

**Town of Sidney**

**In the Matter of the  
Cable Television Franchise  
To  
DTC Cable, Inc.**

Dated: 1/03/2019

**FRANCHISE AGREEMENT**

**THIS AGREEMENT**, executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the *Town of Sidney* (hereinafter referred to as the Municipality), by the *Supervisor* acting in accordance with the authority of the duly empowered local governing body (hereinafter referred to as the Board), party of the first part, and *DTC Cable, Inc., a subsidiary of Delhi Telephone Company*, a corporation organized and existing under the laws of the State of New York, the principal place of business of which is located at *Delhi, New York 13753* (hereinafter referred to as the Company party to the second part:

### **WITNESSETH**

**WHEREAS**, Pursuant to the *Town Law* the Board has the exclusive power on behalf of the Municipality to grant franchises providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the Municipality to any franchisee for or relating to the occupation or use of the Streets; and

**WHEREAS**, Pursuant to the Communications Act of 1934, as amended (the “Communications Act”), the Board has the authority to grant cable television franchises and renewals thereof on behalf of the Municipality and whereas the Board and the Company pursuant to said federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the franchise procedures required of Municipalities and cable operators in the grant of cable television franchises or their renewal; and

**WHEREAS**, the Municipality has conducted negotiations with the Company and has conducted one or more public hearings on the Company’s franchise proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of the Company’s technical ability, financial condition, and character; said public hearing also included consideration and approval of the Company’s plans for constructing and operating the cable television system; and

**WHEREAS**, Following such public hearings and such further opportunities for review, negotiations and other actions

as the Board deemed necessary and that is required by law, the Board decided to grant Company's franchise as provided hereinafter; and

**WHEREAS**, The Board, in granting this franchise, embodied in the agreement the results of its review and any negotiations with the Company and has determined that said franchise agreement and the Company respectively, fulfills and will fulfill the needs of the Municipality with the respect to cable television service and complies with the standards and requirements of the New York Public Service Commission; and

**NOW, THEREFORE**, In consideration of the forgoing clauses, which clauses are hereby made a part of this franchise agreement, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

## **SECTION 1 – DEFINED TERMS**

Unless the context clearly indicates that a different meaning is intended:

- (a) "Basic Service" means such cable television service as is provided in the lowest Service Tier.
- (b) "Board" means the Board of Trustees of the Municipality.
- (c) "Cable Television Service" means
  - (1) The transmission to Subscribers of Video Programming, or other cable and communications services; and/or
  - (2) Subscriber interaction, if any, which is required for the selection of such Video Programming, or other communications services and/or
  - (3) Interactive Service.
- (d) "Cable Television System" means a facility, consisting of a set of closed transmission paths, including (without limitation) fiber optic wires or lines, and associated signal

generation, reception and control equipment that is designed to provide Cable Television Service to multiple Subscribers within a community.

- (e) "Communications Service" means the one-way or two-way transmission and distribution of analog or digital audio, video and/or data signals.
- (f) "Company" means DTC Cable, Inc., its successors, assigns and transferees.
- (g) "Effective Date" of this agreement shall be that date subsequent to confirmation of the Franchise, by the New York State Public Service Commission ("NYSPSC") agreed to by the parties, which date is (calendar date).
- (h) "Franchise" means the grant or authority given hereunder to the Company with the due consent of the Municipality, which consent or authority is evidenced by regulation, ordinance, permit, this agreement or any other authorization, to conduct and operate a Cable Television System in the Municipality in accordance with the terms hereof.
- (i) "FCC" means the Federal Communications Commission, its designee and any successor thereto.
- (j) "Interactive Service" means the two-way transmission of information over the Cable Television System including but not limited to, data transmission.
- (k) "May" is permissive.
- (l) "Municipality" means the *Town of Sidney*. Wherever the context shall permit, Board, and Municipality shall be used interchangeably and shall have the same meaning under this Franchise.
- (m) "NYSPSC" means New York State Public Service Commission.
- (n) "Person" means an individual, partnership, association, corporation, joint stock company, trust, corporation or

organization of any kind, the successors or assigns of the same.

