

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

ORDINANCE NO.

AN ORDINANCE GRANTING TO GOOGLE FIBER TEXAS, LLC, A NONEXCLUSIVE FRANCHISE IN THE CITY OF AUSTIN, TEXAS; TO USE THE PRESENT AND FUTURE PUBLIC RIGHT-OF-WAY OF AUSTIN, TEXAS FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF FIBER OPTIC FACILITIES TO DELIVER BROADBAND SERVICES; ESTABLISHING COMPENSATION; REPEALING ALL PREVIOUSLY EXISTING AGREEMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. A franchise is granted in accordance with the following terms:

SECTION 1. Definitions.

- 1.1 For the purpose of this Ordinance and subject to all applicable laws, rules, and regulations, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.
- 1.2 "Broadband Service" shall mean broadband internet access service as defined by the Federal Communications Commission in section 8.1(b) of part 47, Code of Federal Regulations, or subsequent regulation.
- 1.3 "City" shall mean the city of Austin, Texas, a municipal corporation in the state of Texas.
- 1.4 "City Manager" shall mean the City Manager of the City or an authorized designate of the City Manager.
- 1.5 "Company" shall mean Google Fiber Texas, LLC, a Texas limited liability company existing and authorized to do business by the laws of the State of Texas, authorized to transact and actually transacting business in the State of Texas.

- 41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
- 1.6 “Company Facilities” shall mean all interrelated lines, equipment, and other appurtenances used, necessary, or in support of the Company’s delivery of Broadband Service to homes, businesses, and institutions in the City.
 - 1.7 "Consumer" or “Customer” shall mean any person or organization receiving and using broadband service from the Company.
 - 1.8 “Council” shall mean the governing body of the City of Austin.
 - 1.9 "Director of Transportation" shall mean the Director of the Transportation Department of the City of Austin, or its successor Department.
 - 1.10 "Franchise" shall mean this Ordinance as accepted by Company in accordance with its terms, being a contract between City and Company, and all rights and obligations established herein or as it may be amended.
 - 1.11 "Public Right-of-Way" shall mean the area in, under, along and across, any and all present and future streets, avenues, easements, alleys, highways, and public ways held, owned or controlled by the City, the terms, conditions or limitations of which allow the construction or maintenance of fiber optic lines necessary to provide Broadband Service.
 - 1.12 "Street" shall mean a publicly dedicated or maintained Public Right-of-Way (excluding easements, alleys, public ways and property), a portion of which is open to use by the public for vehicular travel.

64 SECTION 2. Granting of Franchise.

- 65
66
67
68
69
70
71
72
73
74
75
76
77
- 2.1 There is hereby granted to Company a non-exclusive franchise to maintain, construct, equip, extend, replace, alter, operate in and otherwise establish a network consisting of Company’s Facilities in the City’s Public Right-of-Way for the provision of Broadband Service to homes, businesses, and institutions in the City, and for that purpose the Company is hereby granted passage and the right to occupy and use in any lawful way during the life of this Franchise said Public Right-of-Way, as they now or hereafter may exist, for Company Facilities as herein mentioned; provided that the franchise right is conditioned on the Company’s compliance with applicable federal, state, and local laws, and further provided that Company will give notice to the Director of Transportation and obtain all necessary City permits before commencing any work, excavation, or equipment placement in the Public Right-of-Way, or in the case of a bona fide emergency, provide notice to the

78 Director of Transportation of any such activity as soon as reasonably
79 practicable.

80 2.3 This Franchise shall be subject to all applicable federal, state, and local laws,
81 rules, and regulations and subject to the Company's rights of appeal or to
82 otherwise contest the validity, applicability or enforceability of same as may
83 be provided by law. The venue for all causes of action arising under this
84 Franchise shall lie in Travis County, Texas. Nothing in this Franchise
85 shall prohibit the City from filing an action related to this Franchise in
86 Travis County, Texas.

