

## ORDINANCE NO. 15-21

### AN ORDINANCE GRANTING A FRANCHISE TO CLARITY TELECOM, LLC, FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: That the Casper City Council, having determined that Clarity Telecom, LLC has agreed to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the City of Casper, and has agreed to be bound by conditions of applicable law, and by binding agreement to serve the public interest, pursuant to the terms of this Franchise, does hereby ordain as follows:

#### SECTION 1. DEFINITION OF TERMS

**1.1 Terms.** For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. Terms not defined below shall have the same meaning as in the Cable Act, defined below, or in Federal Communications Commission regulations. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- B. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.
- C. "Board/Council" means the governing body of the Grantor.
- D. "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection or use of such Video Programming or any other lawful programming service.
- E. "Cable System" is defined as set forth in the Cable Act.
- F. "Cable Act" means the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. § 521, *et seq.*
- G. "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.
- H. "City" means the City of Casper, Wyoming, a municipal corporation or the lawful successor, transferee, or assignee thereof.
- I. "FCC" means the Federal Communications Commission and any successor governmental entity thereto.

- J. "Franchise" means the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- K. "Grantee" means Clarity Telecom, LLC or the lawful successor, transferee, or assignee thereof.
- L. "Grantor" means the City of Casper, Wyoming, a municipal corporation or the lawful successor, transferee, or assignee thereof.
- M. "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, derived by the Grantee and its affiliates, from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments imposed directly upon Subscribers and collected by the Grantee or pass-through to a government agency, including, without limitation, any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable state law; and (5) any Capital Grant and/or Second Capital Grant (as defined in Section 12.5 hereof) recovered from Subscribers.
- N. "Person" means an individual, partnership, association, organization, corporation, trust or governmental entity.
- O. "Service Area" means the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 5.3 hereto.
- P. "State" means the State of Wyoming.
- Q. "Service Tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
- R. "Street" or "Public Ways" includes each of the following located within the Service Area: public streets, roadways, freeways, courts, boulevards, sidewalks, parkways, lanes, drives, circles, highways, bridges, land paths, avenues, alleys, easements, rights-of-way and similar public ways and extensions and additions thereto, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- S. "Subscriber" means any Person lawfully receiving Cable Service from the Grantee.
- T. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## SECTION 2. GRANT OF FRANCHISE

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, state or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 14.10.

**2.3 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any generally applicable local ordinance necessary for the convenience, safety, health, and welfare of the public which is lawfully adopted pursuant to the Grantor's general police power. This Franchise is a contract and, except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this Franchise. Any changes to this Franchise must be made in writing, and signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that has the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise, this Franchise will prevail, except as to those ordinances and regulations which are the result of the Grantor's lawful exercise of its general police power.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

## SECTION 3. FRANCHISE RENEWAL

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

## SECTION 4. INDEMNIFICATION AND INSURANCE

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its Council, officers, boards, commissions, agents, and employees for all claims for injury or death to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and shall indemnify and hold Grantor, its Council, officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury or death to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor at least ten (10) calendar days prior to the

deadline for responding to the claim or action, and if no such deadline exists, within thirty (30) days of Grantor's receipt of the claim or action. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder, and shall pay for such defense (including, but not limited to, all costs, expenses and attorney fees incurred by Grantee for assuming the defense of the Grantor), and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee may be excused from any obligation to represent the Grantor at the Grantor's sole discretion. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct of the Grantor or for the Grantor's use of the Cable System. Grantee's compliance with these indemnity provisions shall in no way limit any other remedies available to the City under this Franchise or at law or equity.

#### **4.2     Insurance.**

- A.     The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$250,000 per occurrence, Combined Single Liability (C.S.L.) \$500,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$50,000 per occurrence C.S.L.

- B.     The Grantor shall be added as an additional insured, arising out of work performed by the Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C.     The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- D.     Grantee agrees to maintain insurance in the amounts herein, subject to statutory maximum liability amounts in Section 4.2, throughout the term of the Franchise. If Grantee cancels any policy, it shall immediately obtain a replacement policy and provide a new certificate to the Grantor evidencing new coverage within thirty (30) days. At no time shall the Grantee have any gaps in the coverage, or the amounts herein specified.
- E.     Upon request by the Grantor, the Grantee shall provide the Grantor with policy endorsements listing the Grantor as an additional insured. The Grantor's failure to

request or review such insurance certificates or policies shall not affect Grantor's rights or the Grantee's obligations hereunder.

