's designee and the second seat will be designated for a hotel representative of the City's choice.

### **SECTION 5 COMPLETE AGREEMENT**

This Agreement represents the complete agreement of the Parties, any prior negotiations, correspondence, understandings, or the like are with no force or effect.

### **SECTION 6 AMENDMENTS AND TERMINATION**

This Agreement may only be amended in writing and executed by the Parties. Notice of the intent to terminate this Agreement shall be provided no less than 45 days. In the event of the rescission or termination of the Act, the Village may terminate this Agreement upon 30-days written notice.

### **SECTION 7 NOTICES**

Any notice required by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, or by personal or electronic service, to the persons and addresses indicated below or to such other addresses as either Party hereto shall notify the other Party of in writing pursuant to the provisions of this subsection:

If to the Visitors Bureau:

Aurora Area Convention and Visitors Bureau  
43 W. Galena Boulevard  
Aurora, Illinois 60506  
Attention: Executive Director  
Email: cort@enjoyaurora.com

If to the Village:

Village of North Aurora  
25 E. State St  
North Aurora, Illinois 60542  
Attention: Village Administrator  
Email: sbosco@northauror.org

**SECTION 8 ILLINOIS LAW.**

This Agreement shall be deemed to be an agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

**SECTION 9 COUNTERPARTS**

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

**SECTION 10 EFFECTIVE DATE**

This Agreement shall become effective upon its execution and delivery by both the Village and Visitors Bureau.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the date listed below.

**Aurora Area Convention and Visitors Bureau**

**Village of North Aurora**

By: \_\_\_\_\_  
Chairperson, Board of Directors

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_



# Memorandum

**To:** Village President and Village Board of Trustees  
**Cc:** Steve Bosco, Village Administrator  
**From:** Joseph DeLeo, Chief of Police & Nathan Darga, Community Development Director  
**Date:** November 18, 2024  
**Re:** Code Updates Pertaining to Vehicle Weights on Village Streets, Abandoned & Inoperable Vehicles, E-Bikes, and Hawksley Lane Parking

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## OVERVIEW

In coordination with the Community Development Department, Public Works, and Police, staff has identified several sections of code recommended for revisions. These revisions pertain to vehicle weight limits on streets, an adjustment to parking hours on Hawksley, regulation of E-Bikes and Scooters and abandoned and inoperable vehicles definitions.

## DISCUSSION

### Overweight Vehicles

The Police Department has been working to reestablish a more comprehensive truck safety enforcement team to handle truck related motor-vehicle violations, such as overweight vehicles, safety testing requirements and unsafe use of equipment. In the reestablishment of this program, it came to the attention of staff that the Village code section pertaining to truck weights, needed further review. This section of code was updated in 2023 however, based on feedback from the truck enforcement officers, a simplification of section 10.12.110 is requested to enforce code more effectively.

Rather than listing the prohibited streets (for vehicles weighing over 10,000 pounds), as they are currently, staff proposes to list only the streets which allow travel by vehicles over 10,000 pounds. This reversed method simplifies the process by defining

a much shorter list of streets that allow for heavy vehicle traffic, rather than listing out all the residential streets and other areas where heavy vehicles are not permitted. Exceptions would remain the same to include emergency vehicles, local deliveries, school buses and refuse collection vehicles, Village owned vehicles, and the addition of permitted transits.

Staff recommends this update and slight restructure to the section prescribing weight limitations on Village streets (10.12.110). Streets currently prohibiting vehicles over 10,000 pounds will maintain the same status, the change simply streamlines the code's explanation on what streets allow trucks over 10,000 pounds.

If passed, these regulations would become effective at such time that signs are posted accordingly.

No Parking

Additionally, staff recommends an update to the recently approved ordinance regarding no parking areas in the Village. Hawksley Lane was previously approved for no parking along the residence side of Hawksley Lane from 8:00 am to 11:00 pm from April 1 to August 1. These hours are proposed to be updated to 7:30 am to 11:00 pm to match the school parking and the baseball parking times.

