

**CHAPTER 26****EXISTING FRANCHISE ORDINANCES**

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**DIVISION 1 --ILLINOIS POWER COMPANY**  
**d/b/a AMERENIP**

SEC. 26.1-1. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to AmerenIP, its successors and assigns, to construct, operate and maintain a utility system within the Town as originally authorized by Ordinance No. 160 approved on November 6, 1944, and extended monthly by Extension Ordinance No. 4488, and approved on December 26, 1997. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of electric energy and other purposes within the Town for the benefit of its citizens and residents as well as other consumers of electric energy located within its corporate limits. For purposes of construing the terms, rights and obligations of the parties, this authorization is granted pursuant to Section 14 of the Electric Supplier Act, 220 ILCS 30/14, and the Illinois Municipal Code, 65 ILCS 5/1-1-1, etc. seq.

SEC. 26.1-2. There is hereby given and granted to AmerenIP, its successors and assigns (hereinafter referred to as the “Company”), the right, privilege and authority to construct, operate, maintain, and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the Town of Normal (hereinafter referred to as “Municipality”), an electric utility system for the transmission, distribution and/or sale of electric energy (the “System”), together with the right, privilege and authority to erect, construct, install, operate, and/or maintain all poles, conductors, wires, cables, conduits, equipment, and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through, and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way, and /or other public ways.

SEC. 26.1-3. All poles and other equipment placed or installed under this Ordinance in streets, alleys, avenues, and other public places, shall be so placed as not to interfere unnecessarily with travel on such streets, alleys, avenues, and other public places. All poles and other equipment placed or installed under this Ordinance shall be so located as not to injure any pipes, conduits, sewers, drains, pavement, or other like public improvements, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof, and, in default thereof, said Municipality may repair such damage and charge the cost thereof to, and collect the same from, the Company. All facilities of the Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any street, avenue, or other public facility or structure shall be graded, curbed, paved, or otherwise changed so as to make the resetting or relocation of any poles or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation at the Company’s cost and expense. The Municipality shall provide the Company with a

suitable location for the resetting or relocation of such poles or other equipment, and the Company's obligation shall be limited to resetting or relocating poles or other equipment of the same type and configuration as the displaced poles or other equipment. The Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality and the establishment by the Municipality of the permanent grade at the new location.

SEC. 26.1-4. In order for the Company to render efficient, safe, and continuous services, it will be necessary for the Company to conduct vegetation management activities, including the trimming or pruning and cutting down of the trunks and branches of trees and/or vines and shrubs along or over the streets, sidewalks, alleys, avenues, squares, bridges, and other public places in said Municipality and areas dedicated to the Municipality for public utility use wherever the same are likely to interfere with its equipment; therefore, the Company is hereby granted the right to conduct such vegetation management activities so as to enable it to erect, operate and maintain its equipment in a regular consistent form and manner and to enable it to provide the most efficient, safe, and continuous service that the circumstances will permit; provided, however, that the Company shall exercise proper care and discretion in its vegetation management activities. The Company shall conduct its vegetation management activities in accordance with applicable law, including without limitation, 220 ILCS 5/8-505.1, and any amendments thereto. Notwithstanding the foregoing, to the extent applicable law may be superceded or modified by an agreement between the Municipality and the Company, the Municipality and the Company reserve the right to enter into such an agreement.

SEC. 26.1-5. The rates to be charged by the Company for electric service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by the Ordinance, in the event of conflict herewith, shall govern, but only to the extent such rules and regulations preempt Home Rule authority.

SEC. 26.1-6. As a further consideration for the rights, privileges and authorities granted by this Ordinance, the Company shall, in Year 1 of the agreement, furnish the Municipality compensation in the amount of \$240,200 (payable in 12 equal monthly payments by the 15<sup>th</sup> of each month, beginning within 30 days of the acceptance of this ordinance by the Municipality). In subsequent years, payment will be made after the anniversary date on the following graduated scale: Year 2 - \$255,400 (payable in 12 equal monthly payments by the 15<sup>th</sup> of each month); Year 3 - \$270,600 (payable in 12 equal monthly payments by the 15<sup>th</sup> of each month); Year 4 - \$285,800 (payable in 12 equal monthly payments by the 15<sup>th</sup> of each month); and Year 5 – and all remaining years - \$301,000 (payable in 12 equal monthly payments by the 15<sup>th</sup> of each month). The Municipality may request a revision to the compensation amount after five years from the date of passage of this ordinance if the Municipality has a reasonable belief that its population has increased or decreased by 3% or more. The Municipality must request the revision at least 60 days prior to the next anniversary date. If the Company confirms that the number of customers served by the System within the Municipality's corporate limits has increased or decreased by 3% or more, the compensation amount will be revised by that percentage for the next and succeeding payments. The Municipality may request similar revisions to compensation amounts under these criteria in additional five-year periods throughout the term of this ordinance.

SEC. 26.1-7. If at any time during the term of this contract, the Municipality permits another entity or person to provide electric distribution of similar services, and the Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then the Company shall notify the Municipality of such treatment, terms or conditions. Alternatively, if the Municipality reasonably believes the other entity or person grants the Municipality more favorable treatment, terms or conditions, then the Municipality shall notify the Company of such treatment, terms or conditions. Upon receipt of such notice, the Municipality and the Company shall negotiate in good faith to amend this ordinance to provide the Company or the Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between the Company and the entity or person receiving the more favorable or less favorable treatment, terms, or conditions.

SEC. 26.1-8. The Company shall be exempt from any special tax, assessment, license, rental, or other charge during the term of this Ordinance on all poles, conductors, wires, cables, conduits, equipment, and other apparatus placed in the streets, alleys, avenues, bridges, easements, rights of way, or other public places within the corporate limits of the Municipality.

SEC. 26.1-9. The rights, privileges and authority hereby granted shall inure to and be vested in the Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon the Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SEC. 26.1-10. This Ordinance shall confer no right, privilege or authority on the Company, its successors or assigns unless the Company shall within ninety (90) days after due notice to the Company of the enactment of this Ordinance, file with the Town Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges and authority herein granted shall become null and void.

SEC. 26.1-11. All rights, privileges and authority given and granted by this Ordinance are granted for a term of 20 years from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and, thereafter, on a year-to-year basis (each a "Subsequent Term") unless either the Company or the Municipality notifies the other in writing of its desire to terminate this Ordinance at least six (6) months prior to the expiration of the Initial Term or any Subsequent Term.

SEC. 26.1-12. The Municipality acknowledges that the Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which the Company may have independent of this Ordinance. In addition, neither use by the the Company of public property or places as authorized by this Ordinance nor service rendered by the Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges, or other public places during the term of this Ordinance, the Municipality agrees to reserve unto the Company the rights, privileges and authority herein given and granted to the Company in upon, along, over, and across each and all of such vacated premises which are at the time in use by the Company.

SEC. 26.1-13. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SEC. 26.1-14. The Company shall indemnify and save harmless the Municipality and all contractors, officers, employees, and representatives thereof from all claims, demands, causes of action, liability, judgments, costs and expenses, or losses for injury or death to persons, or damage to property owned by, and Worker's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the Company's construction, erection, maintenance, use, or presence of, or removal of any poles, wires, lines, cables, conduit, appurtenances thereto, or equipment or attachments thereto. The foregoing indemnification shall not apply to the extent any such claim, demand, cause of action, liability, judgment, cost, expense, or loss arises out of, is caused by, or results from the negligent or wrongful willful act or omission of the Municipality or any contractor, officer, employee, or representative thereof.

SEC. 26.1-15. This Ordinance shall not relieve the Company of the obligation to comply with any ordinance of uniform application now existing in the Municipality or enacted in the future including, but not limited to, ordinances requiring the Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except the Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading, and repair of its constructed facilities provided no excavation is necessary; provided, however, if excavation is necessary, no permit fee shall be payable by the Company. The Company shall provide notice of excavation hereunder in accordance with the Illinois Underground Utility Damage Prevention Act (220 ILCS 50/1, et. seq.).

SEC. 26.1-16. If any provision of this Ordinance or the application of such provision to particular circumstances shall be held invalid, the remainder of this Ordinance or the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 26.1-17. Any conflict between the Franchise Ordinance and the provisions contained in the Electric Service Customer Choice and Rate Relief Law of 1997 (Public Act 90-561) will be resolved by giving the state statute mandatory priority over any contrary language contained in the Franchise Ordinance as to electric service customer choice and electric rates only.

SEC. 26.1-18. This Ordinance shall take effect, and the rights, privileges and authority hereby granted and renewed shall vest in the Company upon its filing of an acceptance with the Town Clerk according to the terms prescribed herein and as provided for in Section 12 and in IL Rev 35 ILCS 645/5-4. This Ordinance shall be in full force from and after its passage, approval and ten- (10) day period of publication in the manner provided by law.

**(Entire Division 1 Approved on 5/18/09 by Ordinance No. 5266, and Expires on May 18, 2029)**

**DIVISION 2 – NORTHERN ILLINOIS GAS COMPANY**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORMAL,  
COUNTY OF McLEAN, STATE OF ILLINOIS:

**SEC. 26.2-1 - DEFINITIONS.**

The following terms have the meaning ascribed to them in this Section:

***Annual Meeting.*** The meeting provided under Subsection 13.A. of this Ordinance.

***Assignee.*** The entity that accepts an assignment under this Ordinance from the Grantee with the authorization of the Municipality, as provided in Subsection 13.B of this Ordinance.

***Corporate Authorities.*** The corporate authorities of the Municipality.

***Effective Date.*** The effective date of this Ordinance, being January 1, 2016.

***Emergency.*** An event involving the Gas System that (i) poses an imminent threat to the public health or safety within the Municipality or (ii) is likely to result in a prolonged and unplanned interruption of gas service to a significant number of customers within the Municipality.

***Gas.*** Natural gas or manufactured gas, or a mixture of gases, that is distributed to the Grantee's customers in the Municipality through the Gas System.

***Gas System.*** The Grantee's system of pipes, tubes, mains, conductors, and other devices, apparatus, appliances, and equipment for the production, distribution, and sale of gas for fuel, heating, power, processing, and other purposes within and outside the corporate limits of the Municipality.

***Gas System Work.*** Any construction, operation, maintenance, repair, removal or replacement of the Gas System conducted by the Grantee within the Public Right-of-Way or conducted by the Grantee immediately adjacent to the Public Right-of-Way if such activity physically disturbs the Public Right-of-Way.

***ICC.*** The Illinois Commerce Commission.

***Public Right-of-Way.*** The Municipality's streets, alleys, sidewalks, parkways, easements, and other property of the Municipality used as right-of-way.

***Requirements of Law.*** Any and all reasonable regulations which may now or hereafter be prescribed by general ordinance of the Municipality with respect to the use of the Public Right-of-Way or the conduct of Gas System Work.

***Term.*** The term of the Franchise under Section 3 of this Ordinance.

SEC.26.2- 2 - GRANT OF FRANCHISE. The Municipality grants the right, permission and authority to the Grantee to construct, operate, maintain, repair, remove, and replace its Gas System within the corporate limits of the Municipality, subject to the conditions and regulations of this Ordinance. The right, permission and authority granted by the Municipality to the Grantee by this Franchise may not be exclusive to the Grantee, provided that any other such rights or authority granted by the Municipality may not interfere with the right, permission and authority granted to the Grantee pursuant to this Ordinance.

SEC. 26.2-3 - TERM. The Franchise authorized and granted pursuant to this Ordinance shall be for a term of 25 years, commencing on the Effective Date, and expiring on January 1, 2041 ("**Term**").

SEC. 26.2-4 - USE OF PUBLIC RIGHT-OF-WAY. The Grantee shall be authorized to use the Public Right-of-Way for the Gas System and Gas System Work subject to the provisions of this Ordinance, including without limitation the following provisions:

- A. General Coordination, Location And Repair. Those portions of the Gas System in the Public Right-of-Way shall be installed and maintained under the general supervision of the Director of Public Works of the Municipality, or other duly authorized agent of the Municipality. The portions of the Gas System within the Public Right-of-Way shall be located as not to injure any drains, sewers, catch basins, water pipes, pavements or other like public improvements. If any drain, sewer, catch basin, water pipe, pavement or other like public improvement is injured by the location of the portions of the Gas System within the Public Right-of-Way, the Grantee shall forthwith repair the damage to the satisfaction of the Municipality and in default thereof the Municipality may repair such damage and charge the cost thereof to, and collect the same from, the Grantee.
- B. Compliance with Requirements of Law. The Grantee shall be subject to the specific standards provided in this Ordinance for work in the Public Right-of-Way and with all other Requirements of Law.
- C. Conduct of Gas System Work; Restoration. The Grantee will conduct Gas System Work in accordance with the Requirements of Law. The Grantee will undertake to minimize the disturbance or obstruction of the Public Right-of-Way caused by Gas System Work, including, without limitation, having Gas System Work, once started, undertaken and completed without unreasonable delay. The Grantee will promptly restore Public Right-of-Way, as well as any fences, roads, pavements and other improvements in the Public Right-of-Way, disturbed by Gas System Work as nearly as reasonably practicable to its condition immediately before the Gas System Work.
- D. Emergencies. In the case of an Emergency, the Grantee will notify the Municipality by the most practical, timely, and available means under the circumstances of the Emergency and the conditions that are affecting the Gas

System and its customers. Notwithstanding Section 10, the notice will be no more than 24 hours after the Grantee learns of the Emergency, except if notice within 24 hours is not practicable under the circumstances of the Emergency, in which case the Grantee will provide the notice required under this Subsection as soon as is practicable under the circumstances. Each Party will provide the other Party with an Emergency contacts list, including 24-hour contact information for at least two representatives. The Grantee will keep the Municipality apprised of the status of the Emergency to the extent reasonably practicable and will advise the Municipality when the Emergency has been resolved.

E. Coordination Regarding Capital Improvements; System Information. The Grantee and the Municipality believe that it is in their mutual interests to be informed of their respective capital improvement programs, so that whenever practicable those programs can be undertaken to minimize the cost of construction and public inconvenience. To that end, the following provisions apply:

2. Meeting. At Annual Meetings (see Subsection 13.A of this Ordinance), representatives of the Grantee and the Municipality will be prepared to discuss significant known Gas System Work and Municipal projects that could impact the Gas System and that will or may be undertaken within the Municipality.

2. Capital Improvement Plans and General System Information. The Grantee will establish and maintain an information medium (“**Information Sharing System**”), at no cost to the Municipality, that will provide the Municipality access, on reasonable terms, to information identifying (a) anticipated Gas System Work, (b) Grantee’s planned capital improvement plans and major maintenance work related to the Gas System within the Municipality, (c) maps or other documents showing the locations of gas distribution mains in or under Public Right-of-Way within the Municipality; and (d) the status of ongoing Gas System Work and capital improvement plans and major maintenance work related to the Gas System within the Municipality (collectively, “**General System Information**”). The Grantee reserves the right to modify or replace the Information Sharing System from time to time at its discretion. Absent gross negligence or intentional misconduct by the Grantee, the Grantee shall have no monetary liability to the Municipality due to defects in the design or performance of the Information Sharing System or errors or omissions in the information disclosed through the Information Sharing System; provided, however, that this sentence does not change the Grantee’s obligation under Paragraph 1 of this Subsection and Subsection 13.A of this Ordinance with respect to General System Information. As part of the Annual Meeting, the Parties may discuss the performance of the Information Sharing System and any adjustments and refinements to the Information Sharing System and, if requested by the Municipality, the Grantee will provide information regarding any updates or other operational changes or improvements to the Information Sharing System.

