

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB20

ORDINANCE NUMBER: 2021-20

TITLE: AN ORDINANCE AMENDING THE CITY'S NON-EXCLUSIVE CABLE TELEVISION FRANCHISE AGREEMENT WITH CAP CABLE, LLC, KNOWN LOCALLY AS USA COMMUNICATIONS

WHEREAS, on December 1, 2010, the City entered into a ten (10) year non-exclusive cable television franchise agreement with CAP Cable, LLC, a Colorado Limited Liability Company, known locally as USA Communications;

WHEREAS, on November 14, 2018, by the adoption of Ordinance Number 2018-28, the City extended the Franchise Agreement until December 1, 2030;

WHEREAS, the Franchise Agreement does not address CAP Cable's use of real estate owned by the City currently, which is subject to a Headend Lease dated December 1, 2010; and

WHEREAS, the City and CAP Cable wish to amend the Franchise Agreement to incorporate and reference the Headend Lease.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. The Franchise Amendment, attached hereto as **Exhibit 1**, and incorporated herein by this reference, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

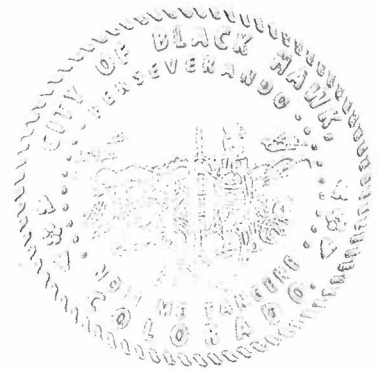
Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 28th day of July, 2021.


David D. Spellman, Mayor

ATTEST:


Michele Martin, CMC, Deputy City Clerk



FRANCHISE AMENDMENT

This Franchise Amendment is made on July 28, 2021, between the City of Black Hawk, a Colorado municipal corporation (the "City") and CAP Cable, LLC, a Colorado Limited Liability Company (the "Company").

Recitals:

- a. On December 1, 2010, the City and the Company entered into a Franchise Agreement (the "Franchise Agreement") concerning a non-exclusive cable television franchise to the Company. All capitalized terms not otherwise defined in this Franchise Amendment shall have the same meaning as provided for in the Franchise Agreement.
- b. On November 14, 2018, the City and the Company agreed to extend the Franchise Agreement until December 1, 2030 (the "Extension Agreement").
- c. It has been determined that neither the Franchise Agreement nor the Extension Agreement addressed the use of real estate owned by the City currently used by the company for a Headend (the "Headend Site"), subject to the Headend Lease dated December 1, 2010, a copy of which is attached hereto and incorporated herein as **Exhibit A** (the "Lease").
- d. The term of the Lease is through the term of the Franchise Agreement, as extended by the Extension Agreement.
- e. The City and the Company wish to amend the Extension Agreement to incorporate and reference the Lease.
- f. By adoption of Ordinance Number 2021-20, the Mayor of the City has been authorized to sign this Franchise Amendment on behalf of the City.

Agreement:

1. The City agrees that the Company may continue to use the Headend Site in connection with the operation of the cable system for the duration of the Franchise Agreement, as extended by the Extension Agreement, according to the terms and conditions of the Lease.
2. Except as provided for in this Franchise Amendment, the terms of the Franchise Agreement and the Extension Agreement shall continue in effect.

Signature page follows.

CITY OF BLACK HAWK, COLORADO

By: 
David D. Spellman, Mayor

ATTEST:


Michele Martin, CMC, Deputy City Clerk

CAP CABLE, LLC

By: 
Christian M. Hilliard, President

NOTARY:

HEADEND LEASE

THIS INDENTURE OF LEASE, made and entered into this 1 day of December, 2010, by and between the City of Black Hawk, hereinafter referred to jointly as Lessor, and CAP Cable, L.L.C. dba USA Communications, a limited liability company, hereinafter referred to as Lessee.

WHEREAS, Lessee is the owner and operator of a Cable Television system in and around the Cities of Central and Black Hawk, Colorado, and

WHEREAS, Lessor is the owner of the Lease Property as described below, and

WHEREAS, the parties herein are desirous of entering into a lease,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and such other good and valuable consideration herein set forth, the parties hereto agree as follows:

LEASE PROPERTY

The Lease Property shall be the surface rights to the property described as follows:

That portion of the NW ¼ of Section 7, T. 3 S., R. 72 W. of the 6th P.M., in the Black Hawk Townsite, Gilpin County, Colorado, described as beginning at a point from which the W ¼ corner of the said Section 7 bears S 59 54' 57" W a distance of 2598.82 ft. and Corner #3 of the After Supper Lode, U.S. Survey #898 bears S 06 04' 39" W a distance of 811.77 ft. (calculated), Thence N 11 02' 56" W, 50.00 ft., thence N 78 57' 04" E, 50.00 ft., thence S 11 02' 56" E, 50.00 ft., thence S 78 57' 04" W, 50.00 ft. to the point of beginning.

TERM

To have and to hold the above Lease Property, and all rights, privileges and appurtenances belonging thereto, unto Lessee for the term commencing on the date of this Agreement through the term of the CATV Franchise Agreement held with the City of Black Hawk. Notwithstanding anything to the contrary contained herein, this Headend Lease shall terminate upon the termination of the Franchise.