87 2.4 The term of this Franchise shall expire on the fifteenth anniversary of the
88 effective date of this Franchise. The term shall be automatically renewed for
89 two successive five-year extension periods, unless written notice of non-
90 renewal is given to the Company by the City or to the City by the Company
91 at least 120 days before expiration of the then-current term to reconsider or
92 terminate this Franchise, in which event this Franchise shall expire at the end
93 of the then-current term.

94 2.5 The rights granted by this Franchise inure to the benefit of the Company.
95 The rights granted by this Franchise shall not be transferred without the
96 express written consent, by ordinance, of the City Council in accordance
97 with Article XI, Section 4 of the Austin City Charter. For the purposes of
98 this section, transfer shall exclude an assignment or transfer to an entity that
99 controls, is controlled by, or is under common control with Company.
100 Consent by the City shall not be unreasonably conditioned, delayed, or
101 withheld.
102

103 2.6 Company may retain contractors and subcontractors to construct or maintain
104 Company's Facilities in the Public Rights-of-Way provided that Company
105 maintains a written list of authorized contractors on file with the City.
106

107 SECTION 3. Service.

108 3.1 All Company Facilities shall be located so that they do not interfere with the
109 flow of water in any gutter or drain, with the operations of any City-owned
110 utility, with any electric, water, sewer or telephone facilities, traffic control
111 signals, street lights, bus lanes, bike lanes, fire lines or communications
112 lines, and so that same will not interfere with ordinary travel on Public
113 Right-of-Way.
114

115

116 Public Right-of-Way disturbed by the Company in the construction or
117 maintenance of Company Facilities shall be restored within a reasonable
118 time after the completion of the work to the same or better condition existing
119 before the commencement of the work. Should the City reasonably
120 determine that additional restoration of Public Right-of-Way is required to
121 place it in as good a condition as before the commencement of the work, the
122 Company shall perform such additional restoration work, at Company's
123 expense, to the reasonable satisfaction of the City. In no event will
124 Company disrupt Public Right-of-Way for longer than reasonably necessary
125 to execute all work nor longer than allowed under applicable City permits.

126 3.2 The Company shall not discriminate in furnishing Broadband Service on the
127 terms provided in its terms of service and line extension policy, as they may
128 be in effect from time to time. The Company shall not deny Broadband
129 Service, or otherwise discriminate against applicants for service or
130 customers, on the basis of race color, religion, national origin, sex, or sexual
131 orientation.

132 3.3 Pursuant to separate mutual agreement by the parties, the Company shall
133 provide Broadband Service free of charge to the community connection
134 facilities mutually agreed upon by the parties.

135 3.4 The Company shall maintain Company Facilities in good order and
136 condition, consistent with the needs of the Broadband Service to be rendered
137 therefrom.

138 3.5 The City may conduct an audit or hire an auditor to conduct an audit or other
139 inquiry of the Company's books, accounts, and operations to the extent
140 necessary to ensure compliance with the terms of this Franchise; provided
141 that for the limited purpose of ensuring compliance with the payment
142 obligations in Section 9, the City may only review records that relate to the
143 48-month period preceding the date of the last franchise fee payment. The
144 Company shall make available to the City or auditor during the Company's
145 regular business hours and upon reasonable notice not later than 45 days
146 after notice, such personnel and records as the City may, in its reasonable
147 discretion, request in order to complete such audit, and shall make no charge
148 to the City therefore. Each party shall bear the party's own costs of the
149 examination. The obligation to make records available under this section
150 does not extend to information that can be used on its own or with other
151 information to identify, contact, or locate a single person, or to identify an
152 individual in context unless the review of the information is necessary to

153 ensure compliance with this Franchise and the City provides Company
154 assurance that the information will not be made available to the public.

- 155 3.6 Company will provide City as-built plans and specifications as well as a
156 complete and accurate map in digital form, describing the location of all
157 Company Facilities placed in the Public Right-of-Way not later than 60 days
158 after the effective date of this Franchise and updates to the as-builts and
159 maps for every calendar quarter thereafter. Company believes such
160 information is confidential commercial information, including trade secrets.
161 The City shall maintain confidentiality of all sensitive information to the
162 extent required by applicable law.