SEC. 26.2-5 – CONSIDERATION FOR USE OF PUBLIC RIGHT-OF-WAY.

2. Payments; Provision of Gas. The Grantee shall make the Renewal Payment provided in Paragraph 1 of this Subsection and, commencing with calendar year 2016, either (but never both) (i) make the Annual Payments as provided and calculated in Paragraph 2 of this Subsection, or (ii) provide for Unbilled Gas as provided and calculated in Paragraphs 3 of this Subsection. The Municipality shall notify the Grantee in writing within sixty days after the Effective Date whether it has chosen to receive Annual Payments or Unbilled Gas. In the event the Municipality has not notified the Grantee in writing within sixty days after the Effective Date, the Municipality shall be deemed to have chosen to receive Annual Payments as provided and calculated in Paragraph 2 of this Subsection. Upon written notice to Grantee given on or before June 30 of the calendar year preceding the date of change, the Municipality may change the method of compensation from Annual Payments to Unbilled Gas, or vice versa, effective as of January 1 of any or all of the third, sixth, ninth, twelfth, fifteenth, eighteenth, twenty-first, or twenty-fourth calendar year following the Effective Date. In the event the Municipality has not so notified the Grantee of a change in the method of compensation by the applicable June 30, the method of compensation then in effect shall continue and may not be changed by the Municipality during the ensuing three calendar year period.
  
2. Renewal Payment. Within ninety days after the Effective Date, the Grantee will pay the Municipality, solely as consideration for renewal of the franchise granted under the Previous Agreement, a one-time franchise renewal payment (“**Renewal Payment**”) of \$42,192, being equal to 75 percent of the value of (a) the “**Therm Allocation**” (as calculated under Paragraph 4 of this Subsection) as of the Effective Date multiplied by (b) the “**Gas Cost per Therm**” (as calculated under Paragraph 2 of this Subsection).
  
2. Annual Payment. In January of each year except 2016 and in March of 2016, the Grantee will pay the Municipality an annual payment (“**Annual Payment**”) if the Municipality has chosen or has been deemed to have chosen to receive Annual Payments rather than Unbilled Gas for such calendar year. The amount of each Annual Payment will be calculated by the Grantee by multiplying (a) the “**Therm Allocation**” (as calculated under Paragraph 4 of this Subsection) times (b) the applicable Gas Cost per Therm. As used herein, the term “**Gas Cost per Therm**” means, with respect to a calendar year, the sum of (i) the average per therm gas cost for the preceding three calendar years, based on the Grantee’s prudently incurred purchased gas cost and (ii) the per therm rate for general gas service under the Grantee’s rate structure in effect as of the last day of the preceding calendar year.



- B. Unbilled Gas. If the Municipality has chosen to receive Unbilled Gas, the Grantee shall supply, during each billing year (start and finish of each year shall begin and end with regular meter reading date nearest to January 1) that the Municipality's choice to receive Unbilled Gas remains in effect, without charge to the Municipality, an amount of gas ("*Unbilled Gas*") not to exceed the Therm Allocation (as calculated under Paragraph 4 of this Subsection), to be used in buildings which may be occupied from time to time by the Municipality solely for municipal purposes, or such part of these buildings as may from time to time be occupied for ongoing municipal purposes, and not for purposes of revenue.
- C. Therm Allocation. For purposes of determining the Annual Payment or the amount of Unbilled Gas under Paragraphs 2 and 3, respectively, of this Subsection, the Therm Allocation will be based on the following formula: 3.6 therms per person up to 10,000 of population; 2.4 therms per person for the next 10,000 of population; 1.2 therm per person for the next 80,000 of population; 1.45 therms per person for the next 20,000 of population; and 1.8 therms per person for the population over 120,000. For purposes of the Therm Allocation, the population of the Municipality as of the Effective Date shall be deemed to be the same as the population of the Municipality at the 2010 decennial census, which was 52,497. This population number will be adjusted by the Grantee based on each decennial census count. Between decennial census counts, the Therm Allocation may be increased prospectively on the basis of changes in population of the Municipality as shown by revised or special census. Upon the submission of a written request by the Municipality accompanied by the official State notification of census change, the Therm Allocation will be adjusted by the Grantee.
- D. Limitations on Gas Use. None of Unbilled Gas to be supplied to the Municipality under Paragraph A3 of this Section, shall be resold by the Municipality for any purpose whatsoever. In the event the Municipality uses less than the amount of Unbilled Gas calculated and authorized under Paragraph A3 of this Section, there shall be no payment due to the Municipality from the Grantee for gas not used during that billing year, nor shall any such unused therms be carried over for the following billing year's use.
- C. Offset. If the Municipality has chosen or has been deemed to have chosen to receive Annual Payments, the Grantee shall have the right to reduce the Annual Payment for a calendar year by the amount of any fees that the Municipality has been paid by the Grantee during the preceding calendar year for permits, street or parkway openings, or inspections related to the Gas System or Gas System Works. If the Municipality has chosen to receive Unbilled Gas, the Grantee shall have the right to reduce the Therm Allocation for a billing year by an amount of therms equal to (a) the amount of any fees that the Municipality has been paid by the Grantee during the preceding billing year divided by (b) the Gas Cost per Therm determined for the calendar year that begins with the January 1 nearest to the end of such billing year.

SEC. 26.2-6 – ACCOUNTS AND RECORDS. Within 90 days following a written request by the Municipality made no more frequently than once during each calendar year of the Term, the Grantee will provide the Municipality with a written statement showing the gross operating revenue generated during the immediately preceding calendar year by the Grantee from the distribution of gas to customers identified in the Grantee’s billing records as located within the corporate limits of the Municipality, which statement will, if requested as part of the Municipality’s request, show the distribution of such gross operating revenue among the following categories of users: Residential, Commercial, and Industrial, or by such other categories as may be agreed to by the Grantee and the Municipality.

SEC. 26.2-7 – SUBSTITUTION OF MORE FAVORABLE PROVISIONS.

- A. Amended Ordinance. If during the Term of this Franchise, the Municipality learns of a Grantee franchise (“**Grantee Franchise**”) from any other municipality in Illinois (“**Other Franchisor**”) adopted or otherwise provided by the Other Franchisor after the Effective Date and containing “*More Favorable Provisions*” (as defined in Subsection C of this Section), then the Municipality may adopt, no sooner than 30 days from the date of providing the notice to the Grantee required pursuant to Subsection B of this Section, an ordinance amending this Ordinance solely to substitute for the provisions of Section 5 of this Ordinance replacement provisions that are substantially identical to the More Favorable Provisions (“**Amended Ordinance**”). If the Municipality adopts an Amended Ordinance in conformity with this Section 7, the Grantee will accept the Amended Ordinance and execute a Consent Agreement consistent with Section 15 of this Ordinance.
- B. Notice. At least 30 days before adopting an Amended Ordinance pursuant to this Section 7, the Municipality shall provide the Grantee with written notice that explicitly (i) states that the Municipality intends to invoke its right under this Section 7 to adopt an Amended Ordinance; (ii) identifies the Other Franchisor; (iii) states the date, time, and place of the meeting at which adoption of the Amended Ordinance will be considered; and (iv) includes the Amended Ordinance.
- C. More Favorable Provisions. “**More Favorable Provisions**” means the provisions in a Grantee Franchise (i) establishing the compensation to be paid by the Grantee to the Other Franchisor, including, without limitation, the formulas and procedures utilized to determine the form and amount of such compensation (“**Compensation Formulas and Procedures**”); and (ii) that the Municipality has reasonably concluded are more advantageous to or protective of the public interest of the Other Franchisor than the existing provisions of Section 5 of this Ordinance are to the Municipality. “More Favorable Provisions” shall not include provisions providing consideration to the Other Franchisor for franchise renewal (it being understood that the exercise by the Municipality of its right under this Section 7 shall not be deemed a franchise renewal). Replacement provisions in a proposed Amended Ordinance shall not be deemed to be substantially identical to More Favorable Provisions if those replacement provisions do not utilize the Compensation Formulas and Procedures as applied to the Municipality to determine the form and amount of compensation to be paid by the Grantee to the

Municipality. The Municipality shall not have the right to invoke this Section solely to effect a change in the form of compensation (between payments or unbilled gas) if that form of compensation had been available to the Municipality to select under Section 5 of this Ordinance, and neither the procedures for changing the form of compensation in Section 5 of this Ordinance nor those in the Compensation Formulas and Procedures would then have permitted the Municipality to make a change in the form of compensation.

- D. No Notification Required. Nothing in this Section shall require the Grantee to notify the Municipality of new franchises that the Grantee obtains with other municipalities in Illinois or new provisions within any existing franchise agreements.

SEC. 26.2-8 - INDEMNIFICATION.

- A. Grantee. The Grantee must, and will, fully indemnify the Municipality (but not any other third party) against and from any and all claims, liabilities, actions, damages, judgments, and costs, including without limitation injury or death to any person and damage to any property or Public Right-of-Way and including without limitation attorneys' fees (collectively, "**Claims**") that the Municipality may incur or suffer, or that may be obtained against the Municipality, as a result of or related to the Grantee's failure to perform any of its obligations under this Ordinance, or the Grantee's negligent, unlawful, or intentional wrongful acts or omissions that relate to (i) the use or occupation by Grantee of the Public Right-of-Way under this Ordinance, or (ii) the construction, operation, maintenance, or repair of the Gas System located within the Public Right-of-Way. The Municipality must give the Grantee written notice within 30 calendar days after the Municipality has received written notice of a Claim. The Municipality may tender to the Grantee the defense of a Claim, in which case the Grantee must defend the Municipality against that Claim, or the Municipality may defend itself against that Claim at the Grantee's expense. The Grantee shall not be required to indemnify, defend, or hold harmless the Municipality for any Claims to the extent the Municipality, its officers, agents, or employees are liable under the laws of the State of Illinois (including for conduct that constitutes gross negligence, malicious or intentional wrongful acts, or the willful misconduct of the Municipality, its officers, agents, or employees while acting on behalf of the Municipality).

- B. Municipality.

1. The Municipality must, and will, fully indemnify the Grantee (but not any other third party) against any and all Claims arising as a result of damages to the Grantee's Gas System caused by the conduct of the Municipality, its officers, employees, or agents for which the Municipality is liable under the laws of the State of Illinois (including for conduct that constitutes gross negligence, malicious or intentional wrongful acts, or the willful misconduct of the Municipality, its officers, agents, or employees while acting on behalf of the Municipality). The Municipality shall not be required to indemnify, defend, or hold harmless the Grantee for any damages to the extent the Grantee, its officers, agents, or employees are

liable under the laws of the State of Illinois (including for conduct that constitutes gross negligence, malicious or intentional wrongful acts, or the willful misconduct of the Grantee, its officers, agents, or employees while acting on behalf of the Grantee).

2. The Grantee recognizes the Municipality's right to exercise its police powers over the Public Right-of-Way in case of fire, disaster, or other emergency as reasonably determined by the Municipality. Notwithstanding Paragraph 1 of this Subsection, the Municipality shall not be liable to the Grantee for any damages to the Grantee's Gas System when the damage results from the exercise by the Municipality of its police powers in order to protect the public in case of fire, disaster or other emergency. When practicable, as reasonably determined by the Municipality, the Municipality shall consult with the Grantee prior to the exercise by the Municipality of these police powers, where the exercise may affect the Grantee's Gas System, and to permit the Grantee to take necessary action to protect the public and the Gas System.

SEC. 26.2-9 – INSURANCE. If the Grantee's total stockholder equity as determined in accordance with generally accepted accounting principles ("*Stockholder Equity*") as of the end of its most recently completed fiscal year is less than *fifty million dollars (\$50,000,000)*, the Grantee shall be obligated under this ordinance to maintain during its current fiscal year, at its sole cost and expense, insurance against the liabilities assumed under this ordinance consisting of the following coverages at the following minimum limits:

- D. Comprehensive General Liability. Comprehensive general liability insurance with coverage written on an "occurrence" or "claims made" basis and with limits no less than: (1) General Aggregate: \$2,000,000; (2) Bodily Injury: \$2,000,000 per person, \$2,000,000 per occurrence; and (3) Property Damage: \$2,000,000 per occurrence. Coverage must include: Premises Operations, Independent Contractors, Personal Injury (with Employment Exclusion deleted), Broad Form Property Damage Endorsement, Blanket Contractual Liability, and bodily injury and property damage. Exclusions "X," "C," and "U" must be deleted. Railroad exclusions must be deleted if any portion of the Gas System Work is within 50 feet of any railroad track. Every employee of the Grantee engaged in Gas System Work within the Municipality must be included as an insured.
- B. Comprehensive Motor Vehicle Liability. Comprehensive motor vehicle liability insurance with a combined single limit of liability for bodily injury and property damage of not less than \$2,000,000 for vehicles owned, non-owned, or rented. The coverage required by this subsection shall include bodily injury and property damage for all motor vehicles engaged in Gas System Work within the Municipality that are operated by any employee, subcontractor, or agent of the Grantee.
- E. Workers' Compensation. Workers' compensation coverage in accordance with applicable law.

- E. General Standards for All Insurance. If obligated under this Section to maintain the foregoing insurance coverages, (i) the Grantee may satisfy that obligation, in whole or in part, through insurance provided by a captive insurance company affiliated with the Grantee to the extent permitted under applicable law if such captive insurance company and the Grantee are both controlled by a company with Stockholder Equity as of the end of its most recently completed fiscal year of at least *fifty million dollars (\$50,000,000)*, or through commercial insurance; (ii) all commercial insurance policies obtained by the Grantee to satisfy such obligation must be written by companies customarily used by public utilities for those purposes, including, if permitted by this Subsection, policies issued by a captive insurance company affiliated with the Grantee; (iii) the Grantee must provide the Municipality, upon request, with reasonable evidence of insurance and with certificates of insurance for commercial coverage designating the Municipality and its officers, boards, commissions, elected officials, agents, and employees as additional insured and demonstrating that the Grantee is maintaining the insurance required in this Section; and (iv) each policy shall provide that no change, modification, or cancellation of any insurance coverage required by this Section shall be effective until the expiration of 30 calendar days after written notice to the Municipality of any such change, modification, or cancellation and providing that there is no limitation of liability of the insurance if the Grantee fails to notify the Municipality of a policy cancellation.

