

MINUTES OF TOWN BOARD MEETING
OF THE TOWN OF BRIGHTON, COUNTY OF
MONROE, NEW YORK, HELD AT THE
BRIGHTON TOWN HALL, 2300 ELMWOOD
AVENUE, ROCHESTER, NEW YORK
February 26, 2014

PRESENT:

Supervisor William Moehle
Councilmember James Vogel
Councilmember Louise Novros
Councilmember Jason DiPonzio
Councilmember Christopher Werner

Daniel Aman, Town Clerk
Mark Henderson, Chief of Police
Tim Keef, Commissioner of Public Works
Kenneth Gordon, Attorney for the Town
Suzanne Zaso, Director of Finance

MEETING CALLED TO ORDER AT 7:05 PM:

RECOGNITIONS/PRESENTATIONS:

Brighton Police 2013 Annual Report – Police Chief Mark Henderson
Supervisor Moehle recognized Chief Henderson for his recent receipt of the Honored Law Enforcement Award from the Center for Dispute Settlement

OPEN FORUM:

Bob Haier

APPROVAL OF AGENDA:

Motion by Councilmember Jason DiPonzio seconded by Councilmember Louise Novros to approve the agenda with the addition of Wiles correspondence, recognition of Chief Henderson's Honored Law Enforcement Award from the Center for Dispute Settlement, and executive session at the end of the meeting

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

APPROVE AND FILE TOWN BOARD MEETING MINUTES FOR:

January 22, 2014 Town Board Meeting

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the aforementioned minutes be approved and filed

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

BIDS:

MATTER RE: Approval to solicit for bids to provide materials associated with the Monroe Avenue GIGP project (see Resolution #1 and letter dated February 14, 2014 from Michael Guyon, PE Town Engineer).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 1 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

COMMUNICATIONS:

FROM Monroe County Legislative Clerk Jamie Slocum to Supervisor, dated February 14, 2014 requesting the posting of a Notice of 30-day period for proposal of inclusion of predominantly Viable Agricultural Lands into Certified Monroe County Districts

FROM American Red Cross – Results from the February 11, 2014 Blood Drive

FROM Supervisor Wiles expressing thanks for his copy of the Proclamation kicking off the Town's Bicentennial Celebration

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner to receive and file the aforementioned correspondence

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

COMMITTEE REPORTS:

Parks and Recreation & Community Services (PARCS) - 3/24/2014 at 4:30 PM at Brookside
Finance and Administrative Services (FASC) – Next meeting 3/4/2014 at 3:30 PM in Stage Conference Room

Public Safety Services – Next meeting 3/11/2014 at 8:00 AM in the Auditorium

Public Works Services – Next meeting 3/3/2014 at 9:00 AM in the Downstairs Meeting Room

NEW BUSINESS:

MATTER RE: Reading and approval of claims

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel that the Supervisor read and approve for payment the claims as set forth in Exhibit No. 2 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Approval to accept donation in the amount of \$50.00 from Mr. Roy T. Bruno to the Brighton Police Department (see Resolution #2 and letter dated February 18, 2014 from Police Chief Mark Henderson).

Motion by Councilmember Jason DiPonzio seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 3 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Approval to accept donation in the amount of \$100.00 from the Grosvenor East Townhouse Condo Association to the Brighton Police Department (see Resolution #3 and letter dated February 18, 2014 from Police Chief Mark Henderson).

Motion by Councilmember Jason DiPonzio seconded by Councilmember James Vogel that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 4 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Authorize Supervisor to execute a one-year agreement with Northeast Association Management Inc. to provide tail claims administrative services of the Town's pre-2010

workers compensation claims (see Resolution #4 and memorandum dated February 18, 2014 from Suzanne Zaso, Director of Finance).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzio that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 5 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Approval to dispose of particular items declared as surplus in the Highway Dept. with approval, where applicable to be used for trade-in and or sold through public auction (see Resolution #5 and letter dated February 13, 2014 from Timothy Anderson, Deputy Highway Superintendent).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 6 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Authorize Supervisor to execute an Inter-municipal Agreement with Monroe County for the 2014 Stop DWI Enforcement program with approval to amend 2014 budget to support addition and appropriation of associated funding (see Resolution #6 and letter dated February 18, 2014 from Police Chief Mark Henderson).

Motion by Councilmember Louise Novros seconded by Councilmember Jason DiPonzio that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 7 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Approval to amend budget for the Corwin Road Bridge project to reflect authorized actual spending and reimbursements associated with project (see Resolution #7 and memorandum dated February 18, 2014 from Suzanne Zaso, Director of Finance).

Motion by Councilmember James Vogel seconded by Councilmember Christopher Werner that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 8 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTER RE: Authorize Supervisor to execute agreement with Fibertech Networks to install and support fiber optic line between the Town Hall and the Operation Center and installation of dedicated internet service to the Brighton Police Department (see Resolution #8 and letter dated February 14, 2014 from Michael Guyon P.E., Town Engineer).

Motion by Councilmember Christopher Werner seconded by Councilmember Jason DiPonzio that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit No. 9 attached

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MATTERS OF THE SUPERVISOR:

MATTER RE: Expense and Revenue for month ending January 31, 2014

Motion by Councilmember James Vogel seconded by Councilmember Louise Novros to receive and file the aforementioned report

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MOTION TO GO INTO EXECUTIVE SESSION AT 8:50 PM:

Motion by Councilmember James Vogel seconded by Councilmember Louise Novros to go into executive session at 8:50 PM to discuss the appointment of a particular person to the Planning Board

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

Motion by Councilmember Christopher Werner seconded by Councilmember James Vogel to come out of executive session at 8:58 PM

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

MEETING ADJOURNED AT 8:59 PM:

Motion by Councilmember James Vogel seconded by Councilmember Louise Novros to adjourn at 8:59 PM

UPON ROLL CALL VOTE

MOTION UNANIMOUSLY CARRIED

CERTIFICATION:

I, Daniel Aman, 131 Elmore Road, Rochester, NY do hereby certify that the foregoing is a true and accurate record of the proceeding of the Town of Brighton, County of Monroe, State of New York meeting held on the 26th day of February 2014 and that I recorded said minutes of the aforesaid meeting of the Town Board of the Town of Brighton, New York.

