ORDINANCE NO. 2026-06

AN ORDINANCE OF THE VILLAGE OF GRESHAM GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE RIGHT OF WAY IN THE VILLAGE OF GRESHAM.

WHEREAS, Kinetic ABS NE LLC ("Franchisee") has applied to the Village of Gresham, Nebraska for a non-exclusive franchise to enter, occupy, and use Right of Way to construct, install, operate, maintain, and repair fiber optic cable and related facilities to offer and provide telecommunications and data services to customers in the Village of Gresham; and

WHEREAS, the Village has authority to manage the public Right of Way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis;

WHEREAS, a franchise is a general permission to a service provider to enter, use, and occupy the Right of Way for the purpose of locating facilities;

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the Village, including without limitation, permits required in connection with construction activities in Right of Way which must be administratively approved by the Village after review of specific plans;

WHEREAS, the grant of a non-exclusive franchise requires submission to and approval by the Village Board;

WHEREAS, the management of telecommunication lines are necessary to preserve and protect the health, safety and welfare of Village residents and is important in providing economic benefits within the Village; and

WHEREAS, the Village Board finds that the franchise terms and conditions contained in this Ordinance are in the public interest.

NOW, THEREFORE, the Village Board does ordain as follows:

Section 1: Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein wherever used. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Municipal Code unless inconsistent herewith.

A. "Agent" shall mean any contractor, subcontractor, person or entity, other than an employee of the Franchisee, which is under the direction, control or authorization of Franchisee to affect, install, operate and maintain Facilities owned, managed or operated by Franchisee in the Right of Way.

B. "Broadband Service" means an existing and future high speed Internet access service with a minimum speed in excess of 100 Megabits per second and provided by the Franchisee for hire, sale, or resale to the general public.

C. "Village" means the Village of Gresham, Nebraska, its agencies, departments, and divisions, successors, in its present form, or in any later reorganized, consolidated or enlarged form.

D. "Village Property" means and includes all real property owned by the Village, other than Right of Ways, including without limitation, Village parks, the Village cemetery, and all property owned in fee by the Village.

E. "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines, including Optical Fiber.

F. "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

G. "Data Caps" means any residential customer volume limitation on amount of data per month per household or per device connected to the System where exceeding the cap could subject a household to alterations to its Internet access, possibly after one or more warnings, such as reduction of access speed, additional charges, suspension of service, or even termination of service.

H. "Effective Date" means five (5) days following the publication of this Ordinance or a summary thereof occurs in an official newspaper of the Village as provided by law.

I. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the Village including, without limitation, damage to persons or property from accidents or natural consequences, such as storms, earthquakes, riots or wars.

J. "Existing" means in actual physical being upon the Effective Date of this Ordinance.

K. "Facilities" means all of the plant, electronic equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver Services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, innerducts, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances, used in connection with or incidental to the distribution and use associated with an Optical Fiber system.

L. "FCC" shall mean the Federal Communications Commission

M. "Fiber Optic Technology" means a transmission medium capable of carrying digitized bits, bytes, or packets of communications or information (such as voice, video, or data) by means of electric lightwave impulses along a glass or plastic strand or fiber.

N. "Franchisee" means Kinetic ABS NE LLC, and its lawful successors, transferees or assignees, subject to such conditions as are defined herein.

O. "Franchise Territory" means all of the area within the Village limits of the Village as well as any area henceforth annexed thereto during the term of the Franchise.

P. "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or proration of costs, of any kind whatsoever, including without limitation overhead or labor costs, which would have otherwise been incurred.

Q. "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

R. "Obstruct" shall mean to place any tangible object or material in the Right of Way in a manner that stops, hinders, disrupts, or otherwise interferes with free and open passage over a specific area or part of the Right of Way. The term does not include the otherwise legal parking of a vehicle subject to all the current parking regulations of the Village.

S. "Optical Fiber" means wires, lines, and cables used to convey communications or information by means of Fiber Optic Technology.

T. "Overhead Facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

U. "Person" means a natural person, joint venture, joint stock association or company, partnership, firm, association, club, company, corporation, limited liability company, business trust, or organization.

V. "Public Street" means the surface, the area below the surface, and the airspace above the surface, of any highway, street, road, lane, alley, unpaved alleys, path, parkway, viaduct, bridge, sidewalk, or other public right of way for motor vehicle or pedestrian travel under the jurisdiction and control of the Village which has been acquired, established, dedicated, or devoted to such purposes.