- (o) "Service Tier" means a category of Cable Television Service provided by the Company over the Cable Television System for which a separate rate is charged for such category by the Company.
- (p) "Shall" or "will" are mandatory.
- (q) "Streets" means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkway, waterways, docks and public grounds and water within or belonging to the Municipality.
- (r) "Subscriber" means any person lawfully receiving any Cable Television Service in the Municipality provided over the Cable Television System.
- (s) "Standard Drop" means a standard cable connection, defined as no more than 150 feet from existing cable lines.
- (t) "Video Programming" means any or all programming services provided by, or generally considered comparable to programming provided by a television broadcast station.

## **SECTION 2 -- CONSENT TO FRANCHISE AND CONDITION PRECEDENT**

(a) The Municipality hereby grants to the Company a non-exclusive right to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service and Communications Service within the Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality by leasing from any duly authorized public telephone or electric provider or erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon, and across any and all said Streets such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as is deemed necessary or useful by the Company, subject to the Company's obligation to provide

efficient Cable Television Service. Additionally, the Municipality, insofar as it may have the authority to so grant, hereby authorizes the Company to use any and all easements dedicated to compatible uses, such as electric, telephone or other utility transmissions, for the purposes of erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across such easements such items of the Cable Television System as is deemed necessary or useful by the Company in order to provide Cable Television Service. Upon request by Company and at Company's sole expense, the Municipality hereby agrees to assist the Company in gaining access to and using any such easements.

(b) Without waiver or restriction of the rights available to the parties hereto under applicable law, this Franchise and the attachments hereto constitute the entire agreement between the parties and supersede any and all prior cable television agreements and other agreements or instruments by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to the cable television service.

(c) In the event the Municipality grants to any other Person (being referred to as "Grantee" in the below quoted paragraph) a franchise, consent or other right to occupy or use the Streets, or any part thereof, for the construction, operation, or maintenance of all or part of a cable television system or any similar system or technology, the Municipality shall insert the following language into any such franchise, consent or other documents, and/or promptly enact legislation, conditioning the use of the Streets or any part thereof by any such Person, as follows:

"Grantee agrees that it shall not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of the DTC Cable, Inc. without the prior written consent of the DTC Cable, Inc. Grantee shall indemnify the DTC Cable, Inc. against any damages or expenses incurred by the DTC Cable, Inc. as a result of any such removal, damage, penetration, replacement or interruption of the services of the DTC Cable, Inc. caused by the Grantee."

As used immediately above in the above-quoted paragraph, the term "DTC Cable, Inc." shall mean the Company, DTC Cable,

Inc. as defined in this Franchise, and its successors, assigns and transferees.

In addition to the foregoing, in the event any such grants of franchises, consents or other rights to occupy the Streets, or the provision of any service pursuant thereto, are on terms more favorable than those contained herein, the provisions of this Franchise shall be deemed modified without any further action so as to match any such less onerous provisions.

As used in this Part, the phrase "occupancy or use of the Streets", or any similar phrase, shall not be limited to the physical occupancy or use thereof but shall include any use above or below the Streets by any technology including but not limited to infrared transmissions.

Should any part of this Franchise be changed or modified, by virtue of the above conditions, approval by the Public Service Commission will be required in order to effect such change or modification.

### **SECTION 3 -- APPROVAL OF COMPANY BY MUNICIPALITY**

The Municipality hereby acknowledges and agrees that this Franchise has been approved and entered into by it in accordance with and pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq. (hereinafter the "Communications Act") and all other applicable laws, rules and regulations of FCC and the NYSPSC, and hereby represents and warrants that this Franchise has been duly approved and entered into in accordance with all applicable local laws. The Municipality hereby acknowledges that it, by duly authorized members thereof, has met with the Company for the purposes of evaluating the Company and negotiating and consummating this Franchise.