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that correspondence dated February 14, 2014 from Town Engineer Michael E. Guyon, P.E. regarding a request to authorize the solicitation of bids for materials to be utilized in the construction of the Monroe Avenue Green Innovation Grant Project, be received and filed; and be it further

RESOLVED, that the Town Board hereby authorizes the Town Engineer or his designee to solicit bids for materials to be utilized in the construction of the Monroe Avenue Green Innovation Grant Project.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



Town of Brighton

MONROE COUNTY, NEW YORK

DEPARTMENT OF PUBLIC WORKS

2300 ELMWOOD AVENUE ★ ROCHESTER, NEW YORK 14618 ★ PHONE (585)784-5250 ★ FAX (585)784-5368

February 14, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Ave.
Rochester, New York 14618

Re: Monroe Avenue GIGP Project
Purchase of Materials

Dear Councilperson Werner and Committee Members:

The Monroe Avenue Green Innovation Grant Project is proceeding through the public participation and project design phases and we anticipate that construction will begin in late spring of 2014. The project will be constructed by Town forces. Therefore, the Town will be responsible to purchase the materials associated with the green infrastructure improvements. Federal, New York State or County purchasing contracts will be used to purchase much of the material required to complete the project. In addition, material purchases should be less than \$20,000 annually and competitive quotes will be sought from three vendors without a formal competitive bid authorized by the Town Board. However, there may be materials required to complete the project that are not included in these purchasing contracts and their cumulative annual cost may exceed \$20,000. In an effort to expedite the construction of the project, I am requesting that FASC recommend that the Town Board allow Town staff to solicit competitive bids for materials such as these. No action as to awarding a contract for these materials will be considered without returning to this committee.

I will be in attendance at your regularly scheduled February 18, 2014 meeting in the event that you have any questions regarding this correspondence. As always, your consideration of matters such as this is greatly appreciated.

Sincerely,

Michael E. Guyon, P.E.
Department of Public Works

Cc: Suzanne Zaso
Tim Keef
Mary Ann Hussar

CLAIMS FOR APPROVAL AT TOWN BOARD MEETING

February 26, 2014

THAT THE CLAIMS AS SUMMARIZED BELOW HAVING BEEN APPROVED BY THE RESPECTIVE DEPARTMENT HEADS AND AUDITED BY THE TOWN BOARD AUDIT COMMITTEE ARE HEREBY APPROVED FOR PAYMENT.

A - GENERAL	\$	<u>444,424.41</u>
D - HIGHWAY		<u>104,537.25</u>
L - LIBRARY		<u>126,428.42</u>
SF - FIRE DIST		<u>209,881.72</u>
SL - LIGHTING DIST		<u>28,828.11</u>
SS - SEWER DIST		<u>9,830.89</u>
TA - AGENCY TRUST		<u>14,524.87</u>
TOTAL	\$	<u>938,455.67</u>

UPON ROLL CALL

MOTION CARRIED _____

APPROVED BY:

SUPERVISOR_____
COUNCIL MEMBER_____
COUNCIL MEMBER

TO THE SUPERVISOR:

I CERTIFY THAT THE VOUCHERS LISTED ABOVE WERE AUDITED BY THE TOWN BOARD ON THE ABOVE DATE AND ALLOWED IN THE AMOUNTS SHOWN. YOU ARE HEREBY AUTHORIZED AND DIRECTED TO PAY TO EACH OF THE CLAIMANTS THE AMOUNT OPPOSITE HIS NAME.

DATE_____
TOWN CLERK

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that correspondence dated February 18, 2014 from Chief of Police Mark T. Henderson regarding a request to authorize the acceptance of a \$50.00 donation from Roy T. Bruno to the Brighton Police Department, be received and filed; and be it further

RESOLVED, that the Town Board hereby accepts with gratitude the \$50.00 donation from Roy T. Bruno to the Brighton Police Department and directs that the same be recorded as revenue to the 2014 Police Operating Budget under A.POLCE.3120.2705 (Gifts and Donations).

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



Mark T. Henderson
Chief of Police

Town of Brighton

POLICE DEPARTMENT
2300 Elmwood Avenue
Rochester, New York 14618-2196



Emergency 911
Administrative (585) 784-5150
Fax: (585) 784-5151

February 18, 2014

Honorable Town Board
Finance & Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

Dear Board Members:

Re: Donation

Recently, the Police Department received a donation of \$50.00 from Mr. Roy T. Bruno.

I request that the Town Board authorize the acceptance of this gift, and that the donation be recorded as revenue to the 2014 Police Department Operating Budget under A.POLCE.3120.2705 Gifts and Donations. I have attached a copy of my letter to Mr. Bruno expressing the department's gratitude for this generous donation.

Sincerely,

A handwritten signature in cursive script that reads "Mark T. Henderson".

Mark T. Henderson
Chief of Police

attachment

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that correspondence dated February 18, 2014 from Chief of Police Mark T. Henderson regarding a request to authorize the acceptance of a \$100.00 donation from the Grosvenor East Townhouse Condo Association to the Brighton Police Department, be received and filed; and be it further

RESOLVED, that the Town Board hereby accepts with gratitude the \$100.00 donation from the Grosvenor East Townhouse Condo Association to the Brighton Police Department and directs that the same be recorded as revenue to the 2014 Police Operating Budget under A.POLCE.3120.2705 (Gifts and Donations).