W. "Right of Way" mean and include all present and future: (i) Public Streets, (ii) utility easements or similar properties in which the Village now or hereafter holds a property interest and/or a maintenance responsibility which, consistent with the purposes for which it was granted or dedicated, may be used to install, operate, and maintain Optical Fiber or Facilities, now or hereafter owned by or under the jurisdiction and control of the Village, but only to the extent of the Village's right, title, interest, or authority to grant a license or franchise to occupy and use such Right of Way for Optical Fiber or Facilities. "Right of Way" does not include Village Property; State highways; land dedicated for roads, streets, and not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the public way; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; federally granted railroad rights of way that are not open for motor vehicle use, or utility easements granted to utility companies (which may be reflected in a real property deed, subdivision plat, or other real property record) with respect to which the Village holds no property interest or maintenance responsibility.

X. "Services" means Broadband Service described herein, hereof offered and delivered by Franchisee to Subscribers over the System within the Franchise

Territory. Except as provided herein, no service speed shall be offered slower than 100 Mbps unless agreed to in writing by the Village Board.

Y. "State" means the State of Nebraska, its agencies, departments, and governmental subdivisions, and all agencies, departments, and divisions of its agencies, departments, and governmental subdivisions.

Z. "Subscriber" means any Person who entered into an agreement with Franchisee to subscribe to and is lawfully receiving Services provided by Franchisee on the Franchisee's System.

AA. "System" means Franchisee's network of Optical Fiber and Facilities used to furnish and deliver Services in the Franchise Territory.

BB. "Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

CC. "Utility Poles" means poles, crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

Section 2: Franchise.

A. The Village grants to Franchisee, subject to the terms and conditions of this Ordinance, a non-exclusive franchise to enter, occupy, and use Right of Way for constructing, installing, operating, maintaining, repairing, and removing the System for the purpose of providing Services within the Franchise Territory (the "Franchise"). Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

B. Nothing in this Ordinance grants authority to Franchisee to enter, occupy, or use of Right of Way for constructing, installing, operating, maintaining, repairing, or removing wireless communication facilities.

C. Nothing in this Ordinance grants authority to Franchisee to enter, occupy, or use Village Property.

D. Any rights, privileges, and authority granted to Franchisee under this Ordinance are subject to the legitimate rights of the police power of the Village to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Ordinance excuses Franchisee from its obligation to comply with all applicable laws enacted by the Village pursuant to such power. Any conflict between the terms or conditions of this Ordinance and any other present or future exercise of the Village's police powers will be resolved in favor of the exercise of the Village's police power.

E. Nothing in this Ordinance excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the Right of Way and to obtain permits from the Village before entering, occupying, or using the Right of Way to construct, install, operate, maintain, repair, or remove such facilities.

F. Nothing in this Ordinance excuses Franchisee of its obligation to comply with all applicable codes, rules, regulations, and standards.

G. Nothing in this Ordinance shall be construed to limit taxing authority or other lawful authority to impose generally applicable charges or fees, or to excuse Franchisee of any obligation to pay generally applicable lawfully imposed taxes, charges or fees.

H. Nothing in this Ordinance grants authority to Franchisee to impair or damage any Village Property, Right of Way, other ways or other property, whether publicly or privately owned.

I. Nothing in this Ordinance shall be construed to give Franchisee's facilities priority of use of Right of Way over the Village's facilities.

J. Nothing in this Ordinance shall be construed to create a duty upon the Village to be responsible for acquisition, construction, maintenance or repair of facilities or to modify the Right of Way to accommodate Franchisee's facilities.

K. Franchisee may use its fiber optic facilities authorized by this Ordinance for the transmission of information used to provide wireless services only as expressly provided in this Ordinance or by separate express permission of the Village.

L. Nothing in this Ordinance shall be construed to create, expand, or extend any liability of the Village to any third-party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Ordinance.

M. Nothing in this Ordinance shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

N. Nothing in this Ordinance authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that party's permission.

Section 3: Term.

A. Initial Term. The authorization granted under this Ordinance shall be for a period of twenty-five (25) years from the Effective Date (the "Initial Term").

B. Renewal. If Franchisee desires to renew its franchise for an additional term, it shall, not less than one hundred eighty (180) days before expiration of the current franchise, give written notice to the Village requesting renewal. The parties shall negotiate in good faith on all issues including compensation.

Within ninety (90) days after receiving a written renewal request, the Chairperson shall make a written recommendation to the Village Board to grant or deny the franchise in whole or in part. After receipt of the recommendation, the Village Board shall make a decision. If the renewal request is denied, the written determination shall include the reason(s) for non-renewal. The Village Board may continue consideration of the request for a period not to exceed thirty (30) days. The decision to grant or deny a renewal request shall be based upon the following standards:

1. The continuing capacity of the Right of Way to accommodate the Franchisee's existing facilities;

2. Franchisee's compliance with the requirements of this Ordinance;

3. Applicable federal, state, and local telecommunications laws, rules, and policies; and

4. Such other factors as may demonstrate that the continued grant to use the Right of Way will serve the community interest, including indications of significant customer satisfaction or dissatisfaction with Franchisee's provision of services; and

5. Mutual agreement on compensation issues.

C. If the parties are in agreement on compliance with standards in subsection B. 1-4 but have not reached agreement on subsection B. 5, the Franchisee shall be allowed to continue its operations under the existing terms and conditions until agreement or a decision to recommend denial is reached.