The Municipality has determined, after affording the public all adequate and due notice and opportunity for comment in public proceedings affording due process, that the Company is likely to satisfy cable related community needs and has found the Company's technical ability, financial condition, and character to be satisfactory and has also found to be adequate and feasible the Company's plans for constructing and operating the Cable

Television System. In making said determination, the Municipality considered the past performance of the Company and its affiliated entities and the Company's likelihood of satisfactory performance of its obligations hereunder and other factors the Municipality deemed necessary for approval of the Company as the cable television franchisee, which approval will not be unreasonably withheld.

#### **SECTION 4 -- TERM AND THE RIGHTS ARISING HEREUNDER**

The Franchise herein granted and the rights arising here under are for a term commencing on the "Effective Date" and expiring fifteen (15) years therefrom.

Company and Municipality hereby agree that from the Effective Date until the date of NYSPSC confirmation hereof, Municipality and Company shall be bound by and comply with terms of this Agreement and shall take no action contrary thereto; from and after NYSPSC confirmation, Municipality and Company shall continue to be bound by and comply with the terms of this Agreement.

#### **SECTION 5 -- REVOCATION**

(a) The Municipality may revoke this Franchise and all rights of the Company hereunder in any of the following events or for any of the following reasons:

- (1) Company fails after sixty (60) days' written notice from the Municipality to substantially comply or to take reasonable steps to comply with a material provisions or material provisions of this Franchise. Notwithstanding the above, should Company comply or take said reasonable steps to comply with said (60) day notice, the right to revoke this Franchise shall immediately be extinguished; or
- (2) Company is adjudged a bankrupt; or
- (3) Company attempts or does practice a material fraud or deceit in its securing of this Franchise.



(b) Notwithstanding the above, no revocation shall be effective unless and until the Municipality shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date thereof, which resolution shall not be adopted until the expiration of sixty (60) days from the date of delivery of written notice to the Company specifying the reasons for revocation and an opportunity for the Company to be fully and fairly heard on the proposed adoption of such proposed ordinance or local law. If the revocation as proposed therein depends on a finding of fact, such finding of fact shall be made by the Municipality only after an administrative hearing providing the Company with a full and fair opportunity to be heard, including, without limitation, the right to introduce evidence, the right to the production of evidence, and to question witnesses. A transcript shall be made of such hearing. The Company shall have the right to appeal any such administrative decision to a state court or a federal district court as the Company may choose and the revocation shall not become effective until any such appeal has become final or the time for taking such appeal shall have expired.

(c) In no event, and notwithstanding any contrary provision in this section or elsewhere in this Franchise, shall this Franchise be subject to revocation or termination, or the Company be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is due to Acts of God or other events beyond the control of the Company. The Company shall be excused from its obligations herein during the course of any such events or conditions, and the time specified for performance of the Company's time equal to the period of the existence of any such events or conditions and such reasonable time thereafter as shall have been necessitated by any such events or conditions.

(d) Nothing contained in this Franchise is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Franchise.

## **SECTION 6 -- INDEMNIFICATION & INSURANCE**

(a) The Company hereby agrees to indemnify the

Municipality for, and hold it harmless from, all liability, damage, cost or expense (including reasonable attorney's fees) arising from claims of injury to persons or damage to property caused by reason of any negligent conduct undertaken by the Company, its employees or agents in the construction, installation and maintenance of the Cable Television System.

(b) The Company shall as of the Effective Date of this Franchise furnish to the Municipality evidence of a liability insurance policy or policies, in the form of a certificate of insurance naming the Municipality as an additional insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Franchise at the cost and expense of the Company; said policy and replacements shall be in the combined amount of Two Million Dollars (\$2,000,000.00) for bodily injury and property damage issued by a company authorized to do business in New York State. In addition, the Company shall carry Worker's Compensation insurance for its employees in such amounts as is required by the laws of the State of New York. The insurance coverage herein above referred to may be included in one or more policies covering other risks of the Company or any of its affiliates, subsidiaries or assigns.

(c) Notwithstanding any provision contained within this Franchise, the Municipality and Company hereby expressly agree that the Company shall not be liable for and shall not indemnify the Municipality in any manner and in any degree whatsoever from and against any action, demand, claims, losses, liabilities, suits or proceedings arising out of or related to any (i) programming carried over or transmitted by or through the Cable Television System (other than locally originated programming produced by the company), or (ii) the negligent or intentional wrongdoing of the Municipality or any of its employees, agents or officers.