SEC. 26.2-10 – CURE. In addition to every other right or remedy provided to the Municipality under this Ordinance, if the Grantee fails to comply in a material respect with any of its material obligations under this Ordinance (for reason other than force majeure), then the Municipality may give written notice to the Grantee specifying that failure. The Grantee will have 30 calendar days after the date of its receipt of that written notice to take all necessary steps to cure such material non-compliance, unless the cure cannot reasonably be achieved within 30 calendar days but the Grantee promptly commences the cure and diligently pursues the cure to completion.

SEC. 26.2-11 – FORCE MAJEURE. Neither the Grantee nor the Municipality will be held in violation or breach of this Ordinance when a violation or breach occurred or was caused by (a) riot, war, earthquake, flood, terrorism, or other catastrophic act beyond the respective Party's reasonable control or (b) governmental, administrative, or judicial order or regulation other than, in the case of the Municipality, an order or regulation issued by the Municipality not in the exercise of its police powers in order to protect the public in the case of fire, disaster or other emergency.

SEC. 26.2-12 – NOTICE. With respect to an Emergency, Grantee shall provide notice to the Municipality in accordance with Subsection 4.D. of this Ordinance. Any other notice that (a) requires a response or action from the Municipality or the Grantee within a specific time frame or (b) would trigger a timeline that would affect one or both of the parties' rights under this Ordinance must be made in writing and must be sufficiently given and served on the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

If to Municipality:

Town of Normal  
11 Uptown Circle  
PO Box 589  
Normal, IL 61761-0589  
Attention: City Manager

If to Grantee:

Northern Illinois Gas Company d/b/a Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois 60563  
Attention: President

with a copy to:

Northern Illinois Gas Company d/b/a Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois 60563  
Attention: Community Relations and Economic Development Department

For other notices regarding the general business between the parties, e-mail messages and facsimiles will be acceptable when addressed to the persons of record specified above.

SEC. 26.2-13 – GENERAL PROVISIONS.

1. Communications and Annual Meeting.
2. General Communications. The Grantee and the Municipality believe that it is in their mutual interests to maintain consistent and reliable means of communications regarding all matters under this Franchise. Nothing in this Section precludes the parties in any way from conducting meetings and communications not specifically provided in this Section on any other dates and times during the Term as necessary, required, or otherwise desired.
3. Annual Meeting. Except as the Grantee and the Municipality may otherwise agree, upon 45 days prior written notice from the Municipality to the Grantee given no more frequently than once during each calendar year of the Term, the representatives of the Grantee and the Municipality will meet at the offices of the Municipality or another mutually acceptable location (“*Annual Meeting*”).

- B. Annual Meeting Matters. At the Annual Meetings the Parties will review, as necessary, any matters related to this Ordinance and the Franchise as generally identified by the Municipality in its written notice provided pursuant to Paragraph 2 of this Subsection related to (i) the Gas System and Gas System Work; (ii) issues that have arisen since the prior Annual Meeting regarding the Grantee's activities conducted under the authority granted by this Ordinance, (iii) efforts and initiatives by the Grantee or the Municipality, or both, to promote energy efficiency and cost savings related to the use of gas supplied by the Grantee; and (iv) identification of anticipated future capital improvement programs by the Municipality and the Grantee in an effort to coordinate those programs whenever practical in an effort to minimize costs for both the Municipality and the Grantee and to reduce public inconvenience (collectively, "**Annual Meeting Matters**"). The Grantee's and the Municipality's representatives at Annual Meetings shall include individuals with the knowledge, experience and authority required to address competently and to seek to resolve the Annual Meeting Matters identified from discussion at the Annual Meeting.
- B. Good Faith Efforts to Resolve Annual Meeting Matters. The Municipality and the Grantee will constructively discuss the Annual Meeting Matters at the Annual Meetings. The goal of these discussions is to ensure that the Grantee and the Municipality have sufficient information to address and, if possible, resolve the Annual Meeting Matters and the Parties will share information reasonably necessary for those purposes; provided, however that neither the Grantee nor the Municipality will be required to respond to unduly burdensome information requests or to provide confidential or privileged information to the other party. The parties will work in good faith to resolve Annual Meeting Matters on mutually acceptable terms and to do so within a reasonable period of time. To the extent that resolution of an Annual Meeting Matter is not otherwise provided by the terms of this Franchise, the parties may memorialize their understandings related to resolution of Annual Meeting Matters through memoranda of understanding, supplemental agreements, or other arrangements mutually agreed to.
- B. Assignments of Rights by Grantee. All provisions of this Ordinance that are obligatory upon, or which inure to the benefit of, NICOR GAS shall also be obligatory upon and shall inure to the benefit of any and all successors and permitted assigns of NICOR GAS, and the word "Grantee" wherever appearing in this Ordinance shall include and be taken to mean not only NICOR GAS, but also each and all of such successors and permitted assigns. The Grantee may not assign any right it has under this Ordinance without the prior express written authorization of the Municipality by ordinance or resolution of the Corporate Authorities. The Municipality will not withhold that authorization if (a) the Assignee is technically and financially capable of operating and maintaining the Gas System in the reasonable judgment of the Municipality and (b) the Assignee assumes all of the obligations of the Grantee under this Ordinance except as they may be amended in writing and approved by the Municipality.

- F. Entire Agreement; Interpretation. This Ordinance embodies the entire understanding and agreement of the Municipality and the Grantee with respect to the subject matter of this Ordinance and the Franchise. This Ordinance supersedes, cancels, repeals, and shall be in lieu of the Previous Agreement.
- G. Governing Law; Venue. This Ordinance has been approved executed in the State of Illinois and will be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of the State of Illinois. Any court action against the Municipality may be filed only in McLean County, Illinois, in which the Municipality's principal office is located.
- H. Amendments. Except as otherwise provided pursuant to Section 7 of this Ordinance, no provision of this Ordinance may be amended or otherwise modified, in whole or in part, to be contractually binding on Grantee, except by an instrument in writing duly approved and executed by the Municipality and accepted by the Grantee by execution of a Consent Agreement consistent with Section 15 of this Ordinance.
- I. No Third-Party Beneficiaries. Nothing in this Ordinance is intended to confer third-party beneficiary status on any person, individual, corporation, or member of the public to enforce the terms of this Ordinance.
- J. No Waiver of Rights. Nothing in this Ordinance may be construed as a waiver of any rights, substantive or procedural, the Grantee or the Municipality may have under federal or State of Illinois law unless such waiver is expressly stated in this Ordinance.

SEC. 26.2-14 – MUNICIPALITY AUTHORITY RESERVATION. The Municipality reserves, subject to the limitations of applicable federal and State of Illinois laws, (i) its powers necessary or convenient for the conduct of the Municipality's municipal affairs and for the public health, safety and general welfare; and (ii) its right to own and operate a gas utility in competition with the Grantee. Notwithstanding the foregoing, the Municipality will not take any such action that would have the effect of depriving Grantee of the rights, permissions and authorities granted to Grantee under this Ordinance.

SEC. 26.2-15 – CONSENT AGREEMENT.

Within ninety days after the Effective Date, the Grantee will file with the Municipality a written agreement to accept and comply with the terms of this Ordinance as attached to this Ordinance as Exhibit A ("**Consent Agreement**"), duly executed by authorized representatives of the Grantee. The Grantee's failure to provide the Consent Agreement within ninety days after the Effective Date shall be deemed a rejection of this Ordinance by the Grantee, and the rights and privileges herein granted shall absolutely cease and terminate, unless, within ninety days after the Effective Date, the time period for the Grantee to file the Consent Agreement is extended by the Municipality by ordinance duly passed for that purpose and the Grantee has agreed in writing to such extension.



EXHIBIT A

Pursuant to Section 15 of that certain Natural Gas Franchise Ordinance duly passed by the City Council/Board of Trustees of the Town of Normal (the "Municipality") on January 19, 2016, and duly approved by the Mayor/President of the Municipality on January 20, 2016 (the "Ordinance"), a copy of which is attached hereto, Northern Illinois Gas Company d/b/a Nicor Gas Company, an Illinois corporation hereby accepts and agrees to comply with the Ordinance.

NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS COMPANY

By: Patrick E. Whiteside

Name: Patrick E. Whiteside

Title: Vice President

Date: March 11, 2016

**DIVISION 3 – GTE NORTH**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORMAL, McLEAN COUNTY, ILLINOIS:

SEC. 26.3-1. GTE North Incorporated, its lessees, successors and assigns (hereinafter referred to as the “Company”) are hereby granted the right, privilege, authority and franchise to construct, erect, maintain, repair, replace and operate in, upon, along, across, under and over the public streets, alleys, and public utility easements, rights of way, and other public ways (hereinafter referred to as “public ways”) within the corporate limits of the Town of Normal, as the same now exist or may hereafter be extended (hereinafter referred to as the “Municipality”) lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment, and to use the same for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds by means of electricity and/or light, and especially for the conduct of a general telephone system and business, for the period of ten (10) years from January 1, 1990, until January 1, 2000, and thereafter until terminated by sixty (60) days’ written notice, either by the Municipality to the Company, or by the Company to the Municipality. The grant of authority herein shall not include the right to use public ways to conduct customary cable television services as the same is defined in the Illinois Municipal Code (65 ILCS 5/11-42-11 State Bar Edition, 1992, as amended). (Amended 6/7/93 by Ord. No. 4143)

SEC. 26.3-2. The location and height above or the depth below the public ways of the existing lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment of said Company within the Municipality are hereby approved, and the same shall be maintained and operated under and subject to the provisions of this Division. Any change in or extension of any said poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as “structures”), or the construction of any additional structures, in, upon, along, across, under or over the public ways of the Municipality shall be made under the direction of the Director of Public Works of the Municipality, or such other officers as may be designated from time to time by the Municipal Manager of the Municipality for that purpose, who shall, if the proposed change, extension or construction conforms to the provisions of the then current Town codes, ordinances, and regulations of uniform application, issue written permits therefore. The height above public ways of all aerial wires and cables hereafter constructed shall conform to the requirements of the Illinois Commerce Commission or other regulatory body having jurisdiction thereof. All structures hereafter installed shall not unreasonably interfere with customary travel, and all work in connection with such installation shall be so performed as not to interfere unreasonably with customary travel on the streets of the Municipality or with any municipal facility then in place, and in case of the municipality bringing to grade or change of grade or change of width or improvement of any street and/or alley or the municipality installing, maintaining, improving, or relocating municipal water or municipal sewer pipes said Company, provided it is notified within reasonable time prior to the commencement thereof, shall change its structures so as to conform thereto, except where such change of grade or the width or any improvement of street or alley is made in connection with the rearrangement, separation or alteration of railroad crossings or is incident to any such rearrangements, separation or alteration. The tops of all vaults constructed by said Company within the Municipality shall present an even surface with the pavement at the point where laid, and, subject to the exception contained in the last preceding sentence, shall be lowered or raised by said Company to conform to the tops of paving or improvement as required by the governing body of the Municipality whenever the grade of the street or alley in which any such vault is located may be at any time hereafter lowered or raised.

SEC. 26.3-3. The Company, after doing any excavating, shall leave the surface of the ground in a neatly graded condition. All public ways disturbed by said Company shall be restored by it to as good condition as before said areas were disturbed by it, and in the event that any such areas shall become uneven, unsettled or otherwise requires repairing because of such disturbance by the Company, then said Company, as soon as climatic conditions will permit, shall, promptly upon receipt of notice from the Municipality cause such areas to be repaired or restored to as good condition as before said areas were disturbed by said Company. The Company shall keep all structures which it shall construct by virtue of this Division, in a reasonable safe condition at all times, and shall maintain such barriers and danger signals during the construction, repair or renewal work performed hereunder as will reasonably avoid damage to life, limb and property.

SEC. 26.3-4. The Company shall, at its own expense, defend all claims, demands or suits that may be brought against the Municipality on account of or in connection with any of the obligations and/or rights hereby imposed upon or granted in this franchise to the Company, or by reason of or in connection with any damage to life, limb or property as a result of any of the work done on structures located within public ways by it under or by virtue of this Division, and shall save and keep harmless the Municipality from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided, that notice in writing shall be promptly given to said Company of any claim or suit against the Municipality which, by the terms hereof, the said Company shall be obligated to defend, or against which the Company has hereby agreed to save and keep harmless the Municipality and provided further that the Municipality shall furnish to said Company all information in its possession relating to said claim or suit, co-operate with said Company in the defense of said claim or suit. The Municipality may, if it so desires, assist in defending any such claim or suit. The Company will not rely upon governmental immunity afforded to the Municipality, and further agrees that it will pay the costs incurred by the Municipality for the necessary defense of any suit not only against the Municipality but also against its officers and employees resulting from this franchise agreement.

SEC. 26.3-5. As a consideration for the rights, privileges, and authority hereby granted, while said Company is using any pole or poles erected or maintained hereunder, it will permit the Municipality the use of sufficient space on the poles or adequate facilities for the successful operation of the Municipality's police and fire alarm signal systems to be accomplished by two methods: (1) by means of one pole fixture to be placed, in accordance with the Company's specifications, by the Municipality at its expense at the top of the space available for the use of the Company on any said poles, it being understood that the poles upon which space is permitted in the Municipality shall be considered, for the purpose of this agreement, as personal property; provided that such wires shall be so placed and maintained by the Municipality that the use of the same will not interfere with the operation and maintenance of the Company's equipment or its use of said poles, and provided further that a thirty (30) inch climbing space shall be maintained between the pole pin on poles jointly used with another public utility. All such police and fire alarm signal wires shall be attached and maintained under the direction and supervision of said Company's authorized representatives, and only upon the following conditions: No such police and fire alarm signal wire shall be attached to any of said poles of said Company if such wires shall carry a voltage of more than four hundred (400) volts, nor if the transmitted power exceeds one hundred fifty (150) watts, nor if, in any part of the circuit of such wire, it is supported upon a pole on which there is any wire carrying a constant potential A.C. exceeding five thousand (5,000) volts between conductors,

or twenty-five hundred (2,500) volts normally to ground, or a constant potential D.C. exceeding seven hundred fifty (750) volts to ground, or a constant current series arc or incandescent light circuit, carrying in excess of seven and five-tenths (7.5) amperes. In case any such police and fire alarm signal wire in any part of its circuit is supported upon a pole on which there is any wire used for the supply of electrical energy for lighting, heating or power purposes, carrying a constant potential alternating current of five thousand (5,000) volts or less between conductors, or twenty-five hundred (2,500) volts or less normally to ground, or a D.C. circuit of seven hundred fifty (750) volts or less to ground or a constant current series arc or incandescent light circuit carrying seven and five-tenths (7.5) amperes or less, then such police or fire alarm signal wire shall be attached to such pole at a point not less than four (4) feet below such wire used for the supply of electrical energy. (2) In the event sufficient space is not available on said poles for the attachment of the fixtures, said Company will permit the Municipality the use of other facilities furnished by it for the successful operation of the police and fire alarm systems. The Company reserves the right to designate the type of facilities to be furnished to the Municipality for the purposes as stated herein. The Municipality shall, at its own expense, defend all claims, demands, or suits on account of any injury to life, limb or property that may result by reason of or in connection with the presence, use, maintenance, erection or removal of the Municipality's police and fire alarm signal wires and their appurtenances pursuant hereto, and hereby agrees to save and keep harmless said Company from any and all damages, judgments, costs and expenses of any kind which may arise by reason thereof.

