

ORDINANCE NO.

A FRANCHISING ORDINANCE GRANTING TO FRANCHISEE, POINT BROADBAND, LLC THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN AND UNDER, THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN GULF SHORES, ALABAMA.

AND THE SUBSEQUENT ADDITIONS THERETO, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING AND MAINTAINING A TELECOMMUNICATIONS SYSTEM FOR A PERIOD OF TEN (10) YEARS, REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY

WHEREFORE, after due consideration of the legal, financial and technical qualifications of Franchisee and the contents of Franchisee's proposal for a Franchise;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, ON THIS THE ___ DAY OF _____, 2019, as follows:

SECTION I. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A) "City" means the CITY OF GULF SHORES, ALABAMA.
- B) "Council" is the Governing body of the CITY OF GULF SHORES, ALABAMA
- C) "FCC" shall mean the Federal Communications Commission.
- D) "Franchisee" and "Grantee" is POINT BROADBAND, LLC, or any successor in interest or equity in accordance with the provisions of this Ordinance and applicable law, rule and regulation.
- E) "Grantor" is the GOVERNING BODY OF THE CITY OF GULF SHORES, AL
- F) "Gross Revenues" means all revenue derived by Grantee from the operation of the Telecommunications System in the City, adjusted for nonpayment that is actually written off. This definition of Gross Revenues may be amended in accordance with Section XII. Unless otherwise stated, "System" as used in this ordinance refers to a Telecommunications System.

- G) "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- H) "Regulations" means any and all applicable law, rule or regulation governing the construction of a wireline telecommunications system in the City of Gulf Shores, Alabama, including but not limited to the Code of Ordinances of the City of Gulf Shores adopted July 24, 1989, and in particular Article X at Chapter 7.
- I) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice) without change in the form or content of the information as sent and received.
- J) "Telecommunication Service(s)" means the offering of Telecommunications for a fee to the public, or to such classes of users as to be effectively available directly to the public.
- K) "Telecommunications System" means the cables, wires, lines, wave guides, optic fiber, antennae, and any associated converters, equipment, or Facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications to or from locations within the City.

SECTION II. GRANT OF NON-EXCLUSIVE AUTHORITY

- A) There is hereby granted by Grantor to Franchisee and its successors, assigns or designees as may be permissible, the non-exclusive right to erect, maintain and operate in and under the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and subsequent additions thereto, towers, poles, lines, cable, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation of a Telecommunications System for the purpose of delivering Telecommunications Services, all of which are subject to any required permitting or other appropriate authorization.
- B) The right to use and occupy said streets; alleys, and certain specified public ways and places for the purposes herein set forth shall not be exclusive.
- C) Grantor shall not permit any person to provide, construct, maintain, or operate a Telecommunications System in the City without that person first obtaining a non-exclusive franchise from Grantor. The terms of any competing franchise shall be competitively neutral and nondiscriminatory in that it shall be on terms no more favorable than this Franchise when the Franchises are compared in their entirety, which shall include but not be limited to all services offered and all obligations and commitments made under this Franchise. In exchange for this protection, Franchisee agrees and commits never to engage in predatory pricing or other practices intended to or that would have the effect of eliminating any competition for any services offered by Franchisee, as opposed to fairly competing with a competitor at arms-length.

- D) In the event that another Franchisee that is legally and functionally equivalent to the Franchisee provides service to the residents of the community under a Franchise on more favorable terms that create a competitive disadvantage when the Franchise is taken as a whole, the Franchisee shall have a right to request Franchise

Agreement amendments that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee based on tests of competitive neutrality and non-discrimination. In requesting amendments, the Franchisee shall file a petition seeking to amend the franchise. Such petition shall:

- i) Indicate the presence of a competitor(s) operating the same type of system and/or offering the same type of service as Franchisee;
- ii) Identify the basis for Franchisee's belief that certain provisions of this Franchise Agreement place Franchisee at a competitive disadvantage, including the provision of any information, which may be needed to prove the claim, subject to reasonable protection of confidential or proprietary information as permitted by law or applicable regulation;
- iii) Identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage.