163 SECTION 4. Use of Right-of-Way.

- 164 4.1 The Company is hereby authorized, licensed and empowered to do any and
165 all things necessary and proper to be done and performed in executing the
166 powers and utilizing the privileges herein mentioned and granted by this
167 Franchise, provided the same do not conflict with water pipes, sewers,
168 electric power lines, telephone lines, cable television lines and other
169 authorized installations, and provided that all work done in the Public Right-
170 of-Way by the Company shall be done with reasonable diligence and
171 without unnecessary inconvenience to the public or individuals. It is not the
172 intention of either City or Company to create any liability, right, or claim for
173 the benefit of third parties and this Franchise is intended and shall be
174 construed for the sole benefit of City and Company.
- 175
- 176 4.2 Except in an emergency, the Company may not work, excavate, or place
177 equipment in Public Right-of-Way without first complying with applicable
178 City requirements, including but not limited to excavation or other Public
179 Right-of-Way permitting requirements contained within and authorized by
180 Austin City Code Chapter 14-11. On completion of initial or any subsequent
181 construction work, the Company shall promptly restore the Public Right-of-
182 Way in accordance with applicable City requirements. The Company may
183 excavate only for the construction, installation, expansion, repair, removal,
184 and maintenance of Company Facilities.

185 SECTION 5. Work by the City and Others.

186 City reserves the right to lay, and permit to be laid, water, sewer, telephone,
187 electric and other lines, cables, pipes, conduits, and to do and permit to be
188 done any underground or overhead work that may be necessary or proper in,
189 across, along, over, or under any Public Right-of-Way occupied by the
190 Company. Subject to Company's obligation to relocate Company Facilities,

191 City shall comply with all applicable regulations related to placing its
192 facilities in, across, along, over, or under any Public Right-of-Way occupied
193 by Company Facilities.
194

195 SECTION 6. Changes for Governmental and Non-Governmental Purposes.

- 196 6.1 Provided the City gives Company at least 90 days' advance written notice,
197 Company shall relocate Company Facilities. The direct and incidental costs
198 for relocating Company Facilities shall be the sole obligation of Company.
199 Company shall obtain a permit, if required by City Code, prior to performing
200 work in the Public Right-of-Way. Schedules for removal and relocation
201 work shall be developed by designated representatives of the Company and
202 the City. If representatives cannot agree on the schedule, the City Manager,
203 after consultation with the Company, shall establish a schedule. This
204 schedule shall provide for a minimum of 30 days between the time the
205 schedule is furnished to the Company and the time that any specific work to
206 be done by the Company covered in the schedule is to begin.
207
- 208 6.2 If the costs for work contemplated by this section are eligible for funding, in
209 whole or in part, with federal or state highway funds and the City receives
210 such compensation, it shall deliver to Company that portion of the
211 compensation that is allocated by the funding authority to Company's costs
212 incurred for utility adjustment. The City is under no duty to apply for such
213 compensation on behalf of the Company.
214
- 215 6.3 If the City requires Company to adapt or conform Company Facilities, or in
216 any manner alter, relocate, or change Company Facilities to enable any
217 corporation or person other than the City, to use Public Right-of-Way,
218 Company shall not be bound to make any such changes until such
219 corporation or person shall have undertaken, with good and sufficient bond,
220 to reimburse Company for any costs, loss, or expense which will be caused
221 by, or arise out of such change, alteration, or relocation of Company
222 Facilities; provided however, that the City shall never be liable for such
223 reimbursement due to Company from such corporation or person. If the
224 change, alteration or relocation is necessary to accommodate the placement
225 of public utilities, whether or not the utility work is performed by a
226 governmental entity or contractor, or necessary to mitigate a threat to public,
227 health, safety, or welfare, Company shall make the required change,
228 alteration or relocation without delay and without regard to whether the

229 entity or person has undertaken to bond or reimburse Company for
230 Company's costs, loss, or expense.
231

