



**VILLAGE OF SUGAR GROVE,**

**ORDINANCE NO. 20180731**

**AN ORDINANCE AUTHORIZING THE  
EXECUTION OF A CABLE TELEVISION  
FRANCHISE AGREEMENT  
BETWEEN THE VILLAGE OF SUGAR GROVE,  
ILLINOIS AND  
METRO FIBERNET, LLC d/b/a METRONET**

**WHEREAS**, the Village of Sugar Grove, an Illinois municipal corporation, is allowed pursuant to 65 Illinois Compiled Statutes 5/11-42-11 and pursuant to the Cable Communications Act, as amended) to grant or renew one or more non-exclusive franchises to operate, construct, maintain, and improve a cable television system within the Village of Sugar Grove; and

**WHEREAS**, the Village of Sugar Grove Cable Communications Ordinance, the Village of Sugar Grove and Metro Fibernet, LLC d/b/a Metronet, have been meeting for the purpose of renewing the franchise; and

**WHEREAS**, the parties have reached an agreement, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, all requirements for the purpose of entering into a franchise agreement have been met, including an opportunity for public comment; and

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF SUGAR GROVE, ILLINOIS:**

**Section 1:** That the Village Board of Trustees of the Village of Sugar Grove, Illinois hereby approves the Franchise Agreement with Metro Fibernet, LLC d/b/a Metronet, attached hereto as Exhibit "A." The Village President and Village Clerk are hereby authorized to execute the Agreement and any other documents necessary to take such further actions as are necessary to fulfill the terms of said agreement on behalf of the Village of Sugar Grove.

**Section 2:** That the effective date of the Franchise Agreement shall be no later than forty-five (45) calendar days from the date upon which the Village President has signed the Agreement.

**Section 3:** That this ordinance shall become effective immediately upon its passage.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 31<sup>st</sup> day of July 2018.

\_\_\_\_\_  
P. Sean Michels, President of the Board of Trustees of the  
Village of Sugar Grove, Kane County, Illinois

	Aye	Nay	Absent
Trustee Paluch	_____	_____	_____
Trustee Koch	_____	_____	_____
Trustee Johnson	_____	_____	_____
Trustee Montalto	_____	_____	_____
Trustee Herron	_____	_____	_____
Trustee Lendi	_____	_____	_____

ATTEST: \_\_\_\_\_  
Cynthia L. Galbreath,  
Clerk, Village of Sugar Grove

## CABLE TELEVISION FRANCHISE AGREEMENT

~~Code~~ THIS FRANCHISE AGREEMENT is made and entered into this day of \_\_\_\_ July, 2018 (the "Effective Date") by and between the Village of Sugar Grove ("Village"), an Illinois Municipal corporation, and CMN-RUS, Inc. ("Grantee").

### WITNESSETH:

WHEREAS, Grantee has requested to enter into a cable television Franchise to provide cable television service throughout the Village; and,

WHEREAS, the Village, having determined that the financial, legal and technical qualifications of Grantee are reasonably sufficient to provide cable television service in the Village, and have considered Grantee's plans for operating and maintaining its cable system during the term of a Franchise; and,

WHEREAS, after affording the public adequate notice and an opportunity for comment, the Village Board of the Village of Sugar Grove has determined that it is in the public interest to grant a non-exclusive cable television Franchise to Grantee in accordance with the terms hereinafter set forth; and,

WHEREAS, Grantee and the Village have reached agreement on the Franchise terms and conditions hereinafter set forth and in accordance with the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§521 et. seq., the Illinois Constitution of 1970, the Illinois Municipal Code, and the Village's Code of Ordinances.

NOW THEREFORE, in consideration of the foregoing and the mutual terms, conditions, promises, and undertakings contained herein, Grantee and the Village hereby agrees as follows:

### **Section 1: TITLE**

This Agreement may be cited as the Metronet Franchise Agreement of 2018 and is hereinafter referred to as the Agreement.

