

ORDINANCE NO. 2021-11-02

AN ORDINANCE OF THE CITY OF TONKAWA, OKLAHOMA, AMENDING CHAPTER 7 OF THE TONKAWA MUNICIPAL CODE 2021, PROVIDING FOR GRANTING A NON-EXCLUSIVE PERMIT TO CABLE TELEVISION OPERATORS FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM AND PROVIDING FOR THE PERMITTING ARTICLE; BY THE ADDITION OF A NEW ARTICLE 10 TO BE ENTITLED "CATV PERMITTING ARTICLE"; PROVIDING FOR SECTION 7-1001 ENTITLED "DEFINITION OF TERMS", PROVIDING FOR SECTION 7-1002 ENTITLED "GRANT OF PERMIT"; PROVIDING FOR SECTION 7-1003 ENTITLED "STANDARDS OF SERVICE"; PROVIDING FOR SECTION 7-1004 ENTITLED "PERMIT FEE, RATES AND CHARGES, CONDITIONS ON SALE OR TRANSFER"; PROVIDING FOR SECTION 7-1005 ENTITLED COMPLIANCE AND MONITORING"; PROVIDING FOR SECTION 7-1006 ENTITLED "INSURANCE, INDEMNIFICATION, BONDS OR OTHER SURETY"; PROVIDING FOR SECTION 7-1007 ENTITLED "GOVERNMENT AND EDUCATIONAL ACCESS AND EMERGENCY ALERT"; PROVIDING FOR "MISCELLANEOUS EXPENSES"; PROVIDING FOR REPEALER; SAVINGS; CODIFICATION; SEVERABILITY; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

WHEREAS, the City of Tonkawa, Oklahoma (the "City"), in its role as manager of public rights-of-way and easements and as a regulator of cable service, is required to maintain a fair and level playing field for all cable service providers; and

WHEREAS, the City and Clarity Telecom, LLC ("Cable Operator") have determined that it is in the best interest of all parties, including the citizens of the City, that Cable Operator be granted the right to construct and operate a cable system to provide cable services within the City; and

WHEREAS, the City Council has relied on Cable Operator's representations and has considered all information presented to it by Cable Operator, by City staff, and the public, and has determined that Cable Operator has the technical, legal and financial ability to construct and operate a cable system and to provide cable services; and

WHEREAS, based upon such representations, the City Council has determined that it would be in the best interests of the City to grant Cable Operator a non-exclusive permit to construct, install, maintain and operate a cable system in the City, subject to the terms and conditions set forth herein and applicable federal, state, and municipal statutes, regulations and ordinances, and that such action is consistent with the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONKAWA, OKLAHOMA, THAT THE FOLLOWING ARTICLE BE ENACTED:

ARTICLE 7

Section 7-1001

Definition of Terms

For the purpose of this Article (the "Article"), the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

(A) "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with Cable Operator.

(B) "Basic Cable" means the tier of Cable Service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.

(C) "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 other programming service.

(D) "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other equipment that is designed to provide Cable Service or other service to Subscribers. Cable Operator's cable system will be a fiber to the home/business network within the City utilizing the latest GPON/XGS PON infrastructure. Services available over the Cable System will include an Internet Protocol video service that includes the channels and programs commonly offered in the video marketplace in the City, as well as an integrated over-the-top (OTT) marketplace providing consumers access to content from providers like Netflix, Amazon Prime, Hulu, HBO max, etc. In addition, the Cable System will be capable of delivering high speed, symmetrical, bi-directional Internet to residential customers ranging from 500 Mbps to 2 Gbps and upwards of 10 Gbps for business customers.

(E) "FCC" means Federal Communications Commission, or successor governmental entity thereto.

(F) "Permit" means the initial authorization, or renewal thereof, issued by the City whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.

(G) "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.

(H) "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to,

public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by City in the Service Area which shall entitle City and Cable Operator to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. "Public Way" also means any easement now or hereafter held by City within the Service 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 City and Cable Operator to the use thereof for the purposes of installing or transmitting Cable Operator's Cable Service or other service over 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.

(I) "Service Area" means the present municipal boundaries of the City of Tonkawa, Oklahoma and all areas annexed into the City in the future.

(J) "Subscriber" means a user of the Cable System who lawfully receives Cable Service with Cable Operator's express permission.

(K) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 7-1002

Grant of Permit

1.2 **Grant; Build-Out Requirements.** The City hereby grants to Cable Operator a nonexclusive Permit which authorizes Cable Operator to construct and operate a Cable System and offer Cable Service and other service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, 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. Nothing in this Permit shall be construed to prohibit Cable Operator from offering any service over its Cable System that is not prohibited by applicable law. Cable Operator shall build out the Cable System over a reasonable period of time, and provided that the City timely issues permits and other owners and users of critical infrastructure (such as utility poles) do not cause delay, not less than 50% build-out in two years and 90% build-out in three years to every residence (provided that there is a request for Cable Service from Cable Operator in such area and excluding any home subscribing to any satellite service) within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Cable Operator's closest commercially reasonable tie-in point that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of Cable Operator's feeder cable, the Cable Service will be provided at Cable Operator's published rate for standard installations. Cable Service offered to Subscribers pursuant to this Article shall be conditioned upon Cable Operator having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit Cable Operator's ability to offer or provide bulk rate discounts or promotions.

