

ORDINANCE NO. 20230914-020

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 designee 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.

- 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.

SECTION 2. Granting of Franchise.

- 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

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

- 2.2 This Franchise shall be subject to all applicable federal, state, and local laws, rules, and regulations and subject to the Company's rights of appeal or to otherwise contest the validity, applicability or enforceability of the same as may be provided by law. The venue for all causes of action arising under this Franchise shall lie in Travis County, Texas. Nothing in this Franchise shall prohibit the City from filing an action related to this Franchise in Travis County, Texas.
- 2.3 The term of this Franchise shall expire on the fifteenth anniversary of the effective date of this Franchise. The term shall be automatically renewed for two successive five-year extension periods, unless written notice of non-renewal is given to the Company by the City or to the City by the Company at least 120 days before expiration of the then-current term to reconsider or terminate this Franchise, in which event this Franchise shall expire at the end of the then-current term.
- 2.4 The rights granted by this Franchise inure to the benefit of the Company. The rights granted by this Franchise shall not be transferred without the express written consent, by ordinance, of the City Council in accordance with Article XI, Section 4 of the Austin City Charter. For the purposes of this section, transfer shall exclude an assignment or transfer to an entity that controls, is controlled by, or is under common control with Company. Consent by the City shall not be unreasonably conditioned, delayed, or withheld.
- 2.5 Company may retain contractors and subcontractors to construct or maintain Company's Facilities in the Public Rights-of-Way provided that Company maintains a written list of authorized contractors on file with the City.

SECTION 3. Service.

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

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

- 3.2 The Company shall not discriminate in furnishing Broadband Service on the terms provided in its terms of service and line extension policy, as they may be in effect from time to time. The Company shall not deny Broadband Service, or otherwise discriminate against applicants for service or customers, on the basis of race color, religion, national origin, sex, or sexual orientation.
- 3.3 Pursuant to separate mutual agreement by the parties, the Company shall provide Broadband Service free of charge to the community connection facilities mutually agreed upon by the parties.
- 3.4 The Company shall maintain Company Facilities in good order and condition, consistent with the needs of the Broadband Service to be rendered therefrom.
- 3.5 The City may conduct an audit or hire an auditor to conduct an audit or other inquiry of the Company's books, accounts, and operations to the extent necessary to ensure compliance with the terms of this Franchise; provided that for the limited purpose of ensuring compliance with the payment obligations in Section 9, the City may only review records that relate to the 48-month period preceding the date of the last franchise fee payment. The Company shall make available to the City or auditor during the Company's regular business hours and upon reasonable notice not later than 45 days after notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the City therefore. Each party shall bear the party's own costs of the examination. The obligation to make records available under this section does not extend to information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context unless the review of the information is necessary to ensure compliance with this Franchise and the City provides Company assurance that the information will not be made available to the public.

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

SECTION 4. Use of Right-of-Way.

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

SECTION 5. Work by the City and Others.

City reserves the right to lay, and permit to be laid, water, sewer, telephone, electric and other lines, cables, pipes, conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under any Public Right-of-Way occupied by the Company. Subject to Company's obligation to relocate Company Facilities, City shall comply with all applicable regulations related to placing its facilities in, across, along, over, or under any Public Right-of-Way occupied by Company Facilities.