## **SECTION 7 -- USE OF EXISTING POLES AND LOCATION OF UNDERGROUND FACILITIES**

In the event the DTC Cable, Inc. finds it necessary to install additional facilities within the Town:

(a) The Company hereby agrees that when and wherever it deems it economical and reasonably feasible, it shall enter into agreements with telephone or electric or other utilities (collectively "utilities") for the use of said utilities' poles or conduit space whereby said utilities shall provide use of and access to said poles or conduit space by the Company of the Company's lines and other equipment. Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole(s) or conduit space of utilities is not economically reasonable or otherwise feasible, the Company may erect or authorize or permit others to erect any poles or conduit space or any other facilities within the Streets of the Municipality pursuant to the issuance by the Municipality of any necessary authorization which shall not be unreasonably withheld or delayed.

(b) Subject to the provisions of sub-paragraph (c), below, in such areas of the Municipality where it or any sub-division thereof shall hereafter duly require that all utility lines and related facilities be installed underground, the Company shall install its lines and related facilities underground in accordance with such requirement.

(c) Notwithstanding the foregoing, if the Company shall in any instance be unable to install or locate any part of its property underground, then the Municipality, on being apprised of the facts thereof, shall permit such property to be installed above the ground even though other facilities in the area may be placed, or required to be placed, underground. However, any such permission shall be on such conditions as the Municipality may reasonably require.

## **SECTION 8 -- RELOCATION OF PROPERTY**

In the event the DTC Cable, Inc. finds it necessary to install additional facilities within the Town:

Whenever the Municipality or a public utility franchised or operating within the Municipality shall require the relocation or reinstallation of any property of the Company in or on any of the Streets of Municipality as a result of the relocation or other improvements of any such Streets, it shall be the obligation of the Company on written notice of such requirement to remove

and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the Municipality or the public utility.

The Company shall, on request of a person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses of any such temporary removal, raising or lowering of wires or other property shall be paid in advance to the Company by the person requesting the same. The Company shall be given in such cases not less than five (5) working days, prior written notice in order to arrange for the changes required.

## **SECTION 9 -- USE & INSTALLATION**

In the event the DTC Cable, Inc. uses any facilities not owned and maintained by the Delhi Telephone Company:

The Company or any person authorized by the Company to erect, construct or maintain any of the property of the company used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of the Company in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to members of the public. All Cable Television System equipment shall conform to those standards of the National Electrical Code and the National Board of Fire Underwriters which exist at the time said equipment is installed or replaced.

The Company agrees to use its best efforts to install all Cable Television System equipment in a manner to reasonably minimize interference to be expected with the usual use of the Streets and in no event shall any such Cable Television System equipment be located so as to substantially and regularly interfere with the usual public travel on any Street of the Municipality. All work involved in the construction, installation, maintenance, operation and repair of the Cable Television System shall be performed in a safe, thorough and reliable manner and all material and equipment shall be of good and durable quality. In the event that any municipal property is

damaged or destroyed in the course of operations by the Company, such property shall be repaired by Company within thirty (30) days and restored to serviceable condition.

Whenever the Company shall cause or any person on its behalf shall cause any injury or damage to public property or Street, by or because of the installation, maintenance or operation of the Cable Television System equipment, such injury or damage shall be remedied as soon as reasonably possible after the earlier of notice to the Company from the Municipality or after the Company becomes aware of the same in such fashion as to restore the property or street to substantially its former condition. Upon due notice to the Municipality, the Company is hereby granted the authority to trim trees upon and overhanging the Streets of, and abutting private property, (i.e. - in the public way) in the Municipality to the extent it reasonably deems necessary so as to prevent the branches or growths from coming in contact with the wires, cables and other equipment of the Company's Cable Television System. In the event a hazardous situation exists due to fallen trees or branches, notice to the Municipality is not required.