- 232 6.4 If, at the request of a private person or corporation, City proposes to vacate
233 or abandon Public Right-of-Way within which Company Facilities are
234 located, the City will provide advance notice to Company of the vacation or
235 abandonment and an opportunity for Company to take necessary steps to
236 retain Company's use of the Public Right-of-Way scheduled for vacation or
237 abandonment. If the City's vacation or abandonment of Public Right-of-
238 Way requires Company to remove or relocate Company Facilities, the
239 vacation or abandonment will be conditioned on the availability of an
240 alternate route for Company Facilities and, if necessary, the commitment by
241 the requesting private person or company to compensate Company for costs
242 associated with removal or relocation of Company Facilities necessitated by
243 the vacation or abandonment.
244

245 SECTION 7. City's Right to Purchase. 246

- 247 7.1 Pursuant to Article XI of the City Charter, the City may purchase Company
248 Facilities in accordance with the method set out in this section. The City
249 may not sell or lease the purchased facilities in the Public Right-of-Way
250 within five years after its purchase from the Company.
251
- 252 7.2 If the City elects to exercise its right to purchase Company Facilities, the
253 City shall notify the Company in writing. Within 60 days after receiving
254 City's notice electing to exercise its option to purchase, the Company shall
255 make a written price offer ("Price") stating the cash price at which the
256 Company is willing to close the purchase and sale of Company's Facilities.
257 Within 90 days after receipt of the Price, the City must give written notice to
258 the Company (a) rejecting Company's stated Price and initiating the
259 appraisal procedures set forth in Section 7.3, (b) agreeing to purchase
260 Company's Facilities at Company's stated Price, or (c) withdrawing the
261 City's notice of intent to exercise its option to purchase. City agrees that its
262 failure to respond to Company within 90 days after receiving Company's
263 Price is a withdrawal of its intent to exercise its option to purchase.
264
- 265 7.3 If the City rejects the Company's stated Price, the Company agrees to sell
266 the City Company Facilities at a price to be calculated by way of a third-
267 party appraisal process:
268

269 7.3.1 The City and Company shall each designate a qualified appraiser to
270 conduct an independent appraisal of the fair market value of the
271 Company's Facilities as a going concern as of the effective date of the
272 purchase by the City.

273
274 7.3.2 Each party shall be responsible for the appraisal fees of its own
275 appraisers.

276
277 7.3.3 In conducting the appraisals, the appraisers shall consider, among
278 other factors, the book value of the assets constituting the Company's
279 Facilities, the age, condition, and remaining useful life of the
280 Company's Facilities, and the related discounted future revenue
281 stream.

282
283 7.3.4 If the two appraisals render determinations of fair market value that
284 are within 10 percent of each other, the purchase price to be paid by
285 the City will be the average of the two appraisals. If the two appraisals
286 are not within 10 percent of each other, then the two appraisers shall
287 discuss their appraisals and attempt to arrive at a joint determination
288 of fair market value for the purchase price. If the two appraisers are
289 not able to arrive at a joint determination of fair market value within
290 90 days after the appraisal commencement date, then the City and
291 Company shall jointly select a third independent appraiser not later
292 than 120 days after the appraisal commencement date. The third
293 appraiser shall submit a determination of the purchase price within 30
294 days after being selected, and the purchase price shall be the average
295 of the three appraisals. The City and the Company shall each pay 50
296 percent of the costs of the third independent appraiser.

297
298 7.4 Subject to the Texas Constitution and applicable state law, if the City
299 exercises its right to purchase another Broadband Service franchisee's
300 network and closes on that purchase paying a cash price that is calculated
301 using a multiplier of the final appraised value, the City agrees to use the
302 same multiplier of appraised value applied to the purchase price of
303 Company's Facilities if the City exercises the purchase option in this
304 Franchise and purchases the Company Facilities at a cash closing.

305
306 7.5 The purchase price shall be payable in cash unless the parties mutually agree
307 otherwise. The time periods specified in this section may be extended only
308 by a writing duly authorized by both City and Company provided the request

309 for extension is made in writing and received by the other party within a
310 reasonable time prior to the expiration of the time period being extended.