Section 4: Service Characteristics.

A. The System shall, at a minimum, provide the following capabilities and characteristics:

1. Net Neutrality: In the provision of Broadband Service, Franchisee shall comply with the Open Internet regulations.

2. No Blocking: Franchisee shall not block lawful content, applications, services, or non-harmful devices; and

3. No Throttling: Franchisee shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or the use of non-harmful devices; and

4. No Paid Prioritization: Franchisee shall not engage in paid prioritization, where paid prioritization means the management of the System to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.

5. Data Caps: During any period in which Franchisee does not generally impose Data Caps on comparable Broadband Services in its service territories, Franchisee will not impose Data Caps solely within the Franchise Territory.

B. Service Available to Every Residence.

1. Franchisee shall use commercially reasonable best efforts to extend the System to pass every residence within the Franchise Territory within the first year of the Initial Term. Commercially reasonable best efforts would take into consideration customer demand, competitive offerings from other providers, System extension costs, weather conditions, and other potential

unforeseen issues outside of Franchisee's control that adversely affect the ability to extend the System within such timeframe.

2. The Franchisee shall offer and provide Services to all residential Subscribers under non-discriminatory rates, terms, and conditions.

Section 5: Location of Facilities.

A. The System shall be erected, placed, laid, or otherwise installed, operated and maintained in such a manner as will least interfere with other public uses of Right of Way and Village Property, including storm-water drainage systems, and so as not to endanger the safety of Persons.

B. Upon Franchisee's failure to commence, work continuously, or complete any installation, operation and maintenance or restoration work required by this Ordinance with due diligence and dispatch, the Village may cause such work to be done after thirty (30) days advance written notice has been provided to Franchisee, given so as to afford Franchisee an opportunity to commence and complete such work within a reasonable time. The cost of such installation, operation and maintenance or restoration incurred by the Village upon Franchisee's failure shall then be charged and collected from the Franchisee.

Section 6: Engineering Standards.

A. Allocation of Space in the Right of Way. The Village shall have the power to establish limitations on the placement of new or additional facilities within specific congested segments of the Right of Way if there is insufficient space to accommodate all of the requests of entities to occupy the Right of Way. In making such decisions, the Village Board shall strive, to the extent possible, to accommodate all existing and potential users of the Right of Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the width and physical condition of the Right of Way, the protection of existing utilities and improvements in the Right of Way, and future Village plans for public improvements and development projects which have been determined to be in the public's interest.

B. Interference. Franchisee shall not place any fixtures or equipment where the same will interfere with any existing utility or improvement. Franchisee shall locate its facilities in such a manner as not to interfere unnecessarily with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abut any Right of Way. At the request of any Person holding a valid permit to move a building, house or structure and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its Optical Fiber as necessary to permit the moving of a building, house or structure. The expense of such temporary changes may be paid by the permit holder, and Franchisee may require a reasonable deposit of the estimated payment in advance. In no event is the Village responsible for any cost associated with this work.

Section 7: Construction Standards.

Franchisee must place its facilities underground except as otherwise expressly provided herein. Subject to the terms and conditions of this Ordinance, Franchisee may place Optical Fiber and splicing connections on existing utility poles as Overhead

Facilities along existing cable routes if approved by the owner of the utility poles. All other facilities, including without limitation facilities required to operate or maintain such Optical Fiber and Optical Fiber housing, and splicing connections must be Underground Facilities if they are located in a Right of Way, unless otherwise expressly authorized by the Village.

Franchisee's facilities shall not unreasonably interfere with the use of Right of Way or Village Property by the Village, the general public, or other persons authorized to enter, occupy, or use Right of Way or Village Property.

After the operative date of this Ordinance, Franchisee's facilities installed or replaced in Right of Way shall be installed, maintained, upgraded or replaced in conformance to the latest Village standards.

Section 8: Duty to Move or Alter Facilities.

A. Village reserves the right to construct or permit to be constructed cables, electric conduits, water, sewer, storm-water drainage system, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Village, along, across, over or under the Right of Way. In doing or permitting such work to be done, Village, its contractors or subcontractors shall not be liable to the Franchisee for any damages to Franchisee's facilities, willful and grossly negligent acts of Village, its contractors or subcontractors excepted.

B. Whenever by reason of establishing a grade or changes in the grade of any Right of Way, or in the location or manner of construction of any, cables, electric conduits, water, sewer, storm-water drainage system, gas or other pipelines, it shall be deemed necessary by the Village to alter or change Franchisee's distribution system, Franchisee shall make such alterations or changes within a reasonable time, not to exceed forty-five (45) days, as ordered in writing by the Village, without claim for reimbursement or compensation for damages against the Village. Failure to relocate within this timeframe will constitute a breach of this Ordinance.