SEC. 26.3-6. In addition to the consideration described above, Company agrees to pay Municipality prior to March 1 of each year, commencing March 1, 1990, three dollars and fifty cents (\$3.50) for each switched access line in the Town of Normal. For purposes of computation, a switched access line is any line that goes through a switch, including but not limited to residence lines, business lines, Centrex, PBX trunks, FX and key lines. Lines not included are non-switchable lines such as point to point lines. The number of switched access lines shall be determined as of December 31<sup>st</sup> of each preceding year.

SEC. 26.3-7. The amount per switched access line (\$3.50) shall be subject to adjustment in accordance with changes in the Consumer Price Index for all urban consumers for the Chicago, Illinois, area as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-1984 as a base of 100 (the CPI) or such successor price index. Adjustments shall be made in January every two (2) years as follows: January, 1992; January, 1994; January, 1996; January, 1998. In no event, however, shall any adjustment cause the annual payment provided in Section 26.3-6 to be less than \$3.50 per switched access line.

SEC. 26.3-8. The Company after five (5) days written notice from a representative of the Municipality to do so, shall remove or raise or lower its structures temporarily to permit the moving of a building or any other object along a street, provided the benefited party or parties shall agree to pay the Company an amount equal to the actual cost of effecting such temporary changes in its structures; and provided further that, pending the determination of such actual cost, the benefited party or parties shall have deposited with the Company an amount equal to the costs as estimated by the Company. Should any amount of said deposit remain unexpended, after deducting the actual cost involved, said amount shall be returned to the party making the deposit.

SEC. 26.3-9. The Company does further agree to furnish an indemnifying performance bond in the minimum amount of ten thousand dollars (\$10,000.00).

SEC. 26.3-10. In case said Company shall fail or neglect to comply with any or all of the provisions of this Division (unless by order of the Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction), the Municipality reserves the right to repeal this Division or rescind this contract, and forfeit the rights hereby created or sought to be created, provided that no such repeal, rescission or forfeiture shall exist or be claimed because of such failure or neglect, until written notice of such failure or neglect so claimed shall have been given to said Company, and a reasonable opportunity afforded it to comply with the provisions hereof or to prove that such compliance already exists. In the event that said Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction shall adjudge any provision or provisions hereof invalid or illegal, or direct a change by the company in any matter or thing herein contained such invalidity or illegality or change shall in no way affect the remaining provisions of this Division, or their validity or legality, and this Division in all other respects shall continue in full force and effect, as if said provision or provisions had not been so adjusted invalid or illegal or such change directed provided however either party may upon a sixty (60) day notice request negotiations of this Agreement in whole or in part.

SEC. 26.3-11. All grants, franchises, rights, licenses and privileges heretofore made or granted the Company by the Municipality by Ordinance No. 435, approved January 7, 1963, are hereby revoked and repealed, it being the intention that this Division shall contain all grants, franchises, rights, licenses and privileges of said Company, and all obligations of said Company in connection therewith.

SEC. 26.3-12. Whenever the word "Company" or the words "GTE North Incorporated" are used in this Division, they shall be construed to mean GTE North Incorporated, its lessees, successors, and assigns, and this Division shall be binding upon the inure to the benefit of the said Company, its lessees, successors and assigns.

SEC. 26.3-13. This Division shall be in full force upon receipt, by the Clerk of the Municipality, of the Company's written and unconditional acceptance of all the provisions of this Division executed by its proper officers thereunto duly authorized, under the corporate seal of said Company, and attested by its Secretary or Assistant Secretary.

(Entire Division 3 of Section 26 Amended 3/19/90)

**DIVISION 4 – CORN BELT ENERGY CORPORATION**

SEC. 26.4-1. Corn Belt Energy Corporation, an Illinois Corporation, (hereinafter referred to as “Company”) is hereby granted the right, privilege, authority and franchise to construct, erect, maintain, repair, replace and operate in, upon, along, across, under and over the public streets, alleys, and public utility easements, rights of way, and other public ways (hereinafter referred to as “public ways”) within the corporate limits of the Town of Normal, as the same now exist or may hereafter be extended (hereinafter referred to as the “Town” or “Municipality”) lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment, and to use the same for the transmission, distribution, and sale of electric energy, for the period from acceptance of the franchise until December 31, 2025, and thereafter until terminated by sixty (60) days’ written notice, either by the Municipality to the Company, or by the Company to the Municipality. The grant of authority herein shall not include the right to use public ways to conduct customary cable television services as the same is defined in the Illinois Municipal Code (65 ILCS 5/11-42-11). The grant of authority shall not include the right to allow other entities to use Company’s fixtures and equipment unless such other entities or persons have an agreement with the Town to use Town public ways.

SEC. 26.4-2. The location and height above or the depth below the public ways of the existing lines or poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment of said Company within the Municipality are hereby approved and the same shall be maintained and operated under and subject to the provisions of this Franchise. Any change in or extension of any said poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as “structures”), or the construction of any additional structures, in, upon, along, across, under or over the public ways of the Municipality shall be made under the direction of the Director of Public Works of the Municipality, or such other officers as may be designated from time to time by the Manager of the Municipality for that purpose, who shall, if the proposed change, extension or construction conforms to the provisions of the then current Town codes, ordinances, and regulations of uniform application, issue written permits therefore. In the event the municipality fails to respond to a request for a permit within five (5) days, then Company may proceed with the proposed work subject to the right of the municipality to stay work. New wires and cables shall be buried as required by the Town Subdivision Code, except in subdivisions outside the corporate limits subject to Town control new wires and cables may be overhead along unimproved roadways, provided such wires and cables shall be buried as required by the Town Subdivision Code when the adjacent road is improved to urban standards. Main distribution lines (12.5 KV or higher) serving multiple subdivisions may be overhead. All structures hereafter installed shall not unreasonably interfere with customary travel, and all work in connection with such installation shall be so performed as not to interfere unreasonably with customary travel on the streets of the Municipality or with any municipal facility then in place. The tops of all vaults constructed by said Company within the Municipality shall present an even surface with the pavement at the point where laid, and, shall be lowered or raised by said Company to conform to the tops of paving or improvement as required by the governing body of the Municipality whenever the grade of the street or alley in which any such vault is located may be at any time hereafter lowered or raised.

SEC. 26.4-3. The Company, after doing any excavating, shall leave the surface of the ground in a neatly graded condition. All public ways disturbed by said Company shall be restored by it to a condition reasonably similar to the condition that existed before said areas were disturbed by it as determined by the Town, and in the event that any such areas shall become uneven, unsettled or otherwise require repairing because of such disturbance by the Company, then said Company, as soon as climatic conditions will permit, shall, promptly upon receipt of notice from the Municipality cause such areas to be repaired or restored to as good condition as before said areas were disturbed by said Company. The Town shall promptly inspect repaired and restored areas to determine compliance with this franchise. If the repair or restoration is satisfactory, then Town shall notify Company and Company shall be obligated for one (1) year from notice to maintain the repaired and restored areas. The Company shall keep all structures which it shall construct by virtue of this Division, in a reasonable safe condition at all times, and shall maintain such barriers and danger signals during the construction, repair or renewal work performed hereunder as will reasonably avoid damage to life, limb and property.

SEC. 26.4-4. All street light poles erected under this ordinance shall be not more than thirty (30) feet out of ground unless authorized by the Town and all poles and conduits shall be located as not to injure any municipal property. In the event Company causes any injury to municipal property, Company shall forthwith repair the damage caused by such injury. All street light poles shall be set in a straight line as far as possible and no wires shall be attached to any tree. All abandoned poles shall be removed as soon as service is disconnected and the ground restored level with the adjoining surface. Company agrees to only use luminair types approved by Municipality.

SEC. 26.4-5. No buildings shall be erected by Company on any public way within the Town.

SEC. 26.4-6. Municipality gives and grants to the Company the right, privilege and authority, at all times deemed necessary by the Company, to trim trees, or any portion of said trees, or any portion of said trees, upon, along, over and/or across each and all of such streets, avenues, alleys, bridges, easements, rights of way and/or other public places in accordance with Town of Normal ordinances and Illinois Statutes regulating tree trimming by utility companies.

SEC. 26.4-7. When any street, avenue, public way, or other public facility or structure shall be graded, curbed, paved, or otherwise changed so as to make the resetting or relocation of any poles or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation at the Company's cost and expense. The Municipality shall provide the Company with a suitable location for the resetting or relocation of such poles or other equipment, and the Company's obligation shall be limited to resetting or relocating poles or other equipment of the same type and configuration as the displaced poles or other equipment of the same type and configuration as the displaced poles or other equipment. The Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality and the establishment by the Municipality of the permanent grade at the new location.

SEC. 26.4-8. The Company shall, (except as provided in SEC. 26.4-9), at its own expense, defend all claims, demands or suits that may be brought against the Municipality on account of or in connection with any of the obligations and/or rights hereby imposed upon or granted in this franchise to the Company, or by reason of or in connection with any damage to life, limb or property as a result of any of the work done on structures located within public ways by it under or by virtue of this Franchise, and shall save and keep harmless the Municipality from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided, that notice in writing shall be promptly given to said Company of any claim or suit against the Municipality which, by the terms hereof, the said Company shall be obligated to defend, or against which the Company has hereby agreed to save and keep harmless the Municipality and provided further that the Municipality shall furnish to said Company all information in its possession relating to said claim or suit, co-operate with said Company in the defense of said claim or suit. The Municipality may, at no charge to Company, if it so desires, assist in defending any such claim or suit. The Company will not rely upon governmental immunity afforded to the Municipality, and further agrees that it will pay the costs including attorney fees incurred by the Municipality for the necessary defense of any suit not only against the Municipality but also against its officers and employees resulting from this franchise agreement.

SEC. 26.4-9. As a consideration for the rights, privileges, and authority hereby granted, while said Company is using any public way, it will permit the Municipality the use of sufficient space on the poles or adequate facilities for municipal purposes (including, but not limited to traffic regulatory signs, telecommunications and data transmission lines), except municipality shall not use Company's facilities for the retail sale of services. The Company reserves the right to designate the type of facilities to be furnished to the Municipality for the purposes as stated herein. Such use by Municipality shall not unreasonably interfere with Company facilities. If the Company modifies or plans to remove poles, municipality shall remove facilities from poles within thirty (30) days. The Municipality shall, at its own expense, defend all claims, demands, or suits on account of any injury to life, limb or property that may result by reason of or in connection with the presence, use, maintenance, erection or removal of the Municipality's wires and their appurtenances pursuant hereto, and hereby agrees to save and keep harmless said Company from any and all damages, judgments, costs and expenses of any kind which may arise by reason thereof.

SEC. 26.4-10. Company agrees to furnish free of charge all electric service for lighting purposes for all Town owned facilities, including but not limited to, buildings, water treatment plant, sewer lift stations, water well pumps, yard lights, and parking lot lights. Free service pursuant hereto shall apply only if separately metered. It is agreed the following athletic facilities shall not be separately metered: Athletic fields, tennis courts, swimming pools and golf course driving ranges.

SEC. 26.4-11. (Reserved)

SEC. 26.4-12 (Reserved)



SEC. 26.4-13. Franchise Fee. As consideration for the rights, privileges, and authority hereby granted, while Company is using any public way, Company agrees to pay Town a fee equal to 3% of the residential receipts received by Company for services provided by Company to customers within the Town of Normal. The fee shall be assessed and collected on a monthly basis for electricity service provided within Town to each residential customer of Company.

In the event Town elects to impose an infrastructure maintenance fee pursuant to 35 ILCS 645/5-1 et seq. or other similar legislation authorizing such fee, the parties agree that the value of the franchise fee provided in this agreement is a minimum amount as determined herein and subject to increase based on growth of kilowatt hours of electricity consumed within the Town. The assessment rate will be the same rate imposed on Ameren/IP.

Any fee provided herein shall be payable on a monthly basis beginning 30 days following the effective date of this agreement.

Town shall have the right, upon reasonable notice, to audit Company's books of records for the purpose of determining compliance with this Section.

SEC. 26.4-14. The Company, after ten (10) working days written notice from a representative of the Municipality to do so, shall remove or raise or lower its structures temporarily to permit the moving of a building or any other object along a street, provided the benefited party or parties shall agree to pay the Company an amount equal to the actual cost of effecting such temporary changes in its structures; and provided further that, pending the determination of such actual cost, the benefited party or parties shall have deposited with the Company an amount equal to the costs as estimated by the Company. Should any amount of said deposit remain unexpended, after deducting the actual cost involved, said amount shall be returned to the party making the deposit.

SEC. 26.4-15. The Company does further agree to furnish an indemnifying performance letter of credit or cash escrow in the minimum amount of one hundred thousand dollars (\$100,000.00). Form and bank to be approved by the Town of Normal.

SEC. 26.4-16. In case said Company shall fail or neglect to comply with any or all of the provisions of this Franchise (unless by order of the Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction), the Municipality reserves the right to repeal this Franchise or rescind this contract, and forfeit the rights hereby created or sought to be created, provided that no such repeal, rescission or forfeiture shall exist or be claimed because of such failure or neglect, until written notice of such failure or neglect so claimed shall have been given to said Company, and a reasonable opportunity afforded it to comply with the provisions hereof or to prove that such compliance already exists.

Alternatively, or in addition to the revocation rights provided above, Municipality and Company may mutually invoke binding arbitration concerning any dispute between Company and Municipality arising out of this Franchise. The arbitration panel shall consist of three (3) members, being one member chosen by each party and one member chosen by agreement of those two members. Arbitration shall be expedited and shall be conducted in accordance with the Illinois Uniform Arbitration Act (710 ILCS 5/1 et seq). The arbitration panel shall have authority to order compliance with the Franchise Agreement and assess against the non-complying party actual damages incurred by the other party.

In the event the Illinois legislature, the Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction shall preempt, or adjudge any provision or provisions hereof invalid or illegal, or direct a change by the company in any matter or thing herein contained such invalidity or illegality or change shall in no way affect the remaining provisions of this Franchise, or their validity or legality, and this Franchise in all other respects shall continue in full force and effect, as if said provision or provisions had not been so adjusted invalid or illegal or such change directed provided however, in the event of any of the preceding conditions, either party may upon a sixty (60) day notice request re-negotiations of this Agreement in whole or in part.

SEC. 26.4-17. In the event Company breaches any term or condition of this agreement, Town shall have in addition to the remedies provided in SEC. 26.4-16 any other remedy provided by law including the right to seek equitable relief in any court of competent jurisdiction. In the event of litigation, Company consents to venue in McLean County, Illinois. The parties may, by mutual agreement, submit disputes to arbitration in accordance with the Illinois Uniform Arbitration Act.

SEC. 26.4-18. All grants, franchises, rights, licenses and privileges heretofore made or granted the Company, are hereby revoked and repealed, it being the intention that this Franchise shall contain all grants, franchises, rights, licenses and privileges of said Company, and all obligations of said Company in connection therewith.