In order to obtain such an amendment, Grantee shall bear the burden of proving to the Grantor that the amendment is required to maintain competitively neutral and nondiscriminatory regulation of Franchisee. The Grantor shall not unreasonably withhold granting the Franchisee's petition and so amending the Franchise Agreement if Grantee can establish its case by a preponderance of the evidence.

SECTION III. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Franchisee shall, during the term hereof and any permissible extensions thereof, be subject to all lawful exercise of the regulatory and police powers of Grantor as such may exist at any time.

SECTION IV. FRANCHISE TERRITORY

This Franchising Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Franchise.

SECTION V. LIABILITY AND INDEMNIFICATION

Franchisee shall, at all times, keep in effect the following types of coverage:

- A) Worker's Compensation, as required by State law;
- B) Public liability insurance: Minimum of \$ 3,000,000.00 per Person/ per occurrence;
- C) Property damage insurance: Minimum of \$3,000,000.00 for anyone (I) claim;
- D) Umbrella liability insurance: Minimum of \$10,000,000.00
- E) Franchisee shall indemnify, protect, and save harmless Grantor and any of its officials, employees, representatives or agents from and against any and all losses and physical damage to property and bodily injury or death to persons, including payments made under any Worker's Compensation Law which may arise out of the erection, maintenance, use or removal of Franchisee's System or facilities, within the territory of Grantor, or by any act of Franchisee, its agents or employees. Franchisee shall carry insurance in the above described minimum amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury or damage. Franchisee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation Laws in effect that may be applicable to Franchisee. Insurance certificates evidencing such coverage shall be deposited with and kept on file by the City Revenue Officer, expressly naming the City of Gulf Shores, Alabama as named and covered insured.
- F) These coverages shall include claims for damages or penalties including, but not limited to, claims or damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

SECTION VI. TECHNICAL STANDARDS

Franchisee shall be governed by all technical standards established by the FCC. In the event such technical standards are eliminated, then, unless prohibited by law or regulation, the standards in existence at the time of this Agreement shall be deemed to have been adopted by the City and shall be enforceable. The same shall apply as regards compliance by Franchisee with the latest editions of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) and any applicable construction or safety-related regulations of the City

SECTION VII. CUSTOMER SERVICE STANDARDS/OPERATION AND MAINTENANCE OF SYSTEM

- A) Franchisee shall render efficient service, make repairs promptly, and

interrupt service only for good cause for the shortest time possible, and such interruptions, insofar as possible, shall occur during periods of minimum use of the System.

- B) All service requests and complaints shall be responded to the same day as received, but in no case later than the start of the next business day. All complaints shall be responded to within 24 hours of the receipt of the complaint and shall be remedied within 48 hours or as soon as practicable under the circumstances. As the system is intended to be and will be relied on for communications in the case of an emergency, any report of a loss of all service shall be reported to Mike Hawley, IT Director for the City of Gulf Shores at (251) 968-1165 or (251) 504-4751 and responded to immediately, including after normal business hours, and service shall be restored soon as is possible.
- C) Grantee shall comply with all applicable Customer Service regulations in force by the FCC or as may be permissible and legally adopted by the City throughout the term of this franchise, which shall expressly be enforceable by the City.
- D) In accordance with the requirements in generally applicable ordinances of the Franchising Authority including those governing the Public Way use, and as required of like users by the Franchising Authority, Grantee shall keep and maintain accurate records and as-built drawings of its Telecommunications System constructed, reconstructed, or relocated within the Franchising Authority's Public Way. Grantee shall cooperate promptly and fully with the Franchising Authority and take all reasonable measures necessary to provide accurate and complete information regarding the nature and location of its Telecommunications System located within the Public Way when requested by the Franchising Authority for public improvements. Such location and identification shall be at the sole expense of Grantee without expense to the Franchising Authority, its employees, agents, or authorized contractors.

SECTION VIII. LOCAL BUSINESS AGENT

During the term of this Franchise, and any renewal thereof, Franchisee agrees to maintain a local business agent and a local or toll-free telephone line to be used by customers of the Franchisee with respect to billing questions or complaints or complaints regarding the reliability or quality of service, malfunctioning of equipment and other matters relating to the operation of the System.