### **Section 2: DEFINITIONS**

For the purpose of this Agreement capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein. The following terms, phrases, words and their derivations shall have the meaning given herein:

"Act" or "Cable Act" means the Cable Communications Policy Act of 1984 [P.L. 98-549], as amended by the Cable Television Consumer Protection and Competition Act of 1992

[P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104], as the same may be amended from time to time.

"Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals and the public, educational, and governmental access channels.

"Cable Services" means the one-way transmission to subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such programming or other service.

"Cable System," "System," "Cable Communications System," or "CATV System" means any facility which is constructed in whole or in part in, on, under or over any Public Way or public place and which is operated in whole or in part to perform for hire the service of receiving and amplifying Video Programming and redistributing such Programming by wire, cable, or other means to members of the public who subscribe to such service; except that such definition shall not include any system which serves only the residents of one or more apartment dwellings under common ownership, control or management and commercial establishments located on the premises of such dwellings. A CATV System is classified by reason of the purpose and operation of the facilities; the technology by which the signals are received, amplified, and redistributed, except for necessarily using the Public Way, is not relevant to the determination of whether such a system is a CATV System.

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

"Customer" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

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

"Franchise Agreement" or "Agreement" means this Agreement and any amendments or modifications hereto.

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

"Franchise Fee" means any assessment imposed herein by the Village on a Grantee solely because of its status as a Grantee. The term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed upon both utilities and Cable Operators or their services) but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or cable Subscribers; capital costs which are required by the Franchise to be incurred by Grantee for the establishment of and operation of Governmental Access Facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages; or any fee imposed under Title 17, U.S. Code. Franchise Fees shall not include any taxes of general applicability on services furnished by the Grantee herein imposed directly upon any Subscriber by the State of Illinois, Kane, or Kendall Counties, the Village or other governmental unit and collected by the Grantee on behalf of said governmental unit. A Franchise Fee is not such a tax, and Franchise Fee expenses may not be deducted in determining the amount of the fee due to the Village.

"Grantee" means CMN-RUS, Inc.

"Grantor" means the Village of Sugar Grove, Illinois.

"Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view fees, advertising, and home shopping revenue, installation fees, franchise fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to City of Dallas, Texas v. FCC., 118 F.3d. 393 (5<sup>th</sup> Cir. 1997) and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena" case, City of Pasadena, California, et al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001), and In re: Texas Coalition of Cities for Utility Issues v. FCC., 56 F. 3d. 151 (5<sup>th</sup> Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area set forth in Exhibit A.

"PEG Access Channel" means a channel designated for Public, Educational, or Governmental use by the Village.

"PEG Access Facilities" means facilities or equipment for the use of Public, Educational or Government Access Channel capacity.

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

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

"Qualified Household" shall mean any single family residential home where a resident has agreed in writing to Grantee's standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Cable Service from Grantee.

"Village" means the Village of MontgomerySugar Grove, Illinois and all the territory within its present and future corporate boundaries.

"Village Board" or "Board" means the Village Board of the Village of MontgomerySugar Grove, Illinois.

### **Section 3: GRANT OF AUTHORITY AND ACCEPTANCE**

A. Grant of Franchise. The Village hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed. Metronet shall utilize easements in lieu of rights of way to install all facilities where feasible and reasonable. Furthermore, no above ground structures or facilities shall be installed within the rights of way.-

B. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/ or applicable law.

C. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

D. Reservation of Authority. Nothing in this Franchise Agreement shall (1) abrogate the right of the Village to perform any public works or public improvements of any description, (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (3) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

E. Competitive Equity.

- 1) In the event the Village grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a cable system, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.
- 2) In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

F. Acceptance. The Franchise as well as all rights, privileges, obligations and authority granted therein shall become effective upon the authorization of the Village Board for the execution of this Agreement, and the parties' execution of said Franchise Agreement. This Franchise Agreement describes the entire Franchise between the parties.

G. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

**Section 4: CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM**

A. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all provisions of Title 7, Chapter 5 of the Sugar Grove Municipal Code, entitled "CONSTRUCTION OF FACILITIES ON THE RIGHTS OF WAY," as may be amended from time to time.