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



Town of Brighton

POLICE DEPARTMENT

2300 Elmwood Avenue
Rochester, New York 14618-2196



Mark T. Henderson
Chief of Police

Emergency 911
Administrative (585) 784-5150
Fax: (585) 784-5151

February 18, 2014

Honorable Town Board
Finance & Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

Dear Board Members:

Re: Donation

Recently, the Police Department received a donation of \$100.00 from the Grosvenor East Townhouse Condo Association.

I request that the Town Board authorize the acceptance of this gift, and that the donation be recorded as revenue to the 2014 Police Department Operating Budget under A.POLCE.3120.2705 Gifts and Donations. I have attached a copy of my letter to the Association expressing the department's gratitude for this generous donation.

Sincerely,

A handwritten signature in black ink that reads "Mark Henderson".

Mark T. Henderson
Chief of Police

attachment

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that a memorandum dated February 18, 2014 from Director of Finance Suzanne Zaso regarding a request to authorize the Supervisor to execute a one year agreement with Northeast Association Management, Inc. to provide administrative services for the Town's pre-2010 workers compensation claims, be received and filed; and be it further

RESOLVED, that the Town Board hereby authorizes the Supervisor to execute a one year agreement with Northeast Association Management, Inc. to provide administrative services for the Town's pre-2010 workers compensation claims.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



SUZANNE ZASO, DIRECTOR OF FINANCE
2300 ELMWOOD AVENUE
ROCHESTER, NEW YORK 14618
Phone (585) 784-5210 Fax (585) 784-5396

MEMORANDUM

To: The Honorable Town Board
Attn.: Finance and Administrative Services Committee
From: Suzanne Zaso, Director of Finance 
Date: February 18, 2014
Subject: Contract for Workers' Comp Tail Claim Administration

I am recommending that the Town Board authorize the Supervisor to execute an agreement with Northeast Association Management, Inc. (NEAMI) to provide tail claims administration of the Town's pre-2010 workers' compensation claims at no cost to the Town. The term of the contract will be for one year from execution. I am also recommending that the Town Board authorize a cash claims deposit on account with NEAMI in the amount of \$14,400 (3 months of estimated claims).

I would be happy to respond to any questions that members of the Committee or other members of the Town Board may have regarding this matter.

Cc: Gary Brandt

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that correspondence dated February 13, 2014 from Deputy Highway Superintendent Timothy J. Anderson regarding a request to declare as surplus certain equipment as set forth in his letter and dispose of it in the manner described therein, be received and filed; and be it further

RESOLVED, that the Town Board hereby declares as surplus and directs that the following equipment be disposed of by public online auction through Roy Teitsworth: Nine foot Reading Platform dump body and hoist (S/N 587753) and Econo-Ton II vehicle mounted crane (S/N ETR-0504-037), and it is hereby further

RESOLVED, that the Town Board hereby declares a Miller Welder (Asset #2207) as surplus and directs that it be disposed of by trading it in on the future purchase of a new welder.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



Town Of Brighton

Operations Center

1941 Elmwood Ave. / Rochester, New York 14620 / Phone (585) 784 - 5280 Fax (585) 784 - 5385

February 13, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Ave.
Rochester, NY 14618

Re: Authorize Disposal of Equipment

Honorable Members:

I recommend that the following equipment be declared surplus to our needs:

9' Reading platform dump body and hoist: S/N 587753
Econo-Ton II vehicle mounted crane: S/N ETR-0504-037
Miller welder: Asset #2207

I further recommend that I be authorized to dispose of the dump body with hoist and crane through an on line auction with Row Teitsworth and to trade the welder towards a purchase of a new welder.

Sincerely,

Timothy J. Anderson
Deputy Highway Superintendent

Cc: S. Zaso
A. Banker
M. Hussar
T. Keef

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that correspondence dated February 18, 2014 from Chief of Police Mark T. Henderson regarding a request to authorize the Supervisor to execute an Intermunicipal Agreement with Monroe County for the 2014 Stop DWI Enforcement program, to accept funding in connection therewith and to amend the 2014 Police Department budget for an increase of \$2,698.59 over projected 2014 funding, be received and filed; and be it further

RESOLVED, that the Town Board hereby authorizes the Supervisor to execute an Intermunicipal Agreement with Monroe County for the 2014 Stop DWI Enforcement program, accepts funding totaling \$25,298.59 in connection therewith and amends the 2014 Police Department budget by increasing appropriations in A.POLCE 3120.1580 (STOP DWI Reimbursement Revenue Account) and by increasing A.POLICE 3120.4.14 (Law Enforcement Supplies) by \$2,698.59 over projected 2014 funding levels.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



Town of Brighton

POLICE DEPARTMENT
2300 Elmwood Avenue
Rochester, New York 14618-2196



Mark T. Henderson
Chief of Police

Emergency 911
Administrative (585) 784-5150
Fax: (585) 784-5151

February 18, 2014

Honorable Town Board
Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, NY 14618

**RE: STOP-DWI Enhanced Enforcement
STOP-DWI Crackdown Weekends**

Dear Board Members:

I hereby request that the Supervisor be authorized to enter into an agreement with the County of Monroe to accept the following funding:

STOP-DWI Enhanced Enforcement	\$21,948.59
STOP-DWI Crackdown Weekends	<u>\$ 3,350.00</u>
	\$25,298.59

The funding will be used to augment police department STOP DWI enforcement efforts.

I request that appropriations in account **A.Polce.3120.1580 (STOP DWI Reimbursement Revenue Account)** in 2014 police department budget be increased by **\$2,698.59 (an increase over projected 2014 funding)**. I am also requesting that the 2014 police department budget be amended to reflect the additional Stop DWI funding over the \$22,600 which has already been projected in the 2014 budget by increasing appropriations in Law Enforcement Supplies (A.POLCE.3120 4.14) by \$2,698.59.