1.3 **Term.** The Permit granted pursuant to this Article shall be for a term of ten (10) years from the passed and adopted date of the Permit unless otherwise lawfully terminated in accordance with the terms of this Article. The Cable Operator shall accept the Permit granted pursuant hereto by accepting and executing said Permit Acceptance and filing same with the City Clerk within sixty days after the granting of the Permit.

1.4 **Acceptance.** Cable Operator shall accept the Permit granted pursuant hereto by signing a Permit Agreement incorporating by reference this Article and filing same with the City Clerk within sixty (60) days after the passage and final adoption of this Article.

1.5 **Favored Nations.** In the event City enters into or has entered into a binding Permit of any kind with any Person other than Cable Operator to enter into the Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service or video service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the Public Way in the Service Area, is lawfully authorized by any governmental entity or otherwise exempt in the future from obtaining a permit as provided for in this Article in order to provide such services, City hereby agrees that, upon a request from Cable Operator, as a matter of law, Cable Operator's Permit will be modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing the same terms and conditions as such person(s) on a competitively neutral basis. Except as specifically provided in this paragraph, neither City nor Cable Operator shall be permitted to take any unilateral action that materially changes the explicit mutual promises and covenants contained in this Permit, and any changes, modifications or amendments to this Permit must be made in writing, signed by City and Cable Operator.

1.6 **Change of Law.** In the event the federal, state or local law, rules or regulations are amended, modified or created that have the effect of modifying the terms and conditions of this Permit during the Term or any extension thereof, Cable Operator has the sole option to terminate this Permit upon ninety (90) days' notice to City. Nothing in this Permit shall impair the right of Cable Operator to terminate this Permit and, at Cable Operator's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity (such as the State of Oklahoma). To the extent that Cable Operator lawfully obtains an authorization to operate a network and serve customers under applicable laws in lieu of this Permit, Cable Operator shall have the right to terminate this Permit upon 90 days prior written notice to City.

1.7 **Renewal of Permit.** Prior to the end of the Permit term, City and Cable Operator agree to enter into good faith negotiations regarding the renewal, modification, and/or extension of this Permit.

Section 7-1003

Standards of Service

1.8 **Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by Cable Operator pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. Cable Operator shall comply with all right-of-way and easement management ordinances and/or regulations enacted by City, including such ordinances and/or regulations enacted after the effective date of this Permit.

1.9 **Restoration of Public Ways.** If during the course of Cable Operator's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Cable Operator, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

1.10 **Relocation at Request of Permitting Authority.** Upon its receipt of reasonable advance notice, Cable Operator shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Cable Operator when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by City; but Cable Operator shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Cable Operator.

1.11 **Relocation at Request of Third Party.** Cable Operator shall, on the request of any Person holding a building or other structure moving permit issued by City, temporarily raise or lower its wires to permit the moving of such building or other structure, provided: (a) the expense of such temporary raising or lowering of wires is paid by such Person, including, if required by Cable Operator, making such payment in advance; and (b) Cable Operator is given not fewer than ten (10) business days' advance written notice to arrange for such temporary wire changes.

1.12 **Trimming of Trees and Shrubbery.** Cable Operator shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with Cable Operator wires, cables, or other equipment. Cable Operator shall reasonably compensate City or property owner for any damages caused by such trimming. Cable Operator will remove limbs, branches and other tree growth that they have cut in a timely manner.

1.13 **Safety Requirements.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

1.14 **Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Cable Operator likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Cable Operator's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Cable Operator shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Subsection 1.14 shall require Cable Operator to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Subsection 1.14, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Article, Cable Operator shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

1.15 **Subscriber Charges for Extensions of Service.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 7-1002, Subsection 2.1, Cable Operator shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to cover the capital costs of extending the Cable System. Cable Operator may require that payment of the capital contribution for construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

1.16 **Pole Attachments.** Utility poles owned by City or an affiliated entity shall be available for use by Cable Operator. Cable Operator shall pay City the maximum cable services pole rental rate as determined by the rules of the FCC for the use of poles owned by City or its affiliate, but not to exceed the amount paid by any other Cable Service provider attaching to such poles pursuant to a current and effective pole agreement.