- F. It is recognized by and between the parties to this Franchise that the insurance requirements contained herein are the maximum liabilities which may be imposed under Wyoming Statute § 1 39-101 *et seq.* In the event the maximum liability allowed by law is altered, either during the term of this Franchise, or any subsequent terms, then Grantor shall notify Grantee in writing. Upon such notification, Grantee shall issue a revised policy endorsement to the Grantor with coverage for the maximum liability amounts under the Wyoming Governmental Claims Act.

## **SECTION 5. SERVICE OBLIGATIONS AND AVAILABILITY**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

**5.3 Service Area.** Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any Subscriber's dwelling unit or other units wherein such Cable Service is provided.

**5.4 New Development Underground.** Upon reasonable advance notice from Grantee, Grantor agrees to make a good-faith effort to meet with Grantee and to convene meetings between Persons utilizing Grantor's Public Ways to coordinate the placement of facilities in open trenches and along Public Ways.

**5.5 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days written notice from the Grantor, subject to the conditions set forth below and Section 5.3 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall, within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor, if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area (to the extent addresses exist) in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 14.5 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

## **SECTION 6. CONSTRUCTION AND TECHNICAL STANDARDS**

**6.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with the National Electrical Safety Code (NESC), and applicable City of Casper Municipal Codes to the extent they do not conflict with the NESC.

**6.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including, but not limited to, the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**6.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**6.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations, as may be amended from time to time, regardless of the transmission technology utilized.

**6.5 Performance Monitoring.** Grantee shall test the Cable System consistent with the FCC regulations.

## **SECTION 7. USE OF STREETS AND PUBLIC WAYS**

### **7.1 General Conditions.**

- A. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.
- B. Subject to the terms of this Franchise, the Grantee may not endanger nor unreasonably interfere with the lives or property of persons; unreasonably interfere with property of the Grantor or -any public utility; or unnecessarily hinder or obstruct use of the Public Ways. The Franchise does not establish priority for use of Public Ways over holders of other permits or franchises; it grants no vested interest in occupying any particular position in the Public Ways. The Grantor shall control distribution of space in the Public Ways.
- C. The Grantee shall expeditiously carry out all of its operations during the course of any construction, repairs or maintenance operations on Public Ways of the Grantee.

**7.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed

aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

**7.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 9.1 of this Franchise.

**7.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

**7.5 Restoration of Public Ways and Public Property.**

- A. Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.
- B. Pursuant to the Grantor's generally applicable codes and ordinances, restoration, repair or replacement of Public Ways shall be completed within ten (10) business days. Upon request and for good cause shown, the City Manager or his/her designee may authorize an extension of the period within which the Grantee may perform its restoration work. If Grantee fails to restore the Public Ways as described above, the Grantor may, after twenty (20) days' written notice to Grantee, make such repairs or restorations that are necessary to return the Public Ways to their condition immediately prior to the damage or disturbance. The Grantor may elect to repair or replace public property so damaged by Grantee, such as a sewage line, and the Grantee shall compensate the City for the reasonable expenses associated with the repair or replacement. If such damage caused by Grantee creates an emergency situation resulting in an immediate hazard to public safety, health, or property, the Grantor may

repair the deficiency without prior written notice to the Grantee. The Grantee shall be responsible for reimbursing the Grantor for all reasonable costs and expenses to repair or replace public property or Public Ways.

**7.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities in accordance with the Casper Municipal Code and applicable state law.

**7.7 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers in the interest of public convenience, health, safety or welfare. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities. If Grantee fails to remove or relocate its System as required by the Grantor, the Grantor may take action to remove or relocate Grantee's Cable System, and Grantee shall compensate the City for all reasonable expenses incurred thereby. In the event physical interaction with Grantee's plant is anticipated or likely to occur, such work shall be done by a qualified contractor. The Grantee shall not be penalized by the City for any failure to provide Cable Service which results from relocation or removal under Section 7.5, 7.7, or 7.11.

**7.8 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**7.9 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**7.10 Emergency Use.** Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS"). If the Grantee provides an EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Subject to the limitations of the Wyoming Governmental Claims Act, W.S. § 1-39-101, *et seq.*, the Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.



