

RESOLUTION NO.____ July 17, 2018

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A NON-EXCLUSIVE FRANCHISE AGREEMENT WITH
MID-HUDSON CABLEVISION, INC.**

WHEREAS, the City of Hudson (hereinafter referred to as "Grantor") and Mid-Hudson Cablevision, Inc. (hereinafter referred to as the "Grantee or Franchisee"), have held negotiations concerning renewal and extension of Mid-Hudson Cablevision, Inc.'s non-exclusive franchise agreement in the City of Hudson; and

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise renewal with the Grantee for the operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council hereby agrees to enter into a fifteen (15) year non-exclusive franchise with Mid-Hudson Cablevision, Inc., as of the effective date of approval by the New York State Public Service Commission (NYSPSC), for service to the City of Hudson, and hereby authorizes the Mayor to execute a franchise agreement with Mid-Hudson Cablevision, Inc. in accordance with the terms of the proposed franchise agreement attached hereto as Schedule "A".

Introduced: _____

Seconded: _____

Approved: _____
Rick Rector, Mayor

**CITY OF HUDSON
RESOLUTION #**

CATV - MID-HUDSON CABLEVISION, INC.

RESOLVED: That the City of Hudson, Columbia County, State of New York, grant a fifteen (15) year franchise to Mid-Hudson Cablevision, Inc, as of the effective date of approval by the New York State Public Service Commission (NYSPSC), for service to the City, and that the Mayor is directed to execute a franchise agreement with Mid-Hudson Cablevision, Inc. in accordance with the terms of the proposed franchise agreement attached hereto.

OFFERED BY:

SECONDED BY:

YES NO

(Board Members Names)

DATED: _____

(City Clerk)

FRANCHISE AGREEMENT

This **FRANCHISE AGREEMENT** made this ____ day of _____, 20__, between the City of Hudson, ("City") and Mid-Hudson Cablevision, Inc. ("Mid-Hudson") having its principal office at Hudson, New York.

WHEREAS, Mid-Hudson is desirous of renewing its franchise to maintain and operate a cable television system in the City; and

WHEREAS, maintenance and operation of said cable television system involves the use and occupation by Mid-Hudson of the streets, thoroughfares and other public rights-of-way belonging to the City; and

WHEREAS, the technical ability, financial condition and character of Mid-Hudson and its principals have been considered and approved by the City Board in a public proceeding affording due process; held on the _____ day of _____, 20__; and

WHEREAS, the plans of Mid-Hudson for continued operation of said cable television system have been considered by the City Board and found adequate and feasible in a full public proceeding affording due process; and

WHEREAS, by resolution of the City Board dated the ____ day of _____, 20__, the City has granted a non-exclusive cable television franchise to Mid-Hudson Cablevision, and authorized the Mayor to execute this Franchise Agreement with Mid-Hudson upon the terms hereinafter set forth; and

WHEREAS, this Franchise Agreement complies with the franchise standards required by the New York State Public Service Commission and the Cable Consumer Protection Act of 1992 and is subject to the review and approval of the New York State Public Service Commission.

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein:

IT IS MUTUALLY AGREED AS FOLLOWS:

1. GRANT

The City of Hudson, hereby grants to Mid-Hudson, its successors and assigns the non-exclusive right and privilege to erect, place in the City and to construct, maintain and operate in, over and under the present and future streets, sidewalks, alleys, public land and places and highways in or of the City, towers, poles, lines, cables, necessary wiring and other apparatus for the purpose of transmitting, receiving, amplifying and distributing of cable television, telephone, telegraph, television, radio signals and data transmissions and other video and aural programming and communications within the said City and to the inhabitants thereof, for the purpose of providing telecommunications and related services to the residents of the City.

2. FRANCHISE AREA

- A. PRIMARY SERVICE AREA.** Mid-Hudson's rights and obligations set forth in this agreement shall be applicable to the Primary Service Area as shown on the attached map marked 'Exhibit II'. Mid-Hudson agrees to have cable service available, without a contribution in aid of construction, to any resident who lives within 250 feet of a cabled public right-of-way in the Primary Service Area. Areas outside the Primary Service Area will be considered as line extension areas and residents may receive service in accordance with the line extension formula as stated in section 2B. The primary service area is highlighted on the attached map, Exhibit II. The rest of the City of Hudson is designated as line extension area.

Mid-Hudson shall comply with the requirements for construction of cable television plant and the provision of cable television services as set forth in Section 895.5 of the rules of the NYSPSC. Mid-Hudson may provide cable television service to the Primary Service Area at a minimum of 20 dwelling units per linear mile. This will be assessed on a case by case basis and is a voluntary change from the PSC requirement of 35 homes per mile (HPM). Mid-Hudson shall not deny service to any resident of the City of Hudson based upon age, race creed, color, sex, national origin or income level of the residences in their local area.

