**FRANCHISE FOR FIBER OPTIC SERVICES**

**ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_\_\_**

AN ORDINANCE GRANTING A FRANCHISE TO CENTURY ENTERPRISES, INC., A FOR-PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF ILLINOIS, TO CONSTRUCT, OPERATE AND MAINTAIN A FIBER OPTIC COMMUNICATION SYSTEM IN THE CITY OF KNOXVILLE, ILLINOIS SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

The City Council of the City of Knoxville, Illinois (“CITY”) ordains:

**STATEMENT OF INTENT AND PURPOSE**

The City intends, by the adoption of this Franchise Agreement, to bring about the development of a fiber optic communication system, and the continued operation of it. Such a development can contribute significantly to the communication needs of the public schools and potentially others.

**FINDINGS**

In review of the proposed Fiber Optic Services Agreement proposed by Century Enterprises, Inc. “the Company,” the City Council makes the following findings:

1. That the Company’s technical ability, financial condition, legal obligations and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. The Company’s plans for constructing, upgrading and operating the system were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

3. The Franchise granted to the Company by the City complies with the existing applicable state and federal laws and regulations.

4. That the cable television grant of this additional franchise is no more favorable or less burdensome to the Company than those required under any existing Franchise authorized by the City, including but not limited to terms and conditions pertaining to the territorial extent of the franchise, system design, technical performance standards, construction schedules, performance bonds, standards for construction and installation of telecommunication system services, service to subscribers, public educational and governmental access channels and program, production assistance, liability and indemnification.

5. That no other franchise granted by the City of Knoxville has a competitive advantage over the other.

6. That public right of ways will accommodate the additional cable television and other telecommunication services and will not adversely impact the long erm addition of the services contemplated by this franchise.

7. That the following Fiber Optic Services Agreement is approved as a valid and existing franchise for the City.

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017 by and between The City of Knoxville, State of Illinois, hereinafter sometimes referred to as “CITY”, and Century Enterprises, Inc., a for-profit corporation organized under the laws of the State of Illinois, sometimes referred to as “THE COMPANY”.

WITNESSETH:

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, the Mayor and members of the City Council of the City (hereinafter collectively referred to as “City”), have considered the desirability of entering into this Agreement for the benefit and welfare of City and its citizens;

WHEREAS, the City intends by the adoption of this Agreement, to bring about the development of fiber optic facilities which may provide Internet, telephone, television and other communications services (hereinafter “System”).

WHEREAS, the City makes the following findings with regard to this Agreement:

1. That Company’s technical ability, financial condition, legal qualifications, and character were considered and approved by the City in accordance with state and federal regulations and the ordinances of City;
2. Company’s plans for constructing, upgrading and operating the System were considered and found adequate and feasible after a full opportunity to be heard;

3. The franchise granted by this Fiber Optic Services Agreement/Ordinance by City complies with the existing applicable Illinois, Federal and City laws and regulations.

**SECTION I. TITLE**

This Agreement and Ordinance shall be known and cited as the “Fiber Optic Services Agreement.”

**SECTION II. DEFINITIONS**

For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meaning as given herein. When not inconsistent with the context, words and the singular number include the plural number the word “shall” is always mandatory and not merely directory. The word “may” is always directory and discretionary and not mandatory.

1. “Television Service” means any service tier, which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier.
2. “Board of Trustees” or “City Council” means the governing body for the City.
3. “Cable” means fiber transmission line buried underground or hung on poles that can carry the system.
4. “County” means County of, a municipal corporation, in the State of Illinois, acting by and through its County Board.
5. “Drop” means the cable that connects the equipment at the Subscriber’s location to the nearest feeder cable of the System.
6. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
7. “Internet Service” means the connection of subscriber to the world wide web.
8. “Installation” means the connection of the System from feeder cable to the point of connection, including Standard Installations and Custom Installations.
9. “Person” is any person, firm, partnership, association, corporation, Cooperative, or other legal entity.
10. “Standard Installation” means any Installation, which can be completed using a Drop of one hundred fifty (150) feet or less.
11. “Street” means the surface of, and the space above and below, any public Street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by City.
12. “Subscriber” means any Person who lawfully receives services. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

**SECTION III. GRANT OF AUTHORITY AND GENERAL PROVISIONS**

1. Franchise Required

It shall be unlawful for any person to construct, operate or maintain a Fiber Optic System (“System) in City, unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any person to provide System service in the City unless such person shall have first obtained and shall currently hold a valid Franchise Ordinance. All System franchises granted by City shall contain terms and conditions as required by state statute.

