

CHAPTER 20

CABLE T.V. FRANCHISE ORDINANCE

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20.01 FRANCHISE ORDINANCE

This Ordinance shall be known, and may be cited as the "Village of Eagle Cable T.V. Franchise Ordinance".

20.02 PURPOSE

It is the purpose of this Ordinance to grant to Ingersoll Cable Company a non-exclusive franchise to construct, maintain, and operate a CATV system in the Village of Eagle, and to set forth the rights and obligations of the Village and the Grantee accompanying said grant.

20.03 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the text, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely a directory.

- (1) "Village" means the Village of Eagle or any duly appointed designate thereof, including, but not limited to, the Village Board.
- (2) "Village Board" means the present governing body of the Village or any successors to the legislative powers of said body, or any duly appointed designate thereof.

- (3) "Cable system", "Cable communications system", or "CATV system", means a system located within the Village of Eagle only, of antennas, coaxial cables, wires, wave guides, or other conductors, electronic equipment or facilities designed, constructed, or used for the production of television signals, interception and reception of television or radio signals directly or indirectly off the air, and the distribution or transmission of such signals and other communications services by means of cable or similar devices to subscribers.
- (4) "Subscriber" means any person or entity receiving for any purpose the cable service of the Grantee.
- (5) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (6) "Grantee" means Ingersoll Cable Company (ICC).
- (7) "Channels" means a group of frequencies in the electromagnetic spectrum capable of carrying an audio-date or an audio-visual television signal. Each channel is a block of frequencies containing 6 Milz bandwidth.
- (8) "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber to view all signals delivered at designated dial locations.
- (9) "Basic service" means the simultaneous delivery by the Grantee to television receivers of those broadcast and non-broadcast television channels.
- (10) "Additional service" means service provided by the Grantee other than basic service.
- (11) "Franchise" means the non-exclusive right, privilege and authority granted by this Ordinance to construct, maintain, and operate through the use of public streets of the Village of Eagle.
- (12) "Street" means any street, alley or other public right-of-way in the Village.
- (13) "The Grantee's system" or "The system" or "The Cable system" or "The CATV system" means that the CATV system constructed or operated by a Grantee pursuant to a franchise granted hereunder.
- (14) "FCC" means the Federal Communications Commission.
- (15) "To monitor" means to observe a one-way or two-way communications signal without the expressed prior consent of the subscriber receiving or sending said communication signal, whether said signal is observed by visual or electronic means, for any purpose whatsoever.

20.04 USE OF VILLAGE STREETS

- (1) Grant of Authority
 - a. There is hereby granted the Village of Eagle the non-exclusive right, privilege, and franchise to construct, operate and maintain a CATV system in the streets of the Village for a period of twenty-five (25) years, subject to the rights, obligations, conditions and restrictions as hereinafter provided.
 - b. The right to use and occupy said streets for the purpose herein set forth shall not be exclusive and the Village reserves the right to grant a similar

use of said streets to any person at any time during the period of this franchise.

(2) Expiration of the Grant

- a. Two (2) years prior to the expiration of the franchise granted hereunder, the Village and Grantee shall meet to review the development and operation of the Grantee. Within sixty (60) days thereof, the Village shall extend to the Grantee an option to renew this franchise upon the same conditions as stated herein.
- b. In the event the Village agrees that the Grantee has substantially complied with the conditions of this Ordinance, the Grantee shall extend the franchise for an additional period of twenty-five (25) years.
- c. In the event the Village determines that the Grantee has not substantially complied, the Grantee may submit such decision to: first, the cable television committee. If not resolved there, then to the Village Board and finally if not resolved there, to the Circuit Court of Waukesha County pursuant to rules and conditions of the American Arbitration Association. Such decision of the Court shall be binding upon both parties.