B. LINE EXTENSION AREA. Any area in the City not specified as part of the primary service area is hereby designated a line extension area.

Service shall be provided to any line extension area upon request provided that the criteria set forth by the PSC of 35 homes per mile (HPM) is met or line extensions may be considered on a case by case basis at a minimum density of 20 HPM provided that at least 15 of the houses passed are willing to commit to a multi-year level of service. The HPM statistic for the primary service area will be determined by dividing the total dwelling units passed in the primary service area by the total linear miles of the cable plant in the primary service area.

Any resident in a line extension area falling below the minimum HPM figure outlined above shall be able to receive service upon payment in full and in advance of a sum to be designated as a contribution in aid of construction (CAC) or subscriber contribution (SC) Such SC shall be computed as follows:

$$\frac{C}{LE} - \frac{CA}{P} = SC (CAC)$$

- C** = the cost of construction of new plant.
CA = the average cost of construction per mile in the primary service area.
P = either 20 HPM or the average number of dwelling units per mile of aerial cable in the primary area whichever is less.
LE = the number of dwelling units requesting service in the line extension area.
SC = subscriber contribution in aid of construction for the line extension.

Mid-Hudson shall apply for all mandatory licenses, permits, amendments and approvals within 30 days of the receipt of all SC payments for a line extension area. Mid-Hudson shall provide service to line extension area within 12 months of the receipt of all mandatory licenses, permits, amendments, and approvals.

During the five year period commencing at the completion of SC line extension, a prorated refund may be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined annually by application of the above stated formula. The refunds shall be paid annually to the subscribers, or former subscribers, entitled to receive them. However, Mid-Hudson Cablevision, Inc. shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at either the service address or billing address, and who has not informed the company of the subscriber's address.

3. SERVICES & CHANNELS

A. Mid-Hudson shall maintain and continue to operate, acceptable service in a safe and reliable manner. Channels and services may be changed from time to time depending on availability and the desires of the subscribers. If any signal should become unavailable through no fault of Mid-Hudson's it shall be replaced as soon as possible by a substitute signal. Mid-Hudson agrees that in replacing unavailable signals to give preference, if possible, to subscribers' wishes, if they can reasonably be determined but the responsibility of the selection of replacement signals shall be solely that of Mid-Hudson.

B. Basic Cable Service ("Basic Service") will consist of at least thirty eight (38) channels and/or services carried in the VHF spectrum between channels two (2) and seventy eight (78). Mid-Hudson will also make available a Broadcast Basic Tier ("Broadcast Basic Service") which will contain fewer channels than its Basic Tier at a reduced price.

C. Mid-Hudson agrees that it will furnish the aforescribed Basic Cable Service to all residential subscribers daily, 24 hours per day, throughout the term of its franchise for the standard basic cable rate. Mid-Hudson will maintain a 24 hour toll free answering service to handle customer service calls.

4. RATES

Mid-Hudson shall charge for its rates in accordance with the rules of the New York State Public Service Commission as set forth in section 895.1(e) and the applicable Federal Laws and Regulations.

5. CONSTRUCTION

A. Any future Construction schedules and sequence will depend on arrangements with local utility companies for make-ready. Installation of all equipment will be accomplished in accordance with all Federal and State agency regulations, the National Electrical Code of the National Board of Fire Underwriters and utility companies' regulations.

B. Mid-Hudson shall construct any future cable television plant within one (1) year from the receipt of all mandatory construction and utility permits. Unless conditions beyond the control of Mid-Hudson interfere with Mid-Hudson's proposed construction schedule.

C. Mid-Hudson shall construct all cable television system using materials of good and durable quality, and all work involved in construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough, and reliable manner.

D. When an aerial installation extends more than 250 feet from Mid-Hudson's trunk or feeder cable the subscriber will be charged on a time and material basis beyond the first 250 feet of the extension.

E. When a subscriber specifically requests nonstandard installation of cable, installation charges will be based on time and material costs. The term "Standard Installation" is defined in the annexed Exhibit I.

F. When a customer specifically requests underground installation, the installation charge will be based on time and materials. The customer may be required to provide the necessary trenching for underground service at his own expense.