SEC. 26.4-19. This Agreement is binding upon the parties, its successors, and assigns. This Agreement shall not be assigned in whole or in part without the written consent of municipality.

SEC. 26.4-20. This Franchise shall be in full force upon receipt, by the Clerk of the Municipality, of the Company's written and unconditional acceptance of all the provisions of this Division executed by its proper officers thereunto duly authorized, under the corporate seal of said Company, and attested by its Secretary or Assistant Secretary.

ACCEPTANCE

Corn Belt Energy Corporation, in consideration of the rights and privileges granted by Ordinance No. 5612 of the Town of Normal, Illinois, passed on December 21, 2015 and approved on December 22, 2015, and entitled *An Ordinance Amending Division 4 of chapter 26 of the Municipal Code—Corn Belt Energy Corporation Franchise Agreement*, accepts that ordinance and all of the provisions thereof.

In Witness Whereof, Corn Belt Energy Corporation has caused these presents to be signed by its President or a Vice President and attested by its Secretary or an Assistant Secretary and its corporate seal to be affixed on January 12, 2015

**Corn Belt Energy Corporation**

By: /s/ Steven H. Hancock (Name)  
VP of Electric Distribution (Title)

(Corporate Seal)

**Attest:**

By: /s/ Lynn Oleson (Name)  
Director of Accounting & Finance (Title)

(Entire Division 26 Amended 12/19/05 by Ord. No. 5045)(Entire Division 26 Amended 12/21/2015 by Ord. No. 5612)

**DIVISION 5 -- CATV**

This Section deleted in its entirety by Ord. No. 4556 on October 19, 1998.

**DIVISION 5.1 -- COMMUNITY ANTENNA TELEVISION SYSTEM**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Normal, Illinois (hereinafter, the “Town”) and Comcast of Illinois/ Indiana/ Ohio, LLC, (hereinafter, “Grantee”) this 7th day of August, 2017 (the “Effective Date”).

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

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

**SEC. 26.5.1-1: DEFINITION OF TERMS.** For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

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

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

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

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand

Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

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

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

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

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

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

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

“Grantee” shall mean Comcast of Illinois/ Indiana/ Ohio, LLC.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the Town’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282-R, *Memorandum Opinion and Order*, 16 FCC Rcd. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture,

corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Town.

“Public, Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the public, educational institutions such as public or private schools, but not “home schools”, community colleges, and universities, as well as the Town.

“Public, Educational and Governmental (PEG) Access Programming” shall mean noncommercial programming produced by any Town residents or organizations, schools, and government entities and the use of designated facilities, equipment and/ or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Franchise Area, which shall entitle the Town and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Town within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Town and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

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

“Town” means the Town of Normal, Illinois or the lawful successor, transferee, designee, or assignee thereof.

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

#### SEC 26.5.1-2: GRANT OF AUTHORITY.

- 2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, the Illinois Constitution, and Ordinance No. 5699 approving and authorizing the execution of this Agreement, the Town hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

- 2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the provision of Cable Service.
- 2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.
- 2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Town of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Town pursuant to such police power.
- 2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Town to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or (C) be construed as a waiver or release of the rights of the Town in and to the Public Ways.
- 2.6. Competitive Equity.
  - 2.6.1. In the event the Town grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.
  - 2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.
  - 2.6.3. No application fee or Security Fund shall be required of the Grantee for any permit required by the Town, provided that Grantee shall have timely made all payments to the Town pursuant to Section 5.1 of this Franchise Agreement.

#### SEC. 26.5.1-3: CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM.

- 3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Chapter 8 of the Town of Normal Municipal Code as may be amended from time to time.
- 3.2. Aerial and Underground Construction. At the time of Cable System



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

- 3.3. Improvements of the Public Way. The Grantee agrees that it shall, upon reasonable notice by the Town and at the Grantee's own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system facilities, or equipment when required to do so by the Town because of public health, safety and welfare improvements as deemed necessary by the Town. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way.
- 3.4. Undergrounding and Beautification Projects.
  - 3.4.1. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.
  - 3.4.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least ninety (90) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

#### SEC. 26.5.1-4: SERVICE OBLIGATIONS.

- 4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Service

Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least sixty-six (66) dwelling units per linear Cable System network mile as measured from the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable (e.g., a Standard Installation).

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

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

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

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

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time.

4.5. New/Planned Developments. The Town shall provide the Grantee with written notice of the issuance of the building permits within the Franchise Area for projects requiring undergrounding of cable facilities. Such notices shall be provided at the time of notice to all utilities or other like occupants of the Town's rights-of-way. The Town agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches. The Town shall also provide the Grantee with summaries of all planned developments in the Town at the same time as provided to all utilities or other like occupants of the Town's right-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the Town fail to

provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.

- 4.6. Annexations. The Town shall notify the Grantee of all annexations by the Town; and of any and all planned developments in areas expected to be annexed at the same time the Town informs utilities or other like occupants of the Town's rights-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the Town fail to provide advance notice of actual and planned annexations, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time; and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred. The Town shall provide the Grantee with the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The Town agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.
- 4.7. Service to School Buildings and Governmental Facilities.
- 4.7.1. The Town and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary Basic Cable Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.
- 4.7.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.
- 4.8. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. The Town agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Town, its employees or agents in using such system.
- 4.9. Customer Service Obligations. The Town and Grantee acknowledge that

the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and that the Town may enforce those requirements and standards and the penalties for noncompliance in a manner consistent with that statute.

**SEC. 26.5.1-5: OVERSIGHT AND REGULATION BY TOWN.**

5.1. Franchise Fees. The Grantee shall pay to the Town a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Town shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the Town would otherwise be authorized to collect a Franchise Fee at a rate greater than five percent (5%) of Gross Revenues, the Town may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the Town up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the Town conducts a public hearing on the proposed amendment; (iii) the Town approves the amendment by ordinance; and (iv) the Town notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible Franchise Fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of Franchise Fees collected to the lower of: i) the maximum permissible Franchise Fee percentage; ii) the lowest Franchise Fee percentage paid by any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the Town pursuant to Title 47; or, iii) such Franchise Fee percentage as may be approved by the Town, provided that : (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the Town approves the amendment by ordinance; and (d) the Town notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

- 5.1.2. **Taxes Not Included.** The Grantee acknowledges and agrees that the term “Franchise Fee” does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).
- 5.2. **Franchise Fees Subject to Audit.** The Town and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. The Town and/or its designee may be required to execute a nondisclosure agreement with the Grantee prior to inspection of the Grantee’s financial records. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with 65 ILCS 5/11-42-11.05.
- 5.3. **Proprietary Information.** Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Town agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Town that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the Town has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Town shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Town from and against any claims arising from the Town’s opposition to disclosure of any information Grantee designates as proprietary or confidential.

**SEC. 26.5.1-6: TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE.**

- 6.1. Grantee shall notify the Town of any change in ownership of the Cable System within thirty (30) days of any transfer of ownership totaling more than fifty-one percent (51%) of the Cable System.

**SEC. 26.5.1-7: INSURANCE AND INDEMNITY.**

- 7.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Town certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained

the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person, and one million dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Town from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

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

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

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

**SEC. 26.5.1-8: PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS.**

8.1. PEG Capacity. The Grantee shall provide capacity for the Town's noncommercial Public, Educational and Governmental Access ("PEG") Programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the Town utilizes two Channels which are time shared with the City of Bloomington. Unless otherwise agreed to by the Town and the Grantee to the extent required by applicable law, the Channel(s) may be carried on the Grantee's basic digital service tier. The Town's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

- 8.2. The Grantee does not relinquish its ownership of or ultimate right of control over channel(s) by designating it for PEG use. However, the PEG channel(s) are, and shall be, operated by the Town, and the Town may at any time allocate or reallocate the usage of the PEG channel(s) among and between different non-commercial uses and Users. The Town shall be responsible for the editorial control of the Video Programming on the PEG Channel(s) except to the extent permitted in 47 U.S.C. §531(e).
- 8.3. Origination Point. At such time that the Town determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG Access Programming originated from Schools and/or Town facilities; or at such time that the Town determines that it wants to change or upgrade a location from which PEG Access Programming is originated; the Town will give the Grantee written notice detailing the point of origination and the capability sought by the Town. The Grantee agrees to submit a cost estimate to implement the Town's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.
- 8.4. PEG Signal Quality. Provided the PEG signal feed is delivered by the Town to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.
- 8.5. Grantee Use of Unused Time. Because the Town and Grantee agree that a blank or underutilized PEG Access Channel is not in the public interest, in the event the Town does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation by the Town upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG Access Channel with text messaging, or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on a PEG Access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

#### SEC. 26.5.1-9: ENFORCEMENT OF FRANCHISE.

- 9.1. Notice of Violation or Default. In the event the Town believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
- 9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Town's: (A) to respond to the Town, contesting the assertion of

noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that the cure will be completed.

- 9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the Town determines that the Grantee is in default of any material provision of the Franchise, the Town may:
- 9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or
  - 9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following: (i) The Town shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise. (ii) At the designated hearing, the Town shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the Town shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the Town shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the Town's decision.
- 9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the Town's ability pursuant to Section 4.9 of this Franchise Agreement to enforce the requirements and standards, and the penalties for noncompliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law, and, pursuant to Section 3.1 of this Franchise Agreement to enforce the Grantee's compliance with the Town's regarding construction of facilities in the Public Way. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Town to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Town.



SEC.26.5.1-10: MISCELLANEOUS PROVISIONS.

- 10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.
- 10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

## To the Town:

Town of Normal  
 11 Uptown Circle  
 P.O. Box 589  
 Normal, IL 61761  
 ATTN: City Manager

## To the Grantee:

Comcast of Illinois/Indiana/ Ohio, LLC  
 1500 McConnor Parkway  
 Schaumburg, IL 60173  
 ATTN: Sr. Director of Government Affairs

## With a copy to:

Corporation Counsel  
 Town of Normal  
 P.O. Box 589  
 Normal, IL 61761

## With a copy to:

Comcast Cable  
 1701 JFK Blvd., 49th Floor  
 Philadelphia, PA 19103  
 ATTN: Government Affairs Department

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

- 10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Town and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

- 10.3.1. The Town may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.
- 10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.
- 10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.
- 10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McLean County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Central District of Illinois.
- 10.7. Modification. Except as provided in Sections 5.1.1, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Grantee, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate ordinance or resolution by the Town, as required by applicable law.
- 10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.
- 10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.
- 10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

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

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

**For the Town of Normal:**

Name: Christopher Koos  
Title: President of the Board of Trustees  
Date: August 7, 2017

**For Comcast of Illinois/Indiana/Ohio,  
LLC**

Name: John Crowley  
Title: Regional Senior Vice-President  
Date: August 7, 2017

**DIVISION 5.2 – CMN-RUS, INC., D/B/A METRONET**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Normal, Illinois (hereinafter, the “Town”) and CMN-RUS, Inc. (hereinafter, “Grantee”) this 16th day of August, 2016 (the “Effective Date”). The Town, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act.

**SEC. 26.5.2-1 DEFINITION OF TERMS.** For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

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

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

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any Public Way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

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

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

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

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

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

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

“Grantee” shall mean CMN-RUS, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

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

“Public, Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the public, educational institutions such as public or private schools, but not “home schools,” community colleges, and universities, as well as the Town.

“Public, Educational and Government (PEG) Access Programming” shall mean noncommercial programming produced by any Town residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Franchise Area, which shall entitle the Town and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Town within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Town and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

“Qualified Household” shall mean any single family residential home where a resident has agreed in writing to Grantee’s standard terms and conditions of service.

“Town” means the Town of Normal, Illinois or the lawful successor, transferee, designee, or assignee thereof.

#### SEC. 26.5.2-2: GRANT OF AUTHORITY.

- 2.1. The Town hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.
- 2.2. Term of Franchise. The term of the Franchise granted hereunder shall be Ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to replace all existing franchise agreements – including the prior Franchise with the Grantee – regardless of whether said prior Franchise or franchise agreements are in effect.
- 2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.
- 2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Town of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Town pursuant to such police power.

- 2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Town to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or (C) be construed as a waiver or release of the rights of the Town in and to the Public Ways.
- 2.6. Competitive Equity.
- 2.6.1. In the event the Town grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.
- 2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.
- 2.6.3. No application fee or Security Fund shall be required of the Grantee for any permit required by the Town, provided that Grantee shall have timely made all payments to the Town pursuant to Section 5.1 of this Franchise Agreement.

SEC. 26.5.2-3: CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM.

- 3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Chapter 8 of the Town of Normal Municipal Code, as may be amended from time to time.
- 3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

- 3.3. Improvements of Public Way. The Grantee agrees that it shall, upon reasonable notice by the Town and at the Grantee's own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the Town because of public health, safety and welfare improvements as deemed necessary by the Town. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way.
- 3.4. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.
- 3.5. The Grantee shall not be required to relocate its facilities unless it has been afforded at least ninety (90) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

#### SECTION 26.5.2-4: SERVICE OBLIGATIONS.

- 4.1. General Service Obligation. Grantee shall extend and make service available to every residential dwelling unit within the Franchise Area where a minimum of 15 Qualified Households have requested service within 1,200 feet of the existing Cable System's technically feasible connection point. Grantee shall offer Cable Services to all new homes or previously unserved homes located within 125 feet of Grantee's distribution cable. Grantee may, at its sole expense, extend and provide service to areas within the Franchise area that do not meet the provisions of this Section.
  - 4.1.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.



- 4.2. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, or technical equivalent as amended from time to time.
- 4.3. New/Planned Developments. The Town shall provide the Grantee with written notice of the issuance of building permits within the Franchise Area for projects requiring undergrounding of cable facilities. Such notices shall be provided at the time of notice to all utilities or other like occupants of the Town's rights-of-way. The Town agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches. The Town shall also provide the Grantee with summaries of all planned developments in the Town at the same time as provided to all utilities or other like occupants of the Town's right-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the Town fail to provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.
- 4.4. Annexations. The Town shall notify the Grantee of all annexations by the Town; and of any and all planned developments in areas expected to be annexed at the same time the Town informs utilities or other like occupants of the Town's rights-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the Town fail to provide advance notice of actual and planned annexations, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time; and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred. The Town shall provide the Grantee with written notice of the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The Town agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.
- 4.5. Service to School Buildings and Governmental Facilities.
  - 4.5.1. Service to School Buildings. The Town and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), and to the extent requested by any eligible school Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to State accredited K-12 public and private schools not including "home schools," located in the Franchise Area within one hundred twenty five feet (125) of the Grantee's distribution cable.

- 4.5.2. **Service to Governmental Facilities.** The Town and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), and to the extent requested by any eligible governmental entity, Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to municipal buildings located in the Franchise Area within one hundred twenty five (125) feet of Grantee's distribution cable. "Municipal buildings" are those buildings owned or leased by the Town for government administrative purposes, and shall not include buildings owned by Town but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.
- 4.5.3. **Long Drops.** The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.
- 4.6. **Emergency Alerts.** At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. The Town agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Town, its employees or agents in using such system.
- 4.7. **Customer Service Obligations.** The Town and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et seq., and that the Town may enforce those requirements and standards and the penalties for noncompliance in a manner consistent with that statute.