## **SECTION 10 -- REMOVAL AND ABANDONMENT OF PROPERTY**

No Cable Television Service, or portion thereof, may be abandoned by the Franchise during the term of this Agreement without the written consent of the Municipality.

If the use of any part of the Company's Cable Television System occupying the Streets of the Municipality is discontinued for any reason (other than for reasons beyond the Company's control) for a continuous and uninterrupted period of twelve months, the Company shall, on being given sixty (60) days prior written notice thereafter by the Municipality, provided no such notice is sent without prior vote of the Board directing the forwarding of said notification, remove that portion of its Cable Television System from the Streets of the Municipality which has both remained unused and which the Municipality for good cause shown and articulated in said notice deems necessary to remove to protect the public health and safety. It is understood that the cost of any such removal shall be borne by the Company.

## **SECTION 11 -- OPERATION AND MAINTENANCE; CONSTRUCTION AND LINE EXTENSION**

(a) The Company shall maintain and operate its Cable Television System at all times in compliance with the duly promulgated and lawful provisions of Section 596 of the Rules and Regulations of the NYSPSC and the technical requirements of the FCC. The Company shall maintain staffing levels and support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold time. The Company shall have, at all times, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. The Company shall respond to individual requests for repair service no later than the next business day. System outages, and problems associated with channel scrambling, and switching equipment, shall be acted upon promptly after notification. The Company shall maintain a means to receive repair service requests and notice of system outages at times when its business office is closed. The Municipality shall have the right and authority to request an inspection or test of the cable system by the NYSPSC, the FCC, or to have such inspection or test performed, all at the Municipality's expense. The Company shall fully cooperate in the performance of such testing.

(b) To the extent consistent with and subject to the Communications Act, and notwithstanding any other provision of this Agreement, any requests for Cable Television Service in areas outside the area presently served by the Company, with additional areas, if any, the Company is required to service either in accordance with this Agreement or the Rules and Regulations of the NYSPSC, shall be served as required by this Agreement or as required by such rules and regulations, provided the Company is economically and otherwise reasonably capable of compliance with such request.

(c) The Company is prohibited from abandoning any service to any area of the Franchise area or any portion thereof without the written consent of the Municipality. In the event Company makes a showing of financial loss or technical infeasibility, such consent shall not be unreasonably withheld.

## **SECTION 12 -- PUBLIC, EDUCATIONAL, GOVERNMENTAL ACCESS (PEG)**

The Company provides access channel(s) designated for noncommercial, educational and governmental use by the public on a first-come, first-served, nondiscriminatory basis. DTC Cable, Inc. shall provide public, educational and governmental access channels in accordance with Part 595.4 of the rules and regulations of the New York State Public Service Commission and/or the Federal Communications Commission.

(a) Emergency Alert System. Grantee shall comply with the Emergency Alert System regulations of the FCC. The emergency alert system shall meet all Federal and State requirements.

(b) PEG Access Channels. Grantee shall make available PEG access and comply with the standards set for PEG as required by the regulations of the NYPSC. Any PEG channel shall be shared with other franchising authorities served by Grantee's cable system. The Grantor shall indemnify, save and hold Grantee harmless from and against any liability resulting from the Grantor's use of the PEG Channels for municipal access.

## **SECTION 13 – RATES**

(a) To the extent consistent with applicable law, rules or regulations, rates and charges imposed by the Company for Cable Television Service shall be subject to the approval of the Town, New York State Department of Public Service and the FCC. The Company shall comply with all notice requirements contained in this Franchise Agreement and all applicable laws, rules and regulations pertaining to rates and charges for cable television service.

The Municipality acknowledges that it may not regulate the content of Cable Television Service except that under current federal law it may exercise whatever rights it may have thereunder to object to or prohibit programming that is obscene or otherwise unprotected by the Constitution of the United States. To the extent not inconsistent with applicable laws, and notwithstanding any contrary provision of this Franchise, the

Company may delete, add or rearrange Video Programming and other communication services, as well as Service Tiers, or portions thereof, as it deems necessary or desirable provided it has first notified the Municipality and its subscribers in accordance with the terms of this Franchise and applicable regulatory requirements.