Respectfully,

Mark T. Henderson
Chief of Police

INTERMUNICIPAL AGREEMENT

STOP-DWI ENHANCED ENFORCEMENT

THIS AGREEMENT which shall be deemed to be dated as of the date the last party executed this agreement, by and between **MONROE COUNTY**, a New York municipal corporation, with offices at 39 West Main Street, Rochester, New York 14614 (the "County"), and **Town of Brighton**, a municipal corporation with offices at 2300 Elmwood Avenue, Rochester, NY 14618, (the "Contractor").

WITNESSETH:

WHEREAS, the County is desirous of obtaining the services of the Contractor to perform the scope of services set forth in Section II hereof; and

WHEREAS, the Contractor is willing, able and qualified to perform such services; and

WHEREAS, Resolution No. 287 of 2013, adopted by the Monroe County Legislature on December 10, 2013, authorized the County Executive of Monroe County to execute a contract with the Contractor to perform the scope of services set forth in Section II hereof; and;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually agree as follows:

I. REQUIRED STANDARD CLAUSES FOR COUNTY CONTRACTS

Appendix "A" contains the standard clauses for all Monroe County contracts and is attached hereto and is hereby made a part of this Agreement as if set forth fully herein.

II. SCOPE OF SERVICES

The Contractor hereby agrees to perform the following services for the County:

Law enforcement agencies receive STOP-DWI funding from New York State to support enhanced anti-DWI enforcement efforts in their jurisdictions.

III. TERM OF CONTRACT

The term of this Agreement shall be from **January 1, 2014 to December 31, 2014**.

This Agreement shall remain in effect for the period specified above, unless it is terminated by either party hereto, upon thirty (30) days prior written notice sent by registered or certified mail to the County's Public Safety Director or the Contractor. This notice shall be sent to the respective party at the addresses first above set forth or at such other address as specified in writing by either party. Upon termination of

this Agreement, the Contractor shall have no further responsibility to the County or to any other person with respect to those services specified in this Agreement. Upon termination of this Agreement, the County shall be obligated to pay the Contractor for services only performed through the date of termination. Following such payment, the County shall have no further obligations to the Contractor under this Agreement.

IV. PAYMENT FOR SERVICES

The County agrees to pay the Contractor, and the Contractor agrees to be paid, a sum in full satisfaction of all expenses and compensation due the Contractor not to exceed **TWENTY-ONE THOUSAND, NINE HUNDRED AND FORTY-EIGHT AND 59/100 DOLLARS (\$21,948.59)** and any amended thereto.

The County hereby agrees to reimburse the Contractor for actual expenses as budgeted, herewith attached hereto as APPENDIX B "Activity Budget."

Payment by the County for the sum(s) herein contracted for shall be made upon the submission of properly executed Monroe County claim vouchers, supported with such information and documentation necessary to substantiate the voucher, approved by the Director of Public Safety, or by his/her designee, and audited by the Controller of the County.

The County may audit records relating to expenses for services provided by the Contractor pursuant to this Agreement at any time during this Agreement and through and including twelve (12) months following this Agreement.

The Contractor shall prepare and make available such statistical and financial service and other records requested by the County. These records shall be subject at all reasonable times to inspection, review or audit by the County, the State of New York and other personnel duly authorized by the County. These records shall be maintained for the period set forth in the State regulations.

V. INSURANCE

Professional liability insurance is not a requirement of this contract; all other insurance requirements in Appendix A remain in full force and effect.

IN WITNESS THEREOF, Maggie Brooks, County Executive of the COUNTY OF MONROE and William Moehle, Town Supervisor of Town of Brighton (Federal Tax ID #16-6002187), hereto have executed this agreement as of the day and year appearing opposite their respective signatures below. By electronically approving this Agreement, both parties agree to all terms and conditions listed in this contract document, as well as all attachments included with the document.

APPENDIX A

STANDARD CLAUSES FOR COUNTY CONTRACTS

(See attached document)

APPENDIX B

ACTIVITY BUDGET

(See attached document)

APPENDIX C

DEBARMENT CERTIFICATION

By electronically approving this contract document, the Contractor agrees to all terms and conditions listed in this appendix. The Contractor certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
2. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

CERTIFICATION REGARDING MONROE COUNTY PROCUREMENT POLICY AND CONSEQUENCES FOR VIOLATION

By electronically approving this contract document, the Contractor certifies that the Contractor and its principals:

5. Have read and understand the Monroe County Procurement Policy and agree to abide by its terms (<http://www2.monroecounty.gov/purch-overview.php>);
6. Understand that any violation of the Monroe County Procurement Policy may result in the exclusion of any response to a public bid, Request for Proposals (RFP) or Request for Qualifications (RFQ) submitted on our behalf; and
7. Understand that any contract or agreement entered into subsequent to a violation of this policy during the procurement process is null and void.

DIGITAL SIGNATURES

AGREEMENT

STOP DWI Crackdown Weekends

THIS AGREEMENT, which shall be deemed to be dated as of the date the last party executed this Agreement, by and between the **COUNTY OF MONROE**, a municipal corporation with offices in the County Office Building, 39 West Main Street, Rochester, New York, 14614, hereinafter referred to as "County" and the **Town of Brighton** having its offices and place of business at 2300 Elmwood Avenue, Rochester, NY, 14618 hereinafter referred to as the "Municipality" or "Contractor".