(3) Conditions Regarding Street Use

- a. All transmission and distribution structures, lines and equipment erected by the Grantee within the Village shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or public ways and places, and not to interfere with existing public utility installations. All installations shall be underground in those areas of the Village where either of the public utilities providing telephone or electric service are underground at the time of installation. The Grantee shall install its cable to conform with the National Electric Safety Code. In areas where both telephone and electric distribution are above ground at the time of installation, the Grantee may install its facilities above ground, but in such case the Grantee, to the maximum extent possible and subject to approval by the affected public utility, shall place its facilities on the poles of said public utilities. If, subsequently, said telephone or electric utility facilities go underground, the facilities of the Grantee shall go underground simultaneously. The use by the Grantee of any facilities or installations of a telephone or electric utility and the conditions of said uses shall be determined by negotiations between the Grantee and said utility.
- b. In case of any disturbance of pavement, sidewalk, driveway, sod or other surfacing, the Grantee shall, at its own expense, and in the manner provided by the Village, replace and restore all paving, sidewalk, driveway, or other surface of any street, alley, parkway or private property disturbed.
- c. If at any time during the period of the franchise the Village shall lawfully elect to alter or change the grade or location of any street, alley or other public way, the Grantee shall, upon reasonable notice by the Village,

remove, relay, and relocate its poles, wires, cables and underground fixtures at its own expense, and in each instance comply with the requirements of the Village.

- d. The Grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks and public places of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Village, such trimming may be done by it, or under its supervision and direction, at the expense and liability of the Grantee.

20.05 INITIAL SYSTEM INSTALLATION SCHEDULE

(1) Obligations of the Grantee

- a. Grantee shall, within ninety (90) days from the granting of a franchise, make application to the Federal Communications Commission for a certificate of compliance for the establishment of a cable television system in the Village and shall prosecute such application diligently and faithfully in order that necessary approvals can be obtained in the shortest time possible. The Village reserves the right to intervene in said application for a certificate of compliance, and the Grantee shall pay all expense incurred by the Village in connection with the submission and defense of an application for a certificate of compliance filed with the FCC by the Grantee.
- b. Prior to the commencement of construction and prior to receipt of final approvals from the FCC for establishment of the system, the Grantee shall conduct the necessary engineering studies so that the construction can commence immediately upon final approval of the FCC.
- c. The Grantee shall, within one hundred eighty (180) days from the granting of a franchise, begin preliminary engineering of the pole line route and electrical layouts and initiate engineering surveys for the receiving site and building locations of the Grantee's cable TV system.
- d. The Grantee shall commence construction of the cable television system no later than one hundred eighty (180) days after the franchise has been granted.
- e. The Grantee shall have full service available to every resident within the Village boundaries within one (1) year.
- f. The Grantee shall furnish the Village Board with construction progress reports indicating in detail the area of construction of the cable television system. Such periodic reports shall be furnished at one (1) month intervals, with the first report to be made one month after the construction commencement date until all construction and restoration are complete. At such time, Grantee shall then make quarterly status reports.
- g. The requirements established in Subsection (a) through (e) above are maximums, and the Grantee may at any time proceed at a rate speedier than required by Subsection (a) through (e).

(1) Franchise Payments

- a. The Grantee shall pay to the Village for the use of the streets and other facilities of the Village in the operation of the CATV system and for the municipal supervision thereof a fee in the amount of three percent (3%) of the Basic service receipts of the Grantee.

(2) Insurance and Indemnity

- a. At all times during the term of the franchise, the Grantee shall obtain, pay all premiums for, and file with the cable review committee at least ten (10) days before construction of the system commences a certificate of insurance or other proof evidencing payment of premiums for the following:
 1. A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Village, its officers, boards, committees, commissions, agents, or employees, from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of one million dollars (\$1,000,000) for bodily injury or death of any one or more persons in any one occurrence. Said policies are to include personal injury coverage.
 2. Property damage insurance indemnifying, defending and saving harmless the Village, its officers, boards, committees, commissions, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of five hundred thousand dollars (\$500,000) for property damage in any one occurrence.
- b. All of the foregoing insurance contracts shall be in form satisfactory to the Village Attorney, shall be accepted by companies authorized to do business in the State of Wisconsin acceptable to the Village Attorney. Said insurance contracts shall require thirty (30) days written notice of any cancellation to both the Village and the Grantee.
- c. The Grantee shall also, at its sole cost and expense, fully indemnify, defend and hold harmless the Village, its officers, boards, committees, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expense for reasonable legal fees and disbursements and liabilities assumed by the Village in connection therewith):
 1. Arising out of any claim for invasions of the right of privacy, for defamation of any person, firm or corporation, or for violation or infringement of any copyright, trademark, trade service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to Village programming); and