- 311
- 312 7.6 At closing on the sale of Company Facilities to the City, the Company shall
313 execute and deliver warranty deeds, bills of sale, or other instruments of
314 conveyance to the City to complete the transfer.
- 315
- 316 7.7 The Company recognizes that the provisions of the City's Charter require
317 inclusion of this section in the Franchise. The Company, however, does not
318 waive but reserves the right to challenge the Charter provision, this section,
319 or any application of this section on any basis, including as a violation of the
320 Constitution and laws of the United States or the State of Texas.
- 321
- 322 7.8 In the event the City initiates the appraisal process set forth in Section 7.3,
323 but decides not to purchase Company's Facilities or the City is financially
324 unable to close the purchase of the Company's Facilities within 120 days
325 after determination of the purchase price, the City's purchase right shall be
326 deemed waived and the City shall reimburse the Company for all the
327 Company's reasonable actual costs and expenses incurred in connection with
328 the appraisal process.
- 329

330 SECTION 8. Captions and Severability.

- 331 8.1 The use of captions or headings for the various sections of this Franchise are
332 for the convenience of the parties only and do not reflect the intent of the
333 parties. This Franchise shall be construed and deemed to have been drafted
334 by the combined efforts of the City and the Company.
- 335 8.2 Notwithstanding anything contained in this Franchise to the contrary, in the
336 event that this Franchise or any part hereof is declared unenforceable, void,
337 unlawful or otherwise inapplicable, in whole or in part, by any court at law,
338 the remainder of the provisions of this Franchise shall remain in full force
339 and effect and shall in no way be affected, impaired or invalidated.

340 SECTION 9. Fees.

- 341
- 342 9.1 In consideration of the grant of said right, privilege and franchise by the City
343 and as full payment for the right, privilege and franchise of using and
344 occupying the City's Public Right-of-Way, and in lieu of easement taxes,
345 franchise taxes, license fees, permitting fees for Right-of-Way use or
346 excavation permit and inspection fees or charges, street taxes, bonds, street

347 or alley rentals, Company shall pay to the City three percent of the
348 Company's Gross Revenues. The compensation set forth in this section is
349 exclusive of, and in addition to: (a) rents or fees the City may charge for use
350 of or attaching to City-owned infrastructure including, but not limited to,
351 poles and conduit; (b) any rents or fees for use of City real property outside
352 of City's Public Right-of-Way for utility equipment and fiber housing
353 (equipment huts); and (c) permitting fees necessary for Company to comply
354 with the City's land development code.

355 9.2 For the purpose of calculating the fees due under this Franchise, the term
356 "Gross Revenues" means: all consideration of any kind or nature including
357 without limitation cash, credits, property, and in-kind contributions (services
358 or goods) derived by the Company from the operation of Company Facilities
359 within the Public Right-of-Way. Gross Revenues shall include all
360 consideration paid to Company and its affiliates (to the extent either is acting
361 as a provider of a service as authorized by this Franchise), which shall
362 include but not be limited to the following: (i) all fees charged to customers
363 for any and all Broadband Service provided by Company; (ii) revenues from
364 other services classified as non-Broadband Service or attributed by
365 Company to non-Broadband Service; (iii) any fee imposed on Company by
366 this Franchise that is passed through and paid by customers (including
367 without limitation the gross revenue fee set forth in this Franchise); and (iv)
368 compensation received by Company or its affiliates that is derived from the
369 operation of Company's network to provide Broadband Service with respect
370 to commissions that are paid to Company as compensation for promotion or
371 exhibition of any products or services on Company's network. Gross
372 revenue includes a pro rata portion of all revenue derived by Company or its
373 affiliates pursuant to compensation arrangements for advertising derived
374 from the operation of Company's network to provide Broadband Service
375 within the City, subject to section 9.2.1(iii) below. Advertising commissions
376 paid to third parties shall not be netted against advertising revenue included
377 in gross revenue. Revenue of an affiliate derived from the affiliate's
378 provision of Broadband Service shall be Gross Revenue to the extent the
379 treatment of such revenue as revenue of the affiliate and not of Company has
380 the effect (whether intentional or unintentional) of evading the payment of
381 fees which would otherwise be paid to the City. In no event shall revenue of
382 an affiliate be Gross Revenue to Company if such revenue is otherwise
383 subject to fees to be paid to the City.