WITNESSETH:

WHEREAS, the County is receiving a grant from the New York State STOP-DWI Foundation to provide enhanced law enforcement throughout Monroe County during established Crackdown Weekends, and;

WHEREAS, County is desirous of obtaining the services of the Municipality to perform the scope of services set forth in Section II hereof, and;

WHEREAS, the Municipality is willing, able and qualified to perform such services;

WHEREAS, the County Legislature, by **Resolution Number 286 adopted on December 10, 2013**, authorized the execution of an Agreement with the Municipality for such services;

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

I. REQUIRED STANDARD CLAUSES FOR COUNTY CONTRACTS

Appendix "A" contains the standard clauses for all Monroe County contracts and is attached hereto and is hereby made a part of this Agreement as if set forth fully herein.

II. SCOPE OF SERVICES

The Municipality hereby agrees to perform the following services for the County:

A. The Municipality hereby agrees to provide through its police department enhanced anti-DWI services as set forth in Appendix C, appended to and made a part of this agreement.

III. TERM OF CONTRACT

The term of this Agreement shall be from **October 1, 2013 to September 30, 2014**.

This Agreement shall remain in effect for the period specified above, unless it is terminated by either party hereto, upon thirty (30) days prior written notice sent by registered or certified mail to the County's Public Safety Director or the Municipality. This notice shall be sent to the respective party at the

addresses first above set forth or at such other address as specified in writing by either party. Upon termination of this Agreement, the Municipality shall have no further responsibility to the County or to any other person with respect to those services specified in this Agreement. Upon termination of this Agreement, the County shall be obligated to pay the Municipality for services only performed through the date of termination. Following such payment, the County shall have no further obligations to the Municipality under this Agreement.

IV. PAYMENT FOR SERVICES

The County agrees to pay the Municipality, and the Municipality agrees to be paid, a sum in full satisfaction of all expenses and compensation due the Municipality not to exceed **THREE THOUSAND, THREE HUNDRED AND FIFTY DOLLARS (\$3,350.00)** and any amended thereto.

Payment by the County for the sum(s) herein contracted for shall be made upon the submission of properly executed Monroe County claim vouchers, supported with such information and documentation necessary to substantiate the voucher, approved by the Director of Public Safety, or by his/her designee, and audited by the Controller of the County.

The County may audit records relating to expenses for services provided by the Municipality pursuant to this Agreement at any time during this Agreement and through and including twelve (12) months following this Agreement.

The Municipality shall prepare and make available such statistical and financial service and other records requested by the County. These records shall be subject at all reasonable times to inspection, review or audit by the County, the State of New York and other personnel duly authorized by the County. These records shall be maintained for the period set forth in the State regulations.

V. INSURANCE

Professional liability insurance is not a requirement of this contract; all other insurance requirements in Appendix A remain in full force and effect.

IN WITNESS THEREOF, Maggie Brooks, County Executive of the COUNTY OF MONROE and William Moehle, Town Supervisor of Town of Brighton (Federal Tax ID #16-6002187), hereto have executed this agreement as of the day and year appearing opposite their respective signatures below. By electronically approving this Agreement, both parties agree to all terms and conditions listed in this contract document, as well as all attachments included with the document.

APPENDIX A
STANDARD CLAUSES FOR COUNTY CONTRACTS
(See attached document)

**APPENDIX B
DEBARMENT CERTIFICATION**

By electronically approving this contract document, the Contractor agrees to all terms and conditions listed in this appendix. The Contractor certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
2. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

**CERTIFICATION REGARDING MONROE COUNTY PROCUREMENT POLICY AND
CONSEQUENCES FOR VIOLATION**

By electronically approving this contract document, the Contractor certifies that the Contractor and its principals:

5. Have read and understand the Monroe County Procurement Policy and agree to abide by its terms (<http://www2.monroecounty.gov/purch-overview.php>);
6. Understand that any violation of the Monroe County Procurement Policy may result in the exclusion of any response to a public bid, Request for Proposals (RFP) or Request for Qualifications (RFQ) submitted on our behalf; and
7. Understand that any contract or agreement entered into subsequent to a violation of this policy during the procurement process is null and void.

APPENDIX C
Town of Brighton
POLICE DEPARTMENT

NYS STOP-DWI ENFORCEMENT CRACKDOWNS PATROLS

\$3,350.00

Halloween: October 30, 2013 - November 3, 2013

Thanksgiving: November 27, 2013- December 1, 2013

Holiday Season: December 13, 2013 - January 1, 2014

Super Bowl: January 31, 2014 - February 3, 2014

St. Patrick's Day: March 14, 2014 - 18, 2014

Memorial Day: May 22, 2014 - May 27, 2014

Fourth of July: July 3, 2014 - July 7, 2014

Labor Day: August 15, 2014 - September 21, 2014

DRE Call Outs

\$ 0

TOTAL

\$3,350.00

**Any deviation from these dates for Crackdown Weekends
would need prior approval from NYS STOP-DWI Foundation.**

DIGITAL SIGNATURES

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO

Councilpersons

RESOLVED, that a memorandum dated February 18, 2014 from Director of Finance Suzanne Zaso regarding a request to authorize the amendment of the budget for the Corwin Road Bridge preventive maintenance project to reflect authorized actual spending and reimbursements associated with said project, be received and filed; and be it further

RESOLVED, that the Town Board hereby authorizes the amendment of the budget for the Corwin Road Bridge preventive maintenance project to reflect authorized actual spending and reimbursements associated with said project all as set forth in more detail in the above referenced memorandum.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



SUZANNE ZASO, DIRECTOR OF FINANCE
2300 ELMWOOD AVENUE
ROCHESTER, NEW YORK 14618
Phone (585) 784-5210 Fax (585) 784-5396

MEMORANDUM

To: The Honorable Town Board
Attn.: Finance and Administrative Services Committee
From: Suzanne Zaso, Director of Finance 
Date: February 18, 2014
Subject: Amend Corwin Road Bridge Maintenance Capital Project Budget

I am requesting the Town Board authorize the following amendment to the capital project budget for the preventative maintenance of Corwin Road Bridge to reflect previous Town Board authorized contracts and funding of 80% Federal (GTC), 15% NYS Marchiselli Aid, and 5% from Town Highway Funds.