6. FRANCHISE FEE

Mid-Hudson Cablevision agrees to pay a franchise fee for compensation for the rights and privileges enjoyed hereunder. Mid-Hudson Cablevision will pay 3% of gross monthly revenue received from provision of recurring cable services to subscribers. Recurring cable services includes the monthly charge paid by cable subscribers, but does not include monies received from non-cable subscriber sources and one-time payments for equipment sales, installation fees and similar miscellaneous items that are already subject to sales tax. The sum shall be paid annually on or before the 15th day of June of each year. In the event that the franchise payment is not received on time a penalty shall be assessed as follows (sums are not accumulative):

3% to the City of Hudson based upon the total number of active subscribers in the City.

7. FREE SERVICE

Mid-Hudson will provide one (1) standard installation (Exhibit I) and Broadcast Basic Service free of monthly charges to schools, civic, public, and municipal buildings located in the Primary Service Area as set forth in Exhibit II. Mid-Hudson will upon request, also provide 1 standard discounted high speed internet access cable modem to the sites listed above on a voluntary basis.

8. COMPLAINTS

A. Mid-Hudson shall maintain a listed telephone number toll free for the purpose of receiving and responding to cable television subscriber complaints.

B. All subscriber complaints or trouble calls shall receive investigative action on the same day such complaint or call is received at the office, if possible, but in no case no later than the following business day. Customer Service and Consumer Standards shall

be in compliance with the standards set forth in Parts 890 & 896 of the rules and regulations of the New York State Public Service Commission (NYSPSC).

C. Mid-Hudson shall provide notice to each subscriber, upon installation and yearly thereafter of the procedure for reporting and resolving subscriber complaints. (Such notice may be written or by such other means as the NYSPSC may from time to time approve).

9. PROHIBITION OF ABANDONMENT

Mid-Hudson shall not abandon service to any area in this franchise without the prior written consent of the City Board of the City of Hudson, which consent shall not be reasonable withheld.

10. RECORDS & REPORTS

Mid-Hudson will keep a full record of the plans, maps, and records showing the exact location of all equipment located and used in the City of Hudson. The City reserves the right, upon reasonable notice during normal business hours, to inspect all pertinent maps, plans, and other materials of Mid-Hudson pertaining to the construction and operation of the cable plant in the City. Mid-Hudson is a private company and does not publish a public financial statement.

11. EQUAL EMPLOYMENT

Mid-Hudson shall 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 of employment because of age, race, creed, marital status, color, national origin, or sex. Mid-Hudson shall have an Equal Employment Program on file at its' main office for public inspection.

12. INDEMNIFICATION AND INSURANCE

A. Mid-Hudson, its successors and assigns shall at all times save and keep harmless and fully indemnify the City, its officers, agents, servants, and employees from and against any and all loss, liability, suits, damages, costs, charges, legal fees and expenses in any manner arising from the construction, repair extension, maintenance or operation of their equipment of any kind or character and from any negligence, fault, or misconduct on the part of Mid-Hudson, its officers, agents, servants and employees or by reason of any act done or omitted to be done in the premises of said City. Mid-Hudson shall obtain and carry property damage and personal liability insurance written by an insurance company or companies qualified to do business in the State of New York. The amounts of such insurance shall not be less than \$1,000,000 for liability due to damage to property, no less than \$2,000,000 for liability due to injury or death of any person and not less than \$2,000,000 for liability due to any one accident. The City shall notify Mid-Hudson within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence or other conduct on the part of Mid-Hudson,

B. A certificate evidencing the insurance coverage required by paragraph (A) above, shall be delivered by Mid-Hudson to the City Clerk as requested within 120 days of franchise and annually thereafter.

13. REPAIR OF PROPERTY

Any City property damaged or destroyed by Mid-Hudson shall be promptly replaced and permanently restored to the condition in which it was prior to such damage or destruction at the sole expense of Mid-Hudson and for failure to do so the City may do so and charge the cost thereof to Mid-Hudson.

14. FRANCHISE TERM

Mid-Hudson Cablevision's franchise shall run for a term of fifteen (15) years from the effective date of approval by the New York State Public Service Commission (NYSPSC).

15. TERMINATION

This franchise may be forfeited upon the failure to observe the material terms and conditions outlined herein. The franchisee recognizes the importance of making timely payments for Franchise Fees. The failure of Mid-Hudson to obviate or correct any material violation within a mutually agreed upon reasonable period of time, which shall not exceed 45 days, after being notified by the City in writing, the City may, upon the option of the City, after a public hearing, held after due notice, and subject to the review of the NYSPSC, terminate the contract and end the franchise.

16. RESPONSIBLE MUNICIPAL OFFICER

The Mayor shall be responsible for the continuing administration of this franchise.