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

- 6.1 Provided the City gives Company at least 90 days' advance written notice, Company shall relocate Company Facilities. The direct and incidental costs for relocating Company Facilities shall be the sole obligation of Company. Company shall obtain a permit, if required by City Code, prior to performing work in the Public Right-of-Way. Schedules for removal and relocation work shall be developed by designated representatives of the Company and the City. If representatives cannot agree on the schedule, the City Manager, after consultation with the Company, shall establish a schedule. This schedule shall provide for a minimum of 30 days between the time the schedule is furnished to the Company and the time that any specific work to be done by the Company covered in the schedule is to begin.
- 6.2 If the costs for work contemplated by this section are eligible for funding, in whole or in part, with federal or state highway funds and the City receives such compensation, it shall deliver to Company that portion of the compensation that is allocated by the funding authority to Company's costs incurred for utility adjustment. The City is under no duty to apply for such compensation on behalf of the Company.
- 6.3 If the City requires Company to adapt or conform Company Facilities, or in any manner alter, relocate, or change Company Facilities to enable any corporation or person other than the City, to use Public Right-of-Way, Company shall not be bound to make any such changes until such corporation or person shall have undertaken, with good and sufficient bond, to reimburse Company for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Company Facilities; provided however, that the City shall never be liable for such reimbursement due to Company from such corporation or person. If the change, alteration or relocation is necessary to accommodate the placement of public utilities, whether or not the utility work is performed by a governmental entity or contractor, or necessary to mitigate a threat to public, health, safety, or welfare, Company shall make the required change, alteration or relocation without delay and without regard to whether the entity or person has undertaken to bond or reimburse Company for Company's costs, loss, or expense.
- 6.4 If, at the request of a private person or corporation, City proposes to vacate or abandon Public Right-of-Way within which Company Facilities are located, the City will provide advance notice to Company of the vacation or abandonment and an opportunity for Company to take necessary steps to

retain Company's use of the Public Right-of-Way scheduled for vacation or abandonment. If the City's vacation or abandonment of Public Right-of-Way requires Company to remove or relocate Company Facilities, the vacation or abandonment will be conditioned on the availability of an alternate route for Company Facilities and, if necessary, the commitment by the requesting private person or company to compensate Company for costs associated with removal or relocation of Company Facilities necessitated by the vacation or abandonment.

SECTION 7. City's Right to Purchase.

- 7.1 Pursuant to Article XI of the City Charter, the City may purchase Company Facilities in accordance with the method set out in this section. The City may not sell or lease the purchased facilities in the Public Right-of-Way within five years after its purchase from the Company.
- 7.2 If the City elects to exercise its right to purchase Company Facilities, the City shall notify the Company in writing. Within 60 days after receiving City's notice electing to exercise its option to purchase, the Company shall make a written price offer ("Price") stating the cash price at which the Company is willing to close the purchase and sale of Company's Facilities. Within 90 days after receipt of the Price, the City must give written notice to the Company (a) rejecting Company's stated Price and initiating the appraisal procedures set forth in Section 7.3, (b) agreeing to purchase Company's Facilities at Company's stated Price, or (c) withdrawing the City's notice of intent to exercise its option to purchase. City agrees that its failure to respond to Company within 90 days after receiving Company's Price is a withdrawal of its intent to exercise its option to purchase.
- 7.3 If the City rejects the Company's stated Price, the Company agrees to sell the City Company Facilities at a price to be calculated by way of a third-party appraisal process:
 - 7.3.1 The City and Company shall each designate a qualified appraiser to conduct an independent appraisal of the fair market value of the Company's Facilities as a going concern as of the effective date of the purchase by the City.
 - 7.3.2 Each party shall be responsible for the appraisal fees of its own appraisers.

- 7.3.3 In conducting the appraisals, the appraisers shall consider, among other factors, the book value of the assets constituting the Company's Facilities, the age, condition, and remaining useful life of the Company's Facilities, and the related discounted future revenue stream.
- 7.3.4 If the two appraisals render determinations of fair market value that are within 10 percent of each other, the purchase price to be paid by the City will be the average of the two appraisals. If the two appraisals are not within 10 percent of each other, then the two appraisers shall discuss their appraisals and attempt to arrive at a joint determination of fair market value for the purchase price. If the two appraisers are not able to arrive at a joint determination of fair market value within 90 days after the appraisal commencement date, then the City and Company shall jointly select a third independent appraiser not later than 120 days after the appraisal commencement date. The third appraiser shall submit a determination of the purchase price within 30 days after being selected, and the purchase price shall be the average of the three appraisals. The City and the Company shall each pay 50 percent of the costs of the third independent appraiser.
- 7.4 Subject to the Texas Constitution and applicable state law, if the City exercises its right to purchase another Broadband Service franchisee's network and closes on that purchase paying a cash price that is calculated using a multiplier of the final appraised value, the City agrees to use the same multiplier of appraised value applied to the purchase price of Company's Facilities if the City exercises the purchase option in this Franchise and purchases the Company Facilities at a cash closing.
- 7.5 The purchase price shall be payable in cash unless the parties mutually agree otherwise. The time periods specified in this section may be extended only by a writing duly authorized by both City and Company provided the request for extension is made in writing and received by the other party within a reasonable time prior to the expiration of the time period being extended.
- 7.6 At closing on the sale of Company Facilities to the City, the Company shall execute and deliver warranty deeds, bills of sale, or other instruments of conveyance to the City to complete the transfer.
- 7.7 The Company recognizes that the provisions of the City's Charter require inclusion of this section in the Franchise. The Company, however, does not waive but reserves the right to challenge the Charter provision, this section,