SECTION IX. SAFETY REQUIREMENTS

Franchisee shall at all times and without exception comply with the latest editions of the National Electrical Safety Code (NESC) prepared by the National Bureau of Standards, the National Electrical Code (NEC) of the National Board of Fire Underwriters, the Bell core Manual of Construction Practices (Bell Blue Book) and any other applicable safety or

construction regulations for either the use of the public rights-of-way or for service to homes or buildings in effect at the time of the installation or upgrade of the applicable facilities.

SECTION X. LIMITATIONS ON RIGHTS GRANTED

- A) All transmission and distribution structures, lines and equipment erected by Franchisee within Grantor's regulatory jurisdiction shall be located as to cause minimum interference with the proper use of streets, alleys and the public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose property adjoins any of the said streets, alleys or other rights-of-way and public ways and places or other locations of Franchisee's system or facilities , and said facilities shall be removed by Franchisee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places within the City. Franchisee shall comply with all regulations of Grantor relating to utility corridors as such relate to the placement of the system and related facilities.
- B) The system of the Franchisee is subject to the Grantor's future requirements to place facilities underground. However, under any future requirements to place facilities underground, Grantee's system shall not be ordered to be the only system placed underground.
- C) In case of disturbance of any street, sidewalk, alley, public way or paved area, Franchisee shall, solely at its own cost and expense and in a manner approved by Grantor, replace and restore such street, sidewalk, alley, public way or paved areas to as good a condition as before the work involving such disturbance was done. The cost of necessary inspection of such work shall be paid for solely by the Franchisee within sixty (60) days of presentation of a bill for such.
- D) If at any time during the period of this Ordinance Grantor shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, Franchisee, upon reasonable notice by Grantor, shall remove, relay and relocate its poles, wires, cable s, underground conduits, manholes and other fixtures at its own expense.
- E) Franchisee shall, on the request of any person holding a building moving permit or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same; the Franchisee shall have the authority to require such payment in advance, and upon request shall provide documentation of the actual costs involved and promptly return any amount in excess of the actual cost to the appropriate party. Franchisee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.
- F) Franchisee, shall, at its sole expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street,

alley or public place, any property of Franchisee when required by Grantor by reason of traffic conditions, change of establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Franchisee shall in all cases have the privileges and be subject to the obligations to abandon any property of Franchisee that is located underground and placed in conduit that is in place as hereinafter provided, so long as such does not interfere with current or planned public works projects. In the event Franchisee fails to comply with this subsection within a reasonable period of time given the facts and circumstances involved, Grantor may cause such work to be done and may require Franchisee to reimburse the City for all actual and reasonable fully-allocated costs associated with said work.

- G) In all sections of the City where Grantor designates an area where all presently above-ground services are to be placed underground, Franchisee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- H) In the event that the use of any part of the System is discontinued for any reason for a continuous period of thirty (30) days, or in the event such System or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been subject to the rights of the Grantor to acquire or transfer the system as specified in Section XVI, Franchisee shall promptly remove from the streets or public places all such property and poles of such System, other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other areas to the satisfaction of Grantor, such being defined as equal to or better than the condition prior to the event taking place.
- I) Any property of Franchisee permitted by the City to be abandoned in place and no longer used shall be abandoned in such a manner as the City may reasonably prescribe. Upon permanent abandonment of the property of Franchisee in place, it shall submit to Grantor an instrument to be approved by the City, transferring to the City the ownership of such property at no cost whatsoever to Grantor.

SECTION XI. TRANSFER OF FRANCHISE

All right, title and interest of Franchisee in this Ordinance and the Non-exclusive Franchise granted herein shall be freely assignable, but only with the express written consent of the City Council. The City Council shall not unreasonably withhold or delay such consent without good and just cause, such as outstanding and uncured or unremedied violations of this Franchise or applicable law, rules or regulation, or non-payment or underpayment of money owed the City. The Grantor's consent shall not be required for the grant of security interest in the Franchise or System for the purpose of securing

indebtedness, provided that the cost of any capital not used in the City shall not be reflected in the rates or charges to subscribers in the City. Also, Grantor shall not be obligated to grant its consent if the Transferee is able to be deemed not to be legally, technically or financial qualified or capable, or if Transferee or any officer of Transferee has been convicted of a felony.