~~AB.~~ Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal

utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially, or underground. Aerial facilities are only permitted in locations where poles and overhead utilities currently exist. Placement of any new poles requires prior approval from the Village, and approval is at the sole discretion of the Village. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

~~B.~~ C. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

~~C.~~ D. General Relocates: The Grantee shall not be required to relocate its facilities unless it has been afforded at least 30 days' notice of the necessity to relocate its facilities. Upon adequate notice, the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. Except for the provisions of Subsection 4C above, the Grantee shall not be required to perform the relocation work at its own expense. until it has received payment for the relocation work.

E. Village Staff Time. Grantee acknowledges it has proposed a schedule for installation of its fiber optic cable throughout the Village and the unincorporated area known as Prestbury that the Village serves for J.U.L.I.E. locates and that the Grantor may be required the Grantor to incur overtime costs to its employees. While the Grantor will make all reasonable efforts to complete the J.U.L.I.E. locates within normal business hours, Grantee acknowledges and understands that other J.U.L.I.E. locates and other responsibilities or operational issues may take precedence over the Grantor's J.U.L.I.E. locates related Grantee's installation of its fiber optic cable. The Grantor agrees to allocate one (1) employee to spend 4 hours per regularly scheduled work day on J.U.L.I.E. locates that have been issued Grantor permits related to Grantee's installation of its fiber optic cable to a maximum of 350 locates per month. After this individual has spent a total of 4 hours per day for the work week, Grantee agrees to pay for overtime incurred by the Grantor due to setting up, carrying out and completing all J.U.L.I.E. locates needed by Grantee to implement their planned installation of fiber optic cable throughout the Grantor. The hourly rate to be charged by the Grantor to Grantee for this overtime pay shall be \_\_\_\_\_Fifty Three dollars and Forty Three cents (\$53.43\_\_\_\_) per hour. Should the Grantor incur a double-time rate due to overtime work needed to be completed on designated holidays or other days in which an employee earns double time, the hourly rate shall be \_\_\_\_\_Seventy One dollars and Twenty Four cent (\$—71.24) per hour. Such hourly rate charges include salary/wage costs, FICA taxes, and pension costs associated with the hourly rate. The Grantor shall issue invoices to Grantee for the overtime charges at reasonable intervals and Grantee shall pay such



invoices within ten (10) business days of receipt (hereinafter “payment period”). Grantee agrees that the Grantor shall withhold the issuing of further permits until undisputed past due invoices, if any, are paid. If Grantee disputes an invoice, they shall issue such objection within sixty (60) days following the expiration of the payment period. Any undisputed sums shall be paid within the payment period. Upon reasonable request by Grantee, the Grantor shall provide appropriate documentation supporting its invoices. All invoices unpaid as of the due date and not disputed in good faith shall accrue interest at the rate of nine percent (9%) per annum. The rates referenced in paragraph 5 shall increase by three percent (3.0%) starting [June 1, 2018] and every June 1 after until the work contemplated herein is completed. Grantee agrees that no more than one LCP-, as depicted in Exhibit B Sugar Grove LCP Tracking Map dated 11/26/2017, shall be requested for J.U.L.I.E. locates any time.

F. Purchase locator: Within 30 days of the Effective Date of this Agreement Grantee agrees to purchase one J.U.L.I.E. locate device and related appurtenances acceptable to the Grantor and deliver said device to the Village and transfer all ownership of said device to the Village through appropriate written documentation. This equipment includes, at a minimum, the vLoc Pro2 Receiver with carry bag, the Loc-10Tx Broadband 10 Watt Transmitter with carry bag, the vLoc Live Cable Connector, the 12 Volt DC Power Lead, and the Loc-10Tx Rechargeable Battery Kit.