Amend Appropriations as Follows:

H.BRIDG.CORWN 2.67 – Construction Expenses – increase by \$66,793.21
H.BRIDG.CORWN 4.52 – Engineering Expenses – increase by \$29,936.00
H.BRIDG.CORWN 4.86 – Legal Notice – increase by \$125.42

Amend Revenues as Follows:

H.BRIDG.CORWN 3580 – NYS Aid – increase by \$60,105.03
H.BRIDG.CORWN 4580 – Federal Bridge Aid – increase by \$77,383.17
H.BRIDG.CORWN 5015 – Transfer from Highway Fund – **decrease** by \$40,633.57

There is a decrease in the Town's portion due to Marchiselli aid picking up a portion of design work that was not accounted for in the initial budget estimates.

I will be happy to respond to any questions that members of the Committee or other members of the Town Board may have regarding this matter.

cc: Mike Guyon
Amy Banker

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 26th day of February, 2014.

PRESENT:

WILLIAM W. MOEHLE,
Supervisor

JAMES R. VOGEL
LOUISE NOVROS
CHRISTOPHER K. WERNER
JASON S. DIPONZIO
Councilpersons

WHEREAS, the Town Board previously authorized a three year contract with Fibertech Networks for fiber optic cable and services, at a meeting held December 11, 2013; and

WHEREAS, the Town Engineer recommends amending that prior approval to authorize an extension to such agreement on the terms set forth therein; it is therefore

RESOLVED, that a memorandum dated February 14, 2014 from Town Engineer Michael E. Guyon, P.E. regarding a request to authorize the Supervisor to execute with Fibertech Networks a three year agreement with the ability to extend the agreement pursuant to its terms for installation from Town Hall to the Operations Center of a fiber optic cable and services in connection therewith and in connection with dedicated internet service to the Police Department, be received and filed; and be it further

RESOLVED, that the Town Board hereby authorizes the Supervisor to execute with Fibertech Networks a three year agreement with the ability to extend the agreement pursuant to its terms for installation from Town Hall to the Operations Center of a fiber optic cable and services in connection therewith and in connection with dedicated internet service to the Police

Department.

Dated: February 26, 2014

William W. Moehle, Supervisor	Voting	_____
James R. Vogel, Councilperson	Voting	_____
Louise Novros, Councilperson	Voting	_____
Christopher K. Werner, Councilperson	Voting	_____
Jason S. DiPonzio, Councilperson	Voting	_____



TOWN OF BRIGHTON
MONROE COUNTY, NEW YORK
DEPARTMENT OF PUBLIC WORKS

February 14, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

Re: Purchase Request
Dedicated Fiber Interconnection to the Operation Center

Dear Councilperson Werner and Committee Members:

The Town Board at their December 11, 2013 meeting authorized the Supervisor to execute a contract with Fibertech Networks to install and support a fiber optic line between the Town Hall and the Operation Center and installation of dedicated internet service to the Brighton Police Department. The Town Board resolution referenced a letter prepared by Michael Guyon which indicated that the anticipated costs for the installation and support of the fiber optic line and internet service was prefaced upon a 3 year term.

The Term provisions included in the contract with Fibertech states, "After expiration of the initial Term, the Contract will renew on a month to month basis for a maximum of six (6) consecutive months, at which time the Customer must provide in writing its intent to renew or cancel the contract. The Customer will have the option to renew the contract for a minimum of (1) one year for continuation of service." The December 11, 2013 resolution does not include a provision to renew and/or extend the contract following the expiration of the term. I am requesting that FASC recommend that the Town Board authorize the Supervisor to enter into a contract with Fibertech Network Services to install a 20 Mb Fiber Optic Line from the Town Hall to the Operations Center and provide a dedicated internet service to the Brighton Police Department for a three year term with the ability to extend the contract pursuant to the Fibertech agreement. A copy of the agreement is attached for your reference.

As always, thank you for your consideration. I will be in attendance at your regularly scheduled February 18, 2013 meeting in the event that you have any questions regarding this matter.

Respectfully,

Michael E. Guyon, P.E.
Town Engineer

cc: S. Zaso
T. Keef
Mary Ann Hussar



certificate(s). No exemption will be available to Customer for any period prior to the date that the Customer presents a valid certificate to Fibertech.

5. Billing and Payment. Billing for a service shall commence on the earlier of: (a) use of the Service by Customer; or (b) sixty (60) days after delivery of the Service to Customer's service address. All bills are due and payable upon receipt. If a dispute notice is filed on or before the Due Date for the respective invoice, Customer shall pay the invoiced amount minus the disputed amount by the Due Date. Customer shall have no right to withhold amounts not disputed by the Due Date, provided that payment of an invoice shall not be deemed a waiver of Customer's rights to later dispute an invoice. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. Fibertech and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved in favor of Fibertech, Customer shall pay the disputed amount previously withheld within thirty (30) days of such resolution. If the dispute is subsequently resolved in favor of Customer, Fibertech shall issue a credit on Customer's subsequent invoice for the disputed amount immediately.

6. Termination.

(a) A party may terminate the Contract on thirty (30) days' written notice if the other party materially breaches the Contract and such breaching party fails to cure the breach within such notice period.

(b) Either party may terminate the Contract upon written notice to the other party if (i) the other party dissolves or becomes insolvent or bankrupt, or (ii) any bankruptcy, reorganization, insolvency or similar proceeding is instituted by or against the other party and not dismissed within thirty (30) days, (iii) the other party makes an assignment for the benefit of creditors; (iv) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (v) a trustee or receiver of the other party is appointed.