SECTION XII. OWNERSHIP AND REMOVAL OF FACILITIES

All exterior cable and passive equipment for service owned and installed by Franchisee at a Subscriber's location, including converters or the functional equivalent, shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment in accordance with applicable law, rules and regulations, unless purchased by the Subscriber.

SECTION XIII. FRANCHISE FEES

- A) The Franchisee shall pay to the City as a franchise fee five percent (5%) of its Gross Revenues during each calendar year of operation under the franchise. Such payments shall be made annually to the City within sixty (60) days of the end of each anniversary date of the franchise agreement. Franchisee shall make available to the Grantor within sixty (60) days after the anniversary date of the franchise agreement a detailed listing of Franchisee's revenues generated within the City's municipal limits, or in the alternative an unredacted photocopy of Franchisee's financial statement showing such revenues, certified as accurate and complete by an officer of Franchisee with appropriate knowledge of such.
- B) Additionally, Point Broadband will provide four dark fibers on the Point Broadband fiber optic system within the city limits of the City of Gulf Shores on all future builds within the city limits. These fibers shall be solely for the non-commercial use of the City of Gulf Shores. The City will be allowed to access these fibers at designated splice points. The City shall provide Point Broadband with a written request of its intention to access the City fibers on the Point Broadband system at least 10 days prior to any work being done. All splicing or cutting into the Point Broadband network will be completed by Point Broadband or an approved Point Broadband contractor. A Point Broadband inspector must be on site at the time of entry into any Point Broadband hand hole. Point Broadband is not responsible for any of the costs for building into any City facilities or extending the Point Broadband network to meet other City owned fibers or network elements.
- C) Grantor may amend this Ordinance to increase or decrease the franchise fee or to amend the definition of "Gross Revenues" as long as such amendment is in compliance with applicable local, state and federal law, and is competitively neutral and nondiscriminatory under the Federal Telecommunications Act of 1996. Any such amendment shall occur at a duly noticed public meeting, giving interested parties an opportunity to comment. Grantor shall provide

Franchisee with at least 60 days written notice of Grantor's intent to amend the Ordinance under this section, and Franchisee will be allowed the opportunity to respond with its objections, if any, to the proposed amendment. Any amendment to this Ordinance must be accepted by Franchisee prior to it becoming effective.

SECTION XIV. DURATION AND RENEWAL OF ORDINANCE

Subject to the terms of this Franchise, the rights granted to Franchisee herein shall become effective upon the passage of this Ordinance and shall continue for a period of ten (10) years.

SECTION XV. ERECTION, REMOVAL AND COMMON USE OF POLES

No poles or similar wire-holding structures shall be erected by Franchisee on City-owned property without the prior written approval of the City, which approval shall not be unreasonably withheld.

SECTION XVI. BOOKS AND RECORDS

The Franchisee shall keep complete, true, accurate, and current records and books of accounts at all times and shall provide unredacted copies of such to the City within thirty (30) days of a written request, as such may be needed for the administration and enforcement of this Franchise.

SECTION XVII. FORFEITURE AND TERMINATION

- A) In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to order Grantee to forfeit this Franchise and to terminate the Franchise and all rights and privileges of the Franchisee hereunder in the event of an uncured substantial breach of the terms and conditions of this Franchise following the required 60-day period to cure. A substantial breach by the Franchisee shall include, but shall not be limited to the following:
 - (1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the City made pursuant to the Franchise. For the purposes of this section a material provision shall be deemed to be any provision on which the City in good faith relied in awarding the Franchise and that is not of a de minimis nature, de minimis meaning of insignificant or no material effect on the City, its residents or a subscriber(s);