384 9.2.1 "Gross Revenues" does not include: (i) bad debt; (ii) non-services
385 revenues received by any affiliate or any other person in exchange for
386 supplying goods or services used by Company to provide Broadband

387 Service; (iii) refunds, rebates, or discounts made to customers, leased
388 access providers, advertisers, or the City; (iv) the sale of services for
389 resale in which the purchaser is required to collect the fees set out in
390 this Franchise from the purchaser's customer; (v) the provision of
391 Broadband Services to customers at no charge if required by state law;
392 (vi) any tax of general applicability imposed upon Company or upon
393 customers by the City, state, federal, or any other governmental entity
394 and required to be collected by Company and remitted to the taxing
395 entity (including, but not limited to, sales and use tax, gross receipts
396 tax, excise tax, utility users tax, public service tax, communication
397 taxes, and fees not imposed by this Franchise); (vii) any forgone
398 revenue from Company's provision of free or reduced cost Broadband
399 Services to any person including without limitation employees of
400 Company; provided, however, that any forgone revenue which
401 Company chooses not to receive in exchange for trades, barter,
402 services, or other items of value shall be included in Gross Revenue;
403 (viii) sales of capital assets or sales of surplus equipment that is not
404 used by the purchaser to receive services from Company; and (ix)
405 revenue from a service taxed or charged in accordance with a state or
406 local law, other than the Ordinance granting this Franchise, if the tax
407 or charge results in a payment to the City's general fund in an amount
408 that is equal to or greater than three percent of the Gross Revenue
409 received by the Company from that service.

410 9.2.2 In no event shall business expenses or promotional credits against
411 revenues not covered by this Franchise be used to reduce Gross
412 Revenues.

413 9.2.3 Where Company or any affiliate bundles, integrates, ties, or combines
414 services with Broadband Services creating a bundled package so that
415 Company's customers pay a single fee for more than one class of
416 service or receive a discount on services, Gross Revenues shall be
417 determined based on the allocation of the package discount consistent
418 with Accounting Standards Codification ("ASC") Topics 605 Revenue
419 Recognition and 606 Revenue From Contracts With Customers and
420 any amendments thereto.

424

9.3 Payments to the City shall be made per the quarterly schedule as follows:

<u>Payment Due Date</u>	<u>Period</u>
February 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – Mar. 31
August 15	Apr. 1 – Jun. 30
November 15	Jul. 1 – Sept. 30

425

426

427

428

429

430

431

9.4 A five percent late fee shall be applied to the amount due for all underpayments of Franchise fees. In addition, interest shall accrue at one percent per month on the outstanding amount from the date the amount was due for that reporting period to the date paid.

432

433

434

435

9.5 Although the City has no authority over the means by which the Company recovers its business costs, the City does not object to the Company recovering its costs for complying with this Franchise from its customers.

SECTION 10. Indemnity.

436

437

438

439

440

441

442

443

444

10.1 In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of or occasioned by the intentional or negligent acts or omissions of Company or any of its officers, agents, or employees in connection with Company's construction, maintenance, or operation of Company's Facilities, including any court costs, reasonable expenses and reasonable defenses thereof.

445

446

447

448

449

450

10.2 This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company or its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, or employees or any other person or entity.

451

452

453

454

455

456

10.3 In the event of joint and concurrent negligence or fault of both Company and the City, responsibility, shall be apportioned comparatively between the City and Company in accordance with the laws of the state of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of either party under Texas law. Further, in the event of joint and concurrent negligence or fault of both

457 Company and the City, responsibility for all costs of defense shall be
458 apportioned between the City and Company based upon the comparative
459 fault of each.

