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ORDINANCE No.

Grant a franchise to Google Fiber Oregon, LLC to construct and operate a fiber network using the City Streets, for a period of ten years (Ordinance)

The City of Portland ordains:

Section 1 NATURE AND TERM OF GRANT

1.1 Grant of Franchise

A. The City of Portland does hereby grant to Google Fiber Oregon, LLC, who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain in the Streets of the City a Network to provide Broadband and Video Services, which the City of Portland has determined is consistent with the goals of the City's adopted Broadband Strategic Plan.

B. Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and Google Fiber Oregon, LLC shall be referred to as the "Grantee" (collectively, the "Parties").

1.2 Term of Franchise This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall expire on December 31, 2024, unless terminated sooner as provided in this Franchise.

1.3 Effective Date The effective date of this Franchise shall be 60 days after passage of this Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive; Limitations

A. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, permits or other rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee under this Franchise.

B. The Parties have negotiated this Franchise in good faith. Google Fiber Inc. has announced plans to build and operate fiber networks in one or more cities in the United States, in an effort to improve Internet access and foster new high-speed applications through broadband Internet services. Grantee anticipates engaging in commercially reasonable efforts to design, incrementally construct and install a fiber network within the City to provide, among other things, a residential broadband Internet service offering with upload and download speeds of up to 1 Gigabits. The Parties agree that deployment of such a network by Grantee would materially advance the goals of the City's Broadband Strategic Plan.

C. This Franchise does not authorize Grantee to operate as a telecommunications services provider. Prior to providing telecommunications services, Grantee shall apply for and obtain such authority as may be necessary from the Oregon Public Utility Commission and the Federal Communications Commission. Grantee shall provide the City with documentation of such authority. Grantee's Video Service is not a cable service for purposes of the federal Communications Act of 1934, as amended.

D. In the event that Grantee seeks to offer services outside of the scope of this Franchise that utilize Grantee's Facilities in the Streets and for which authorization from the City is required for use of the Streets, Grantee shall immediately provide written notice to the City. Within ninety (90) days of the City receiving such notice, the Parties will negotiate in good faith to provide the necessary authority for Grantee to provide such services, and to determine the appropriate compensation for use of the Streets for such provision of services.

1.5 Compliance with Laws

A. The Parties shall comply with all applicable federal laws, state laws and local ordinances.

B. To the extent authorized by law, this Franchise is expressly subject to the Charter of the City of Portland and the general ordinance provisions, resolutions, rules and regulations adopted or established pursuant thereto, affecting matters of general City concern and not materially in conflict with existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Section 1.5.B shall be deemed a waiver by either of the Parties of their rights under applicable law.

Section 2 DEFINITIONS

2.1 A. Captions Throughout this Franchise, captions to Sections are intended solely to facilitate reading and to reference the Sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

B. Definitions For the purpose of this Franchise and all Exhibits attached hereto, the following terms, phrases and their derivations shall have the meanings given in this Section 2 unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

2.2 "Annual" or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

2.3 "Broadband" and "Broadband Services" mean existing and future broadband Internet access service offerings delivered to Subscribers using Grantee's Network.

2.4 “Broadband Strategic Plan” means the City’s Broadband Strategic Plan as adopted by City Council by Resolution No. 36879 on September 14, 2011.

2.5 “City” means the City of Portland, Oregon, a municipal corporation and all of the territory within its corporate boundaries as such may change from time to time.

2.6 “City Council” means the Council of the City of Portland.

2.7 “Designated Access Provider” means a provider of Public, Educational or Government Access programming, as designated by the City.

2.8 “Facility” means any tangible component of the Network.

2.9 “Fiber” or “Fiber Optic” means a transmission medium of optical fiber cable, with associated equipment, capable of carrying digitized bits or bytes of communications (such as voice, video or data) by means of electric lightwave impulses.

2.10 “Franchise” means this franchise agreement, as fully executed by the City Council and the Grantee.