Section 7-1004

Permit Fee, Rates and Charges, Conditions of Sale or Transfer

1.17 **Permit Fee.** During the term of this Permit, Cable Operator shall pay to City a fee equal to five percent (5%) of the gross revenues that Cable Operator and its affiliates collected from each subscriber to Cable Operator's Cable Services, and five percent (5%) of the portion of gross revenues from advertising which are defined below the fee ("Permit Fee"). The Permit Fee may be identified and passed through on any subscriber bill by Cable Operator, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each calendar quarter.

- (A) For purposes of this Permit, gross revenues are limited to the following:

- (1) recurring charges for Cable Services;
- (2) event-based charges for Cable Services, including but not limited to pay-per-view and video-on-demand charges;
- (3) rental of set top boxes and other Cable Services equipment;
- (4) service charges related to the provision of Cable Services, including, but not limited to, activation, installation, and repair;
- (5) administrative charges related to the provision of Cable Services, including, but not limited to, service order and service termination charges; and
- (6) amounts billed to Cable Services subscribers to recover the Permit Fee authorized by this section.

(B) For purposes of this Permit, gross revenues do not include:

- (1) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
- (2) late payment fees;
- (3) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Cable Services and not for the provisioning of any other service provided by Cable Operator or its affiliates;
- (4) amounts billed to Cable Services subscribers to recover taxes, fees or surcharges imposed upon Cable Services subscribers in connection with the provision of Cable Services, other than the Permit Fee authorized by this section;
- (5) revenue from the sale of capital assets or surplus equipment; or
- (6) charges, other than those described in subsection (A), that are aggregated or bundled with amounts billed to Cable Services subscribers.

(C) Gross revenues which are subject to the Permit Fee paid by Cable Operator additionally include a pro rata portion of all revenue collected by Cable Operator pursuant to compensation arrangements for advertising (less any commissions Cable Operator receives from any third parties for advertising) and home-shopping sales derived from the operation of Cable Operator's Cable System within the Service Area. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(D) Bundling discounts shall be apportioned fairly among video and other services. Cable Operator shall not apportion revenue in such a manner as to avoid the Permit Fee.

(E) The Permit Fee shall not apply to Internet access or Internet-based telephone services offered by Cable Operator. If the FCC or any other federal or state governmental authority with jurisdiction to do so authorizes the collection of such a fee during the term of this Permit, then Cable Operator shall, upon reasonable notice of the imposition of such a fee by the City that applies equally to all Internet access or Internet-based telephone service providers within the Service Area, commence remittance of a fee in the amount of not more than five percent (5%) of the gross revenues collected from the sale of such Internet access or Internet-based telephone services during the remaining term of this Permit; provided that the City and Cable Operator agree to the specific amount in an amendment to this Article/Permit. *This exclusion shall not apply to the payment of statutory "911" fees; such fees shall be collected and remitted by Cable Operator beginning the effective date of this Permit as required by applicable law.*

(F) In the event that any other video services provider, including but not limited to a cable operator or open video service provider, enters into any agreement or makes any arrangement with City during the term of this Permit whereby it is required or allowed to pay a fee to City that is similar to the Permit Fee described herein, this Permit shall be amended to allow Cable Operator to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Permit immediately upon request of Cable Operator.

Cable Operator and City agree that the Permit Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments except sales taxes, personal or real property taxes, and act valorem taxes.

1.18 **Rates and Charges.** City may not regulate the rates for the provision of Cable Service or other service, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as may be authorized pursuant to federal and state law. From time to time, and at any time, Cable Operator has the right to modify its rates and charges, at its discretion and without consent of City, including, but not limited to, the implementation of additional charges and rates; provided, however, that Cable Operator shall give notice to City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

1.19 **Conditions of Sale.** Except to the extent expressly required by federal or state law, if a renewal or extension of the Permit is denied or the Permit is lawfully terminated, and City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Cable Operator and City agree that in the case of a lawful revocation of the Permit, at Cable Operator's request, which shall be made in its sole discretion, Cable Operator shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. City further agrees that during such period of time, it shall authorize Cable Operator to continue to operate pursuant to the terms of its prior Permit; however, in no event shall such

authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Cable Operator is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to City, Cable Operator and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Cable Operator's continued operation of its Cable System during the six (6)-month period shall not be deemed to be a waiver, nor an extinguishment of; any rights of either City or Cable Operator. Notwithstanding anything to the contrary set forth in this Subsection 1.19, neither City nor Cable Operator shall be required to violate federal or state law.

1.20 **Transfer of Permit.** All of the rights and privileges and all of the obligations, duties and liabilities created by this Permit shall pass to and be binding upon the successors of City and the successors and assigns of Cable Operator and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that this Section shall not prevent the assignment or hypothecation of the Permit by Cable Operator as security for debt without such approval; and provided further that transfers or assignments of this Permit between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of City ("intracompany transfers"). Cable Operator shall notify City in writing within thirty (30) days of the closing of such intracompany transfer.