G. Grantee shall for Grantor’s record keeping purposes, submit both PDF and GIS electronic files of as-built locations.

## **Section 5: FRANCHISE FEES**

A. Franchise Fees. The Grantee shall pay to the Village a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. Any undisputed franchise fee payment which remains unpaid in whole or in part, after the date specified herein, shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest from the time of the discovery of the delinquent payment at the prime lending rate as quoted by Chase Bank U.S.A or its successor, computed daily from the time due until the date paid. Any undisputed overpayments made by Grantee to the Grantor shall be returned or credited upon discovery of such overpayment and shall be payable within sixty (60) days of the receipt of written notice from Grantee.

B. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues.

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

C. Franchise Fees Subject to Audit. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Village shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Agreement; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the Grantee's fiscal years. Upon the completion of an independent audit by the Village, the Village shall provide to the Grantee a final report setting forth the Village's findings in detail, including all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Village with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Village by the Grantee, or overpayment to the Village by the Grantee as the case may be, as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law. Any "Finally Settled Amount(s)" due to the Village as a result of such audit shall be paid to the Village by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Any overpayment by the Grantee to the Village shall be credited against subsequent franchise fee payments by the Grantee to the Village until such time as the overpayment is fully credited; or shall be paid by the Village to the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount" in the event no subsequent franchise fee payments are due to the Village. In the event Grantee does not pay the "Finally Settled Amount" within thirty days (30), Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two percent (2%) interest compounded daily from the due date for payment of the "Finally Settled Amount." Once the parties agree upon a "Finally Settled Amount" and such amount is paid by or credited to the Grantee, the Village

shall have no further rights to audit or challenge the payment for that period. The Village shall bear the expense of its audit of the Grantee's books and records.

D. Address Exchange. The Grantor and Grantee agree that within one hundred twenty (120) days of the Effective Date and in accordance with applicable privacy laws, they will exchange in electronic form their respective lists of the addresses located within the boundaries of the Grantor in order to ensure that all addresses in the Grantor are included in the Grantee's database for the Grantor. The parties agree to exchange said address lists upon written request, but not more than once annually, during the term of this Franchise Agreement. The Grantor and Grantee agree to exercise good faith efforts to maintain the accuracy of their respective databases. The parties further agree except that in the case of gross negligence, no penalties or interest shall apply to any errors discovered as result of any exchanges of information hereunder.

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

## **Section 6: ACCESS PROGRAMMING**

A. Capacity. Grantee shall provide capacity for the Village's noncommercial Public, Educational, and Governmental programming through Grantee's Cable Service consistent with the requirements set forth herein.

- 1) Within one hundred-twenty (120) days of written notice by the Village to the Grantee, Grantee shall energize one (1) channel for Government Access programming. Grantee shall offer Village's PEG Access programming on its Basic Digital Tier of service. Within the same one hundred-twenty (120) days, the Village shall have secured the necessary equipment in order to begin programming their access channel. It is the mutual intention of the parties that the programming to be aired on the Village's access channel shall be substantially locally produced and sourced programming germane to the Village of Montgomery.

- 2) The Village may request, and Grantee shall provide one additional PEG channel so long as the Repetitive Programming Threshold Use Requirement is satisfied. For the purposes of this Agreement, the term "Repetitive Programming Threshold Use Requirement" means that the PEG Access Channel provided for above in Section 6(A)(1), must be programmed by the Village at least eight (8) hours per day with, locally-produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The Village shall provide the Grantee with written documentation evidencing that the Repetitive Programming Threshold Use Requirements are being satisfied. Grantee shall have one hundred eighty (180) days to provide the additional PEG Access Channels. This channel shall be located in the Basic Digital Tier of service.
- 3) The Village may request, and Grantee shall provide, a second additional PEG channel so long as the Non-Repetitive Programming Threshold Use Requirement is satisfied. For the purposes of this Agreement, the term "Non-Repetitive Programming Threshold Use Requirement" means that both the PEG Access Channels provided for above in Section 6(A)(1) and 6(A)(2), must be programmed by the Village at least eight (8) hours per day with non-repetitive, locally-produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The Village shall provide the Grantee with written documentation evidencing that the Non-Repetitive Programming Threshold Use Requirements are being satisfied. Grantee shall have one hundred eighty (180) days to provide the second additional PEG Access Channel. This channel may be located in the Basic Digital Tier of service.
- 4) Grantee Use of Fallow Time. Because the Village and Grantee agree that a blank or underutilized Access Channel is not in the public interest, in the event the Village does not completely program a Channel, Grantee may utilize the Channel for its own purposes in accordance with the terms of 47 U.S.C. §532(b)(4). Grantee may program unused time on the Channel subject to reclamation from the Village upon no less than sixty (60) days' notice. The programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute fallow time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered fallow time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered fallow time. Fallow time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Fallow time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