C. Franchisee shall relocate its facilities immediately and at its expense at the request of the Village in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

D. If the Village shall require Franchisee to in any way alter, relocate or change its facilities from a private easement, then Franchisee shall be reimbursed by the Village for such alteration, relocation or change. Reimbursable costs shall be limited to facilities of like size.

E. The Village shall have the right to require Franchisee to change the location of any of Franchisee's poles within Right of Way when, in the opinion of the Village, the public convenience requires such change, and the expense thereof shall be paid by Franchisee.

F. Franchisee shall not impair or damage any Village Property, Right of Way, other ways or other property, whether publicly or privately owned.

G. Whenever Franchisee's facilities are no longer used by Franchisee and Franchisee has no plans for any future use of those facilities, then Franchisee shall remove those facilities that are at or above grade and restore the area in accordance with the Village's standards. This requirement may be waived by the Village, in its

sole discretion, upon a written request from Franchisee giving due consideration of such factors as the remaining economic life of the facilities, public safety, future use of Right of Way, or customer service needs.

Section 9: Maintenance and Inspection of Records.

A. Franchisee shall at all times make and keep full and complete plats, maps and other records showing the location and size of the System within the corporate limits of the Village. Such plats, maps and any other records shall show the location and nature of all other works, structures, equipment and appurtenances comprising Franchisee's system within the corporate limits of the Village. Franchisee shall further permit the Village to inspect such plats, maps, books and other records during regular business hours. After completion of construction on each project, Franchisee shall provide final as-recorded construction, (also referred to as "as built" drawings), or acquisition Facility maps, which shall be submitted to the Village. Such as-recorded maps shall be based upon post-construction inspections to verify location. Copies of as-recorded maps in a digital format and accuracy acceptable to the Village shall be submitted to the Village.

B. Franchisee agrees to make available within the corporate limits of the Village all books, maps, papers, and records pertaining to its business carried on by it in or through the Franchise Territory, for the purpose of affording the Village the opportunity to enforce the terms of this Ordinance and particularly to verify payment of occupation taxes and other amounts due under this Ordinance. Franchisee shall further permit the Village to inspect and audit during regular business hours the relevant books, maps and records kept by Franchisee in the ordinary course of business. The Village shall promptly notify Franchisee in writing of areas newly annexed into or deannexed from the corporate limits of the Village, and Franchisee shall update its records for the purpose of payment of occupation taxes as soon as reasonably practicable after receiving such notice.

Section 10: Pole, Structures and Property Owned by Others.

Whenever feasible, Franchisee may use existing poles when the installation of facilities aboveground is permitted. Franchisee must obtain written approval from the owners of all utility poles, structures and property not owned by Franchisee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the Village upon request. The Village makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The Village shall not be liable for the unavailability of utility poles, structures, and property owned by third parties for any reason whatsoever. The installation of System facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use Right of Way. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the Right of Way expires, terminates, or is cancelled, the authority of Franchisee to construct, install, operate, maintain, and repair Franchisee's facilities at such locations may be immediately cancelled at the sole option of the Village. The Village shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use Right of Way for any reason whatsoever. Notwithstanding the foregoing, the erection of new poles is only to be a last resort and shall be reviewed by the Village for approval on a case-by-case basis. In any event, new poles may not be erected in any new subdivision.

Section 11: Construction and Installation Requirements.

The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The Village will have the full authority permitted by applicable law to enforce compliance with these technical standards.

A. All installations of Franchisee System will be durable and installed in accordance with good engineering, construction, and installation practices.

B. All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience public use of the Right of Way or to adversely affect the public health, safety or welfare and in conformity with plans approved by the Village, except in instances in which deviation may be allowed by the Village.

C. All reserve cable and cable loops shall be stored on properly installed opti-loop (a/k/a snow shoe) devices or similar devices or methods approved by the Village.

D. The plans for facilities shall conform to and comply with all applicable federal, state, local, and industry codes, rules, regulations, and standards, including, but not limited to the National Electrical Code, the National Electrical Safety Code, and the Municipal Code of the Village, in connection with the construction, operation, and repair of the System.

E. Franchisee must cease work immediately if the Village determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the Village determines that Franchisee is in compliance. The Village shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

F. Neither approval of plans by the Village nor any action or inaction by the Village shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

Section 12: Coordination of Construction and Installation Activities and Other Work.

A. Franchisee shall coordinate its construction and installation activities and other work with the Village and other users of the Right of Way at least annually or as determined by the Village.

B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the Village, to minimize public inconvenience, disruption or damages.

