**CONSENT AND FRANCHISE AGREEMENT FOR BROADBAND INTERNET SERVICE**

 This Agreement is made on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between (BROADBAND MUNICIPALITY), a Michigan municipal corporation, and (MUNICIPALITY), a Michigan municipal corporation.

 **WHEREAS**, the (BROADBAND MUNICIPALITY) owns and operates a broadband internet access transport system (the "System"); and

 **WHEREAS**, the (BROADBAND MUNICIPALITY) has extended the System into (MUNICIPALITY) and may need to further extend the System and infrastructure adjacent to, along, under or within the road right-of-way located in the (MUNICIPALITY) and the limited service area (hereinafter the "Service Area") as legally described in Exhibit A, attached hereto; and

 **WHEREAS**, pursuant to Article VII, section 29 of the Michigan Constitution of 1963, a public utility may not use the streets, highways or other public rights-of-way within the (MUNICIPALITY) for public utility facilities without the (MUNICIPALITY)'s consent, and may not provide utility services within the (MUNICIPALITY) without first obtaining a franchise from the (MUNICIPALITY); and

 **WHEREAS**, the (MUNICIPALITY) is amendable to providing its consent and a franchise as limited by this Agreement.

 **NOW, THEREFORE**, it is hereby agreed by and between the (BROADBAND MUNICIPALITY) and the (MUNICIPALITY) as follows:

 **1. Consent.** Subject to the terms and conditions of this Agreement, the (MUNICIPALITY) grants to the (BROADBAND MUNICIPALITY) consent, permission, right and authority to lay, construct, maintain, locate, repair, rebuild, operate, use and replace broadband internet access transport system systems, including equipment necessary to extend the System in and through the Services Area. This Agreement also grants to the (BROADBAND MUNICIPALITY) any right to serve property within the Service Area. This Agreement does not grant to the (BROADBAND MUNICIPALITY) any right to serve any property within the (MUNICIPALITY) outside of the Service Area, or to place utilities in any other place within the (MUNICIPALITY) without first obtaining specific written authorization and approval from the (MUNICIPALITY). This Agreement does not provide any rights to use any (MUNICIPALITY) -owned property.

 **2. Consent Not Exclusive.** The rights, powers, and authorities granted by this Agreement are not exclusive, and the (MUNICIPALITY) may grant similar rights, and powers to any other person or entity.

 **3. Franchise.** Subject to the terms and conditions of this Agreement, the (MUNICIPALITY) grants to the (BROADBAND MUNICIPALITY) a franchise to operate its System within the Service Area. The following conditions shall apply to the franchise granted by this Agreement:

 (a) Construction Plans. The Construction of broadband facilities within the Service Area shall be constructed in accordance with the plans prepared by a certified public engineer, and a copy of such plans will be filed with the (MUNICIPALITY).

 (b) Maintenance and Repair. The (BROADBAND MUNICIPALITY) shall have the right to conduct ordinary and routine maintenance, repair and replacement work on the System constructed or maintained pursuant to this Agreement.

 (c) During the term of this Agreement, the (BROADBAND MUNICIPALITY) shall charge and bill users rates, fees and charges as permitted by law for Service in the Service Area as may be approved from time to time by formal action of the (BROADBAND MUNICIPALITY).

 **4. No Cost to the (MUNICIPALITY).** The (MUNICIPALITY) shall have no duties or responsibilities with regard to the System constructed and maintained pursuant to this Agreement and the (MUNICIPALITY) shall not be responsible for any cost or expenses associated with them.

 **5. No Basis for Annexation**. During the term of this Agreement, the (BROADBAND MUNICIPALITY) shall not use the existence of the System constructed pursuant to this Agreement to justify or support any annexation of property from the (MUNICIPALITY) to the (BROADBAND MUNICIPALITY), no matter who initiates the annexation effort. Furthermore, the parties agree that any body (including the County Board of Commissioners, State Boundary Commission or their successors) should view any such annexation effort as if the System constructed pursuant to the Agreement does not exist. Notwithstanding any provision of this Agreement to the contrary, in the event the (BROADBAND MUNICIPALITY) initiates or supports annexation of any portion of the Service Area from the (MUNICIPALITY) to the (BROADBAND MUNICIPALITY), the consent and franchise granted by this Agreement shall be immediately revocable by the (MUNICIPALITY).