The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Agreement and to make such tests at its own expense as it shall find necessary to insure compliance with the terms of this Agreement and applicable provisions of local, state, and federal law.

The Company shall, on request of any person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of building with the expense of temporary removal to be paid by the person requesting the same, and the Company shall be given not less than ten days advance notice to arrange for such temporary changes.

1. Grant of Franchise

In consideration of the faithful performance and observance of the conditions and reservations hereinafter set forth, there is hereby granted to the Company, its successors, assigns or designees a non-exclusive right to erect, install, construction, reconstruction, replace, remove, repair, maintain and operate in or upon, under, above, across and from the Streets, avenues, highways, sidewalks, bridges and other public ways, easements, rights of way and lands, as now existing and all extensions thereof and additions thereto, in the City of Knoxville, Knox County, Illinois, including the right to install and use thereon all equipment, facilities, appurtenances and apparatus of any nature, for the purpose of providing System Service in accordance with the laws of the United States of America and the State of Illinois (hereinafter referred to as “Franchise” or “Agreement”). This provision shall in no manner infringe on the rights of any individual to construct or install any communications equipment for private use by such individual.

The Franchise granted by this Agreement to provide System Services is non-exclusive for the territory contained within the corporate boundaries of City as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered.

**SECTION IV. DURATION**

The Franchise and rights herein shall take effect and be in force and after the passage and approval of this Agreement, as required by law, and shall continue in force for so long as the Company provides system Service under this Agreement, at any rate not to exceed twenty years following the effective date of this indenture. At the option of the Company, this Agreement may be renewed on the same terms and conditions for an additional twenty years, provided, however, that the City and the Company may agree to modify the terms of the Agreement by further mutual written agreement.

**SECTION V. REGULATIONS**

The Company shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Ordinance, and to assure uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms and conditions shall not conflict with the provisions hereof. Copies of such rules, regulations, terms and conditions adopted by the Company shall be available for inspection at its local office, 285 Mid Century Lane, Fairview, Illinois 61432. All such rules, regulations, terms and conditions shall comply with 65 ILCS 5/11-42-11 and 220 ILCS 5/22-501.

**SECTION VI. INSTALLATION AND MAINTENANCE OF EQUIPMENT**

General Public

The Company’s plant and equipment shall be installed with materials of good and durable quality and all work involved in construction, Installation, maintenance and repair of the fiber optic system shall be performed in a safe, thorough and reliable manner.

The Company agrees to conform to all orders, rules and regulations of any and all municipal, state or federal departments, boards, commissions and agencies, now existing or hereafter created, affecting said Installations, and will, at its own expense and cost, promptly execute and comply with all laws, rules and regulations and ordinances now in force or hereafter enacted, which will rightly affect the installation of a fiber optic system.

Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Company, at its expense, to a condition as good as that prevailing prior to Company’s work, as approved by City in the case of Streets and other public property, which approval shall not be unreasonably withheld. Company shall not be required to repair portions of Streets or public property not disturbed or damaged if repairing the disturbed or damaged portion returns the Street or public property to the same condition as prevailing prior to Company’s work. If Company shall fail to promptly perform the restoration required herein, City shall have the right to put the Streets, public, or private property back into good condition. City reserves its rights to pursue reimbursement for such restoration from Company, including legal fees.

At the time of the Company’s construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in an area of the franchise area, are underground, the Company shall place all of its fixtures of the system underground. In any new subdivision, all transmission and distribution facilities will be placed underground.

If at anytime during the period of this Franchise, City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Company shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants or users of the streets, alleys, or other public ways, Company shall be likewise reimbursed.

The Company shall procure, prior to construction and commencement of operation, such permits as are required by law from Federal or State regulatory bodies.

The Company does hereby agree that at the expiration of the term of this Agreement, it will surrender such premises, which do belong to the City in as good condition as now existing, with the proper allowance and exception for the ordinary and necessary wear and tear, and the Company will remove any poles which it may erect in the service area, but is not required to remove any buried facility.