RENTAL

Total rent for the term of this lease shall be \$1.00 per year. The annual rent shall be paid prior to the end of each lease year.

CARE OF PROPERTY

Lessee agrees to keep the leased area free of debris, abandoned equipment, and buildings, wires, and other material not being used in its business, and to keep said propertys in a neat and slightly condition, including all buildings, structure, facilities and equipment that are located on the Leased Property.

CONSTRUCTION ON LEASED PROPERTY

Lessee agrees that all construction, alteration, moving demolition, repair and use of any building or structure on the leased property will be in compliance with the International Building Code (2009 Edition), as adopted by the City of Black Hawk, or any subsequent versions of the building codes duly adopted by the City from time to time.

INDEMNITY FOR DAMAGE TO PERSONS AND PROPERTY

Lessee hereby releases, relinquishes, discharges and agrees to indemnify, protect and save harmless Lessor from any and all claims, demands and liability for any loss, damage or injury, including death, or other like or different casualty to persons and property used by and growing out of, or happening in connection with Lessee's use and occupancy of the aforementioned premises, and any equipment located or to be located thereon, whether due to the negligence of Lessee, its agents, servants and employees, or otherwise. To carry out the aforementioned provisions, Lessee agrees to make Lessor an additional insured party on the insurance policy Lessee is required to maintain as stated in the Black Hawk and Central City CATV Franchise Agreement; and to provide a current copy of said insurance policy to the City of Black Hawk.

ACCESS TO PROPERTY

Lessee shall have the right and license to travel on, over and across Lessor's access road for the purpose of access, ingress and egress to and from Lessee's TV antenna tower and its other facilities. Access shall be limited to Lessee and its agents and employees.

ADDITIONAL DOCUMENTS

All parties on behalf of themselves and their respective heirs, beneficiaries, personal representatives, successors and assigns agree that upon the request of any other party, they will execute and deliver such additional instruments or documents as may be reasonably necessary to confirm or implement any agreement contained herein.

This Lease supersedes all previous leases, rights-of-way or agreements covering the use of Lessor's property for Cable Television purposes, except for the Franchise Agreement which is specifically incorporated by this Lease.

BREACH AND DEFAULT

If Lessee shall default in the performance of any agreement or covenant contained in this Lease, or shall fail to comply with and obey the pertinent regulations, laws, ordinance, and statutes, or if Lessee shall become bankrupt or insolvent or shall make an assignment for the benefit of its creditors, Lessor shall have the right, upon thirty (30) days' written notice, to declare this Lease terminated, and Lessee reserves the right to cure such default within thirty (30) days after receipt of such notice. In the event Lessee fails to correct such default as heretofore provided, Lessor shall have the right, without further notice and without recourse to any legal proceeding, to enter upon the premises and repossess the same. Lessor shall have all the rights and remedies provided by law for the recovery of rent and possession.

RIGHTS OF POSSESSION UPON TERMINATION

Upon termination of this Lease either by expiration of its term, Breach and Default or by operation of law, the Lessor shall have the immediate right to enter upon the Lease Property and repossess same. This right shall extend to all leasehold improvements, including all buildings, facilities and equipment of a permanent nature and any other structure or improvement attached to the Lease Property.

ASSIGNMENT OF LEASE

This Lease shall be binding on the heirs, personal representatives, successors and assigns of the parties of the Franchise Agreement with the City of Black Hawk. This lease shall be assignable with the Franchise Agreement.

BUSINESS TAXES

Lessee shall fully and timely pay all business and other taxes, charges, rates, duties, assessments and license fees levied, rates imposed, charged or assessed against or in respect of the Lessee's occupancy of the Leased Premises or in respect of the personal property, trade fixtures, furniture and facilities of the Lessee or the business or income of the Lessor on and from the Leased Premises, if any, as and when the same become due, and to indemnify and hold Lessor harmless from and against all payment of such taxes, charges, rates, duties, assessments and license fees and against all loss, costs, charges and expenses occasioned by or arising from any all such taxes, rates, duties, assessments and license fees.

INCORPORATION OF FRANCHISE AGREEMENT

This Lease hereby incorporates, by this reference, the Franchise Agreement dated Dec. 1, 2010 entered into by these parties. Lessee acknowledges that a default in the performance of the Franchise Agreement, as defined in said Agreement, shall be deemed a Breach and Default of this Lease.

GOVERNING LAW

This Lease shall be deemed to have been made in and shall be construed in accordance with the State of Colorado.

BINDING EFFECT

Except as expressly provided herein, this indenture shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, and all covenants and agreements herein contained to be observed and performed by the Lessee shall be joint and several.

SEVERABILITY

Should any provision or provisions of this Lease be illegal or not enforceable it or they shall be considered separate and severable from this Lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included.

CAPTIONS


The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or of any provision hereof.

WAIVER

It is further agreed that no assent, express or implied, to any breach or one or more of the terms, agreements and covenants hereof, shall be deemed or be taken to be a waiver of any succeeding or other breach.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names.

CAP CABLE, LLC dba USA COMMUNICATIONS

By 
Stuart Gilbertson

CITY OF BLACK hawk

By 
Title: 


City Clerk/Treasurer