**7.11 Removal or Relocation in Event of Emergency.** In event of emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, the City may remove or relocate Grantee's Cable System without prior notice. As soon as practicable thereafter, the Grantor shall provide written notice to Grantee describing the nature of the emergency and the actions taken by the Grantor. No charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

**7.12 Subcontractors.** All contractors or subcontractors shall be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as Grantee would have under this Franchise and applicable laws if the work were performed by Grantee. Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable law and that all contractors and subcontractors are familiar with their responsibilities.

**7.13 No Recourse.** Grantee shall have no monetary recourse against the Grantor in accordance with applicable federal law. However, this shall not prohibit Grantee from seeking any other remedy that Grantee may have under applicable law.

## **SECTION 8. SERVICE AND RATES**

**8.1 System Maintenance.** Interruptions shall be minimized. The Grantee shall schedule maintenance of the System so that interruptions are minimized to the extent reasonably possible, and so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the system.

**8.2 Internet Service to City Dispatch Center.** Upon request from Grantor, Grantee shall provide, at no charge, its fiber-based, bi-directional, symmetrical Internet service with speeds of up to 1 Gbps download x 1 Gbps upload to the City dispatch center located at 441 Landmark Drive, Casper, Wyoming 82609-4562 (the "Circuit"). Installation costs and equipment charges relating to the Circuit shall be paid by Grantor via the Capital Grant and Second Capital Grant (as defined in Section 12). The Circuit shall be used by the City solely as a backup Internet connection for redundancy purposes for City dispatch center Internet services, and not as the primary Internet connection for such purposes. Accordingly, while Grantee shall use commercially reasonable efforts to ensure that the Circuit is available 24 hours per day, 7 days per week, consistent with its own network availability, Grantee shall have no liability whatsoever to the City or otherwise under this Franchise for any failure or unavailability of the Circuit. Buildout and availability of the Circuit shall occur concurrently with Grantee's planned buildout of the Cable System, but in any event as quickly as reasonably practicable. The Grantor shall take reasonable precautions to prevent any inappropriate use or loss or damage to the Grantee's Cable System.

**8.3 Customer Service.** Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time to time.

**8.4 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the

procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days' prior notice of any rate increases, channel lineup or other substantive service changes.

**8.5 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

**8.6 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored.

## **SECTION 9. FRANCHISE FEE**

**9.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

**9.2 Payment of Fee.** Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 2.2. Each franchise fee payment shall be accompanied by a brief report showing the basis for the computation that is signed by an employee or agent of the Grantee with knowledge of the calculation of the payment. In the event of a dispute, the Grantor, if it so requests, shall be furnished a verified statement of said payment, reflecting the Gross Revenues and the applicable charges.

**9.3 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

**9.4 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be ten (10) years from the date on which payment by the Grantee was due.

## **SECTION 10. TRANSFER OF FRANCHISE**

**10.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

## **SECTION 11. RECORDS, REPORTS AND MAPS**

**11.1 Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be furnished to the Grantor upon request.

**11.2 Records Required.**

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

**11.3 Strand Maps.** Grantee agrees to provide strand maps to an unaffiliated Person engaged by Grantor if such Person signs Grantee's nondisclosure agreement.

**11.4 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for: (1) books and records showing the calculation of Gross Revenues and payment of Franchise Fees, which shall be kept for ten (10) years; and (2) service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

## **SECTION 12. EDUCATION AND GOVERNMENT (EG) ACCESS**

**12.1 Education and Government Access.** Upon request from Grantor, Grantee shall provide Internet service as specified in Section 8.2 in connection with educational and government access purposes.