The Company shall have the authority to trim trees upon and overhanging Streets, alleys, sidewalks and public places in the service area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. All trimming is to be done after notification to the City and at the expense of the Company. However, said authority shall not be construed in any manner whatsoever to relieve the City of any of its obligations relative to trimming of trees. Any trimming of trees for above ground facilities will be done in a manner so as not to damage or destroy other trees during the process.

There is hereby granted the further right, privilege and authority to the Company to lease, rent or in any other manner obtain the use of towers, poles, lines, cables and other equipment and facilities from any and all holders of public licenses and franchises within the service area, subject to all existing and future ordinances, local laws and regulations of the City.

Company shall obtain a Performance Bond, equal to at least the projected cost of the restoration, for restoration of pavement and curb where necessary as a result of construction and maintenance done by Company in accordance with this Franchise Agreement. Company shall make the repairs and restoration to the specifications of City.

**SECTION VII. LIABILITY**

The Company shall indemnify the City for, and hold it harmless from, all liability, damage, cost or expense, including but not limited to, attorney fees, arising from claims of injury to Persons or damage to property, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance and operations of the Company’s System, and resulting from or by any negligence, fault or misconduct on the part of the Company, its agents, officers, servants and employees. Any property of City damaged or destroyed in connection with the construction or operation of the System shall be promptly repaired or replaced by the Company and restored to serviceable condition.

The Company shall carry a general comprehensive liability insurance policy with the following limits:

Bodily injury, including death - $1,000,000 for any one person and $3,000,000 for two or persons in any one occurrence

Property damage - $1,000,000 to any one person and $3,000,000 for property damage resulting from any one act or occurrence.

In addition, Company shall carry Worker’s Compensation insurance as provided by the laws of Illinois.

The Company shall furnish to City a certificate of such insurance indicating that said insurance may only be cancelled upon thirty (30) days notice in writing to City.

Nothing in this Agreement relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Company’s facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:

1. Promptly notify Company in writing of any claim or legal proceeding which gives rise to such right;
2. Afford Company the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

C. Fully cooperate with reasonable requests of Company, at Company’s expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph Babove.

**SECTION VIII. REVOCATION**

If the Company shall (i) fail to comply with any of the provisions of this Agreement, or (ii) default in any of its obligations hereunder, except for causes beyond the reasonable control of the Company, the City shall have the right to cancel this Agreement if, after sixty (60) days written notice, such failure, deceit or default has not been corrected, and thereafter all rights of the Company hereunder and this Agreement shall become null and void, without further liability on the part of the Company. In the event the Company shall be adjudged bankrupt or placed in receivership, the City may declare the rights herein granted forfeited and terminated.

Before City can revoke this Agreement it shall provide the following:

1. City shall provide Company with written notice of a cause for revocation and the intent to revoke and shall allow Company sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Agreement. Together with the notice required herein, City shall provide Company with written findings of fact, which are the basis of the revocation.
2. Company shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in Paragraph (A) above. City shall provide Company with written notice of its decision together with written findings of facts supplementing said decision.
3. After the public hearing and upon written determination by City to revoke the Agreement, Company may appeal said decision with an appropriate state or federal court or agency.
4. During the appeal period, the Agreement shall remain in full force and effect unless the term thereof sooner expires.

E. Upon satisfactory correction by Company of the violation upon which said notice was given as determined in the City’s sole discretion, the initial notice shall become void.

**IX. IMPLEMENTATION OF SERVICE**

The Company may provide communications services, but it is not required to do so. The grant of this franchise does not require immediate system service.

In the event that another qualified entity intends to hereafter provide communications service within the City and is thereafter granted franchise authority on terms comparable to those set out herein, the Company shall cooperate and assist such entity in providing such service by making or allowing such connection with the system of the Company as such be necessary to provide such services, subject to reimbursement to the Company of such proportion of the initial expense to the Company of the development of its primary trunk line to the City as may be equitable based upon the relative burden upon said primary or trust line resulting from usage thereof by the Company and the usage by such other entity providing such services. Company shall be entitled to a fee for use of Company’s system as determined in the sole discretion of Company. Use of the system shall not include any products of Company but shall only be for transport of the qualified entities products but only if there is sufficient transport capacity available without interfering with Company’s use at the time or as projected in the future. Company may terminate the use if payments for transport are not made timely or if Company no longer has the capacity for transport after considering its own product services as may exist from time to time.