C. Franchisee shall make a good faith effort to comply with a private property owner or occupier's preferences, if any, on location or placement of facilities on their property, consistent with sound engineering practices.

D. Franchisee shall make available and accept the co-location of property of others within trenches excavated or used by Franchisee in the Right of Way provided the costs of the work are fairly allocated between the parties.

E. Annually, upon request of the Village, Franchisee shall provide the Village with a schedule of its proposed construction or installation activities, if any, and other work in, around, or that may affect the Right of Way or Village property.

F. The Village shall give reasonable advance notice to Franchisee of plans to open Right of Way for construction or installation of Underground Facilities; provided, however, the Village shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the Village regarding Franchisee's future plans for use of the Right of Way to be opened. When notice has been given, Franchisee may only construct or install underground facilities during such period that the Village has opened the Right of Way for construction or installation.

G. In the event of an unexpected repair or emergency, Franchisee may commence such repair and emergency response work as required under the circumstances, provided Franchisee shall notify the Village as promptly as possible: before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

Section 13: Temporary Removal, Adjustment or Alteration of Facilities.

A. Franchisee shall temporarily remove, adjust or alter the position of its facilities at its cost at the request of the Village for public projects or other public operations or purposes.

1. The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;

2. Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, in the sole discretion of the Village;

3. The person obtaining such permission from the Village to move or remove such building or other object may be required to indemnify and save Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and

4. Completion of notification requirements by a person who has obtained permission from the Village to use a Right of Way for the moving or removal of any building or other object shall be deemed to be notification by the Village.

5. The Village may temporarily remove, adjust or alter the position of Franchisee's facilities as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The Village shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the Village's actions.

6. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 14: Safety and Maintenance Requirements.

A. All work authorized and required under this Ordinance will be performed in a safe, thorough, and workmanlike manner.

B. Franchisee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the Village, the Village may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the Village may make the repairs itself or have them made at the cost of Franchisee.

C. Franchisee, and any person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in Right of Way to prevent injury or damage to any person, vehicle, or property.

D. Franchisee shall maintain the System in proper working order. Franchisee shall restore the System to proper working order upon receipt of notice from the Village that facilities are not in proper working order. The Village may, after discussions with Franchisee, establish a reasonable time for Franchisee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the Village may restore the facilities to proper working order or have them restored at the cost of Franchisee.

Section 15: Removal of Unauthorized Facilities.

Within ninety (90) days following written notice from the Village for any reason listed in this Ordinance, Franchisee shall, at its expense, remove unauthorized facilities and restore Right of Way and other property to as good a condition as existed prior to construction or installation of the System. Any plan for removal of said facilities must be approved by the Village prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

A. Upon expiration, termination, or cancellation of the Franchise granted under this Ordinance;

B. Upon Franchisee's abandonment of the System. The System shall be deemed abandoned if the entire System is unused by Franchisee for a continuous period of at least one hundred eighty (180) days;

C. If the facilities were constructed or installed prior to the Effective Date of this Ordinance, unless such facilities have been expressly approved by the Village in writing following inspection after Franchisee has provided full information requested by the Village regarding the facilities; provided, however, that all facilities of Franchisee Existing on the Effective Date are hereby expressly approved by the Village in writing for purposes of this subsection C;

D. If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

E. If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Ordinance; or

F. If the facilities are unauthorized for any reason whatsoever.

Provided, however, that the Village may, in its sole discretion, allow a Franchisee to abandon facilities in place. No facilities may be abandoned in place without the express written consent of the Village. Upon consensual abandonment in place of facilities, the facilities shall become property of the Village, and Franchisee shall submit to the Village an instrument in writing, to be approved by the Village, transferring to the Village the ownership of such facilities. The failure of Franchisee to submit an instrument shall not prevent, delay, or impair transfer of ownership to the Village.

Section 16: Indemnification and Assumption of Risk.

A. Indemnification. To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless Village, its elected officials, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from Franchisee's performance under this Ordinance that results in any third-party claim for damages whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by Franchisee or anyone directly or indirectly employed by Franchisee or anyone for whose acts any of them may be liable. This section will not require Franchisee to indemnify or hold harmless the Village for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Village. The Village does not waive its governmental immunity by granting this Ordinance and fully retains all immunities and defenses provided by law with regard to any action based on this Ordinance. The provisions of this section survive any termination of the Franchise granted hereunder.

B. Assumption of risk. Franchisee assumes the risk of damage to its facilities located in Right of Way from activities conducted by third parties or the Village, its elected officials, officers, employees, servants, agents, or representatives.

Franchisee releases and waives any and all claims against the Village, its elected officials, officers, employees, servants, agents, and representatives for damage to or destruction of Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence of the Village.

C. Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the Village, its elected officials, officers, employees, servants, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the Village, its elected officials, officers, employees, servants, agents, and representatives against any and all subrogation claims if it fails to do so.

Section 17: Insurance.

Franchisee shall obtain and maintain, at its cost, worker's compensation insurance and the following liability insurance policies insuring both the Franchisee and the Village, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee:

A. Commercial general liability insurance, written on an occurrence basis, with limits not less than:

1. $2,000,000.00 for bodily injury or death to each person;

2. $1,000,000.00 for property damage resulting from any one accident; and

3. $1,000,000.00 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000.00 for each person and $1,000,000.00 for each accident;

C. The liability insurance policies required by this section shall be maintained by Franchisee throughout the term of the Franchise, such other periods of time during which Franchisee's facilities occupy Right of Way, and while Franchisee is engaged in the removal of its facilities. Franchisee shall provide an insurance certificate, together with a blanket endorsement naming the Village, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the Village prior to the commencement of any construction or installation of any facilities pursuant to this Ordinance or other work in a Right of Way. Any deductibles or self-insured retentions must be declared to and approved by the Village. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee's insurance shall be primary insurance as respects the Village, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the Village, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 18: Taxes, Charges, and Fees.

A. Franchisee shall pay and be responsible for all generally applicable charges and fees imposed by the Village on a competitively neutral basis, including those to recover actual administrative expenses incurred by the Village that are directly related to management of Right of Way, including receiving and approving this franchise, any permits, inspection of plans and construction.

B. Franchisee shall pay and be responsible for taxes and franchise fees permitted by law.

Section 19: Access to Facilities and Universal Service.

Franchisee shall provide access to its services by hire, sale, or resale without unreasonable discrimination. The Franchisee purports to serve the general public, it shall make its telecommunications and broadband services available to any customer within the Franchise Territory who shall request such service whenever feasible, without unreasonable discrimination as to the terms, conditions, rates or charges for the Franchisee's services. It is understood that Franchisee shall be entitled to exercise normal business judgment in allocating or reserving limited capacity.

Section 20: Annexation.

Upon any addition or annexation to the Village of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Ordinance without further action of the Village or Franchisee.

Section 21: One-Call System.

Franchisee is responsible for complying with the provisions of Nebraska's One-Call statutes and all Village codes associated with the location of the System.

Section 22: Vacation of Right of Way.

The Village reserves the right to vacate any Right of Way which is subject to rights, privileges, and authority granted by this Ordinance. If Franchisee has facilities in such Right of Way the Village shall reserve a right of use for Franchisee.

Section 23: Duty to Provide Information.

Within twenty (20) days of a written request from the Village stating the cause for such request, Franchisee shall furnish the Village with all requested information sufficient to demonstrate:

A. That Franchisee has complied with the requirements of this Ordinance specified in such request; and

B. That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid.

C. Franchisee's obligations under this section are in addition to those provided elsewhere in this Ordinance.

D. Upon request by the Village, and not more than once per calendar year, the Franchisee shall provide a report summarizing customer complaints. For the purposes of this requirement customer complaints are defined as:

1. Complaints received by the Franchisee and their resolution;

2. Such complaints may be made by letter, email, phone call or any other medium by which Franchisee may be contacted; and

3. The Village may allow the Franchisee to make a summary version of this requirement.

4. These reports shall be confidential unless deemed necessary by the Village for the enforcement of Section 26.

Section 24: Records.

Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Village. The Village will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are directly related to the enforcement of this Ordinance or to verify Franchisee's compliance with terms or conditions hereof. Franchisee will not deny the Village access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.

All such documents and records maintained by Franchisee shall be made available for inspection by the Village at reasonable times during normal business hours within fourteen (14) days of a written request by the Village; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

One copy of documents and records requested by the Village will be furnished to the Village at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) days of the Village's request, that the Village inspect them at Franchisee's local office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the Village, and if the Village determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Ordinance, or to verify Franchisee's compliance with terms or conditions of this Ordinance, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

Section 25: Assignment or Transfer.

Franchisee's rights, privileges, and authority under this Ordinance may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. In the case of a merger, consolidation, sale of all or substantially all of Franchisee's assets or other business combination, the Village shall not withhold or delay its approval as long as Franchisee complies

with the requirements in this Section 25. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Ordinance may be subject to the following reasonable conditions:

A. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the Village.

B. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the Village not less than one hundred and eighty (180) days prior to the proposed date of assignment, transfer, or disposal:

1. Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal; and

2. Any other information reasonably required by the Village directly related to the standards set forth in subsection 25(C) below.

C. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Ordinance and to comply with the terms and conditions of this Ordinance.

D. Any transfer, assignment, or disposal of rights, privileges, and authority under this Ordinance without prior written approval of the Village pursuant to this section shall be void and is cause for termination of the Franchise.

E. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the Franchisee, of the ownership or working control of affiliated entities having ownership or working control of Franchisee, shall be considered an assignment or transfer requiring Village approval. Transactions between affiliated entities are not exempt from Village approval. A Franchisee shall promptly notify the Village prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of a Franchisee shall cause a review of the proposed transfer. Village approval shall not be required for mortgaging purposes.

F. It is understood that Franchisee intends to sell, lease or license capacity on its network to third-party Internet service providers or other entities that will provide service to end users. Accordingly, the sale, lease or license of Franchisee's network capacity, not involving transfer of ownership or working control of facilities constructed or installed pursuant to this Ordinance, shall not be deemed a transfer, assignment or disposal.

G. All terms and conditions of this Ordinance shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Ordinance.

H. Notwithstanding anything to the contrary in this Ordinance, the rights, privileges, and authority under this Ordinance may be assigned or transferred to any Person who at the time of the assignment or transfer controls, is controlled by, or is under common control with, Franchisee. In the event Franchisee intends to sell the facilities or system constructed or installed under this franchise, the Village shall

have an equal opportunity to purchase such facilities or system as other potential buyers. Village shall be given the same notice and opportunities to purchase as other potential buyers.

Section 26: Violations, Noncompliance, and Other Grounds for Termination or Cancellation.

A. The Franchise granted hereunder, and any right, privilege or authority of Franchisee to enter, occupy or use Right of Way may be revoked by the Village for the following reasons:

1. Violation of or noncompliance with any material term or condition of this Ordinance by Franchisee;

2. Violation of or noncompliance with the material terms of any required permit by Franchisee;

3. Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any Right of Way without Franchisee first obtaining required permits from the Village and all other appropriate regulatory authorities;

4. Unauthorized construction, installation, operation, maintenance, or repair of facilities on Village property;

5. Misrepresentation by or on behalf of a Franchisee in any application or written or oral statement upon which the Village relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;

6. Abandonment of facilities;

7. Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or

8. Insolvency or bankruptcy of Franchisee.

B. In the event that the Village believes that grounds exist for termination or cancellation of the Franchise granted under this Ordinance or any right, privilege or authority of Franchisee to enter, occupy or use Right of Way, Franchisee shall be given written notice thereof by the Village, together with a reasonably detailed description of the grounds for such possible revocation, and providing Franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for revocation;

2. That rebuts the alleged violation, noncompliance, or other grounds for revocation; or

3. That it would be in the public interest to impose some penalty or sanction less than revocation.

C. In the event that Franchisee fails to provide evidence reasonably satisfactory to the Village as provided in subsection (B) of this section, the Village shall refer the apparent violation, noncompliance, or other grounds for revocation to the Village Board. The Village Board shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

D. If the Village Board determines that the violation, noncompliance, or other grounds for revocation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the Village Board, forfeit all rights, privileges and authority conferred under this Ordinance or any use and/or development authorization or permit granted by the Village, and this Ordinance and any such use and/or development authorization or permit may be terminated or cancelled by the Village Board. The Village Board may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the Village by reason of Franchisee's actions or omissions.

E. The Village Board's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Ordinance or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for revocation. Further, nothing herein shall be construed as limiting any remedies that the Village may have, at law or in equity, for enforcement of this Ordinance and any use and/or development authorization or permit granted to Franchisee.

F. Franchisee shall ensure that its contractors, agents, and assigns have knowledge of the provisions of this Ordinance, and violations of the provisions of this Ordinance by Franchisee's contractors, agents, or assigns shall be deemed to be violations by Franchisee.

Section 27: Notices.

A. Any regular notice or information required or permitted to be given to the parties under this Ordinance may be sent to the following addresses unless otherwise specified:

Village:	Franchisee:
Village of Gresham	Kinetic ABS NE LLC
Attn: Village Clerk	Attn: Permitting – Underlying Rights
P.O. Box 164	2101 Riverfront Drive
Gresham, Nebraska 68367	Little Rock, Arkansas 72202
(402) 735-7385	(877) 652-2321

B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the Village and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair

facilities to restore them to proper working order. Annually, on request of the Village, Franchisee will meet with Village emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the Village, actively participate in emergency preparations.

Section 28: Non-waiver.

The failure of the Village to exercise any rights or remedies under this Ordinance or to insist upon compliance with any terms or conditions of this Ordinance shall not be a waiver of any such rights, remedies, terms or conditions of this Ordinance by the Village and shall not prevent the Village from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 29: Eminent Domain.

This Ordinance is subject to the power of eminent domain. In any proceeding under eminent domain, the franchise itself shall have no value.

Section 30: Limitation of Liability.

Except for willful misconduct, administration of this Ordinance may not be construed to create the basis for any liability on the part of the Village, its elected officials, officers, employees, servant, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the Village; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Ordinance by the Village; or for the accuracy of plans submitted to the Village.