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**12.3 Intentionally Left Blank.**

#### **12.4 Intentionally Left Blank.**

**12.5 Capital Support for Education and Government Internet Access.** Upon request from Grantor, Grantee shall provide a capital grant in the amount of up to Twenty Thousand Dollars (\$20,000.00) (the "Capital Grant"), payable to the Grantor within sixty (60) days of such request, to support the Internet service deployment specified in Sections 8.2 and 12.1. Grantor agrees that the Capital Grant only may be used for Internet service capital equipment costs incurred in connection with Section 8.2 and 12.1 and not for operational costs. The Capital Grant shall be for the exclusive use of the Grantor within the Service Area and shall not be used for purposes other than as described under this Section 12.5. The Grantor shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary. The Grantee shall be entitled to recover such capital costs from subscribers to the extent not prohibited by applicable law. Five (5) years from the Effective Date of this Franchise, the Grantor may request in writing an additional capital grant in an amount up to Twenty Thousand Dollars (\$20,000.00) (the "Second Capital Grant") which shall be payable to the Grantor within sixty (60) days of a written request. Such request shall be accompanied by a report showing how the original Capital Grant was used, and a description of the future capital needs that will be paid by the Second Capital Grant. Grantor and Grantee shall discuss the requested Second Capital Grant request, which shall not be unreasonably denied by Grantee. Grantor and Grantee shall cooperate to resolve any security concerns with the Internet service provided in connection with Sections 8.2 and 12.1 and/or implement any additional security equipment or protocol to comply with applicable law.

**12.6 Competitive Neutrality.** If any new or renewed Cable System or Video Service agreement, as defined in Section 14.4.1, contains obligations that are lesser in amount than the obligations imposed in this Section 12, Grantee's aggregate obligations under Section 12 shall be reduced to an equivalent amount. To the extent such a reduction is not sufficient to make the total obligations of this Franchise equivalent to the new or renewed franchise, Grantee may deduct from future franchise fee payments an amount sufficient to make the obligations of this Franchise equivalent to the new or renewed franchise.

### **SECTION 13. ENFORCEMENT OR REVOCATION**

**13.1 Informal Resolution.** In all cases where the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor, via the City Manager or his/her designee, shall first informally discuss the matter with Grantee and seek mutual resolution of the problem.

**13.2 Notice of Default.** If the Grantee engages in a pattern of noncompliance, including one or more instances of substantial noncompliance with a material provision of the Franchise where informal discussions do not lead to mutually acceptable resolution of the issue, the Grantor shall notify the Grantee in writing of the exact nature of the alleged pattern of noncompliance (the "Default Notice"). The Default Notice shall contain a statement specifically describing the default and the identification and contact information of any person providing information that serves as the basis for the default allegation.

**13.3 Grantee's Right to Cure or Respond.** The Grantee shall have ninety (90) days from receipt of the Default Notice to (i) respond to the Grantor, contesting the assertion of default, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the ninety (90) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed. During this time the Grantor shall make reasonable efforts to make any employee of Grantor available for interview by Grantee, and shall provide information that serves as the basis for default allegation available to Grantee.

**13.4 Enforcement.** Subject to applicable local, state, and federal law, in the event the Grantor, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.
- D. Upon revocation of the Franchise, Grantor may require Grantee to remove the Cable System from the Streets of the Grantor.

**13.5 Revocation Procedure.**

- A. If the Grantee fails to respond to the Default Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Grantor may seek to revoke the Franchise as outlined in this subsection.
- B. Prior to holding a public hearing on whether or not to revoke the Franchise, the Grantor shall give sixty (60) days' written notice to the Grantee. The notice shall set forth the exact nature of the default. During those sixty (60) days the Grantee may either object in writing and state its reasons for such objection, and provide any explanation or to cure the alleged default.
- C. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- D. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript or recorded video of the proceeding shall be made available to the Grantee within thirty (30) business days at Grantee's sole cost and expense. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal

such determination to an appropriate court, which shall have the power to review the decision of the Council *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

#### **SECTION 14. MISCELLANEOUS PROVISIONS**

**14.1 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, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**14.2 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**14.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**14.4 Level Playing Field.** Grantee acknowledges and agrees that Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Service Area. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized to use the Streets to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider, then upon ninety (90) days' prior written notice to Grantor, Grantee shall have the right and may choose, to the extent consistent with applicable federal and state laws and orders and rules adopted pursuant thereto:

- A. to modify this Franchise as Grantee and Grantor mutually determine is reasonably necessary to ensure that the material obligations applicable to Grantee are not more burdensome or less favorable than those imposed on any such competing provider; or
- B. to deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
- C. to terminate this Franchise and take in its place substantially the same franchise agreement of a competing provider of Cable Services or video services authorized by Grantor.