(b) The Company shall not unfairly discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers. This Provision is not intended to and shall not prohibit (i) sales, promotions or other discounts which the Company deems necessary or desirable to market its Video Programming and other services; (ii) the Company from providing any of its services (and at such rates) as it shall deem necessary or desirable to any or all Subscribers where cable television service or any similar service is offered or provided in competition with the Company's services; or (iii) the Company from discounting rates to persons who subscribe to any services on a seasonal basis or discounting rate to persons who subscribe to any services that are provided on a bulk billed basis.

#### **SECTION 14 – FRANCHISE FEES**

There are no franchise fees to be paid to the Municipality.

#### **SECTION 15 -- SERVICE TO PUBLIC FACILITIES AND ACCOUNTABILITY PROVISIONS**

(a) At the request of the Municipality, the Company shall provide and maintain a single standard service outlet to each school, firehouse and municipally owned building which is occupied for governmental purposes, and police station as agreed to herein or as may be reasonably requested by the Municipality within sixty (60) days after the Effective Date of this Franchise provided the point chosen by the Company for connecting of such wire to the institution is no further than two hundred feet (200') from the closest feeder line of the Cable Television System. All such connections shall be above ground except where all utility lines and cables in the area are underground. The Municipality shall not extend such service to additional outlets, at its expense, without the express written



consent of the Company.

(b) The Company shall maintain the following records:

- (1) A record of all service orders received regarding subscriber complaints including the date and time received, nature of complaint, date and time resolved, and action taken to resolve.
- (2) A log showing the date, approximate time and duration, type and probable cause of all cable system outages, whole or partial, due to causes other than routine testing or maintenance.

(c) To the extent not inconsistent with or prohibited by the provisions of Section 631 of the Cable Act and all other laws relating to subscriber privacy, the Municipality reserves the right to inspect any and all records the company is required to maintain pursuant to this Franchise upon reasonable notice and during normal business hours. The Company shall promptly make such materials available at its local business office.

## **SECTION 16 – ADDITIONAL SUBSCRIBER SERVICES**

(a) Payment for Cable Television Service rendered to Subscribers is due and payable in advance. A late charge, as determined by the Company, shall be applied to delinquent accounts.

(b) Payment for equipment provided by the Company to Subscribers and the installation, repairs and removal thereof shall be paid in accordance with the Company's standard and customary practices and applicable rules and regulations of the FCC.

(c) The Company shall have the right to disconnect delinquent Subscribers and charge such Subscribers therefor a disconnection charge as determined by the Company, where:

- (1) At least five (5) days have been lapsed after written notice of discontinuance has been served personally upon a Subscriber; or
- (2) At least eight (8) days have lapsed after mailing to the

Subscriber written notice of discontinuance addressed to such person at the premises where the service is rendered.

(d) Notice of the Company procedures for reporting and resolving billing disputes and the Company's policy and the Subscribers' rights in regard to "personally identifiable information", as that term is defined in Section 631 of the Communications Act, will be given to each Subscriber at the time of such person's initial subscription to the Cable Television System Services and thereafter to all Subscribers as required by federal or state law. The Company will provide notice to each Subscriber, at intervals of not more than one year, of the procedure for reporting and resolving Subscriber complaints.

(e) The Company shall offer to, and shall notify in writing, the Subscribers of the availability of locking program control devices which enable the Subscriber to limit reception of obscene or indecent programming in the Subscriber's residence. Any Subscriber requesting such device shall pay the Company in full upon receipt of the same the charge imposed by the Company therefor. The notice provided by the Company shall be given to new Subscribers at the time of installation and thereafter to all Subscribers as required by the federal or state law.

(f) The Company shall give credit for Cable Television System outages involving all Video Programming and other services carried on the Cable Television System, which outage is due to no fault of the affected Subscriber. Such credit shall be provided in accordance with all applicable federal and state laws and regulations.

(g) In accordance with the applicable requirements of federal and state laws, the Company shall provide written notice of any increases in rates or charges for any Cable Television Service.