Section 7-1005 **Compliance and Monitoring**

1.21 **Books and Records.** Cable Operator agrees that City may review such of Cable Operator's books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the financial terms hereof. Such records include, but are not limited to, any public records required to be kept by Cable Operator pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Cable Operator shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. City agrees to treat any information disclosed to it by Cable Operator as confidential, to the extent not prohibited by law, and to disclose it only to employees, representatives, and agents of City that have a need to know, or in order to enforce the provisions hereof.

Section 7-1006 **Insurance, indemnification, and Bonds or Other Surety**

1.22 **Insurance Requirements.** Cable Operator shall maintain in full force and effect during the term of the Permit, at its own cost and expense, Comprehensive General Liability Insurance in the amount of at least \$1,000,000. Such insurance shall designate City as an additional insured to the liability limits imposed by the Oklahoma Governmental Tort Claims Act, 51 O.S. §151, *et seq.*

1.23 **Indemnification.** Cable Operator agrees to indemnify, save and hold harmless, and defend City, its officers, boards and employees, from and against any liability for damages and for any liability or claims, in each case resulting from property damage or bodily injury (including accidental death) which arise out of Cable Operator's construction, operation or

maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs.

1.24 **Bonds and other Surety.** Except as expressly provided herein, Cable Operator shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Permit or continuing its existence. City acknowledges that the legal, financial, and technical qualifications of Cable Operator are sufficient to afford compliance with the terms of the Permit and the enforcement thereof. Cable Operator and City recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Service or other service. In order to minimize such costs, City agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. City agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$100,000 conditioned upon the substantial performance of the material terms, covenants, and conditions of the Permit. Initially, no bond or other surety shall be required. In the event that one is required in the future, City agrees to give Cable Operator at least sixty (60) days' prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Cable Operator's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Permit or afford compliance therewith.

Section 7-1007 **Certain Free Internet Service; Emergency Alert**

1.25 **Certain Free Internet Service.** Cable Operator 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 two (2) municipal buildings located within the Service Area during the term of this Permit (the "Public Building Internet Service"). Installation costs and equipment charges relating to the Public Building Internet Service shall be paid by Cable Operator up to a maximum of \$25,000. The Public Building Internet Service shall be used solely for Internet access and not for any commercial or mission critical use. Accordingly, while Cable Operator shall use commercially reasonable efforts to ensure that the Public Building Internet Service is available 24 hours per day, 7 days per week, consistent with its own network availability, Cable Operator shall have no liability whatsoever to the City or otherwise under this Permit for any failure or unavailability of the Public Building Internet Service. Buildout and availability of the Public Building Internet Service shall occur concurrently with Cable Operator's planned buildout of the Cable System, but in any event as quickly as commercially practicable once the Cable System has been constructed in the immediate vicinity of such locations.

1.26 **Emergency Alert.** Cable Operator shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).

Section 7-1008 **Miscellaneous Provisions**

1.27 **Preemption.** If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Permit, then, to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by City, the jurisdiction of City shall cease and no longer exist.

1.28 **Employment Requirements.** Cable Operator shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, sex, religion, gender, national origin, age, familial status or disability. Cable Operator shall maintain and carry out a continuing program of specific practices designed to assure equal opportunity in every aspect of its employment policies and practices.

1.29 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon City or Cable Operator shall be in writing and shall be delivered by a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. If questioned, the party sending a notice shall have the burden to prove receipt or rejection. Rejected notices shall be deemed delivered. The parties may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this section. The notice and contact information for City and Cable Operator shall be set forth in the Permit.

1.30 **Descriptive Headings.** The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

1.31 **Severability.** If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Permit or any renewal or renewals thereof.

1.32 **Force Majeure.** Cable Operator shall not be held in default under, or in noncompliance with, the provisions of the Permit, 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 Cable Operator to 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 Cable Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Section II. REPEALER. All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

Section III. SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section IV. CODIFICATION. This ordinance shall be codified as herein provided.

Section V. SEVERABILITY. If any one or more of the sections, sentences,

clauses or parts of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Council of the City of Tonkawa that this section of the Tonkawa Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section VI. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health, safety and public good of the City and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect in order to immediately provide for this CATV permitting ordinance; By reason whereof, this Ordinance shall take effect and be in full force and effect after its passage, as provided by law.

Approved and executed this 4th day of November, 2021.



THE CITY OF TONKAWA, OKLAHOMA

Kenneth W. Smith
Kenneth W. Smith, Mayor

(Seal)

ATTEST:

Nancy C. Skipper
Nancy C. Skipper, City Clerk

Approved as to Content:

Kirk Henderson
Kirk Henderson, City Manager

Approved as to Form and Legality:

Bryce S. Kennedy, Jr.
Bryce S. Kennedy, Jr., City Attorney