2.11 “Franchise Area” means the territory within the boundaries of the City of Portland.

2.12 “Gross Revenues” means any and all revenues of Grantee derived from the sale of Video Services to Subscribers within the City, without regard to the billing address of the Subscriber, and to the extent such Video Services utilize the Network described in this Franchise. “Gross Revenues” do not include: (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its parent, subsidiaries of its parent or affiliated companies of Grantee; (iii) late payment fees; or (iv) charges, other than those described above, that are aggregated or bundled with amounts billed to Video Service Subscribers, such as charges for Broadband Services.

2.13 “Institutional Network” or “I-Net” means capacity on existing cable system facilities, used by the City to provide one-way and bi-directional services to and among various public institutions.

2.14 “Interconnect” or “Interconnection” means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee’s Network with the systems or networks of entities designated by the City under this Franchise, so that services of technically adequate quality may be sent to and received from such other entities to the extent required by this Franchise.

2.15 “Interconnect Point” means the line of demarcation forming the designated meet point necessary for Grantee to exchange data for the purposes of effectuating connections to the I-Net without degradation to Grantee’s Network or the data of the sending or receiving entity.

2.16 “Network” means the entirety of Grantee’s planned and incrementally constructed Fiber system, with all Facilities.

2.17 “Network Deployment” means Grantee’s plans to incrementally construct and activate its Network in defined geographic areas within the City and to implement Network connections and Interconnections pursuant to this Franchise.

2.18 “Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

2.19 “Project” means Grantee’s incremental construction of the Network.

2.20 “Service” or “Services” means Broadband Services, Video Services and various existing and to-be-developed services commercially offered and delivered by Grantee to Subscribers over the Network within the Franchise Area.

2.21 “Streets” means the surface of any public street, road, alley or highway, within the City, used or intended to be used by the general public for general transportation purposes to the extent the City has the right to allow the Grantee to use them, and the space above and below.

2.22 “Subscriber” means any Person who entered into an agreement with Grantee to subscribe to and is lawfully receiving Services provided by Grantee on Grantee’s Network.

2.23 “Terms of Service” means Grantee’s standardized commercial terms and conditions, which may change from time to time, for Services offered by Grantee on the Network at nondiscriminatory rates;

2.24 “Video Service” means the provision of Video Programming through wireline facilities located at least in part in the Streets without regard to delivery technology, including Internet protocol technology. This definition does not include any (a) video programming provided solely as part of and via a service that enables users to access content, information, electronic mail or other services offered over the public Internet or (b) Internet access service.

2.25 “Video Programming” means programming provided by, or which would generally be considered comparable to programming provided by, a television broadcast station or programming network.

Section 3 FRANCHISE AREA

3.1 Subject to the provisions of this Franchise, Grantee may provide Services authorized by this Franchise and applicable law within the Franchise Area.

Section 4 NETWORK DESIGN AND CONSTRUCTION

4.1 Network Pursuant to this Franchise and in compliance with all applicable regulatory and permitting requirements and processes of the City, Grantee will use commercially reasonable efforts to design, incrementally construct and install the Network within the City. Upon construction, Grantee intends to utilize the Network for commercial purposes to offer Services to Subscribers within the City.

4.2 Network Deployment Grantee, in its sole discretion, will identify separately defined geographic areas within the Franchise Area where its Network will be deployed. As Grantee undertakes to identify and define these areas, the City will be available to consult with Grantee regarding the boundaries of the City's recognized neighborhood associations, public goals of equity and inclusion and the goals of the City's Broadband Strategic Plan. Grantee will determine into which areas its Network will be deployed first and schedule such deployment. Upon deployment of the Network within an area, Grantee may offer Services to potential Subscribers pursuant to Grantee's applicable Terms of Service, which may change from time to time.