**SEC. 26.5.2-5: OVERSIGHT AND REGULATION BY TOWN.**

- 5.1. **Franchise Fees.** The Grantee shall pay to the Town a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as

quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the Town shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the Town would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the Town may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the Town up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the Town conducts a public hearing on the proposed amendment; (iii) the Town approves the amendment by ordinance; and (iv) the Town notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the Town pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the Town, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the Town approves the amendment by ordinance; and (d) the Town notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

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

5.2. Franchise Fees Subject to Audit. The Town and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. The Town and/or its designee may be required to execute a nondisclosure agreement with the Grantee prior to inspection of the Grantee's financial records. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with 65 ILCS 5/11-42-11.05.

- 5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Town agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Town that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the Town has in its possession and receives a request under the State of Illinois Freedom of Information Act (5 ILCS 140/), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Town shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Town from and against any claims arising from the Town’s opposition to disclosure of any information Grantee designates as proprietary or confidential.

SEC. 26.5.2-6: TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE.

- 6.1. Grantee shall notify the Town of any change in ownership of the Cable System within 30 days of any transfer of ownership totaling more than 51% of the Cable System.

SEC. 26.5.2-7: INSURANCE AND INDEMNITY.

- 7.1. Insurance. Throughout the term of this Agreement, Grantee shall maintain, at its own expense, insurance policies with an insurance company or companies authorized to do business in the State of Illinois and in forms approved by the Corporation Counsel and certificates of insurance or other proof evidencing the payment of premiums therefore against risks as are customarily insured against by businesses of like size and type, including but not limited to:
- 7.1.1 A general comprehensive public liability insurance policy to protect, defend and hold fully harmless the Town, its boards, commissions, officers, agents and employees against liability for loss or any damages for personal injury, death and property damage, including loss of use, and shall defend the Town and said persons in any civil suit occasioned directly or indirectly by the operation of any franchise granted hereunder or work or activity of any person or of any type related thereto with a

minimum liability limit of \$1,000,000 for personal injury or death of one person and \$3,000,000 for personal injury or death of any two or more persons in any one occurrence and \$500,000 for damage to property resulting from any one occurrence;

- 7.1.2. Workmen's Compensation Insurance within the statutory limits and Employer's Liability insurance of not less than \$100,000; and
- 7.1.3. Comprehensive Automobile Liability Insurance to the extent of not less than \$1,000,000 per occurrence against liability for bodily injury including death and to the extent of not less than \$300,000 per occurrence against liability for damage to property including loss of use occurring on, arising out of, or in any way related to the franchise.

The insurance policies shall name the Town of Normal and its boards, commissions, officers, agents and employees as insured parties and shall also contain a provision that a written notice of cancellation or reduction in coverage of the policy shall be delivered to the Town not less than 30 days in advance of the effective date thereof. If such insurance is provided in either case by a policy that also covers the Grantee or any other entity or person than those above named, then such policy shall contain the standard cross liability endorsement. The provision of insurance under this Section does not limit the Grantee's indemnification requirement under Section 7.2 Nothing herein shall be construed so as to restrict the Council from reasonably amending the insurance amounts at any time after the award of a franchise.

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

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

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

SEC. 26.5.2-8: Public, Educational and Governmental (PEG) Access.

- 8.1. PEG Capacity The Grantee shall provide capacity for the Town's Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the Town utilizes two Channels which are time shared with the City of Bloomington. Unless otherwise agreed to by the Town and the Grantee to the extent required by applicable law, the Channel(s) may be carried on the Grantee's basic digital service tier. The Town's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.
- 8.2. The Grantee does not relinquish its ownership of or ultimate right of control over channel(s) by designating it for PEG use. However, the PEG channel(s) are, and shall be, operated by the Town, and the Town may at any time allocate or reallocate the usage of the PEG channel(s) among and between different non-commercial uses and Users. The Town shall be responsible for the editorial control of the Video Programming on the PEG Channel(s) except to the extent permitted in 47 U.S.C. §531(e).
- 8.3. Origination Point. At such time that the Town determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG access programming originated from Schools and/or Town facilities; or at such time that the Town determines that it wants to change or upgrade a location from which PEG access programming is originated; the Town will give the Grantee written notice detailing the point of origination and the capability sought by the Town. The Grantee agrees to submit a cost estimate to implement the Town's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.
- 8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the Town to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.
- 8.5. Grantee Use of Unused Time. Because the Town and Grantee agree that a blank or underutilized Access Channel is not in the public interest, in the event the Town does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the Town upon no less than sixty (60) days notice. Except as otherwise provided herein, the programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute

unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SEC.26.5.2-9: ENFORCEMENT OF FRANCHISE.

- 9.1. Notice of Violation or Default. In the event the Town believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
- 9.2. Grantee's Right to Cure or Respond. The Grantee shall have 30 days from the receipt of the Town's written notice: (A) to respond to the Town, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the 35-day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that the cure will be completed.
- 9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of Section 9.2 herein, in the event the Town determines that the Grantee is in default of any material provision of the Franchise, the Town may:
  - (A) seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or
  - (B) in the case of a substantial or frequent default of a material provision of the Franchise, revoke the Franchise in accordance with the following:
    - 9.3.1 The Town shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have 90 days from the receipt of the notice to object in writing and to state its reasons for such objection. In the event the Town has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Grantee, at least 10 days prior to such public hearing, a written notice specifying the time and place of the hearing and stating its intent to request termination of the Franchise.

- 9.3.2. At the designated hearing, the Town shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the Town shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the Town shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within 30 days after receipt of the Town's decision.
- 9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the Town's ability, under Section 3.1 of this Franchise Agreement, to enforce the Grantee's compliance with the Town's requirements regarding the construction of facilities in the public way and, under Section 4.7 of this Franchise Agreement, to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Town to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Town.

SEC.26.5.2-10: MISCELLANEOUS PROVISIONS.

- 10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.
- 10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:



To the Town:

Town of Normal  
11 Uptown Circle  
PO Box 589  
Normal, IL 61761-0589  
ATTN: City Manager

To the Grantee:

CMN-RUS, Inc.  
3701 Communication Way  
Evansville, IN 47715  
ATTN: President

With a copy to:

Corporation Counsel  
Town of Normal  
11 Uptown Circle  
PO Box 589  
Normal, IL 61761-0589

With a copy to:

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

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

- 10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Town and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, ordinances, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.
  - 10.3.1. The Town may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.
- 10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- 10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

- 10.6. **Modification.** No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Grantee, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.
- 10.7. **No Third-Party Beneficiaries.** Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.
- 10.8. **No Waiver of Rights.** Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

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

**For the Town of Normal:**

**CMN-RUS, Inc.**

By: Christopher Koos

By: John Campbell

Name: Christopher Koos

Name: John Campbell

Title: President, Board of Trustees

Title: Vice President and General Counsel

Date: September 23, 2016

Date: August 16, 2016

**DIVISION 6 – SPRINT COMMUNICATIONS COMPANY, L.P.**

SEC. 26.6-1 WHEREAS, Sprint Communications Company, L.P., a Delaware Corporation authorized to do business in the State of Illinois (hereafter also designated as Grantee), has petitioned the Town of Normal, Illinois, asking that the right permission and authority be granted to it by ordinance to install, maintain, and use a fiber optic cable within certain public rights-of-way for the purpose of crossing the same; and

SEC. 26.6-2 WHEREAS, the Town of Normal and Grantee have agreed upon the terms, provisions, and conditions granting permission and authority to use certain public rights-of-way all as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SEC. 26.6-3 That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to Sprint Communications Company, L.P., upon the terms and subject to the conditions of this Division to install, maintain, and use a fiber optic cable within the certain named public rights-of-way for the purpose of crossing the same.

- A. Said cable shall cross the following public rights-of-way as the same intersect with Illinois Central Gulf Railroad right-of-way (now Union Pacific) as it runs through the Town of Normal: a) Beech Street, b) Cherry Street, c) Maple Street, d) Mulberry Street, e) Walnut Street, f) College Avenue, g) Linden Street, h) Broadway, i) Fell Avenue, j) School Street, k) University Street, l) an unnamed alley between University Street and Main Street, m) Main Street, n) Hovey Avenue, and o) Division Street. Said cable shall cross the public rights-of-way for an aggregate distance of 1,588 lineal feet.
- B. Said cable shall cross the following public rights-of-way as the same connect with Norfolk and Western Railroad right-of-way (now Norfolk Southern) as it runs through Diamond-Star Motors Corporation Subdivision to the Town of Normal: West College Avenue, a distance of one hundred (100) lineal feet.

SEC. 26.6-4 The above described uses of the public ways shall exist by authority herein granted for a period of 25 years from and after the date of passage of this ordinance.

SEC. 26.6-5 The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.6-6 The Grantee agrees to comply with the Illinois Simplified Municipal Telecommunications Tax Act (35 ILCS 623/5-1). In the event Grantee fails to comply with such Act, or such Act is repealed or determined invalid as to Grantee, then this Franchise shall automatically terminate unless Grantor and Grantee reach agreement within 60 days on compensation to be paid by Grantee to Grantor for the rights granted herein.

SEC. 26.6-7 Reserved.

SEC. 26.6-8 In the event the privilege herein granted is terminated, expires, or the Grantee transfers title or vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed, and the public way is restored as herein required.

SEC. 26.6-9 All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned water or sewer pipes then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, then Grantee, as soon as climatic conditions will permit, shall promptly, upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.6-10 This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost of expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, proceeding against the surety bond posted by Grantee as herein provided, or pursue any other remedies provided by law.

SEC. 26.6-11 Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable or structures herein authorized and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles, and other utilities.

SEC. 26.6-12 Grantee agrees to furnish the Town of Normal a surety bond written by a company authorized to do business within the State of Illinois in the amount of \$10,000. Said bond shall be in existence during the term of this agreement and shall be conditioned upon Grantee's performance of its obligations pursuant to this Agreement. In the event Grantee, after reasonable notice, fails to perform pursuant to the terms of this Agreement, then the Town of Normal may, in addition to other remedies, recover on the surety bond. For the Town of Normal to recover from the surety company under this Section, it is not necessary that the Town of Normal first make any expenditure or perform any work. The Director of Public Works is hereby authorized to determine what cost work be involved to perform any obligation of Grantee hereunder and present said claim to Grantee and the surety company. The Grantee or the surety company shall make payment to the Town of Normal on said claim within a reasonable time.

SEC. 26.6-13 Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Sprint Communications Company, L.P. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.6-14 Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs, and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the terms hereof, the Grantee shall be obligated to defend, or against which the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.

SEC. 26.6-15 The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claims arising out of damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents. Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents.

SEC. 26.6-16 Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.6-17 This Agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by Sprint Communications Company, L.P.

(ENTIRE DIVISION 6 OF CHAPTER 26 AMENDED 6/15/09 BY ORD. NO. 5270)

**DIVISION 7 – MCI TELECOMMUNICATIONS CORPORATION**

SEC. 26.7-1 WHEREAS, MCI Telecommunications Corporation, a Delaware Corporation authorized to do business in the State of Illinois (hereafter also designated as Grantee), has petitioned the Town of Normal, Illinois, asking that the right, permission and authority be granted to it by ordinance to install, maintain, repair, replace, and use a fiber optic cable within certain public rights-of-way for the purpose of crossing the same; and

SEC. 26.7-2 WHEREAS, the Town of Normal and Grantee have agreed upon the terms, provisions, and conditions granting permission and authority to use certain public rights-of-way all as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SEC. 26.7-3 That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to MCI Telecommunications Corporation, upon the terms and subject to the conditions of this Division to install, maintain, repair, replace, and use a fiber optic cable with the certain named public rights-of-way for the purpose of crossing the same. Said cable shall cross the following public rights-of-way as the same intersect with Chicago, Missouri, and Western Railroad right-of-way as it runs through the Town of Normal: a) New Fort Jesse Road, b) Beech Street, c) Cherry Street, d) Maple Street, e) Mulberry Street, f) Walnut Street, g) College Avenue, h) Linden Street, i) Broadway Avenue, j) Fell Avenue, k) School Street, l) University Street, m) an unnamed alley between University Street and Main Street, n) Main Street, o) Hovey Avenue, p) Division Street. Said cable shall cross the public rights-of-way for an aggregate distance of 1,728 lineal feet.

SEC. 26.7-4 The above described uses of the public ways shall exist by authority herein granted for a period of 25 years from and after the date of passage of this Ordinance.

SEC. 26.7-5 The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, repaired, replaced, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.7-6 The Grantee agrees to pay the Town of Normal as compensation for the privilege herein granted the sum of \$2,000 per year, payable on the 1<sup>st</sup> day of July of each year, beginning July 1, 1987, and continuing throughout the term of this Agreement, except as adjusted as hereafter provided.

SEC. 26.7-7 The compensation rates specified in the preceding Section shall be adjusted in five-year intervals on the following specified dates: July 1, 1992; July 1, 1997, July 1, 2002; July 1, 2007. The adjustment shall be made by multiplying the then existing contract rate times a factor equal to the overall change in the Consumer Price Index during the five contract years immediately preceding the adjustment date. The Consumer Price Index shall be that index designated as CPI-U (Chicago Index), published by the Bureau of Labor Statistics, United States Department of Labor.

SEC. 26.7-8 In the event the privilege herein granted is terminated, expires, or the Grantee vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed and the public way is restored as herein required.

SEC. 26.7-9 All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned water or sewer pipes then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same or similar type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, then Grantee, as soon as climatic conditions will permit, shall promptly upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.7-10 This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Town shall give Grantee 60 days written notice that relocation is necessary, and the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. If Grantee's proposed plan of relocation is not acceptable to the Town of Normal, the Town shall cooperate with Grantee in attempting to relocate Grantee's cable and other structures on Town-owned property. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost or expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, proceeding against the surety bond posted by Grantee as hereafter provided, or pursue any other remedies provided by law.

SEC. 26.7-11 Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable or structures herein authorized, and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles, and other utilities.



SEC. 26.7-12 Grantee agrees to furnish the Town of Normal a surety bond written by a company authorized to do business within the State of Illinois in the amount of \$10,000. Said bond shall be in existence during the term of this agreement and shall be conditioned upon Grantee's performance of its obligations pursuant to this Agreement. In the event Grantee, after reasonable notice, fails to perform pursuant to the terms of this Agreement, then the Town of Normal may in addition to other remedies recover on the surety bond. The Director of Public Works is hereby authorized to determine what cost would be involved to perform any obligation of Grantee hereunder, and present said claim to Grantee and the surety company together with a date by which said performance will begin. The Grantee or the surety company shall make payment to the Town of Normal on said claim within a reasonable time, but in any event, payment shall be made prior to the date performance of said obligation is scheduled to begin as set forth in the claim presented by the Director of Public Works to Grantee and the surety company.