460 10.4 City shall promptly notify Company in writing of any claim or cause of
461 action which may be asserted against the City relating to or covering any
462 matter against which the Company has agreed, as set forth above, to
463 indemnify, defend and save harmless the City. The Company reserves the
464 right to employ such attorneys, expert witnesses and consultants as it deems
465 necessary to defend against the claim or cause of action. The Company shall
466 have the right to investigate, defend and compromise all claims referred to
467 herein after conferring with the City's Law Department. It is understood that
468 it is not the intention of either the City or the Company to create any
469 liability, right or claim for the benefit of third parties and this Franchise is
470 intended and shall be construed for the sole benefit of the City and the
471 Company.

472
473 SECTION 11. Insurance.

474
475 11.1 During the term of this Agreement, Company shall at all times carry
476 insurance issued by companies duly licensed to provide insurance in the
477 State of Texas and approved by the City (which shall not be unreasonably
478 withheld) to protect Company and the City against any and all claims,
479 demands, actions, judgments, costs, expenses, or liabilities of every kind that
480 may arise, directly or indirectly, from or by reason of losses, injuries, or
481 damages arising during performance of rights or obligations afforded by this
482 Franchise. At a minimum, Company shall carry and maintain the following
483 coverages and shall furnish the City's Risk Manager certificates of insurance
484 as evidence thereof:

485
486 11.1.1 Commercial General Liability coverage in the minimum amount of
487 \$2,000,000 per occurrence; and

488
489 11.1.2 Worker's Compensation coverage with statutory benefits as set
490 forth in the Texas Worker's Compensation Act and Employer's
491 Liability coverage of not less than \$1,000,000 bodily injury per
492 accident, \$1,000,000 bodily injury per disease and \$1,000,000 per
493 disease per employee; and

494
495 11.1.3 Business Automobile Liability Insurance for all owned, non-owned
496 and hired vehicles with a minimum combined single limit of
497 \$1,000,000.

498 11.2 The Commercial General Liability and Business Liability Policies
499 shall name the City as an additional named insured as its interest may
500 appear. The City's risk manager will be included as a party to be
501 notified under the policy before any non-renewal, cancellation or
502 material change in coverage in accordance with the terms of such
503 policy. The "other insurance" clause shall not apply to the City; it
504 being the intention of the parties that the above policies covering
505 Company and the City shall be considered primary coverage. Each
506 policy shall contain a waiver of all rights of recovery or subrogation
507 against the City, its officers, agents, employees, and elected officials.
508 Any contractor (excluding subcontractors) retained by Company to
509 perform work or services for Company authorized under this
510 Franchise shall be required to carry insurance to the same extent as
511 provided above as a condition of being granted access to the Public
512 Right-of-Way.
513

514 SECTION 12. Default, Remedies, and Termination.

515
516 12.1 Events of Default. The occurrence, at any time during the term of this
517 Franchise, of any one or more of the following events, shall constitute an
518 Event of Default by Company:

519 12.1.1 The failure of Company to pay the Franchise fee on or before the
520 due dates specified herein.

521 12.1.2 Company's material breach or material violation of any material
522 terms, covenants, representations or warranties contained herein.

523 12.2 Uncured Events of Default.

524 12.2.1 Upon the occurrence of an Event of Default which can be cured by
525 the immediate payment of money to City, Company shall have (30)
526 calendar days from receipt of written notice from City of an
527 occurrence of such Event of Default to cure same before City may
528 exercise any of its rights or remedies provided for in section 12.3.

529 12.2.2 Upon the occurrence of an Event of Default by Company which
530 cannot be cured by the immediate payment of money to City,
531 Company shall have 90 calendar days (or such additional time as
532 may be agreed to by the City) from receipt of written notice from
533 City of an occurrence of such Event of Default to cure same before
534 City may exercise any of its rights or remedies provided for in
535 section 12.3; provided, that if the nature of the violation is such that
536 the Company can demonstrate to the City's reasonable satisfaction

537 that it cannot be fully cured within 90 days due to circumstances
538 not under the Company's control,

539 the period of time within which the Company must cure the
540 violation shall be extended up to 180 days by the City, but only if
541 the Company demonstrates to the City's reasonable satisfaction that
542 the Company has begun promptly to cure and the Company is
543 diligently pursuing its efforts to cure.