4.3 Construction Schedule Limitations Although Grantee intends to complete construction of the Network and deploy Services throughout the Franchise Area as soon as reasonably practicable, the City acknowledges that Grantee's plans are subject to change due to uncertainties including fluctuating business and market conditions that could result in delay, deferment or cancellation of the Project, subject to the conditions set forth in the Franchise.

4.4 Costs Except as otherwise specifically provided in this Franchise, Grantee shall be responsible for costs of constructing the Network, including but not limited to design, engineering, equipment, construction and insurance for Grantee's Network, up to the drop point for Subscribers. In addition, Grantee will bear all of the operating costs of the Network, up to the drop point, during the term of this Franchise.

Section 5 INTERCONNECTIONS & PUBLIC FACILITIES

5.1 Interconnection to PEG Access Channels and Facilities Designated by City

A. Grantee is willing to cooperate to ensure that Public, Educational and Governmental (collectively "PEG") Access Channels available on franchised cable systems within the City are available with reasonable equivalency on Grantee's Network to the extent technically feasible. For purposes of this Section 5, the following definitions apply:

1. "PEG Access" means Public Access, Educational Access and Government Access for availability for use by various agencies, institutions, organizations, groups and individuals in the community to acquire, create and distribute video programming not under the Grantee's editorial control, where:

a. "Public Access" means access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated Programmers or users having editorial control over their Programming;

b. "Educational Access" means access where educational institutions are the primary or designated Programmers or users having editorial control over their Programming;

c. "Government Access" means access where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming; and

2. "PEG Access Channel" means any channel designated for PEG Access purposes or otherwise made available to facilitate or transmit PEG Access video programming.

B. Interconnection and carriage of PEG Access Channels As soon as reasonably practicable after Grantee has commenced offering of Video Service within a defined geographic area and after a request by the City, and subject to the limitations of Section 5.2.B, Grantee shall interconnect with Designated Access Providers providing PEG Access services within the geographic area and shall provide to all residential Subscribers receiving Video Service access to PEG Access Channels, according to the following:

1. Grantee shall not be required to provide more PEG Access Channels than are activated and available on each franchised cable system that is operational within the City.

2. Following physical Interconnection of the Network with a Designated Access Provider at a mutually agreeable Interconnect Point, operation and content of any PEG Access Channel provided pursuant to this Section 5.1 shall be the responsibility of the Designated Access Provider and the City; Grantee bears only the responsibility for the transmissions of such channel.

3. The City shall be responsible for ensuring that Designated Access Providers provide all transmissions, content or programming to be transmitted over Grantee's Network in a manner or form that is capable of being accepted and transmitted by Grantee without requirement for additional alteration or change in the content, over the particular network of Grantee, which is compatible with the technology or protocol utilized by Grantee to deliver its Video Services.

4. Grantee shall cooperate with the City and Designated Access Providers in the design and implementation of the Interconnect Point. Grantee is encouraged to enter into operating agreements not inconsistent with this Franchise with Designated Access Providers as may be necessary to facilitate and coordinate the provision of PEG Access Channels.

5. Grantee shall distribute PEG Access Channels on its Network without discrimination with respect to the functionality, signal quality and features from those of digital format local broadcast channels carried on its Network.

6. Grantee shall place PEG Access Channels within reasonable proximity to each other or to local broadcast channels on its Video Service offerings. If this is not feasible, as demonstrated by Grantee to the satisfaction of the City, Grantee shall work with the City to determine placement of and subscriber access to PEG Access Channels that are reasonably equitable and equivalent to commercial channel placement and access on Grantee's Video Service offerings. To the extent feasible, Grantee shall include PEG Access Channel program listings on Grantee interactive guides and navigation features available on Grantee's Network, including ready availability to Subscribers through search functions.

7. If at any time during the duration of this Franchise, a reassignment or reconfiguration of Designated Access Providers or PEG Access Channel numbers or programming arrangements occurs, the City shall notify Grantee. Grantee shall ensure that Subscribers are notified of any reassignment or rearrangement of PEG Access channels through the customary means by which Grantee provides programming notices to Subscribers to Grantee's Video Service.