(h) The Administrator, for the Municipality for this Franchise shall be the Supervisor of the Municipality. All correspondence and communications between the Company and the Municipality pursuant to this Franchise shall be addressed by the Company to the Administrator.

(i) It is agreed that all Cable Television Service offered to any Subscribers under this Franchise shall be conditioned upon the Company having legal access to any such Subscribers' dwelling units or other units wherein such service is to be provided.

**SECTION 17 -- SEPARABILITY, POLICE POWERS,  
GOVERNING  
LAW, REQUESTS FOR AUTHORIZATIONS AND NON-  
DISCRIMINATION**

If any section, sub-section, sentence, clause, paragraph or portion of this Franchise (as well as any law or regulation applicable or purported to be applicable to this Franchise) is for any reason held to be invalid, void, unenforceable, illegal or unconstitutional by any court of competent jurisdiction, such law, regulation or provision of this Franchise shall be deemed separate and distinct and shall have no effect on the validity of the remaining portions hereof.

To the extent not inconsistent with or contrary to applicable federal law, the terms of this Franchise shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Franchise or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable federal laws.

The Town reserves the right to adopt, in addition to the provisions of this Franchise and existing applicable regulations, such additional regulations as it shall find necessary in the exercise of its police powers; provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this Franchise.

The Company shall file requests for all necessary operating authorizations with the NYSPSC and the FCC within sixty (60) days of the Effective Date of this Franchise.

The Company shall not refuse to hire or employ and shall neither bar nor discharge from employment, and shall not discriminate against any person in compensation, terms or conditions of employment because of age, race, creed, color, national origin or sex.

## **SECTION 18 -- CONTRACTS IN FULL FORCE**

*All agreements with third parties necessary for the Company to fulfill the terms of this Agreement are valid agreements and are in full force and effect at the time of this Agreement and will remain in full force and effect during the term of this Agreement.*

## **SECTION 19 – NOTICE**

All notices, reports or demands shall be given either by email with designated email address or in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail or by facsimile transmission or by any other means to the parties and locations:

When to the  
Company:

*DTC Cable, Inc.  
P. O. Box 271  
107 Main Street  
Delhi, New York 13753*

When to the  
Municipality:

*Town of Sidney  
21 Liberty Street  
Sidney, NY 13838*

## **SECTION 20 --FURTHER ASSURANCES**

The Municipality shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as the Company may reasonably request in order to effect or confirm this Franchise and the rights and obligations contemplated herein.

## **SECTION 21 – INTEGRATION**

This Franchise supersedes all prior negotiations between the

parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Franchise may be amended (except as otherwise expressly provided for herein) only behalf of both parties. To the extent required by state law, amendments hereto shall be confirmed or approved by the NYSPSC. Changes in rates charged or Cable Television Services rendered by the Company shall not be deemed an amendment to this Franchise.

This Franchise may be executed in one or more counterparts, all of which taken together shall be deemed one original.

The headings of the various sections of this Franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Franchise.

The rights and remedies of the parties pursuant to this Franchise are cumulative and shall be in addition to and not in derogation of any other right or remedies which the parties may have with respect to the subject matter of this Franchise.

## **SECTION 22 - NO JOINT VENTURE**

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or the public in any manner which would indicate any such relationship with the other.

## **SECTION 23—ASSIGNMENT**

The Company shall not assign this Franchise without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or delayed. The foregoing shall not apply to the assignment by the Company to any entity which is a subsidiary of or is affiliated with it.

The Municipality hereby consents to the grant by Company of a security interest in this Franchise and all other assets of the Cable Television System to such lending institution or institutions as may be designated by the Company, which institution(s) shall have all rights and remedies of a secured party under the applicable provisions of the Uniform

Commercial Code.

**SECTION 24 — DEPARTMENT OF PUBLIC SERVICE  
APPROVAL**

The terms of this Franchise agreement are subject to the approval of the Department of Public Service.

**SECTION 25 - AREA SERVED**

(a) The Franchise rights and obligations set forth in this agreement shall be applicable to the Town of Sidney.