B. Origination Points. At such time that the Village determines that it wants the capacity to originate live or recorded video and character generated Government Access programming from the current and any future Village Hall and the Police Department Community Room facilities, it shall notify Grantee of its intent in writing. The Grantee agrees to submit a cost estimate to implement the Village's plan within 30 days of receiving said notice. After an

agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

C. PEG Funding.

- 1) Upon a written request by the Village to the Grantee made at any time after the Effective Date of this Agreement — which request shall include a plan for the intended utilization of the requested PEG capital funds for PEG purposes — the Grantee shall agree to add an external charge of up to thirty-five cents (\$0.35) per month, added on each direct pay Subscriber's bill for Basic Service for PEG access capital pursuant to 47 U.S.C. 542(g) (2)(C). Equipment purchased with the PEG access capital payments shall be utilized to develop PEG programming for subscribers for the term of this Agreement. It is acknowledged by the Village and the Grantee that the intent of the parties in this subsection is that the amount of any external PEG access capital charge be the minimum amount necessary to fund the Village's reasonably projected needs for PEG Access Facilities; and, that the amount of any external charge appearing on subscriber billing statements change as infrequently as possible to accomplish the Village's PEG capital funding needs.
- 2) The external charge shall be permitted to be implemented a total of 5 times during the term of the franchise agreement. The first four implementations shall be allowed to run over a continuous 48 month period to allow the Village to re-pay the Village for the expense of the equipment and connections to initiate broadcasting on its access channel. The 5 implementation of the external charge shall be for an individual 12 month period, or such lesser term requested by the Village, and will occur, if at all, during the 7th, 8th or 9th year of the franchise term.
- 3) The Village's written request shall specify the amount of the external charge to be added to each Subscriber's bill for Basic Service for PEG access capital pursuant to 47 U.S.C. 542(g)(2)(C) of the Cable Act. The external charge shall be applied within one hundred twenty (180) days of the request or such date as otherwise agreed to by the Village and the Grantee. The external charge shall remain on each direct pay Subscriber's bill for Basic Service for twelve (12) months, or such other such term that would be consistent with subsection 1 above. Nothing herein shall prevent the Village and the Grantee from agreeing that any period of collection of this external charge shall be for a period of less than twelve (12) months.
- 4) The Grantee shall collect the external charge and make the additional PEG capital payments in installments from such collected sums. Said installments shall be paid at the same time and in the same manner as Franchise Fee, payments are made. The capital payments shall be expended for PEG Access Facilities and equipment to be utilized to develop PEG programming for subscribers. The Grantee shall terminate the PEG external charge within one hundred twenty (180) days of a written request by the Village to terminate the PEG external charge.

**Section 7: SYSTEM DESCRIPTION**

A. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. §76.

## **Section 8 SERVICE OBLIGATIONS**

A. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every new and existing residential home within the Franchise Area where a minimum of 15 Qualified Households have requested Cable Service within 1200 feet of the Grantee's distribution cable. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation and/or line extension that exceeds the standards set forth above.

B. New Developments. The Village shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Village agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

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

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

D. Emergency Alert System. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulation including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" — as may be amended from time to time.