5.2 Interconnection to Institutional Network(s) and I-Net Institutions designated by City

A. The Parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities. Grantee is willing to cooperate with the City in interconnecting its Network with the I-Net and to exchange traffic where feasible and mutually agreeable to the Parties in order to maximize the availability of high-speed communications services cost-effectively in the public interest, as consistent with the City's Broadband Strategic Plan. Grantee shall also provide one interconnection with the City at a mutually agreeable designated location for purposes of peering to transport Internet packets on a network-to-network basis.

B. Limitations The City and Grantee acknowledge and agree that the Interconnections provided under this Franchise are non-commercial in nature and not in competition with Grantee.

Section 6 NON-DISCRIMINATION AND CONSUMER PROTECTION

6.1 Non-Discrimination Upon Network activation and during periods in which Grantee is soliciting residential Subscribers within any given defined geographic portion of the Franchise Area, Grantee shall offer Services to all potential residential Subscribers in that portion of the Franchise Area under non-discriminatory rates and reasonable terms and conditions. Consistent with its deployment plans pursuant to Section 4.2, Grantee shall not arbitrarily refuse to provide Services to any Person and shall not discriminate in offering Service to Subscribers on the basis of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability or income.

6.2 Parental Control Devices The Parties acknowledge that Grantee's Video Service incorporates the availability of reasonable parental controls. Grantee anticipates providing information to Subscribers regarding these capabilities at the time of initial subscription and periodically thereafter.

6.3 Rates and Charges Upon initial offering of Services with the Franchise Area, Grantee shall provide to the City a working Internet link to a complete and current schedule of applicable rates and charges for Video Services provided under this Franchise. In advance of any increase in rates and charges for Video Services, Grantee shall provide electronic written notice to the City and Subscribers. Notice to the City may be provided by means of a working Internet link.

6.4 Provision of Equipment and Services to Individuals with Disabilities Grantee shall provide Services and equipment to Subscribers with disabilities in accordance with federal and state laws.

6.5 Privacy Grantee shall comply with applicable federal, state and local laws regarding Subscriber privacy. Grantee will make available to Subscribers a privacy policy discussing its practices with regard to the Services.

6.6 Permission to Attach Facilities Grantee shall secure permission of any Person who has the right to approve an attachment before installing or attaching Facilities to any residence or other private property. If such permission or easement is later revoked, unless Grantee is otherwise lawfully entitled to maintain its Facilities, the Grantee, within a reasonable period after the owner's request, shall promptly remove its Facilities and restore the property in a workmanlike manner to a condition similar to its prior condition.

Section 7 COMPENSATION AND REVIEWS

7.1 Compensation As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues.

7.2 Payments and Quarterly Reports

A. Payments Grantee's franchise fee payments to the City shall be computed quarterly following the effective date of this Franchise for the preceding quarter year period ending September 30, December 31, March 31 and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

B. ACH Payments Grantee shall set up electronic fund transfer within sixty (60) days of the Franchise effective date to submit payments to the City by Automated Clearing House (ACH) credit payment receipts. The City may approve any written requests from Grantee for waivers from the ACH requirement.

C. Quarterly Reports Payments pursuant to this Section 7 shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

7.3 Interest on Late Payments Any payments that are due and payable under this Franchise that are not received within forty-five (45) days from the specified due date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date.

7.4 Bundled Services Grantee shall not intentionally allocate revenue between Services subject to the franchise fee and Services not subject to the franchise fee for the purpose of evading or substantially reducing Grantee's franchise fee obligations to the City.

7.5 Cost of Publication Grantee shall pay the cost of publication of this Franchise and any amendments thereto, if such publication is required by the City Charter.