(c) If either party (or any affiliate of such party) is in default of the terms of any other agreement between Fibertech and Customer (or such affiliate), including but not limited to any payment obligation to Fibertech,

then the non-breaching party, at its sole option, may consider such default as a default under this agreement and/or the Contract and provide notice of default in accordance with the terms of such agreement. Further, each party acknowledges and agrees that any breach by such party of its obligations under this agreement or the Contract shall also be deemed a breach by such party of its obligations under any other agreements it (or its affiliate) has entered into with the other party hereto, and that any such breach shall authorize the non-breaching party to immediately suspend performance under, and/or terminate said other agreements with the breaching party. Notwithstanding or forgoing, in the event of a breach by Fibertech of Section 1 of the Service Level Agreement, nothing herein shall grant to Customer the right to terminate any agreement or purchase order other than the agreement or purchase order that has been breached as a result of the violations of Section 2 of the Service Level Agreement.

(d) In addition to Fibertech's remedies under Section 5 and Section 6(a) hereof, Fibertech shall have the right, upon thirty (30) days prior written notice, to immediately suspend Services to Customer in the event of nonpayment by the Due Date of any charges not disputed in accordance with the provisions of Section 5.

7. Termination Liability. If the Contract is terminated anytime prior to the expiration of the current Term (unless terminated by Customer pursuant to Section 1, 2 or 6 above), then Customer shall pay to Fibertech, immediately upon demand, (a) all sums then due and owing plus (b) an amount equal to the recurring Monthly Charges (as listed in the Contract) multiplied by the number of months left in the Term. No termination liability will apply in the event the Contract is terminated by Customer pursuant to Section 1, 2 or 6 above; provided, however, that in any such event Customer will be responsible for payment of all charges incurred prior to the termination date, less all applicable credits and discounts.

8. Compliance with Laws. Each party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services. Without limiting the foregoing, all customers that utilize the Services for the purpose of making telephone solicitations must comply with the

national do-not-call requirements, including the rules as set forth in 47 C.F.R. Section 64.1200 and 16 C.F.R. Part 310. Failure to do so shall constitute a material breach of the Contract.

9. Warranty. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH THE CONTRACT DOCUMENTS, INDUSTRY STANDARDS AND GOVERNMENT REGULATIONS. FIBERTECH MAKES NO OTHER WARRANTIES ABOUT THE SERVICES PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER MAY NOT RELY ON ANY STATEMENT TO THE CONTRARY BY ANY PERSON. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. Unauthorized Use of Services.

Customer, and not Fibertech, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services by Customer. The Services are provided subject to Fibertech's Acceptable Use Policy ("AUP") which may be accessed at: www.fibertech.com/aup.

11. Limitations of Liability.

(a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE CONTRACT DOCUMENTS AND/OR THE PERFORMANCE OR NONPERFORMANCE THEREUNDER. THIS DOES NOT LIMIT CUSTOMERS RESPONSIBILITY FOR PAYMENT OF ALL APPROPRIATE CHARGES UNDER THE CONTRACT DOCUMENTS. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT DOCUMENTS.

(b) FIBERTECH'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING BUT NOT LIMITED TO

THE MAINTENANCE, INSTALLATION, DELAY, TERMINATION, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THE CONTRACT DOCUMENTS, WHETHER IN AN ACTION FOR OR ARISING OUT OF CONTRACT, TORT, INDEMNITY OR STRICT LIABILITY, IS LIMITED AS FOLLOWS: (i) FOR A SERVICE QUALITY CLAIM (INCLUDING INTERRUPTION IN SERVICE), THE OUTAGE CREDIT UNDER THE SERVICE LEVEL AGREEMENT; (ii) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY FIBERTECH'S NEGLIGENT ACTS OR OMISSIONS, FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF FIBERTECH, DAMAGES; AND (iii) FOR ALL OTHER CLAIMS NOT OTHERWISE COVERED ABOVE, THE AMOUNT OF DAMAGES INCURRED BY CUSTOMER NOT TO EXCEED THE AMOUNT OF CHARGES APPLICABLE UNDER THE CONTRACT DOCUMENTS.

(c) IN NO EVENT SHALL EITHER PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE CONTRACT DOCUMENTS EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO FIBERTECH THEREUNDER. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

(d) Fibertech also shall not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by Fibertech; Service interruptions or lost or altered messages or transmissions (except to the extent credit allowances are specified in the applicable SLA); or unauthorized access to or theft, alteration, loss or destruction of Customer's, Users' or third parties' applications, content, data, programs, information, network or systems.

12. Force Majeure. Except with respect to Customer's payment obligations, notwithstanding any other provision of the Contract Documents, neither Party shall be liable to the other Party for any delay or failure in performance of the Contract to the extent such delay or failure is caused by fire, flood, explosion, accident, war, embargo, government requirement, civil or military authority, Act of God,

inability to secure materials or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Contract until the Force Majeure ceases.

13. Relationship of Parties. Neither the Contract nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between Fibertech and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.

14. Fibertech Facilities. Equipment furnished by Fibertech shall remain its property and shall be returned to Fibertech on expiration or termination of the Contract or as earlier requested by Fibertech, in good condition, reasonable wear and tear expected. Customer shall reimburse Fibertech for any loss of, or damage to, Fibertech's facilities or equipment on the Customer's premises, except loss or damage caused by Fibertech's own employees, agents or contractors.

15. Notices. All notices or other communications under this agreement or the Contract shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight courier (with signature for receipt), addressed Fibertech at 300 Meridian Centre, Rochester, NY 14618 or to Customer at the address set forth in the Contract, or to either Party at such other address as may be designated in writing by such Party. Notice shall be deemed given upon receipt.