- (2) Any attempt to evade any material provision of the Franchise
 - (3) Any attempt to practice any fraud or deceit upon the City or its subscribers or customers;
 - (4) Failure to restore service after one hundred sixty-eight (168) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
 - (5) Material misrepresentation of fact in the application for or negotiation of the Franchise or for any report provided under this Franchising Ordinance or applicable law, rule or regulation.
- B) As an alternative to the revocation of the Franchise or the imposition or assessment of penalties or the pursuit of other remedies available to the City at law or tort, or as a means of reducing or not imposing or pursuing the maximum permissible penalties in the event such would jeopardize the financial efficacy of the operation or otherwise not be deemed to be in the City's or the public's interest, and based on reasonable evidence of a pattern of or repeated non-compliance or attempted or actual evasion or avoidance of the requirements of applicable laws, codes, ordinances, rules or regulations by a System Owner or Service Provider, the City may cause the Franchisee to enter into an IPSIG (Independent Private Sector Inspector General) agreement as permitted under the Federal Sentencing Guidelines. The purpose of the IPSIG agreement would be to substitute a program of monitoring to ensure future compliance, to deter, prevent and uncover and report any impermissible or illegal activity or conduct and to assist in the development of a loss prevention program as may be appropriate and needed under the circumstances at no cost to the taxpayers.
- C) Violations of this Franchise shall not constitute a major or material breach if the violation occurs, but is without fault of the Franchisee, or occurs as a result of circumstances beyond Franchisee's control. Notwithstanding the preceding, actions by agents, contractors or subcontractors shall not relieve Grantee of any obligation under this Franchise.
- D) In the case of an alleged violation of this Franchise or applicable law, rule or regulation, the City shall deliver written notice to the Franchisee stating with specificity the alleged violation or type of violation and demanding that Franchisee comply with any such provision, rule, order or determination under or pursuant to the Franchise. If the violation by the Franchisee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the Franchise or other recourse or penalty before the City

Council. The City shall cause to be served upon the Franchisee, at least thirty (30) days prior to the date of such meeting, a written notice of intent to request such termination or imposition of other penalty and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s), which the Council is to consider.

- E) The City Council shall hear and consider the issue(s) and shall hear persons interested therein and shall determine whether or not any violation by the Franchisee has occurred.
- F) If the City Council determines that the violation by the Franchisee was the fault of the Franchisee and within its control, the Council may, by resolution, declare that the Franchise be forfeited and terminated or impose or seek to impose any other penalty permitted under State law, unless there is compliance within such period as the Council may fix, such period to be determined based on the facts and circumstances involved; provided, however, that no opportunity for compliance need be granted for fraud or material misrepresentation.
- G) The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council may then terminate the Franchise forthwith or impose or seek the imposition of other permitted penalties or sanctions upon finding that the Franchisee has failed to achieve compliance or it may further extend the period, at the City's discretion.
- H) For the violation of any of the following provisions of this Ordinance, forfeitures may be assessed and shall be paid within thirty (30) days of notice or demand. If not paid, the forfeiture shall be chargeable to the letter of credit or corporate guarantee in lieu of bond as follows, and the City may determine the amount of the forfeiture for other violations that are not specified in a sum not to exceed one hundred dollars (\$100.00) for each violation, with each day constituting a separate violation:
 - I) Forfeiture Schedule
 - (1) Failure to obtain or file evidence of required insurance, performance bond, or other required financial security: one hundred dollars (\$100.00) per day, per violation, for each day such failure occurs or continues;
 - (2) Failure to provide access to data, documents, records, or reports to the City as required: one hundred dollars (\$100.00) per day, per violation, for each day such failure occurs or continues;
 - (3) Failure to comply with applicable construction, operation, or maintenance standards or safety requirements or regulations: one hundred dollars (\$100.00) per day, per identified violation;
 - (4) For any violations or non-compliance with the customer

service standards; one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues;

- (5) Failure to timely pay any money owed to the City, (\$100.00) per day after due date of the payment, plus interest on the unpaid amount as permitted by State law; and
- (6) Any other violations of the Franchise Agreement to be determined by the Grantor in a public hearing but not specifically noted in this section shall not exceed one hundred dollars (\$100.00) per day, per violation.

J) Whenever the City believes that the Grantee has violated one (1) or more terms, conditions or provisions of the Franchise, and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation(s) so as to afford the Grantee an opportunity to remedy the violation(s) or otherwise respond giving a reason(s) why Grantee cannot comply within thirty (30) days of the notice. However, for multiple violations of the same general type occurring or discovered at the same general time, e.g. safety violations, the City shall not be required to identify each and every such violation in the City, but may provide a notice referencing all such types of violations in the City and requiring that all similar types of violation s in the City be eliminated. The right to determine the acceptability of the response or curative or remedial action shall always rest with the City. The Grantee shall have thirty (30) days subsequent to the receipt of the notice in which to correct the violation(s) or respond to the notice, except for matters affecting the public safety, in which case less than the thirty (30) days' notice may be provided. If the violation is not corrected or if Grantee has not otherwise provided an acceptable response to the City's notice within 30 days, the City may impose penalties, unless the violation is of such a nature so as to require more than thirty (30) days given the facts and circumstances involved and Grantee can adequately demonstrate or prove the reason(s) for the inability to deal with the matter within the required thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation. In any case where the violation is not cured within thirty (30) days of the date of notice from the City, or such other time as the Grantee and the City may mutually agree to, and involves a first notice of violation for that particular type of violation the City may proceed to impose forfeitures. For subsequent or repeated violations of a requirement after the first notice of the initial violation, forfeitures may be imposed without the otherwise required thirty (30) day cure period.