SEC. 26.7-13 Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Grantee. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.7-14 Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage of life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the terms hereof, the Grantee shall be obligated to defend or against which the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.

SEC. 26.7-15 The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claim arising out of damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, except as hereinafter set forth, Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, Grantee retains the right to recover damages from employees of the Town of Normal for willful and wanton damage to Grantee's property, but said retention shall in no way create any liability for the Town of Normal.

SEC. 26.7-16 Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules, and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.7-17 This Agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by its proper officers there unto duly authorized under the corporate seal of said company and attested by its Secretary or Assistant Secretary.

SEC. 26.7-18 Notices required under this agreement shall be sent by the Town of Normal to MCI Telecommunications Corporation, 1133 19<sup>th</sup> Street, N.W., Washington, D.C. 20036, Attention: Executive Vice-President, with a copy to the Senior Vice-President and General Counsel; Grantee shall send notices required under this agreement to Town Clerk, Town of Normal, Normal City Hall, P.O. Box 589, Normal, Illinois 61761.

**DIVISION 8 – BROMENN HEALTHCARE**

SEC. 26.8-1 WHEREAS, BroMenn Healthcare, an Illinois not-for-profit Corporation authorized to do business in the State of Illinois (hereafter also designated as Grantee), has petitioned the Town of Normal, Illinois, asking that the right, permission and authority be granted to it by ordinance to install, maintain, repair, replace, and use a fiber optic cable within certain public rights-of-way for the purpose of crossing the same; and

SEC. 26.8-2 WHEREAS, the Town of Normal and Grantee have agreed upon the terms, provisions, and conditions granting permission and authority to use certain public rights-of-way all as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARDS OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SEC. 26.8-3 That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to BroMenn Healthcare an Illinois not-for-profit Corporation, upon the terms and subject to the conditions of this Division to install, maintain, repair, replace and use fiber optic and copper cable within the certain named public rights-of-way: University Avenue. Said cable shall cross the public rights-of-way for an aggregate distance of 66 lineal feet.

SEC. 26.8-4 The above described uses of the public ways shall exist by authority herein granted for a period of ten (10) years from and after the date of passage of this ordinance.

SEC. 26.8-5 The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, repaired, replaced, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.8-6 The Grantee agrees to pay the Town of Normal, as compensation for the privilege herein granted the sum of one hundred dollars (\$100.00) per year, payable on the 2<sup>nd</sup> day of January of each year, beginning January 2<sup>nd</sup>, 1996, and continuing throughout the term of this Agreement, except as adjusted as hereafter provided.

SEC. 26.8-7 The compensation rates specified in the preceding Section shall be adjusted annually on January 2<sup>nd</sup>. The adjustment shall be made by multiplying the then existing contract rate times a factor equal to the overall change in the Consumer Price Index during the twelve months immediately preceding the adjustment date. The Consumer Price Index shall be that index designated as CPI-U (Chicago Index), published by the Bureau of Labor Statistics, United States Department of labor, or such successor index.

SEC.26.8-8 In the event the privilege herein granted is terminated, expires, or the Grantee vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed and the public way is restored as herein required.

SEC. 26.8-9 All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned water or sewer pipes then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same or similar type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, the Grantee, as soon as climatic conditions will permit, shall promptly upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.8-10 This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Town shall give Grantee 60 days written notice that relocation is necessary, and the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. If Grantee's proposed plan of relocation is not acceptable to the Town of Normal, the Town shall cooperate with Grantee in attempting to relocate Grantee's cable and other structures on Town owned property. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost or expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, or pursue any other remedies provided by law.

SEC. 26.8-11 Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable of structures herein authorized, and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewer, water mains, conduits, pipes, pole, and other utilities.

SEC. 26.8-12 Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Grantee. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.8-13 Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage of life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.

SEC. 26.8-14 The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claims arising out of damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, except as hereinafter set forth. Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officer, employees, and agents. Grantee retains the right to recover damages from employees of the Town of Normal for willful and wanton damage to Grantee's property, but said retention shall in no way create any liability for the Town of Normal.

SEC. 26.8-15 Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules, and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.8-16 This Agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by its proper officer there unto duly authorized under the corporate seal of said company and attested by its Secretary or Assistant Secretary.

SEC. 26.8-17 Notices required under this agreement shall be sent by the Town of Normal to BroMenn Healthcare, Virginia and Franklin Avenues, Normal, Illinois 61761. Attention: Executive President; Grantee shall send notices required under this agreement to Town Clerk, Town of Normal, Normal City Hall, P.O. Box 589, Normal, Illinois 61761

(Entire Division 8 Added 9/5/95 by Ord. No. 4331)

**DIVISION 9 – SUMMIT COMMUNICATIONS, INC.**

SEC. 26.9-1. WHEREAS, Summit Communications, Inc. 167 West Fifth Street, Minonk, Illinois 61760 desires to lay a cable under Linden Street right-of-way in the Town of Normal for the purpose of providing cable television services to Ironwood apartments; and

SEC. 26.9-2. WHEREAS, the Town of Normal has the authority to regulate the use of street rights-of-way in the Town of Normal; and

SEC. 26.9-3. WHEREAS, 65 ILCS 5/11-42-11 excludes from the definition of “community antenna television system” any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and commercial establishments located on the premises of such dwellings; and

SEC. 26.9-4. WHEREAS, Ironwood Apartments is under common ownership, control or management; and

SEC. 26.9-5. WHEREAS, Town Code requires a franchise agreement for use and permanent occupancy of public ways.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL ILLINOIS:

SEC. 26.9-6. That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to Summit Communications, Inc., upon the terms and subject to the conditions of this Division to install, maintain, repair, replace, and use a fiber optic cable or co-axle cable for the purpose of crossing Linden Street public right-of-way. Said cable shall cross Linden Street right-of-way at a point between Northtown Road and Interstate 55 as approved by the Town Engineer for the sole purpose of providing cable television services to Ironwood Apartments. Said cable shall cross Linden Street for an aggregate distance of eighty (80) lineal feet. This Franchise is limited to the one cable crossing described herein and the limited purpose of providing cable television services to Ironwood Apartments while such apartments are under common ownership, control or management. No additional crossings or purposes are authorized without amendment hereto.

SEC. 26.9-7. The above described uses of the public ways shall exist by authority herein granted for a period of 10 years from and after the date of passage of this Ordinance or until such time that the Ironwood Apartments cease being under common ownership, control or management whichever occurs first.

SEC. 26.9-8. The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, repaired, replaced, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.9-9. The Grantee agrees to pay the Town of Normal as compensation for the privilege herein granted a sum equal to five percent (5%) of the total gross receipts received by Grantee from cable services provided via the cable crossing Linden Street. Such payment shall be in addition to any State or Municipal service, utility, or other tax now and hereafter in effect. Grantee shall remit payment to the Town of Normal on a monthly basis or as otherwise directed by the Town of Normal.

SEC. 26.9-10. The Town of Normal shall on reasonable notice have the right to audit Grantee's financial records to determine compliance with this Division. Grantee shall annually submit a financial statement prepared by a certified public accountant showing in detail the gross receipts of Grantee derived from services provided via the Linden Street Cable.

SEC. 26.9-11. In the event the privilege herein granted is terminated, expires, or the Grantee vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed and the public way is restored as herein required.

SEC. 26.9-12. All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned water or sewer pipes then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same or similar type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, then Grantee, as soon as climatic conditions will permit, shall promptly upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.9-13. This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Town shall give Grantee 60 days written notice that relocation is necessary, and the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. If Grantee's proposed plan of relocation is not acceptable to the Town of Normal, the Town shall cooperate with Grantee in attempting to relocate Grantee's cable and other structures on Town-owned property. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost or expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, proceeding against the surety bond posted by Grantee as hereafter provided, or pursue any other remedies provided by law.

SEC. 26.9-14. Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable of structures herein authorized, and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles, and other utilities.

SEC. 26.9-15. Grantee agrees to furnish the Town of Normal a surety bond written by a company authorized to do business within the State of Illinois in the amount of \$10,000. Said bond shall be in existence during the term of this agreement and shall be conditioned upon Grantee's performance of its obligations pursuant to this Agreement. In the event Grantee, after reasonable notice, fails to perform pursuant to the terms of this Agreement, then the Town of Normal may in addition to other remedies recover on the surety bond. The Director of Public Works is hereby authorized to determine what cost would be involved to perform any obligation of Grantee hereunder, and present said claim to Grantee and the surety company together with a date by which said performance will begin. The Grantee or the surety company shall make payment to the Town of Normal on said claim within a reasonable time, but in any event, payment shall be made prior to the date performance of said obligation is scheduled to begin as set forth in the claim presented by the Director of Public Works to Grantee and the surety company.

SEC. 26.9-16. Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Grantee. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.9-17. Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage of life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the terms hereof, the Grantee shall be obligated to defend or against which the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.



SEC. 26.9-18. The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claim arising out of damage to the cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, except as hereinafter set forth, Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents. Grantee retains the right to recover damages from employees of the Town of Normal for willful and wanton damage to Grantee's property, but said retention shall in no way create any liability for the Town of Normal.

SEC. 26.9-19. Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules, and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.9-20. This Agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by its proper officers there unto duly authorized under the corporate seal of said company and attested by its Secretary or Assistant Secretary.

SEC. 26.9-21. Notices required under this agreement shall be sent by the Town of Normal to Summit Communications, Inc., 167 West Fifth Street, Minonk Illinois 61760, Attention: Executive Vice-President. Grantee shall send notices required under this agreement to Town Clerk, Town of Normal, Normal City Hall, P.O. Box 589, Normal, Illinois 61760.

**DIVISION 10. TELECOMMUNICATIONS INFRASTRUCTURE**  
**MAINTENANCE FEE.**

SEC. 26.10-1. DEFINITIONS. As used in this Division, the following terms shall have the following meanings:

- A. “Gross Charges” means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Town, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. “Gross charges” for private line service shall include charges imposed at each channel point within the Town, charges for the channel mileage between each channel point within the Town, and charges for that portion of the interstate inter-office channel provided within the Town. However, “gross charges” shall not include:
1. any amounts added to a purchaser’s bill because of a charge made under:
    - a. the fee imposed by this Section,
    - b. additional charges added to a purchaser’s bill under Section 9-221 or 9-222 of the Public Utilities Act,
    - c. amounts collected under Section 8-11-17 of the Illinois Municipal Code,
    - d. the tax imposed by the Telecommunications Excise Tax Act,
    - e. 911 surcharges, or
    - f. the tax imposed by Section 4251 of the Internal Revenue Code;
  2. charges for a sent collect telecommunication received outside the Town;
  3. charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
  4. charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

5. charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Town;
  6. charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
  7. bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
  8. charges paid by inserting coins in coin-operated telecommunications devices; or
  9. charges for telecommunications and all services and equipment provided to the Town.
- B. "Public Right-of-Way" means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Town has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal Town property that is not specifically described in the previous sentence and shall not include Town buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.
- C. "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

- D. “Sale of telecommunications at retail” means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.
- E. “Service address” means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, “service address” shall mean the location of the customer’s primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.
- F. “Telecommunications” includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, “telecommunications” shall also include wireless telecommunications as hereinafter defined. “Telecommunications” shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. “Telecommunications” shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. “Telecommunications” shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Town through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.
- G. “Telecommunications provider” means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

- H. “Telecommunications retailer” or “retailer” or “carrier” means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Town may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Town, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Town.
- I. “Wireless telecommunications” includes cellular mobile telephone services, personal wireless services as defined in Section 704© of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332©(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

SEC. 26.10-2. REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

- A. Every telecommunications provider as defined by this Division shall register with the Town within 30 days after the effective date of this Division or becoming a telecommunications provider, whichever is later, on a form to be provided by the Town, provided, however, that any telecommunications retailer that has filed a return pursuant to SEC. 26.10-4© of this Division shall be deemed to have registered in accordance with this Section.
- B. Every telecommunications provider who has registered with the Town pursuant to SEC. 26.10-2(A) has an affirmative duty to submit an amended registration form or current return as required by SEC. 26.10-4(C), as the case may be, to the Town within thirty (30) days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Town.

SEC. 26.10-3 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

- A. A Town telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of one percent (1%) of all gross charges charged by the telecommunications retailer to service addresses within the Town for telecommunications originating or received in the Town.
- B. Upon the effective date of the infrastructure maintenance fee authorized in this Division, the Town infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Town by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Division does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

- C. The Town telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in SEC. 26.10-4 of this Division.

SEC. 26.10-4. COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES.

- A. A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the Town infrastructure maintenance fee attributable to that customer's service address.
- B. Unless otherwise approved by the City Manager the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Town not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed two percent (2%) of the Town infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.
- C. Remittance of the municipal infrastructure fee to the Town shall be accompanied by a return, in a form to be prescribed by the Town Treasurer, which shall contain such information as the Town Treasurer may reasonably require.
- D. Any infrastructure maintenance fee required to be collected pursuant to this Division and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Town. The charge imposed under SEC. 26.10-4(A) by the telecommunications retailer pursuant to this Division shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.
- E. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Division, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Division, from the telecommunications retailer who made the erroneous payment; provided, however, the Town Treasurer may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the Town within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

- F. Amounts paid under this Division by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:
1. “gross charges” for purposes of the Telecommunications Excise Tax Act;
  2. “gross receipts” for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
  3. “gross charges” for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
  4. “gross revenue” for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.
- G. The Town shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Division to determine whether the telecommunications retailer has properly accounted to the Town for the Town infrastructure maintenance fee. Any underpayment of the amount of the Town infrastructure maintenance fee due to the Town by the telecommunications retailer shall be paid to the Town plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the Town in conducting the audit, in an amount not to exceed five percent (5%) of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Town within twenty-one (21) days after the date of issuance of an invoice for same.
- H. The Town Treasurer, or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Division, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to SEC. 26.10-2 of this Division of such regulations.

SEC. 26.10-5 COMPLIANCE WITH OTHER LAWS. Nothing in this Division shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- A. generally applicable taxes; and
- B. standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- C. any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and

- D. compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

SEC. 26.10-6 EXISTING FRANCHISES AND LICENSES. Any franchise, license, or similar agreements between telecommunications retailers and the Town entered into before the effective date of this Division regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

SEC. 26.10-7 PENALTIES. Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Division shall be subject to fine up to five hundred dollars (\$500.00) per day for each violation.

SEC. 26.10-8 ENFORCEMENT. Nothing in this Division shall be construed as limiting any additional or further remedies that the Town may have for enforcement of this Division.