544 12.2.3 If the Event of Default is not cured within the time period allowed
545 for curing the Event of Default as provided for herein, such Event
546 of Default shall, without additional notice, become an Uncured
547 Event of Default, which shall entitle City to exercise the remedies
548 provided for in section 12.3.

549 12.3 Remedies. City shall notify Company in writing of an alleged Uncured
550 Event of Default as described in section 12.2, which notice shall specify the
551 alleged failure with reasonable particularity. The Company shall, within 30
552 business days after receipt of such notice or such longer period of time as
553 City may specify in such notice, cure such alleged failure. In the event that
554 Company fails to timely cure, City shall be entitled to exercise any and all of
555 the following cumulative remedies:

556 12.3.1 The commencement of an action against Company at law for
557 monetary damages.

558 12.3.2 The commencement of an action in equity seeking injunctive relief
559 or the specific performance of any of the provisions that as a matter
560 of equity, are specifically enforceable.

561 12.3.3 The termination of this Franchise.

562 12.4 The rights and remedies of City and Company set forth in this Franchise
563 shall be in addition to, and not in limitation of, any other rights and remedies
564 provided by law or in equity. City and Company understand and intend that
565 such remedies shall be cumulative to the maximum extent permitted by law
566 and the exercise by City of any one or more of such remedies shall not
567 preclude the exercise by City, at the same or different times, of any other
568 such remedies for the same failure to cure. However, notwithstanding this
569 section or any other provision of this Franchise, City shall not recover both
570 liquidated damages and actual damages for the same violation, breach, or
571 noncompliance, either under this section or under any other provision of this
572 Franchise.

537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573

574 12.5 Company may terminate this Franchise for convenience upon 180 days'
575 written notice to City.

576 SECTION 13. Repeal

577 Upon Company's acceptance of this Franchise in accordance with its terms, this
578 Franchise shall supersede any and all other franchises or licenses granted by City
579 to Company for Company's use of Public Right-of-Way for the provision of
580 Broadband Service.

581 SECTION 14. Foreclosure, Receivership and Bankruptcy.

582 Company shall notify City within 30 days after any foreclosure or other judicial
583 sale of all or substantial part of Company Facilities or of the appointment of a
584 receiver or trustee to take over and conduct Company's business affecting
585 Company Facilities, whether in receivership, reorganization, bankruptcy or other
586 action or proceeding, whether voluntary or involuntary, such notice to include,
587 where applicable, the cause number and court involved.

588 **PART 2.** Within 60 days of final passage of this Ordinance, Company shall pay to City
589 the sum of \$814,652 in franchise fees due from Company for the holdover period beginning
590 on December 1, 2021 and ending on the effective date of this Franchise.

591 **PART 3.** In compliance with the provisions of the Charter of the City of Austin, this
592 Ordinance, upon being introduced at a regular meeting of the City Council, shall be read
593 by City at three separate regular meetings of the City Council and shall not be passed
594 finally until 30 days after the first reading. Within five days following each of its three
595 readings, the full text of this Ordinance shall be published by City once in a daily
596 newspaper published in the City of Austin. This Ordinance and the franchise granted
597 herein shall take effect 60 days after its final passage.

598 **PART 4.** The City Clerk is hereby authorized and directed to make appropriate
599 endorsements over her official hand and the seal of the City of Austin, on a form
600 provided at the conclusion of this Ordinance, of the dates upon which this Ordinance
601 shall have been read by City at three separate regular meetings of the City Council and
602 the date of final passage of this Ordinance; and the date upon which this Ordinance shall
603 take effect, being 60 days after the date of final passage, and the dates upon which the
604 full text of this Ordinance shall have been published and the name and address of the
605 daily newspaper in which such publications were had in the City of Austin.

608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623

PART 5. This ordinance takes effect on _____, 2023.

PASSED AND APPROVED

_____, 20____ § _____
§ _____
§ _____

Kirk Watson
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Myrna Rios
City Clerk