It shall otherwise be unlawful for any firm, Person, group, Company, Corporation or governmental body or agency without the express consent of the Company, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.

It shall otherwise be unlawful for any firm, Person, group, Company, corporation or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

**X. SERVICE FARE**

The Company will provide such system services and system rates as its Board of Directors shall determine.

The Company shall specifically comply with all applicable provisions of the Cable and Video Customer Protection Law as well as the provisions of any equivalent local ordinance as may now or hereafter be in effect during the term of this Agreement.

The Company shall pay to the City a franchise fee in an amount equal to 5% of annual gross revenues received from the operation of the System for television service within the City of Knoxville; provided that the Company shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the City of Knoxville. No fees shall be paid for internet or phone service. The payment of the franchise fee shall be made on a quarterly basis and shall be due 45 days after the close of each calendar year. Each payment shall be accompanied by a report prepared by the Company showing the basis for the computation of the fees paid during that period. In the event that the Cable Act would allow the City to increase the fee above 5%, and the City proposes to increase the fee in exercise of such authority, the City may amend the franchise fee percentage. The City shall enact an Ordinance enabling the same and shall notify Company of its intent to collect said increased fee. No increase will apply unless all other franchises in the City of Knoxville are paying the same amount.

In the event that the State or Federal Regulations requires the City to lower the franchise fee percentage that may be collected, the parties agree that the Company shall reduce said fee to the maximum permissible franchise fee allowed by law provided that such amendment is in compliance with the change in State or Federal law, the City approves the Amendment by Ordinance, and the City notifies the Company at least 90 days prior to the effective date of such amendment.

The Company acknowledges and agrees that the franchise fee does not include any tax, fee, or assessment of general applicability.

The parties acknowledge that the franchise fee is subject to audit standards set forth in the Illinois Municipal Code (65 ILCS 5/11-42-11.05) and shall be conducted in accordance with such applicable auditing standards.

**XI. DISCRIMINATION**

The Company will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any Person in compensation or in terms, conditions or privileges or employment because of age, race, creed, color, handicap, national origin or sex.

**SECTION XII. ADMINISTRATION**

The Mayor of the City of Knoxville, or a Person duly authorized by such Mayor, shall be responsible for the continuing administration of this Ordinance.

**SECTION XIII. ASSIGNMENT**

The Company agrees that it will not assign this Agreement, nor the rights, licenses and privileges herein granted except by an assignment made in compliance with all relevant federal, state and local statutory or regulatory requirements, and approved by the City, but the City agrees that it will not unreasonably withhold such consent and approval upon satisfactory verification of compliance by the Company with all such relevant federal, sate and local statutory regulatory requirements.

This Agreement shall be binding upon the successors and assigns of the parties hereto.

**SECTION XIV. NOTICES**

All notices, reports or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to any officer of Company or the designated Administrator of this Agreement or other appropriate official of City of forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Knoxville

Attn: Mayor

33 N. Public Square

Knoxville, IL 61448

If to Company: Century Enterprises, Inc.

Attn: CEO Jim Broemmer

285 Mid Century Lane

PO Box 380

Fairview, IL 61432

With copies to: Trygve T. Meade

Meade Law Office, P.C.

175A S. Main Street

Canton, Illinois 61520

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

**XVI. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional, by any court or regulatory agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof and they shall remain in full force and effect.

**XVII. ACCEPTANCE**

Company shall accept this Franchise by executing same. Such acceptance by the Company shall be deemed the grant of this Franchise for all purposes. Upon acceptance of this Franchise, Company shall be bound by all the terms and conditions contained herein. Company shall accept this Franchise by properly executing and acknowledging this Agreement and returning same to City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CITY OF KNOXVILLE, ILLINOIS

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis Maurer, Its Mayor

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Leslie Wilt, Its Acting Clerk

CENTURY ENTERPRISES, INC.

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jim Broemmer, its Chief Executive Officer