K) The Grantee may, within twenty-five (25) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the City shall specify with particularity the matters disputed by the Grantee and shall stay the running of the thirty (30)

day cure period pending Council decision as required below. The Council shall hear the Grantee's dispute. Grantee must be given at least fourteen (14) days' notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the City shall provide Grantee a copy of its action, along with supporting documents. In the event the City upholds the finding of a violation, the Grantee shall have fifteen (15) days subsequent to the date of such finding, or such other time period to correct the violation(s) as the City may deem appropriate given the facts and circumstances involved, before the City may again find the Grantee in violation for the instant situation.

- L) The rights reserved to the City under this section are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the City may have.

SECTION XVIII. PERFORMANCE SECURITY

To assure compliance with the terms of this Franchise Ordinance, including but not limited to the payment of all money owed the Grantor, Franchisee shall place with the Grantor a performance security in the amount of \$50,000, which shall be in a form acceptable to Grantor's Counsel, including but not limited to letter of credit or cash surety bond expressly guaranteeing full and complete compliance. Such security, if used by the Grantor, shall be replenished by the Franchisee within fifteen (15) days and shall remain in full force and effect throughout the term of this Franchise, including any extensions thereto, unless otherwise reduced or eliminated by Grantor in writing.

SECTION XIX. MISCELLANEOUS

Franchisee's legal, financial, technical and other qualifications have been approved by the City after consideration in a full public proceeding affording due process to all interested persons.

SECTION XX. SEVERABILITY

If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or amended by the United States Congress or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof if the superseded or preempted provisions do not relate to or affect the performance of obligations under this Ordinance.

SECTION XXI. NON-WAIVER

Notwithstanding any provisions to the contrary contained elsewhere in this Ordinance, the parties hereto acknowledge and agree that no provision herein shall be construed as, or constitute a waiver or release of any rights, causes of action, or other remedies available to the Franchisee for actions by the City that are not competitively neutral and nondiscriminatory under the federal Telecommunications Act of 1996.

SECTION XXII. PUBLICATION

Franchisee shall assume the costs of any required publication of this Ordinance.

SECTION XXIII. NOTICES

All notices and other communications hereunder this Ordinance shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage paid to the following respective addresses:

To Grantor:

City Clerk
THE CITY OF GULF SHORES
P.O. BOX 299
GULF SHORES, AL 36547

To the Franchisee:

POINT BROADBAND, LLC
ATTN: CEO AND GENERAL
COUNSEL
1791 OG SKINNER DRIVE, SUITE A
WEST POINT, GA 31833
844-407-6468 TELEPHONE

Either of the foregoing parties to this Ordinance may change the address to which all communications and notices may be sent to it by addressing notices of such change in the manner provided hereunder.

SECTION XXIV. EFFECTIVE DATE

This Ordinance shall take effect after its passage, approval, publication and acceptance as

provided by law.

Adopted this ___ day of _____, 2019.

Mayor

ATTEST:

Wanda Parris, MMC, City Clerk

CERTIFICATE

I, Wanda Parris, MMC, City Clerk of the City of Gulf Shores, Alabama, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 11793 (prepared by City Clerk), which Ordinance was duly and legally adopted at a regular meeting of the City Council on _____, 2019 and the same was duly published as required by law .

City Clerk

ACCEPTANCE BY FRANCHISEE

The Non-Exclusive Franchise as granted under this Ordinance is approved and accepted on this ___ day of _____, 2019, by POINT BROADBAND, LLC.

POINT BROADBAND, LLC
(By its authorized representative)