7.6 Additional Commitments Shall Not Offset Franchise Fees Except as may be provided in an amendment to this Franchise, or by a separately adopted ordinance, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees. Grantee agrees that additional commitments under this Franchise shall not be offset or credited against any franchise fee payments due to the City.

7.7 Acceptance of Payment and Recomputation Acceptance of payment pursuant to this Section 7 shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor as a release of any claim the City may have for further or additional sums payable.

7.8 Reviews.

A. Acceptance of Payment and Recomputation All amounts paid under Section 7 of this Franchise shall be subject to review by the City, provided that only payments that were due and payable during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform a review shall be subject to such review. Grantee agrees to pay the City for:

1. Interest on any underpayment of an amount due under Section 7 of this Franchise that is disclosed as the result of a review, such interest to be calculated at one percent (1%) per month. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

2. A penalty of five percent (5%) of the underpayment shall be due within forty-five (45) days of written notice from the City, if the City's review discloses that Grantee has paid ninety percent (90%) or less of the principal amount owing for the period under review.

B. Authority to Conduct Financial Reviews

1. The City and its agents and representatives shall have authority to arrange for and cause to be conducted reviews of any payments under this Franchise, upon no less than thirty (30) days prior written notice to Grantee, and during normal business hours at reasonable locations in the City or the Portland metropolitan area designated by the Grantee. The City's thirty (30) day notice shall provide Grantee with a preliminary list of financial documentation requested by the City for review. Prior to any review being conducted, the Parties shall execute a non-disclosure agreement. Following availability being made by the Grantee of complete,

necessary financial documentation, the City and its agents and representatives shall use best efforts to complete any review under this Section 7.8.B within sixty (60) days; in any event, any review shall not exceed ninety (90) days unless by mutual consent of the parties. Any financial documentation made available by the Grantee to the City for the review shall not be copied or removed from the reasonable locations designated by the Grantee, and both the documents and the information contained therein shall be accorded the maximum level of confidential treatment to the extent authorized by Oregon law. The City shall not call for reviews more than once per thirty-six (36) month period.

2. Grantee agrees to reimburse the City for the reasonable costs of such review if the review discloses that Grantee has paid ninety percent (90%) or less of the fees owing under Section 7 of this Franchise for the period at issue.

3. Subject to the requirement set forth in Section 7.8.B, Grantee shall reimburse the City within forty-five (45) days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the review.

C. Grantee Dispute of Review Grantee shall have the ability to dispute any determination of underpayment by the City within thirty (30) days of receipt of written notice from the City related to the review. If Grantee disputes the City's determination of any underpayment under this Franchise, Grantee shall place the disputed amount in an escrow account at a financial institution acceptable to the City with instructions agreed to by the City until final resolution.

7.9 Liability for Licenses and Taxes Payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The City's right to impose any such license fee, tax or charge shall be subject to any limitations on the City under applicable law.

Section 8 PUBLIC BENEFITS

8.1 Public Benefits Grantee agrees to promote the goals of the City's adopted Broadband Strategic Plan and this Franchise through development of a Public Benefits Program, which shall include but is not limited to, initiatives described in this Section 8. The initiatives shall be provided in accordance with Grantee's standard practices and shall be subject to Grantee's Terms of Service, which are subject to change from time to time.

A. Basic Broadband Service Offering Upon offering of Service within a defined geographic area within the Franchise Area, Grantee shall provide potential residential Subscribers residing in that area with a one-time option to subscribe to a Basic Broadband Service with speeds up to 5 mbps for downloads and 1 mbps for uploads for no recurring monthly fee. Grantee shall be permitted to charge each Subscriber to the Basic Broadband Service a reasonable one-time construction fee comparable to the fee that Grantee charges for construction in other similar markets for the Subscriber's address, which shall be set at Grantee's

discretion and clearly communicated to potential Subscribers on Grantee's website and at the time of subscription. Grantee agrees to provide the free Basic Broadband Service to a Subscriber for a period of no less than seven (7) years, which shall be calculated from the first date on which Grantee installs equipment at the Subscriber's address such that the Subscriber can subscribe to and receive Grantee's Services.