17. PUBLIC-EDUCATIONAL-GOVERNMENTAL (PEG) ACCESS

A. Mid-Hudson will provide PEG access in accordance with the Standards of the NYSPSC, as set forth in 895.4 of the commission's rules, and the rules of the Federal Communication Commission and Cable Consumer's Protection Act of 1992.

18. APPROVAL AND AMENDMENT OF PROVISIONS

A. The terms and provisions of this franchise and any amendments to it are subject to the approval of the NYSPSC.

B. Should the Federal Communications Commission or the NYSPSC make such modifications of the provision of their rules and regulations that would require the amendment of this agreement, the necessary amendments will be sought within one (1) year of the date of issue. No amendment shall be affected without the prior approval of the Commission in accordance with Section 892-1.4 of the Rules of the NYSPSC.

C. Referral: In the event that there is any issue which cannot be resolved between Mid-Hudson and the City or City, such issue may be referred to the NYSPSC (NYSPSC) for their review and mediation. Such referral will be in writing with copies to both parties.

19. MATERIAL PROVISIONS AND SEVERABILITY

Should any provision of this franchise be held invalid by any court or regulatory agency of competent jurisdiction, the remaining provisions of this franchise shall remain in full force and effect.

20. POLICE POWERS

The City of Hudson reserves the right to adopt, in addition to the provisions contained in this franchise and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers; provided, however, that such regulations are reasonable, not materially in conflict with the privileges granted in this franchise and consistent with all federal and state laws, rules, regulations and orders

21. REPRESENTATIONS

This agreement sets forth all of the promises, agreements, conditions, and understandings between the City and Mid-Hudson Cablevision with respect to the subject matter hereof and supersedes all negotiations, conversations, discussions, correspondence and agreements between the City and Mid-Hudson concerning such subject matter. This Franchise can only be changed in accordance with section 13 or as agreed by the parties in writing.

22. EXCUSABLE DELAY

In no event shall Mid-Hudson be liable to the City for any delay or failure to perform hereunder, which delay or failure to perform is due to causes beyond the control of Mid-Hudson, without limitation, acts of God, strikes, fires, war or other malfunction or failure of any entity from which Mid-Hudson obtains licenses, permits, materials, information, or has contracts with in order to perform the services under this agreement.

23. NECESSARY OPERATING AUTHORITY

Mid-Hudson shall file requests for all necessary operating authorizations with the NYSPSC and the Federal Communications Commission within sixty (60) days from the effective date of this franchise.

24. MOST FAVORED NATIONS

No municipality may award or renew a franchise for cable television service which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchise operating in the same franchise area. In the event that the City of Hudson or the grants another franchise for cable television or the provision of video services which are more favorable to any other business entity, such more favorable terms or conditions shall be incorporated herein.

25. APPROVAL

The terms of this franchise are subject to the approval of the NYSPSC.

26. TRANSFER OF OWNERSHIP

Mid-Hudson shall have the right to transfer this franchise without prior municipal approval. However, Mid-Hudson shall give 30 days written notice to the municipality prior to any transfer.

27. EQUALITY

Access to cable service will not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first above written.

MID-HUDSON CABLEVISION, INC.

CITY OF HUDSON

By: _____
James M. Reynolds, President

By: _____
Rick Rector, Mayor

EXHIBIT I

"Standard Installation" shall be defined as the work required to establish a service connection (service drop) between the CATV distribution facilities and the residential subscriber outlet in a single dwelling unit structure. This work normally takes approximately one hour and involves installing a black service drop wire from the CATV distribution facilities for a distance of no more than 250 feet to an attachment on the subscriber's house in a manner similar to the installation of a telephone service drop. From this point the cable is then routed to the cable outlet by the most convenient path. Standard installation will include all necessary work associated with the normal routing of the service drop. All installations will be grounded in accordance with the National Electrical Safety Code and the rules of the NYSPSC.

Standard installation will not apply in the following situations:

A.) any type of multiple dwelling complex; hotels, motels, apartment houses, hospitals, etc.

B.) When the subscriber drop must be extended more than 250 feet from the CATV distribution system.

C.) When Special work is requested or must be performed in order to establish the service connection between the CATV distribution facilities and the subscriber terminal or TV set.

Examples of this type of work could be: Prewiring of a new building for multiple outlets or other purposes; special subscriber requests for wiring in attics, basements, crawl spaces or to install wires internally in preexisting walls.

D.) Special drilling through concrete, steel, asbestos shingles. All nonstandard requests shall be performed on a time and material basis. All underground installations are considered nonstandard.

EXHIBIT II

**CITY OF HUDSON FRANCHISE
MAP OF PRIMARY SERVICE AREA**