SEC. 26.10-9 SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Division is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Entire Division 10 of Chapter 26 Added October 20, 1997 by Ord. No. 4476, effective January 1, 1998)

(Entire Division 10 of Chapter 26 Readopted March 18, 2002 by Ord. No. 4783)



**DIVISION 11 – LEVEL 3 COMMUNICATIONS, LLC**

SEC. 26.11-1 WHEREAS, Level 3 Communications, LLC, a Limited Liability Company organized under the Laws of the State of Delaware authorized to do business in the State of Illinois (hereafter also designated as Grantee), has petitioned the Town of Normal, Illinois, asking that the right, permission and authority be granted to it by ordinance to install, maintain, repair, replace, and use a fiber optic cable within certain public rights-of-way for the purpose of crossing the same; and

SEC. 26.11-2 WHEREAS, the Town of Normal and Grantee have agreed upon the terms, provisions, and conditions granting permission and authority to use certain public rights-of-way all as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SEC. 26.11-3 That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to Level 3 Communications LLC, upon the terms and subject to the conditions of this Division to install, maintain, repair, replace, and use a fiber optic cable with the certain named public rights-of-way for the purpose of crossing the same. Said cable shall cross the following public rights-of-way as the same intersect with Union Pacific Railroad right-of-way as it runs through the Town of Normal: a) W. Division, b) US 51/Center Street, c) US 51/Main, d) S. University Street, e) E. Vernon St., f) S. School Street, g) S. Fell Ave., h) Broadway, i) Linden, j) E. College Ave., k) E. Mulberry St., l) N. Beech, m) E. Willow St., AKA Fort Jesse Rd., n) Towanda Rd., and o) any other right of way authorized by the Town Engineer. The permission and authority herein granted shall not be exercised and no work done until a permit authorizing the same shall have been issued by Grantor and the payment of any applicable fee and tax. (Amended 5/2/2016 by Ord. No. 5637)

SEC. 26.11-4 The above described uses of the public ways shall exist by authority herein granted for a period of 20 years from and after the date of passage of this Ordinance.

SEC. 26.11-5 The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, repaired, replaced, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.11-6 The privilege herein granted may not be transferred or assigned to any other person or entity without the written consent of Grantor; provided, however, that Grantee need not obtain the consent of the Grantor for an assignment or transfer to a subsidiary, parent or affiliate of Grantee, to a purchaser of all or substantially all of the assets of Grantee, or to an entity with or into which Grantee may merge or consolidate.

SEC. 26.11-7 Grantee acknowledges that Grantor has enacted an ordinance imposing a telecommunication infrastructure maintenance fee and that Grantee is a telecommunications retailer as defined in that ordinance. Grantee represents that it does not have any service addresses within the corporate limits of Grantor such that would require it to pay the telecommunication infrastructure maintenance fee as of the date of this Agreement. Grantee will notify Grantor should it obtain service addresses within the corporate limits of Grantor in the future. Grantee understands that it will be required to pay a telecommunication infrastructure maintenance fee at that time and that nothing in this Agreement intends to waive payment of that fee if and when it becomes applicable to Grantee.

SEC. 26.11-8 In the event the privilege herein granted is terminated, expires, or the Grantee vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed and the public way is restored as herein required.

SEC. 26.11-9 All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned facilities then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same or similar type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, then Grantee, as soon as climatic conditions will permit, shall promptly upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.11-10 This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Town shall give Grantee 60 days written notice that relocation is necessary, and the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. If Grantee's proposed plan of relocation is not acceptable to the Town of Normal, the Town shall cooperate with Grantee in attempting to relocate Grantee's cable and other structures on Town-owned property. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost or expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, proceeding against the surety bond posted by Grantee as hereafter provided, or pursue any other remedies provided by law.

SEC. 26.11-11 Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the negligent or wrongful act of Grantee, its' employees and agents during the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable of structures herein authorized, and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles, and other utilities.

SEC. 26.11-12 Grantee agrees to furnish the Town of Normal a surety bond written by a company authorized to do business within the State of Illinois in the amount of \$10,000. Said bond shall be in existence during the term of this agreement and shall be conditioned upon Grantee's performance of its obligations pursuant to this Agreement. In the event Grantee, after reasonable notice, fails to perform pursuant to the terms of this Agreement, then the Town of Normal may in addition to other remedies recover on the surety bond. The Director of Public Works is hereby authorized to determine what cost would be involved to perform any obligation of Grantee hereunder, and present said claim to Grantee and the surety company together with a date by which said performance will begin. The Grantee or the surety company shall make payment to the Town of Normal on said claim within a reasonable time, but in any event, payment shall be made prior to the date performance of said obligation is scheduled to begin as set forth in the claim presented by the Director of Public Works to Grantee and the surety company.

SEC. 26.11-13 Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Grantee. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.11-14 Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage of life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the terms hereof, the Grantee shall be obligated to defend or against which the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.

SEC. 26.11-15 The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claim arising out of damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, except as hereinafter set forth, Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, Grantee retains the right to recover damages from employees of the Town of Normal for willful and wanton damage to Grantee's property, but said retention shall in no way create any liability for the Town of Normal.

SEC. 26.11-16 Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules, and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.11-17 This Agreement and any amendments to the agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by its proper officers there unto duly authorized under the corporate seal of said company and attested by its Secretary or Assistant Secretary. (Amended 5/2/2016 by Ord. No. 5637)

SEC. 26.11-18 This Agreement may only be amended in writing.

SEC. 26.11-19 Grantee shall take all necessary steps as to insure that the location of its fiber optic line and all other structures is on record with JULIE or such other State-wide-One-Call Notice System as may be in place pursuant to the Illinois Underground Utility Facilities Damage Prevention Act (220 ILCS 50/1 et. seq.)

SEC. 26.11-20 Grantee agrees any litigation involving this agreement shall be filed and prosecuted in McLean County, Illinois.

SEC. 26.11-21 Notices required under this agreement shall be sent by the Town of Normal to Level 3 Communications, LLC, Attention: Director, Intercity Network, Attn: General Counsel, 1025 Eldorado Blvd., Broomfield, CO 80021. Grantee shall send notices required under this agreement to Town Clerk, Town of Normal, Normal City Hall, P.O. Box 589, Normal, Illinois 61761.

(Entire Division 11 Added June 7, 1999 by Ord. No. 4598)

**DIVISION 12 – McLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

SEC. 26.12-1 WHEREAS, McLeodUSA Telecommunications Services, Inc. organized under the Laws of the State of Iowa authorized to do business in the State of Illinois (hereafter also designated as Grantee), has petitioned the Town of Normal, Illinois, asking that the right, permission and authority be granted to it by ordinance to install, maintain, repair, replace, and use a fiber optic cable within certain public rights-of-way; and

SEC. 26.12-2 WHEREAS, the Town of Normal and Grantee have agreed upon the terms, provisions, and conditions granting permission and authority to use certain public rights-of-way all as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SEC. 26.12-3 That for the mutual and other valuable considerations as herein provided, the right, permission, and authority are hereby given and granted to McLeodUSA Telecommunications Services, Inc. upon the terms and subject to the conditions of this Division to install, maintain, repair, replace, and use a fiber optic cable within the certain named public rights-of-way. Said cable may occupy the following public rights-of-way: All as set forth on plans on file in the Office of the Town Clerk. A general depiction of said plans is attached hereto as Exhibit A. The permission and authority herein granted shall not be exercised and no work done until a permit authorizing the same shall have been issued by Grantor and the payment of any applicable fee and tax.

SEC. 26.12-4 The above described uses of the public ways shall exist by authority herein granted for a period of 20 years from and after the date of passage of this Ordinance.

SEC. 26.12-5 The exact location of said privilege shall be as shown on prints attached hereto, which by reference are made a part of this Division. Said cable shall be installed, maintained, repaired, replaced, and used in accordance with the ordinances of the Town of Normal and the regulations of the Public Works Director.

SEC. 26.12-6 The privilege herein granted may not be transferred or assigned to any other person or entity without the written consent of Grantor.

SEC. 26.12-7 Grantee acknowledges that Grantor has enacted an ordinance imposing a telecommunication infrastructure maintenance fee and that Grantee is a telecommunications retailer as defined in that ordinance. Grantee understands that it will be required to pay a telecommunication infrastructure maintenance fee in accordance with Town Code and that nothing in this Agreement intends to waive payment of that fee.

SEC. 26.12-8 In the event the privilege herein granted is terminated, expires, or the Grantee vacates the premises, the Grantee shall nevertheless remain liable to the Town of Normal under the provisions hereof until all cable and supporting structures herein authorized are removed and the public way is restored as herein required.

SEC. 26.12-9 All structures hereafter installed shall be so placed and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways of the Town of Normal or with any municipally owned facilities then in place or hereafter placed. Grantee, after doing any excavating, shall leave the surface of the ground in the same condition as existed prior to such excavation. All sidewalks, parkways, or pavements disturbed by Grantee shall be restored by it; and the surface to be restored shall be the same or similar type construction as that previously existing prior to its being disturbed; and in the event that any such sidewalk, parkway, or pavement shall become uneven, unsettled, or otherwise requires repairing because of such disturbance by Grantee, then Grantee, as soon as climatic conditions will permit, shall promptly upon receipt of notice from the Town of Normal so to do, cause such sidewalk, parkway, or pavement to be repaired or restored to as good condition as before said sidewalk, parkway, or pavement was disturbed by Grantee.

SEC. 26.12-10 This grant of authority is subject to amendment, modification, or repeal; and permission and authority herein granted may be revoked by the Town of Normal if Grantee fails or neglects to comply with this grant of authority, but only after being given a reasonable amount of time to cure any defaults. Upon the determination by the Town of Normal that it is necessary to relocate said cable or structures, the Town shall give Grantee 60 days written notice that relocation is necessary, and the Grantee shall relocate the cable and structures and shall bear the sole expense of relocation. If Grantee's proposed plan of relocation is not acceptable to the Town of Normal, the Town shall cooperate with Grantee in attempting to relocate Grantee's cable and other structures on Town-owned property. Upon termination of the privilege herein granted by lapse of time or otherwise, the Grantee, without cost or expense to the Town of Normal, shall remove the cable and structures herein authorized and restore the public way to a proper condition under the supervision of the Director of Public Works. In the event of the failure, neglect, or refusal of said Grantee to remove the cable and other structures, the Town of Normal will have the choice of either performing said work and charging the cost thereof to said Grantee or determining what the cost of said work shall be and billing the Grantee for said cost, proceeding against the surety bond posted by Grantee as hereafter provided, or pursue any other remedies provided by law.

SEC. 26.12-11 Grantee shall hold and save the Town of Normal harmless from any and all liability and expense, including judgments, costs, and damages, arising out of the installation, removal, relocation, alteration, repair, maintenance, restoration, or any other way connected with the cable or structures herein authorized, and from any and all damages thereto on account of the location, construction, alteration, repair, or maintenance of any public ways, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles, and other utilities.

SEC. 26.12-12 Grantee agrees to furnish the Town of Normal a surety bond written by a company authorized to do business within the State of Illinois in the amount of \$10,000. Said bond shall be in existence during the term of this Agreement and shall be conditioned upon Grantee's performance of its obligations pursuant to this Agreement. In the event Grantee, after reasonable notice, fails to perform pursuant to the terms of this Agreement, then the Town of Normal may in addition to other remedies recover on the surety bond. The Director of Public Works is hereby authorized to determine what cost would be involved to perform any obligation of Grantee hereunder, and present said claim to Grantee and the surety company together with a date by which said performance will begin. The Grantee or the surety company shall make payment to the Town of Normal on said claim within a reasonable time, but in any event, payment shall be made prior to the date performance of said obligation is scheduled to begin as set forth in the claim presented by the Director of Public Works to Grantee and the surety company.

SEC. 26.12-13 Grantee agrees to furnish the Town of Normal, prior to issuance of a permit for this privilege, a copy of proof of insurance (certificate of insurance) in an amount not less than \$1 million combined single limit with said insurance covering all liability, both public liability and property damage, that may result from the granting of this privilege to Grantee. The aforementioned insurance coverage shall be maintained at all times by the Grantee until the cable or structures described in this grant of authority are removed and the public way is restored as herein required. The aforementioned insurance coverage shall name the Town of Normal as an additional insured.

SEC. 26.12-14 Grantee shall, at its own expense, defend all suits and does agree to indemnify and save harmless the said Town of Normal and its officers and employees from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to Grantee or imposed upon or assumed by it, or by reason of or in connection with any damage of life, limb, or property as a result of any of the structures constructed by it under or by virtue of this Agreement, and shall save and keep harmless the Town of Normal from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided that notice in writing shall be immediately given to Grantee of any claim or suit against the Town of Normal which, by the terms hereof, the Grantee shall be obligated to defend or against which the Grantee has hereby agreed to save and keep harmless the Town of Normal and provided further that the Town of Normal shall furnish to said Grantee all information in its possession relating to said claim or suit, and cooperate with said Grantee in the defense of any said claim or suit. The governing body of the Town of Normal may, if it so desires, assist in defending any such claim or suit. The Grantee will not rely upon governmental immunity afforded to the Town of Normal, and further agrees that it will pay the costs incurred by the Town of Normal for the necessary defense of any suit not only against the Town of Normal but also against its officers and employees resulting from this franchise grant.

SEC. 26.12-15 The Grantee agrees to hold harmless and indemnify the Town of Normal against any and all damages and claim arising out of damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents, except as hereinafter set forth, Grantee waives all claims against the Town of Normal, whether arising directly, by subrogation, assignment, or otherwise, for any and all damages, direct or indirect, resulting from damage to the fiber optic cable or structures done in whole or in part by the Town of Normal, its officers, employees, and agents. Such indemnification shall not include damage or injury which arise out of the Town of Normal's willful misconduct, including the failure by the Town of Normal, or its agents and employees to contact the Illinois JULIE system prior to excavation or construction. Grantee retains the right to recover damages from employees of the Town of Normal for willful and wanton damage to Grantee's property, but said retention shall in no way create any liability for the Town of Normal.

SEC. 26.12-16 Unless otherwise provided herein, Grantee agrees to abide by all Town of Normal ordinances, rules, and regulations governing the use of municipal property, municipal rights-of-way, and other matters.

SEC. 26.12-17 This Agreement shall be in full force upon receipt by the Town Clerk of the company's written and unconditional acceptance of all the provisions of this Agreement executed by its proper officers there unto duly authorized under the corporate seal of said company and attested by its Secretary or Assistant Secretary.

SEC. 26.12-18 This Agreement may only be amended in writing.

SEC. 26.12-19 Grantee shall take all necessary steps as to insure that the location of its fiber optic line and all other structures is on record with JULIE or such other State-Wide-One-Call Notice System as may be in place pursuant to the Illinois Underground Utility Facilities Damage Prevention Act (220 ILCS 50/1 et. seq.)

SEC. 26.12-20 Grantee agrees any litigation involving this agreement shall be filed and prosecuted in McLean County, Illinois.

SEC. 26.12-21 Notices required under this agreement shall be sent by the Town of Normal to McLeodUSA Telecommunications Services, Inc., OSP Engineering, 2910 Westown Parkway, Suite 300, West Des Moines, Iowa 50266; Attention Mr. Kelly Wingfield, Permit Manager. Grantee shall send notices required under this agreement to Town Clerk, Town of Normal, Normal City Hall, P.O. Box 589, Normal, Illinois 61761.

(Entire Division 12 Added June 21, 1999 by Ord. No. 4601)