16. Entire Agreement. The Contract, these Terms and Conditions, the AUP, the SLA(s), and any Addendum attached thereto (collectively the "Contract Documents"), represent the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Service. Any modification to the Contract Documents shall be in writing signed by authorized representatives of both Parties. In case of any conflict between the provisions of these Terms and Conditions and any other document, the provisions of these Terms and Conditions shall take precedence unless otherwise indicated in a writing signed by both Parties, except

that specific information in a Service Contract shall prevail as to that Service with respect to price, Service Contract Term, locations and availability and other Service-specific terms contained in the Service Order. The Contract, and any amendment of the terms thereof, may be signed in counterparts, each of which (including fax or PDF versions) shall constitute an original and all of which together shall constitute one and the same instrument.

17. Waiver. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

18. CPNI. Under federal law, Customer has the right, and Fibertech has a duty, to protect the confidentiality of information about the amount, type, and destination of Customer's service usage ("CPNI"). Customer hereby consents to the sharing of Customer's CPNI with Fibertech and its affiliates, agents and contractors, solely for the purpose of developing or bringing to Customer's attention any products and services, or in the event of any merger, sale of some or all of the company assets or acquisition as well as in any insolvency, bankruptcy or receivership proceeding in which CPNI would be transferred as one of the business assets of the company. This consent survives the termination of Customer's Service and is valid until revoked by Customer. To remove this consent at any time, Customer must notify Fibertech in writing at 300 Meridian Centre, Rochester, NY 14618 Attn: Customer Service and provide the following information: (1) Customer name, (2) Service billing address, (3) Telephone number including area code, and (4) Service account number. Removing consent will not affect the Customer's current Service.

19. Assignment. Neither Party may assign the Contract Documents without the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made in violation of this Section 19 shall be null and void and of no effect whatsoever. Subject to the foregoing, the Contract Documents shall be binding upon the parties and their respective

successors and permitted assigns. . Notwithstanding any other provision of this Agreement, nothing herein shall limit Fibertech's ability to reorganize, sell, transfer, merge, or otherwise dispose of all or substantially all of its assets, stock, or membership interests, and any such activity will not be considered an assignment under this Agreement.

20. Governing Law. The Contract Documents shall be shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law principles. The Parties each hereby consent to the exclusive personal jurisdiction in the state and federal courts in Monroe County, New York.

21. Partial Invalidity. If any provision of the Contract Documents shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the Contract Documents or such individual agreement unenforceable, but instead such agreement(s) shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of such agreement(s), the Parties shall promptly engage in good faith negotiations to agree upon a substitute for such provision.

22. Insurance. Fibertech shall maintain general and commercial liability insurance, workers compensation coverage and such extended coverage insurance as may be necessary to protect itself and Customer from loss or liability in connection with Fibertech's performance of Services. The amount of such coverage shall be a minimum of \$1,000,000 for each occurrence for bodily injury and \$1,000,000 for each occurrence for property damage, with an aggregate limit of \$3,000,000.

23. Indemnification. Subject to the limitations set forth in Section 11, each party covenants to hold the other party harmless against, and to indemnify the other party for, all losses, damages, expenses, liabilities and any other costs, including attorneys fees, arising out of the willful misconduct or other unlawful malfeasance or non-feasance by such party or its servants, agents, employees or contractors. Each party further covenants to the other that, in the event any claim or demand is asserted against it which may result in indemnification liability to the

other, it will give prompt written notice thereof to the other party and will cooperate in the investigation of any such claim and/or the defense of any action arising therefrom.

24. Confidentiality. Each party acknowledges that it may gain access to certain information of the other party, which is either confidential, privileged, proprietary or otherwise not generally available to the public ("Confidential Information"). Each party agrees: (i) to exercise the same degree of care and protection with respect to another party's Confidential Information that it exercises with its own Confidential Information, but no less than a reasonable degree of care; (ii) not to directly or indirectly disclose, copy, distribute, republish or allow access to any Confidential Information of the other party to a third party and (iii) not to use or disclose the Confidential Information for any purpose other than the performance of its obligations or exercise of its rights under the Contract Documents. Notwithstanding the above any party may disclose Confidential Information if so required by law (including court order or subpoena), provided that the owner of the Confidential Information may require the disclosing party to request the appropriate court or governmental body to seal the record that shall contain such Confidential Information or otherwise obtain satisfactory assurances that its confidentiality will be maintained. Confidential Information shall not include information that is: (i) publicly available or later becomes available other than through a breach of this Section 24; (ii) known to the receiving party or their respective employees, agents or subcontractors prior to such disclosure or is independently developed by the receiving party, or their respective employees, agents or subcontractors subsequent to such disclosure, in either case as shown by the receiving party's records; or (iii) subsequently lawfully obtained by the receiving party, or their respective employees, agents or subcontractors from a third party without obligations of confidentiality. The provisions of this Section 24 shall survive beyond the expiration or termination of this Agreement.

25. Chronic Service Interruption. As used herein, the term ("Chronic Service Interruption") shall mean: (i) four or more Service Interruptions, each lasting at least thirty continuous minutes each, in any rolling three month period; or (ii) ten or more Services Interruptions lasting between fifteen and thirty



39.

continuous minutes each, in any rolling three month period. In the event of a Chronic Service Interruption, Customer may cancel the Service Order as it relates to the affected Circuit without liability. Customer shall provide a written request to Fibertech of its intent to terminate the service no later than twenty (20) business days after the occurrence of the outage.

By:

Authorized Customer Signature Date

Print Name & Title

**FIBER TECHNOLOGIES
NETWORKS, L.L.C.**

By: Fibertech Networks, LLC, its sole member

Authorized Fibertech Signature
Date

Print Name & Title

[End of Document]