(b) Line Extension Policy

(1) Primary service area shall include each of the following within the franchised area:

- a) those areas where cable television plant has been built without a contribution in aid of construction by subscribers;
- b) those areas, if any, where DTC Cable, Inc. is obligated by the terms of its Franchise to provide Cable Television Service without a contribution in aid of construction by subscribers;
- c) any area adjoining an area described in subparagraph "a" or "b" of this paragraph which contains dwelling units at a minimum rate of 20 homes per linear mile of aerial cable. The company will review the financial feasibility of areas with less than 20 homes per mile when requested by the municipality.
- d) if the average number of dwelling units per linear mile of aerial cable in areas described in subparagraphs "a" and "b" of this paragraph (the average is to be determined by dividing the sum of the dwelling units in areas described in subparagraphs "a" and "b" of this paragraph by the number of linear miles of cable in the same areas) is less than 20, then any area adjoining an area described in subparagraphs "a" and "b" of

this paragraph and which contains at least the same number of dwelling units per linear mile of aerial cable in areas described in subparagraphs “a” and “b” of this paragraph.

- (2) Line extension area shall be any area within the franchised area which is not the primary service area.
- a) Within one (1) year after receipt of all necessary operating authorization Cable Television Service will be offered throughout the authorized area to all subscribers requesting service in any primary service area;
- b) Cable Television Service will not be denied to potential subscribers located in line extension areas who are willing to contribute to the cost of construction in accordance with the following formula:

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

“C” equals the cost of construction of new plant; “CA” equals the average cost of construction per mile in the primary service area. “P” equals the lower of 20 or the average number of dwelling units per linear mile of “a” and “b” of paragraph 1 of this section. “LE” equals the number of dwelling units requesting service in the line extension area. “SC” equals subscriber contribution in the line extension area.

- (3) Whenever, subsequent to the date which the Company is obligated to provide service throughout the primary service area, a potential subscriber located in a line extension area requests service, DTC Cable, Inc. will, within thirty (30) days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area and shall inform each of the potential subscribers of the contribution in aid of construction that may be charged. DTC Cable, Inc. may require prepayment of the contribution in aid of construction. DTC Cable, Inc. shall apply for pole

attachment agreements within thirty (30) days of its receipt of contribution in aid of construction. Cable Television Services must be made available to those who made a contribution in aid within ninety (90) days from the receipt of pole attachment agreements by the Company.

- (4) The contribution in aid of construction shall be in addition to the installation rate set forth in this Franchise.
- (5) During a five (5) year period commencing at the completion of a particular line extension, a pro-rated refund shall 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 by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. The Company shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund who is no longer at the same address and who has not informed the Company of the subscriber's new address.
- (6) Cable Television Service will be provided to any Subscriber who demands service and who is located within 250 feet of aerial feeder cable, and that the charge for the installation for any subscriber so situated will not be in excess of the installation charge specified in the Franchise.
- (7) The Company shall review line extensions in May of each year to reflect the number of subscribers per mile so that adjustments or rebates for line extension contribution in aid of construction may be established.

**IN WITNESS WHEREOF**, the parties hereto have caused this Franchise to be duly executed by their duly authorized representatives the day and year first written above.

*DTC Cable,*



*Inc.  
Sidney*

*Municipality: Town of*

By \_\_\_\_\_  
\_\_\_\_\_

By

Name: Jason Miller

Name:

\_\_\_\_\_

Title: General Manager

Title:

\_\_\_\_\_

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

Date:

\_\_\_\_\_

**In the matter of DTC Cable, Inc. Cable Franchise**

Resolved: That the proposed Cable Franchise Agreement between the Town of Sidney and DTC Cable, Inc., as modified by the recommendations of the New York State Public Service Commission, is found to be in compliance with the Regulations of the New York State Public Service Commission and therefore is approved. A copy of said agreement is attached to these minutes.

**Certification**

I, Lisa French, Town Clerk of the Town of Sidney, Delaware County, New York hereby certify that the resolution set for the above is a true copy of the resolution adopted by the Town Board of the Town of Sidney at its regular meeting held

\_\_\_\_\_, \_\_\_\_\_.

Town Clerk

\_\_\_\_\_

