

CITY OF MUNDAY

ORDINANCE NO. 020805-1

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO SANTA ROSA COMMUNICATIONS, INC, A WHOLLY OWNED SUBSIDIARY OF SANTA ROSA TELEPHONE COOPERATIVE, INC, A TEXAS CORPORATION, DOING BUSINESS AS *Santa Rosa Tv*, (HEREINAFTER REFERRED TO AS *Santa Rosa Tv*) ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN MUNDAY, KNOX COUNTY, TEXAS (HEREINAFTER REFERRED TO AS CITY) SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND CONDITIONS; PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS; AND PROVIDING FOR PAYMENTS TO THE CITY UNDER SAID FRANCHISE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE
CITY OF MUNDAY, TEXAS

GENERAL PROVISIONS.

1. **SHORT TITLE.** This ordinance shall be known and may be cited as the "City of Munday Cable Television Franchise to *Santa Rosa Tv*".

2. ***Santa Rosa Tv* TO ASSUME PUBLICATION COSTS FOR ORDINANCE.**
Santa Rosa Tv shall assume the cost of publication of this ordinance.

3. **SEVERABILITY.** The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by valid judgment or decree of a court of competent jurisdiction or unlawful by reason of any conflict with the laws of the State of Texas of the United States, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance. The titles and captions contained herein are for convenience only and are not dispositive provisions.

4. **GRANT OF RIGHT TO USE PUBLIC WAYS AND PLACES.** *Santa Rosa Tv* is granted the non-exclusive right and privilege to construct, erect, operate, and maintain [in, upon, along, across, above, over and under the streets, alleys, public ways and places now laid out or dedicated and all extensions thereof and additions thereto in the City] poles, wires, cables, underground conduits, manholes and other facilities necessary for the maintenance and operation in the City of a cable television and communications system for the interception, transmission and distribution of television signals and communications, both audio and video.

5. **RIGHTS NOT EXCLUSIVE.** The right to use and occupy the streets, alleys and public right of ways for the purpose herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of such streets, alleys and public ways at any time during the period of this franchise.

6. TERM. This ordinance and the franchise shall be for a period of ten (10) years from the effective date of this ordinance, with automatic renewal for the same term and conditions unless either party shall give ninety (90) days prior notification in writing requesting cancellation or unless otherwise terminated as herein provided.

7. FRANCHISE FEES. As compensation to the City for the use of its property and for the franchise granted herein, *Santa Rosa Tv* shall annually, within sixty (60) days following the last day of *Santa Rosa Tv's* fiscal year, pay to the City 3 percent (3 %) of its annual gross receipts. Gross receipts for the purpose of this ordinance shall mean any and all compensation and other consideration in any form whatsoever received by *Santa Rosa Tv* from its television cable subscribers with respect to the use of its system within the City limits. Gross Receipts shall not include any sales taxes, franchise fees, and other state or federal mandated fees collected by *Santa Rosa Tv*.

8. CITY'S RIGHTS TO INSPECT GRANTEE'S RECORDS. The City shall at its expense have the right to inspect *Santa Rosa Tv's* records showing the gross receipts for which its franchise payments are computed and the right of audit and recomputation of any and all amounts paid under this ordinance. No acceptance of any payment shall be construed as a release, accord or satisfaction of any claim the City may have for further or additional payments of sums due under this ordinance or for the performance of any other obligation hereunder.

9. USE OF PROPERTY, ETC., NOT TO CREATE PROPERTY RIGHTS. *Santa Rosa Tv* agrees that no use of any property or right by it, however expended, nor any payment made nor any other action or inaction by the City or by *Santa Rosa Tv* shall create or vest in *Santa Rosa Tv* any ownership of property rights in which any expense has been undertaken by *Santa Rosa Tv* as a result of the exercise by *Santa Rosa Tv* of the rights and privileges enumerated in this franchise.

10. SERVICE AND SYSTEM MAINTENANCE. *Santa Rosa Tv* shall at all times provide service and maintain TV system in a manner that is consistent with all regulatory requirements and good business practices.

11. INDEMNIFICATION OF CITY FOR CLAIMS ARISING FROM CONSTRUCTION OF SYSTEM. It is agreed that *Santa Rosa Tv* shall indemnify and save the City harmless from all losses, claims, and attorney's fees against the City on account of any suit, judgment, execution, claim or demand whatsoever arising from acts or omissions on the part of *Santa Rosa Tv*. Upon notice to it, the City shall notify representatives of *Santa Rosa Tv* within fifteen (15) days after the presentation of any claim or demand, either by suit or otherwise made against the City on account of any claim against the City arising out of any act of *Santa Rosa Tv*.

12. INSURANCE – AMOUNTS. *Santa Rosa Tv* shall carry, throughout the length of term of this franchise, general liability insurance with a responsible insurance

company qualified to do business in the State of Texas. The amount of insurance to be carried is one million dollars (\$1,000,000.00) per occurrence with a general aggregate of two million dollars (\$2,000,000.00). Certificates of Insurance (Acord) shall be provided to City upon request.