B. Connections for Community Organizations Grantee shall provide to certain qualifying non-profit organizations located within the City that provide services directly to citizens ("Community Organization(s)") Internet access service with features substantially equivalent to Grantee's gigabit Internet service offering currently described on its website. The number of Community Organizations receiving such services will be comparable to the number of organizations receiving similar services without service fees in other similar Google Fiber cities. The service shall be provided for no recurring monthly fee and for no construction fee for a period of ten (10) years from the date of activation of the service. Participation in the program by any Community Organization shall be subject to Grantee's reasonable evaluation of: (i) the proximity of the Network to the Community Organization within a defined area geographic area where Grantee is offering Services; (ii) reasonable technical requirements and cost considerations; (iii) qualification and good standing as a non-profit organization under certain provisions of the Internal Revenue Code; and (iv) applicable program eligibility requirements. Grantee shall confer with the City to identify eligible organizations and perform outreach. Following the initial ten (10) year service term, the Community Organization may continue to subscribe to some or all of the services that Grantee offers to similar subscribers at the then-current rates for such services. The City understands and acknowledges that Grantee's Network design and construction plans will be based on optimal deployment of the Network for deployment of residential services.

C. City WiFi Services Following completion of construction of the Network and the first delivery of Services to Subscribers, Grantee shall use commercially reasonable efforts to construct and deploy up to three (3) wireless access networks (each, a "WiFi Network") in outdoor public areas within the City (each, a "WiFi Area"). Grantee agrees to operate and manage each WiFi Network at its own cost and provide WiFi Network access without fees during the initial term of this Franchise. Use of and access to each WiFi Network shall be subject to each user's acceptance of Grantee's applicable Terms of Service. Grantee shall confer with the City to identify and select optimal locations to deploy each WiFi Network. The selection and deployment of each WiFi Area shall be subject to (i) the design and proximity of the Network to each WiFi Area; (ii) reasonable technical requirements and cost considerations; and (iii) Grantee's ability to secure rights to utilize limited private and public infrastructure, such as utility poles, for purposes of constructing each WiFi Network.

8.2 Public Benefits Program not Franchise Fees Grantee agrees that the Public Benefits Program shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the City. The additional commitments in this Section 8 are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

8.3 Cessation upon Franchise Termination or Legal Prohibition. If this Franchise is terminated as provided under Section 16, Grantee shall not be required to provide the initiatives

set forth in Section 8.1 unless Grantee separately agrees in writing to provide such services. Grantee shall not be required to provide the initiatives set forth in Section 8.1 if federal or state law prohibits such services.

Section 9 RECORDS AND REPORTS

9.1 A. General Reports Grantee shall prepare any records or reports that are required of it by federal, state or local law. Such records or reports shall be maintained by Grantee for such period as legally required. The City shall have the right to obtain, in writing, copies of such records and reports as appropriate and reasonable to determine whether Grantee is in compliance with this Franchise. Grantee shall make available to the City the requested reports or records in the formats in which they are customarily prepared by Grantee. Grantee reserves the right to object to any request made under this Section 9.1.A as unnecessary, unreasonable or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to the City under this Section 9.1.A.

B. Deployment Information Grantee shall provide a working Internet link to the City to information that Grantee makes publicly available in the ordinary course of business concerning the construction and installation status of the Network. Such information may include geographic areas being deployed, demand threshold necessary to ensure construction of the Network in defined areas and any other information Grantee believes is important for the community to know regarding progress on its Network deployment.

9.2 Public Records

A. Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

B. Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as “Confidential” prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the City that specifically identifies the applicable exemption under the Oregon Public Records Law, and stating the reason(s) Grantee believes the information is exempt from public inspection. After reviewing Grantee’s request for confidentiality and determining whether the identified exemptions are applicable, the City shall take reasonable steps to protect the confidential nature of any such information, consistent with the Oregon Public Records Law, including only disclosing such information to employees, representatives and agents thereof who have a need to know or in order to enforce the provisions of this Franchise.