E. Complimentary basic Cable Service. Pursuant to 220 ILCS 5/70-501(f) and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each Illinois accredited K-12 public and private school, not including "home schools," located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee's distribution cable. Also pursuant to 220 ILCS 5/70-501(f) and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet

to each Municipal Building located in the Franchise Area within one hundred twenty-five (125) feet of Grantee's distribution cable. This shall include, but not be limited to the Grantor's Village Hall, Public Works Building, Lift Stations, Water Towers and Well Sites. -The Grantor controlled sites shall be provided with a minimum upload and download and upload speeds of 200Mbps/75Mbps for occupied facilities and 100Mbps/25Mbps for unoccupied facilities. Upon request of the Village minimum speeds shall be increased to 1Gbps/250Mbps.

F. Customer Service Standards. Grantee and the Village acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 70/501 et. seq.

## **Section 9: INSURANCE**

A. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the Grantor certificates of insurance in accordance with Section 8 entitled "Insurance" of Title 7, Chapter 5 of the Sugar Grove Municipal Code, entitled "CONSTRUCTION OF FACILITIES ON THE RIGHTS OF WAY," as may be amended from time to time.

~~Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers, boards, commissions, councils, elected officials, agents, and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident, Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, Two Million dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from any one occurrence, and One Million Dollars (\$1,000,000) in automobile insurance. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.~~

## **Section 10: INDEMNIFICATION**

A. Throughout the term of this Franchise Agreement, the Grantee shall , comply with Section 9 entitled "Indemnification" of Title 7, Chapter 5 of the Sugar Grove Municipal Code, entitled "CONSTRUCTION OF FACILITIES ON THE RIGHTS OF WAY," as may be amended from time to time. The Grantee shall indemnify, defend and hold harmless the Village, its officers, agents and employees from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, provided that the Village shall give the Grantee written notice of its obligation to indemnify and defend the Village within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Village determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Village. The Grantee shall not indemnify the Village

~~for any liabilities, damages costs, or expense resulting from the willful misconduct or negligence of the Village, its officers, employees, or agents.~~

## **Section 11: ENFORCEMENT OF FRANCHISE**

A. Notice of Violation or Default. In the event that the Village believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the nature of the alleged noncompliance or default.

B. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Village's written notice:

- 1) To respond to the Village contesting the assertion of noncompliance or default; or  
To cure such default; or
- 2) In the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Village of steps being taken and the projected date that the cure will be completed.

C. Enforcement. Subject to applicable federal and state law, in the event that the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may:

- 1) Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or
- 2) In the case of a substantial default of a material provision of the Franchise, declare the franchise to be revoked in accordance with the following:
  - (a) The Village shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reason for such objection. In the event the Village has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Village shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.



- (b) At the designated hearing, the Village 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 terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Village shall be in writing and shall be delivered to the Grantee by certified mail.

## **Section 12: TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE**

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined, as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Metronet Holdings, LLC. Within thirty (30) days of receiving a request for consent, the Village shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any; it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the Village has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

## **Section 13: MISCELLANEOUS PROVISIONS**

A. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

B. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois or Federal law as applicable, and shall be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of the State of Illinois and/or federal law as applicable.

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

D. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through adoption of an appropriate resolution or order by the Village, as required by applicable law.

E. No Waiver. Nothing in this Franchise Agreement shall be construed as a waiver of rights, substantive or procedural; Grantee may have under Federal or State law unless such waiver is expressly stated herein.

F. Severability. If any word, phrase, clause, sentence, paragraph, section, subsection or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

G. Notices. Any notification that requires a response or action from a party to this franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Village:

Village of Sugar Grove  
Attn: Village Clerk  
10 S. Municipal Drive  
Sugar Grove, IL 60554

To the Grantee:

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

Recognizing the widespread usage and acceptance of electronic forms of communication, emails, and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above.

H. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any person, individual, corporation, or member of the public to enforce the terms of this Franchise Agreement

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

**For the Village of Sugar Grove:**

**For CMN-RUS, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

INITIAL FRANCHISE AREA  
EXHIBIT A

|

SUGAR GROVE LCP TRACKING MAP  
EXHIBIT B