The below update appears in section two of the attached ordinance, all other streets in the table will remain the same.

|               |                                                                                                                 |
|---------------|-----------------------------------------------------------------------------------------------------------------|
| Hawksley Lane |                                                                                                                 |
|               | Along the residence side of Hawksley Lane from <del>8:00 am</del> 7:30 am to 11:00 pm from April 1 to August 1. |

Abandoned/Inoperable Vehicles

The regulations for abandoned or inoperable vehicles are currently listed in two places in the North Aurora Code. In Chapter 8 under *Abandonment of motor vehicles—Nuisance*, and in Chapter 10 under *Vehicles and Traffic*. The language in these sections do not match. They also lump everything under 'abandoned' when most of the citations the Village issues are for 'inoperable' vehicles. The new proposed definitions are as follows:

**Abandoned vehicle.** Any motor vehicle, semitrailer, trailer, or truck tractor that (a) does not have a current state registration or does not display a current state license plate with valid registration sticker affixed; or (b) a vehicle not removed within ten (10) hours of its

involvement in a collision; or (c) a vehicle where the Police Department has attempted and not been able to make contact with the registered owner for a period of at least 48 hours.

**Inoperable vehicle.** Any motor vehicle, semitrailer, trailer, or truck tractor that for a period of at least 48 hours has had the tires removed, one or more tires are flat, major vehicle parts have been removed (i.e. windshield, engine, transmission, brakes, body panels) or is otherwise incapable of being moved under its own power or unlawful to operate.

The sections were also updated to remove outdated towing and impounding language and to refer to our current municipal adjudication process.

### *E-Bikes and E-Scooters*

Finally, the growth in popularity of E-Bikes and E-Scooters has led to questions on where they can be allowed. The proposed update would add a section to Title 10, *Vehicles and Traffic*. The new section, 10.31, would define E-Bikes and E-Scooters. The definitions would match those used by the state. The rules would prohibit E-Bikes on sidewalks and require them to follow all the rules of the road.



# Village of North Aurora Memorandum



**To:** President and Village Board of Trustees  
**From:** Jason Paprocki, Finance Director  
**CC:** Steven Bosco, Village Administrator  
**Date:** November 18, 2024  
**RE:** 2024 Tax Levy Update

The initial 2024 property tax levy estimate was discussed at the October 21<sup>st</sup> Committee of the Whole meeting. Staff wanted to bring back additional information on the tax levy process and how it affects Village operations and capital. After the presentation, staff is seeking direction on a 2024 property tax levy amount. As a reminder, the Village is able to increase its levy up to 3.4% and take an allowance for new construction. This amount is projected at \$2,944,500.

Upon direction from the Board, notice for the Truth in Taxation hearing will be published in the Daily Herald. The hearing will be held at the Village Board meeting on December 2<sup>nd</sup>. The final tax levy ordinance is scheduled to be approved that night as well.

Additionally, the levies for the active special service areas (SSA) have been updated. Below is a summary of the final 2024 levy requests:

| SSA                            | 2023 Levy | 2024 Levy | 2024 Levy<br>\$ Increase | 2024 Levy<br>% Increase | Purpose                             |
|--------------------------------|-----------|-----------|--------------------------|-------------------------|-------------------------------------|
| 4 - Waterford Oaks             | \$ 18,600 | \$ 22,190 | \$ 3,590                 | 19.30%                  | Mowing, pond imp.                   |
| 7 - Oak Hill                   | 25,000    | 40,500    | 15,500                   | 62.00%                  | Common area, pond imp., pond maint. |
| 8 - Timber Oaks                | 7,500     | 10,225    | 2,725                    | 36.33%                  | Mowing                              |
| 9 - Pinecreek II               | 2,000     | 3,435     | 1,435                    | 71.75%                  | Mowing                              |
| 11 - Willow Lakes              | 10,200    | 10,530    | 330                      | 3.24%                   | Mowing, fence repair                |
| 32 - North Aurora Towne Center | 30,000    | 30,000    | -                        | 0.00%                   | Wetland/basin maint.                |

The final SSA levies are scheduled to be approved at the December 2<sup>nd</sup> Village Board meeting. Since the Waterford Oaks, Oak Hill, Timber Oaks, and Pine Creek Phase II SSA increases are over 5%, public hearings will be held for these levies on December 2<sup>nd</sup>.