 **6. No Liability**. Neither the (MUNICIPALITY) nor its officers, agents, employees, or contractors shall be liable to the (BROADBAND MUNICIPALITY) for any interference with or disruption in the operation of the System constructed pursuant to this Agreement, except for the sole negligence or willful misconduct of the (MUNICIPALITY), its agents, officers, employees or contractors. The (BROADBAND MUNICIPALITY), to the extent permitted by law, shall indemnify and hold the (MUNICIPALITY) harmless from any claims, demands, actions, suits or judgments of any kind or nature arising from or related to the System within the Service Area, except for the sole negligence or willful misconduct of the (MUNICIPALITY), its agents, officers, employees or contractors.

 **7. Non-Assignment**. The parties shall not assign, transfer or convey this Agreement, or any of the rights or obligations conveyed or imposed by this Agreement, to any other person, firm, or corporation without the prior written approval of the other party.

 **8. Interpretation**. Nothing in this Agreement shall be construed to convey any title or interest in or to any highway, street, alley, or other public place. Nothing in this Agreement shall be construed in any manner as a surrender by the (MUNICIPALITY) of its legislative power with respect to the subject matter of this Agreement or with respect to any other matter or in any manner limiting the right of the (MUNICIPALITY) to lawfully regulate the use of any public rights-of-way.

 **9. Compliance with Laws**. The (BROADBAND MUNICIPALITY) shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction, operation, maintenance, repair, replacement, ownership or use of the System constructed pursuant to this Agreement. The (BROADBAND MUNICIPALITY) shall secure all necessary permits, licenses, and approvals from all governmental officials, agencies or entities of competent jurisdiction.

 **10. Term**.

 (a) This Agreement is for thirty (30) years.

 (b) Termination Date. This Agreement shall continue in full force and effect until 11:59 p.m., \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

 (c) Continued Term. If either party desires to terminate this Agreement, it shall, six (6) months prior to the termination date, give written notice of termination. If neither party shall give notice of termination, as hereinafter provided, or if each party giving notice of termination withdraws the same prior to termination date, this Agreement shall be renewed for an additional term of thirty (30) years, subject to notice of termination by either party, on six (6) months written notice prior to the renewed agreement's new termination date.

 **11. Termination; Rescission**. This Agreement may be terminated by mutual written agreement of the parties. However, the franchise granted by this Agreement is revocable at will by the (MUNICIPALITY) upon six (6) months prior written notice to the (BROADBAND MUNICIPALITY) and after an opportunity for the (BROADBAND MUNICIPALITY) and Service Area representatives to address the (MUNICIPALITY) before any revocation decision is made.

 **12. Amendments and Contract Execution**. This Agreement may be amended or modified only in a writing signed by the appropriate (MUNICIPALITY) and (BROADBAND MUNICIPALITY) officials after approval of such amendment by the (MUNICIPALITY) and (BROADBAND MUNICIPALITY). This Agreement and amendments thereto shall be in writing and executed in multiple copies. Each copy shall be deemed an original, but all copies together shall constitute one and the same instrument.

 **13. Successors**. This Agreement shall be binding on and inure to the benefit of the parties and their successors.

 **14. Certification**. The persons signing this Agreement on behalf of the (MUNICIPALITY) and the (BROADBAND MUNICIPALITY) certify by their signatures that they are duly authorized to sign on behalf of said parties and that this Agreement has been authorized by said parties.

 **IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

WITNESSES: **(MUNICIPALITY)**

 **(BROADBAND MUNICIPALITY)**