or any application of this section on any basis, including as a violation of the Constitution and laws of the United States or the State of Texas.

- 7.8 In the event the City initiates the appraisal process set forth in Section 7.3, but decides not to purchase Company's Facilities or the City is financially unable to close the purchase of the Company's Facilities within 120 days after determination of the purchase price, the City's purchase right shall be deemed waived and the City shall reimburse the Company for all the Company's reasonable actual costs and expenses incurred in connection with the appraisal process.

SECTION 8. Captions and Severability.

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

SECTION 9. Fees.

- 9.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the City's Public Right-of-Way, and in lieu of easement taxes, franchise taxes, license fees, permitting fees for Right-of-Way use or excavation permit and inspection fees or charges, street taxes, bonds, street or alley rentals, Company shall pay to the City three percent of the Company's Gross Revenues. The compensation set forth in this section is exclusive of, and in addition to: (a) rents or fees the City may charge for use of or attaching to City-owned infrastructure including, but not limited to, poles and conduit; (b) any rents or fees for use of City real property outside of City's Public Right-of-Way for utility equipment and fiber housing (equipment huts); and (c) permitting fees necessary for Company to comply with the City's land development code.
- 9.2 For the purpose of calculating the fees due under this Franchise, the term "Gross Revenues" means: all consideration of any kind or nature including

without limitation cash, credits, property, and in-kind contributions (services or goods) derived by the Company from the operation of Company Facilities within the Public Right-of-Way. Gross Revenues shall include all consideration paid to Company and its affiliates (to the extent either is acting as a provider of a service as authorized by this Franchise), which shall include but not be limited to the following: (i) all fees charged to customers for any and all Broadband Service provided by Company; (ii) revenues from other services classified as non-Broadband Service or attributed by Company to non-Broadband Service; (iii) any fee imposed on Company by this Franchise that is passed through and paid by customers (including without limitation the gross revenue fee set forth in this Franchise); and (iv) compensation received by Company or its affiliates that is derived from the operation of Company's network to provide Broadband Service with respect to commissions that are paid to Company as compensation for promotion or exhibition of any products or services on Company's network. Gross revenue includes a pro rata portion of all revenue derived by Company or its affiliates pursuant to compensation arrangements for advertising derived from the operation of Company's network to provide Broadband Service within the City, subject to section 9.2.1(iii) below. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue. Revenue of an affiliate derived from the affiliate's provision of Broadband Service shall be Gross Revenue to the extent the treatment of such revenue as revenue of the affiliate and not of Company has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to the City. In no event shall revenue of an affiliate be Gross Revenue to Company if such revenue is otherwise subject to fees to be paid to the City.

9.2.1 "Gross Revenues" does not include: (i) bad debt; (ii) non-services revenues received by any affiliate or any other person in exchange for supplying goods or services used by Company to provide Broadband Service; (iii) refunds, rebates, or discounts made to customers, leased access providers, advertisers, or the City; (iv) the sale of services for resale in which the purchaser is required to collect the fees set out in this Franchise from the purchaser's customer; (v) the provision of Broadband Services to customers at no charge if required by state law; (vi) any tax of general applicability imposed upon Company or upon customers by the City, state, federal, or any other governmental entity and required to be collected by Company and remitted to the taxing entity (including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and fees not imposed by this Franchise); (vii) any forgone

revenue from Company's provision of free or reduced cost Broadband Services to any person including without limitation employees of Company; provided, however, that any forgone revenue which Company chooses not to receive in exchange for trades, barter, services, or other items of value shall be included in Gross Revenue; (viii) sales of capital assets or sales of surplus equipment that is not used by the purchaser to receive services from Company; and (ix) revenue from a service taxed or charged in accordance with a state or local law, other than the Ordinance granting this Franchise, if the tax or charge results in a payment to the City's general fund in an amount that is equal to or greater than three percent of the Gross Revenue received by the Company from that service.