**14.4.1 Material Obligations.** Grantor and Grantee agree that any undertakings that relate to the renewal of the Franchise shall be subject to the provisions of Section 626 of the Cable Act (47 U.S.C. § 546) or any such successor statute. Nothing in this Franchise shall impair the right of Grantor or Grantee to seek other remedies available under law. For purposes of this section, "material obligations" shall include: underground construction; service to public buildings; customer service; franchise fee; education and government (EG) access, including any capital support; and records retention and inspection thereof.

**14.4.2 Video Service.** For the purpose of this Section 14.4, "Video Service" shall mean the provision of multichannel video programming generally considered comparable to video programming delivered by a television broadcast station, cable service or other digital television service, whether provided as part of a tier, on demand or on a per-channel basis, without regard to the technology used to deliver the video service, including, without limitation, Internet protocol technology or any successor technology. The term includes, without limitation: Cable Service and Video Service delivered by a community antenna television system. The term does not include: any video content provided solely as part of, and through a service offered by or over a network which does not utilize facilities located in Grantor's Public Ways, such as: (i) a service which enables users to access content, information, electronic mail or services that are offered via the public Internet, (ii) direct broadcast satellite service, and (iii) any wireless multichannel video programming provided by a commercial mobile service provider.

**14.5 Notices.** Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: City of Casper  
Attn: City Manager's Office  
200 N. David St.  
Casper, WY 82601

Grantee: Clarity Telecom, LLC  
5100 S. Broadband Lane  
Sioux Falls, SD 57108  
Attn: Legal Notices

Copy to: City of Casper  
Attn: City Attorney's Office

200 North David St.  
Casper, WY 82601

Copy to: Clarity Telecom, LLC  
c/o Holland & Hart LLP  
555 17th Street, Suite 3200  
Denver, CO 80202  
Attn: Susan Oakes, Esq.

**14.6 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be provided in accord with Wyoming State Statutes.

**14.7 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise 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 of this Franchise.

**14.8 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between the Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**14.9 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

**14.10 Effective Date.** The Franchise granted herein will take effect and be in full force twenty- one (21) days from passing Council upon the third reading of the Ordinance. Grantor shall notify Grantee of the Effective Date in writing. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**14.11 Choice of Law and Venue.** This Franchise shall be governed by the laws of the State of Wyoming and federal law. The State and Federal District Courts of Wyoming shall have venue and jurisdiction for any action in law or equity which may be instituted to enforce the terms of this Franchise.

**14.12 Wyoming Governmental Claims Act.** The City does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statute § 1-39-101 *et seq.*, and the City specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.



**14.13 No Third Party Rights.** The parties to this Franchise do not intend to create in any other individual or entity the status of third-party beneficiary, and this Franchise shall not be construed so as to create such status. The rights, duties and obligations contained in this Franchise shall operate only between the parties to this Franchise, and shall inure solely to the benefit of the parties to this Franchise. The parties to this Franchise intend and expressly agree that only parties signatory to this Franchise shall have any legal or equitable right to seek to enforce this Franchise, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Franchise, or to bring an action for the breach of this Franchise.

**14.14 No Waiver.** In entering into this Franchise, the Grantee and the Grantor do not waive, and hereby expressly reserves, any and all right that they have under applicable federal and state law.

PASSED on 1st reading the 18<sup>th</sup> day of May, 2021.

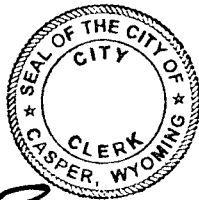
PASSED on 2nd reading the 1<sup>st</sup> day of June, 2021.

PASSED, APPROVED AND ADOPTED on the 3rd and final reading the 15<sup>th</sup> day of June, 2021.

APPROVED AS TO FORM

Walter Tremel

ATTEST



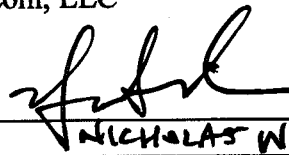
CITY OF CASPER, WYOMING  
A Municipal Corporation

Signature: [Signature]  
Name: Fleur Tremel  
Title: City Clerk

Signature: [Signature]  
Name: Steven K. Freel  
Title: Mayor

Accepted this 15<sup>th</sup> day of June, 2021, subject to applicable federal, state and local law.

Clarity Telecom, LLC

Signature:   
Name/Title: NICHOLAS WILKIN, CFO  
Date: JUNE 17, 2021

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