2. Arising out of the Grantee's failure to comply with the provisions of any Federal, State or local statute, ordinance, or regulation applicable to the Grantee in its business hereunder; and
 3. Arising out of a claim for violation of anti-trust laws.
- d. The foregoing indemnity is conditioned upon the following: The Village shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceedings covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Village from cooperating with the Grantee and participating in the defense of any litigation by its own counsel at its sole cost and expense.
 - e. The Grantee shall furnish the Village with a performance bond of ten thousand dollars (\$10,000).
 - f. The Grantee shall also furnish the Village with a restoration bond in the amount of twenty thousand dollars (\$20,000).
 - g. If full service is not available to every resident within one (1) year from the effective date of this Ordinance, the Grantee shall pay to the Village a fee of two hundred dollars (\$200) per day until such time that the service is available to every resident within Village boundaries.
- (3) Acceptance of this Ordinance
- This Ordinance and its terms and provisions shall be accepted by the Grantee by written instrument executed and acknowledged by it as a deed is required to be, and filed with the Village Clerk within twenty (20) days after the award of a franchise. Such written instrument shall state and express the acceptance of this Ordinance and its terms, conditions and provisions, and said Grantee shall agree in said instrument to abide by, to observe and perform same, and declare that statements and recitals herein are correct and that it has made and does make this agreement, statements and admissions in this Ordinance recited to have been or to be made.

20.07 SERVICES TO BE PROVIDED

- (1) General Requirements
- a. The Grantee shall install, maintain and operate its system in accordance with the highest standards of the art of cable communications and in accordance with any Code of Conduct which has been adopted or shall be adopted by the National Cable Television Association.
 - b. The Grantee shall render efficient service in accordance with such rules and regulations as have been promulgated and will be promulgated by the Federal Communications Commission and other Federal and State regulatory agencies.
 - c. The Grantee shall provide a uniform, strong signal free from distortion and interference (as determined by the cable review committee), and shall not interrupt services unless absolutely necessary.
 - d. it shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell

the system, or the Village revokes or fails to renew this permit, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted, service regardless of the circumstances. In the event of a change of Grantee, the current Grantee shall cooperate with the Village or with a representative appointed by the Village to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

(2) Channel Allocations

Off the Air Programming:

- a. 1. The Grantee shall carry the signals of the following television stations in the Basic service package:

WTMJ	Milwaukee, WI	C-SPAN
WITI	Milwaukee, WI	ESPN
WMVS	Milwaukee, WI	Nickelodeon
WISN	Milwaukee, WI	The Weather Channel
WVTV	Milwaukee, WI	Lifetime
WCGV	Milwaukee, WI	CNN
WVCY	Milwaukee, WI	MTV
WMVT	Milwaukee, WI	
WCIU	Milwaukee, WI	
WGN	Chicago, IL	
WTTW	Chicago, IL	
WFLD	Chicago, IL	
WHA	Madison, WI	
WTBS	Atlanta, GA	
WOR	New York, NY	

- a. 2. The Grantee shall also carry as add-ons or Pay services, but not limited to the following:
Home Box Office
Showtime
The Disney Channel
- b. The Grantee shall carry the signals of other TV stations pursuant to the present and future regulations of the FCC.
- c. The Grantee shall provide radio channels which may be received on conventional FM receivers, connected to the Grantee's cable system.
- d. Such additional channels, signals, programs, and production equipment as the Grantee may include in its proposal for obtaining the franchise.
- e. The Village shall give the Grantee the right and authority to place electronic equipment in the basement of the Village Hall/Fire Station. This right shall continue as long as this Ordinance is in effect.

- (3) Customer Service
- a. The Grantee shall maintain an office within the Greater Milwaukee Area with a listed telephone number on the local exchange which shall be open during all usual business hours, and so be operated that complaints and request for repairs or adjustments may be received at any time. Said office shall be open and fully operational within one (1) year of the execution of the cable franchise agreement.
 - b. The Grantee shall respond to all service calls and complaints, and shall correct malfunctions in its equipment as promptly as possible.
 - c. If all service is out for more than twenty-four (24) hours, the Grantee shall refund 1/30th of the total monthly premium per day that the service is out, after the initial twenty-four (24) hour period of outage.