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

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

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	October 1 – December 31
May 15	January 1 – March 31
August 15	April 1 – June 30
November 15	July 1 – September 30

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.

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.

- 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.
- 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.
- 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 Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.
- 10.4 City shall promptly notify Company in writing of any claim or cause of action which may be asserted against the City relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend and hold harmless the City. The Company reserves the right to employ such attorneys, expert witnesses and consultants as it deems necessary to defend against the claim or cause of action. The Company shall have the right to investigate, defend and compromise all claims referred to herein after conferring with the City's Law Department. It is understood that it is not the intention of either the City or the Company to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Company.

SECTION 11. Insurance.

- 11.1 During the term of this Agreement, Company shall at all times carry insurance issued by companies duly licensed to provide insurance in the State of Texas and approved by the City (which shall not be unreasonably withheld) to protect Company and the City against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages arising during performance of rights or obligations afforded by this Franchise. At a minimum, Company shall carry and maintain the following coverages and shall furnish the City's Risk Manager certificates of insurance as evidence thereof:
- 11.1.1 Commercial General Liability coverage in the minimum amount of \$2,000,000 per occurrence; and
 - 11.1.2 Worker's Compensation coverage with statutory benefits as set forth in the Texas Worker's Compensation Act and Employer's Liability coverage of not less than \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury per disease and \$1,000,000 per disease per employee; and
 - 11.1.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000; and
- 11.2 The Commercial General Liability and Business Liability Policies shall name the City as an additional named insured as its interest may appear. The City's risk manager will be included as a party to be notified under the policy before any non-renewal, cancellation or material change in coverage in accordance with the terms of such policy. The "other insurance" clause shall not apply to the City; it being the intention of the parties that the above policies covering Company and the City shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against the City, its officers, agents, employees, and elected officials. Any contractor (excluding subcontractors) retained by Company to perform work or services for Company authorized under this Franchise shall be required to carry insurance to the same extent as provided above as a condition of being granted access to the Public Right-of-Way.

SECTION 12. Default, Remedies, and Termination.

- 12.1 Events of Default. The occurrence, at any time during the term of this Franchise, of any one or more of the following events, shall constitute an Event of Default by Company:
- 12.1.1 The failure of Company to pay the Franchise fee on or before the due dates specified herein.
 - 12.1.2 Company's material breach or material violation of any material terms, covenants, representations or warranties contained herein.
- 12.2 Uncured Events of Default.
- 12.2.1 Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City, Company shall have 30 calendar days from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in section 12.3.
 - 12.2.2 Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to City, Company shall have 90 calendar days (or such additional time as may be agreed to by the City) from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in section 12.3; provided, that if the nature of the violation is such that the Company can demonstrate to the City's reasonable satisfaction that it cannot be fully cured within 90 days due to circumstances not under the Company's control,

the period of time within which the Company must cure the violation shall be extended up to 180 days by the City, but only if the Company demonstrates to the City's reasonable satisfaction that the Company has begun promptly to cure and the Company is diligently pursuing its efforts to cure.
 - 12.2.3 If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in section 12.3.
- 12.3 Remedies. City shall notify Company in writing of an alleged Uncured Event of Default as described in section 12.2, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within 30 business days after receipt of such notice or such longer period of time as City may specify in such notice, cure such alleged failure. In the event that

Company fails to timely cure, City shall be entitled to exercise any and all of the following cumulative remedies:

- 12.3.1 The commencement of an action against Company at law for monetary damages.
- 12.3.2 The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity, are specifically enforceable.
- 12.3.3 The termination of this Franchise.
- 12.4 The rights and remedies of City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this section or any other provision of this Franchise, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this section or under any other provision of this Franchise.
- 12.5 Company may terminate this Franchise for convenience upon 180 days' written notice to City.

SECTION 13. Repeal

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

SECTION 14. Foreclosure, Receivership and Bankruptcy.

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

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