13. GRANTEE TO OBTAIN NECESSARY PERMITS. *Santa Rosa Tv* agrees to obtain any and all permits needed from the Federal Communications Commission and any other federal, state or city agencies and to be responsible for the payment of any permit or license fees required by said agencies.

14. CONSTRUCTION TO BE IN COMPLIANCE WITH SAFETY CODES. Construction and maintenance of the transmission distribution system, including connections, shall be in accordance with the provision of local, state and federal safety codes, including but not limited to the National Electric Safety Code and the National Electric Code of the National Board of Fire Underwriters, as they now exist or as they may be amended.

15. LOCATION OF FACILITIES. Lines and equipment erected by *Santa Rosa Tv* within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum reasonable inconvenience to property owners who adjoin any of said streets, alleys or other public ways and places.

16. SAFE CONDITION AND MAINTENANCE OF FACILITIES; EXCAVATION NOTICE. All facilities installed by *Santa Rosa Tv* shall be done in a substantial and safe condition and maintained in such condition at all times. *Santa Rosa Tv* shall provide notice of excavation work done on public streets, alleys and public places and shall comply with all state, federal, and local safety standards imposed by law or ordinance.

17. RESTORATION OF SURFACES. In case of any disturbance of roadways, pavement, sidewalk, driveway or other surfacing, *Santa Rosa Tv* shall, at its own cost and expense and in a manner approved by the City or its designated officials, replace and restore all roadways, paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before said work was commenced with reasonable dispatch.

18. GRANTEE RELOCATE EQUIPMENT UPON CITY'S ALTERATION OF GRADE. In the event that any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, upon reasonable notice by the City, *Santa Rosa Tv* shall relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

19. GRANTEE TO MOVE FACILITIES TO PERMIT MOVING OF BUILDINGS. If a permit has been issued by the City, *Santa Rosa Tv* shall temporarily raise, lower or remove its facilities to permit the moving of buildings. *Santa Rosa Tv* shall be given not less than two (2) working days advance notice to arrange for such temporary facility changes. The reasonable expense (labor, materials, etc) of such temporary removal, raising or lowering

of facilities shall be paid by the person requesting same and *Santa Rosa Tv* shall have the authority to require such payment in advance.

20. TERMINATION PROCEDURE. In the event of any material violation by *Santa Rosa Tv* of the terms of this franchise, the City shall have the right to terminate the franchise and rescind all rights granted to *Santa Rosa Tv* hereunder provided that:

- (a) City, prior to taking any action to terminate the rights granted hereunder, shall first give ninety (90) days written notice to *Santa Rosa Tv* specifying in detail the defaults and *Santa Rosa Tv* shall have the right to be heard promptly before the City and shall have the right to correct said defaults within said ninety day period.

21. GRANTEE'S RIGHT TO TERMINATE. If *Santa Rosa Tv's* business at any time shall be deemed infeasible, Grantee shall have the right to discontinue operation and to terminate this contract according to applicable federal and state laws.

22. GRANTEE AND ASSIGNS, ETC. SUBJECT TO CITY REGULATIONS. *Santa Rosa Tv* shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide. Each provision of this ordinance shall be applicable to any successors or assigns of *Santa Rosa Tv* as though the successors or assigns were the original franchise holder.

23. GRANTEE TO HAVE NO RECOURSE AGAINST CITY. *Santa Rosa Tv* shall have no recourse against the City or its officials, for any loss, cost, expense or damage, arising out of any provision or requirement of this ordinance or its enforcement.

24. EMERGENCY ALERT SYSTEM. *Santa Rosa Tv* will comply with all state and federal requirements in regard to the Emergency Alert System. In addition, *Santa Rosa Tv* will make community notification service available to the City.

25. DISCRIMINATION. *Santa Rosa Tv* shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended, and the rules and regulations of the U.S. Department of Agriculture which provide that no person in the United States on the basis of race, color, national origin, age or handicap shall be excluded from participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

26. FAVORED NATIONS. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any Person other than *Santa Rosa Tv*. to enter into the City's streets and public ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order

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that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

27. FRANCHISE CONSTITUTES ENTIRE UNDERSTANDING OF THE PARTIES. This franchise contains the entire understanding of the parties and no oral modification thereof shall be binding upon the successors and assigns of *Santa Rosa Tv*. This franchise is expressly non-exclusive as to *Santa Rosa Tv*.

28. GRANTEE'S COVENANT TO ABIDE BY CITY REGULATIONS. *Santa Rosa Tv* covenants that this and other applicable ordinances and laws of the City will be complied with, and that *Santa Rosa Tv* will discharge the obligations and conditions contained in this ordinance and its proposal to the City.

This Ordinance shall become law five (5) days after publication.

Passed, Adopted and Approved this 8th day of February, 2005.



Mayor

Attest:


City Secretary