20.08 TECHNICAL CONFIGURATION AND CAPACITY

- (1) The Grantee shall at all times meet the technical standards established by the FCC, including specifications for frequency boundaries, visual carriers, frequency levels, aural carrier frequency levels, channel frequency response, terminal isolation, and system radiation, and other standards which the FCC may set.
- (2) At the option of any individual subscriber, the Grantee shall install a switching device upon said subscriber's television receiver whereby said subscriber may disconnect its television receiver from the Grantee's cable system in order to receive over-the-air television signals.
The price of this device to said subscriber shall be the cost of said device to the Grantee, or less at the option of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of said device. The Grantee shall make all reasonable efforts to obtain said devices at the lowest possible cost to it.
- (3) At the option of any individual subscriber, the Grantee shall provide a device which allows said individual subscriber to utilize a key to disconnect those channels providing additional services to the subscriber, such as pay-TV channels. The price of said device shall be the cost of said device to the Grantee, or less at the option of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of said device. The Grantee shall make all reasonable efforts to obtain said devices at the lowest possible cost to it.

20.09 RATES

Basic Service	\$8.50 per month
For Commercial Establishments the Basic Service Rate is \$12.00/month	
Pay Services	\$8.50 per month
Additional Outlets	\$3.25 per month, \$6.25 per month for Basic + 1 Pay
Installation	\$25.00 ***
Additional Outlet	\$15.00
Re-locate Outlet	\$15.00
Disconnect Service	No Charge
Reconnect Service	\$15.00

(1) There will be a one (1) year rate freeze from the date that full service is available to all residents within the Village boundaries.

*** Installation charge will be waived if subscriber signs up for service within ninety (90) days from the date that service is available in his/her area.

(2) The Grantee shall provide, without charge, as many outlets as needed to each municipally owned building, fire station, police station, library, public and parochial school, and institution of higher learning that is passed by its cable. If more than one outlet is required of any said locations, the Grantee shall install at the cost of time and materials only, and in no event will there be a monthly service charge at said locations for basic services.

20.10 PROTECTION OF INDIVIDUAL RIGHTS

(1) Discriminatory Practices Prohibited

The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, creed, or sex.

Nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber or programmer included within a particular classification shall be entitled.

(2) Employment Practices of the Grantee

In carrying out the construction, maintenance, and operation of its cable television system, the Grantee will not discriminate against any employee or applicant because of race, creed, color, religion, sex, or national origin. The Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, as expressed in Section 76.13 (2) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations. The Grantee shall comply at all times with all other applicable Federal, State, Village and County laws, and all executive and administrative orders relating to non-discrimination in employment. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed,

color, sex, religion, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Grantee shall post in conspicuous places, available to employee and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Grantee shall in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, religion, or national origin. The Grantee will incorporate the foregoing requirements of this paragraph in all of its contracts for work relative to construction, maintenance and operation of the CATV system, other than contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

(3) Cable Monitoring

Neither the Grantee nor any governmental bureau, department, unit, agency or entity at the Federal, State, County or Local level, nor any other person or entity, shall monitor, or arrange for the monitoring of, any cable, line, signal input device, or subscriber outlet receiver for any purpose whatsoever.

(4) Right of Privacy

- a. The Grantee shall not transmit any signal to or from any dwelling or any other building without express authorization of the owner of said dwelling or building, provided that where said owner has leased said dwelling or other building or a portion thereof, said express authorization shall be obtained from the lessee and not from the owner.
- b. Nothing in this section shall diminish any rights of residents of dwellings or other buildings protected by Section "5" of this Ordinance.

(5) Rights of Residents

- a. An owner or operator of any apartment building, condominium, nursing home, or any other rental facility may not interfere with or charge a fee for the installation of cable facilities for the use of a lessee of said property or premises, except that such owner or operator may require:
 1. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises.
 2. The Grantee, occupant or tenant to pay for the installation, operation or removal of such facilities.
 3. The Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.
- b. It shall be unlawful for the Grantee to reimburse or offer to reimburse any person, or for any person to demand or receive reimbursement from the Grantee, for placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises for the distribution lines of Grantee to provide CATV service to said premises.

- c. A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.
- d. The Grantee may not take actions which would diminish or interfere with the privilege of any tenant or owner occupant of any such building to use or avail him/herself of master or individual antenna equipment.

(6) Sale of Subscriber Lists Prohibited

The Grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any lists which identify by name, subscriber viewing habits, or any person, agency, or entity for any purpose whatsoever.