Section 31: Damage to Facilities.

Unless directly and proximately caused by the active sole negligence of the Village, the Village shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a Right of Way done by or on behalf of the Village.

Section 32: Governing Law and Venue.

This Ordinance and use of the applicable Right of Way will be governed by the laws of the State of Nebraska, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Nebraska, unless preempted by federal law, and subjected to the jurisdiction of the Courts of the State of Nebraska. Any action relating to this Ordinance must be brought in the District Court of York County, Nebraska, or in the case of a federal action, the United States District Court in Lincoln, Nebraska, unless an administrative agency has primary jurisdiction.

Section 33: Severability.

If any section, sentence, clause, or phrase of this Ordinance or its application to any Person should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or

constitutionality of any other section, sentence, clause, or phrase of this Ordinance nor its application to any other Person.

Section 34: Compliance with Federal, State and Local Laws.

A. This Ordinance shall at all times be subject to applicable local, state and federal law, except as specifically provided otherwise.

B. If any federal or state law or regulation shall require or permit the Village or Franchisee to perform any service or act or shall prohibit the Village or Franchisee from performing any service or act which may be in conflict with the terms of this Ordinance, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Franchisee and the Village shall, to the extent terms in this Franchise are clearly preempted, conform to state laws and regulations regarding Internet access services as they become effective, unless otherwise stated, and to conform to federal laws and regulations as they become effective.

C. In the event that federal or state laws or regulations clearly preempt a provision or limit the enforceability of a provision of this Ordinance, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or state law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Village.

D. If any term, condition or provision of this Ordinance or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Ordinance and all terms, provisions and conditions hereof shall, in all other respects, continue to be effective. In the event such law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Franchisee and the Village without further action by the Village.

Section 35: Miscellaneous.

A. Equal Employment and Nondiscrimination. Throughout the term of the franchise granted under this Ordinance, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, any applicable FCC rules and regulations relating thereto.

B. Descriptive Headings. The headings and titles of the sections and subsections of this Ordinance are for reference purposes only and do not affect the meaning or interpretation of the text herein.

C. Costs and Attorneys' Fees. If any action or suit arises in connection with this Ordinance, the prevailing party will be entitled to recover all of its reasonable

costs, including attorneys' fees, in addition to such other relief as the court may deem proper.

D. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the Village and Franchisee, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

E. Mutual Negotiation. This Ordinance was mutually negotiated by the Franchisee and the Village and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Ordinance.

F. Third-Party Beneficiaries. There are no third-party beneficiaries to this Ordinance.

G. Actions of the Village or Franchisee. In performing their respective obligations under this Ordinance, the Village and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Ordinance sets forth a time for any material act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Ordinance, and sufficient grounds for the Village to invoke any relevant remedy.

H. Entire Agreement. This Ordinance represents the entire understanding and agreement between the Village and Franchisee with respect to the subject matter and supersedes all prior oral and written negotiations between them.

I. Modification. The Village and Franchisee may alter, amend or modify the terms and conditions of this Ordinance upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the Village's exercise of authority reserved to it under this Ordinance.

J. Non-exclusivity. This Ordinance does not confer any exclusive right, privilege, or authority to enter, occupy or use Right of Way for delivery of telecommunications services or any other purposes. The Franchise is granted upon the express condition that it will not in any manner prevent the Village from granting other or further franchises in, on, across, over, along, under or through any Right of Way.

K. Rights granted. This Ordinance does not convey any right, title or interest in Right of Way, but shall be deemed only as authorization to enter, occupy, or use Right of Way for the limited purposes and term stated in this Ordinance. Further, this Ordinance shall not be construed as any warranty of title.

L. Contractors and subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the Village's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

M. Force Majeure. Neither party shall be liable for failure to perform the party's obligations if such failure is a result of unforeseeable Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), terrorist

activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, or lockout. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of the unforeseen event.

N. No broadband franchise granted to any other Person or entity shall be on terms or conditions more favorable or less burdensome when taken as a whole than those imposed herein.

Section 36: Acceptance of Franchise.

Within thirty (30) days after the passage and approval of this Ordinance, the Franchise granted under this Ordinance may be accepted by the Franchisee by its filing with the Village Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept the Franchise granted hereunder within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights, privileges, and authority herein granted shall, after the expiration of the 30-day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 37: Amendment.

Following acceptance of the terms hereof by Franchisee, the terms and conditions of the Franchise granted under this Ordinance may not be amended, supplemented or repealed without the written consent of both the Village and Franchisee.

PASSED AND APPROVED this 10th day of November, 2026.

VILLAGE OF GRESHAM • SEAL • GRESHAM, NEBRASKA

Chairperson

ATTEST:

Michelle Lowther

Village Clerk

(SEAL)