20.11 PROTECTIONS AFFORDED THE GRANTEE

(1) Tampering with Cable Equipment

A person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus, or equipment of the Grantee, or commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of the Grantee, or who taps, tampers with, or connects any wire or device to a wire, cable, conduit or equipment of the Grantee with intent to obtain a signal or impulse there from without authorization from the Grantee, shall be subject to a forfeiture of not more than \$500.00 as determined by the court and shall be liable in a civil action for three (3) times the actual amount of damages sustained thereby, but this Section shall not prevent a public utility from removing, disconnecting or otherwise rendering inoperable any of the Grantee's apparatus or equipment attached or in any way connected to such public utility's facilities, if done for reasonable cause.

(2) Liability of the Grantee in Libel Action

The Grantee or its agents shall not, in an action for slander or for publishing a libel, be held liable for damages for or on account of any defamatory matter uttered, telecast, cablecast, or published over the facilities of the Grantee by any person whose utterance, telecast, cablecast or publication is not, under the provisions of any law of the United States or any regulation, ruling or order of the FCC, subject to censorship or control by the Grantee.

20.12 SUPERVISION OF THE GRANTEE

(1) The Grantee shall file with the Village Engineer and the Village Clerk accurate copies of maps and/or plats of the location and character of all existing and proposed installation over, upon, or under the streets. These maps and plats shall conform to the requirements of the Village Board, shall be kept continuously up-to-date, and shall be filed at least quarterly.

(2) The Grantee shall continuously keep on file with the Village Board a current list of its stockholders, holding five percent (5%) or more of the outstanding stock and its officers, with their current addresses.

(3) The Grantee shall keep and maintain all records required by the FCC. Copies of said records and all other rules, regulations, terms and conditions

established by the Grantee for the conduct of its business shall be filed annually with the Village Board and at the Office of the Grantee.

(4) Copies of all petitions, applications and communications submitted by the Grantee to the FCC, Securities and Exchange Commission or any Federal or State regulatory commission or agency having jurisdiction in respect to any matter affecting cable operation shall also be submitted simultaneously to the Village by filing same with the Clerk.

(5) The Grantee shall maintain records of those subscriber complaints and request for service which it has received, the time of such reception, and the time at which it responded to said subscriber complaints and requests for service.

Every two (2) months, copies of said records shall be submitted to the Village Board. The Grantee shall also keep a copy of said records at its local office.

(6) The Grantee shall keep and maintain a complete record of all persons or groups requesting time on its access channels. Said records shall be made available for public inspection and a copy of said records shall be submitted monthly to the Village Board.

20.13 INTENDED SCOPE OF THIS ORDINANCE

(1) Compliance with Local, State and Federal law

a. The Grantee shall construct, operate and maintain the CATV system subject to the supervision of all of the authority of the Village who have jurisdiction in such matters and in strict compliance with all laws, ordinances, and department rules and regulations.

b. If at any time the powers of the Village are transferred by law to any other board, authority, agency, or official, this board, authority, agency, or official shall have the power, rights and duties previously vested under this Ordinance or by law in the Village Board or any agency or official of the Village.

c. Notwithstanding any other provisions of this franchise, the Grantee shall at all times comply with all laws and regulations of the State and Federal Government or any administrative agency thereof provided; however, if any such State or Federal law or regulation shall require the Grantee to perform any service or shall permit the Grantee to perform any service in conflict with the terms of this Ordinance or of any law or regulation of the Village, then as soon as possible following knowledge thereof, the Grantee shall notify the Village Board of conflict believed to exist between such regulations or law and the laws or regulations of the Village or this Ordinance. If the Village Board determines that a material provision of this Ordinance is affected by such subsequent action, the Village Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance.

(2) Captions

The captions to section throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

(3) Severability

If any of the provisions of this Ordinance or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of this

Ordinance or the application of the provision to other circumstances shall not be affected thereby.

20.14 LIMITATIONS OF THE GRANTEE’S RECOURSE

The Grantee expressly acknowledges that upon accepting this franchise it did so relying upon its own investigation and understanding of the power and authority of the Village to grant this franchise. By the acceptance of this franchise, the Grantee agrees that it will not at any time set up against the Village in any claim or proceeding any conditions or term of this.

20.15 VILLAGE CABLE COMMITTEE

The Village will establish a Cable Committee made up of three (3) members. Those members will consist of a minimum of one (1) Village Board member and one (1) Village resident.