C. Within five (5) working days of receiving a public records request to inspect any information identified by Grantee as confidential, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the

requested confidential information. If the City determines that it will be necessary to reveal the information, the City shall promptly notify Grantee, and do so at least five (5) working days prior to the information being released. The City shall retain discretion to determine whether to release the requested information in response to any public records request, consistent with the Oregon Public Records Law.

Section 10 GENERAL INDEMNIFICATION AND INSURANCE

10.1 Indemnification

A. General Indemnification Grantee shall indemnify, defend and hold harmless the City, its officers, agents, boards and employees, from any liability for claims, damages, costs or expenses, including but not limited to reasonable attorneys' fees, arising from any personal injury or property damage arising out of or by reason of (1) any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise by Grantee, its agents or its employees or (2) any neglect or omission of Grantee to keep its Network in a reasonably safe condition. Grantee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct by the City or its officers, agents, boards or employees or any other third party. The City shall notify Grantee in writing as soon as reasonably practicable after receiving written notice of any third-party action or other claim against it, and Grantee shall be relieved of its indemnification obligations to the extent compromised by the City's failure to provide timely notice of any such action or claim. The notice shall describe the claim, the amount thereof (if known and quantifiable) and the basis thereof. Grantee shall have the sole and absolute right, upon written notice to the City, to defend the claim with counsel of its own choosing. No settlement or compromise of any such claim will be made by Grantee without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned. Grantee shall consult and cooperate with the City while conducting its defense of the City, and the City shall fully cooperate with Grantee.

B. Indemnification for Relocation Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule consistent with the City Code, furnished Grantee by the City's duly authorized agent in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

C. Indemnification – Hazardous Substances Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law, statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, directly attributable to Grantee's structures or other Facilities in the Streets. For purposes of this Section 10.1.C, "Hazardous Substances" shall have the meaning given by ORS 465.200(16) (2011).

D. The Parties acknowledge that third persons may seek to overturn the issuance of this Franchise to Grantee by claiming that the issuance: (1) exceeded the City's authority under

federal or state law, its charter, City Code or ordinances; (2) violated applicable federal or state laws; (3) resulted from disparate or discriminatory treatment in favor of the Grantee; or (4) violated an incumbent franchisee's contractual rights. The City shall notify Grantee in writing as soon as reasonably practicable after receiving written notice of any such claims. The notice shall describe the claim and the basis thereof. The City shall provide Grantee with copies of any communications submitted in response to such claims, as well as any communications from claimants, tribunals or other parties to the dispute received by the City regarding such claims. The Parties acknowledge that there are mutual interests in effectively developing and presenting legal and factual responses to such claims. Accordingly, the Parties have determined that it is in their mutual interest to cooperate in a joint defense to permit effective and adequate responses and the Parties shall accordingly cooperate fully in such instances. In the event that a third person raises any of the objections described in this Section 10.1.D, the Parties agree that they would have a mutuality of interest in a common defense as against such objections or claims, and that any communications concerning such issues, whether written or oral (the "Common Interest Communications") would be protected to the fullest extent permitted by law against disclosure under the work-product doctrine, attorney-client privilege, joint-defense doctrine, common interest privilege and/or other applicable privilege. All Common Interest Communications are intended by the Parties to be privileged and/or protected even without any explicit indication prior to or contemporaneous with the communication that it was so intended. The Parties agree that in the event that a third person seeks disclosure of the Common Interest Communications, they will assert privilege and/or protection over the Common Interest Communications, and oppose any motion to compel disclosure of the Common Interest Communications if they can do so in good faith. In the event that the Common Interest Communications are determined not to be protected or privileged, the Parties agree that they will continue to protect the Common Interest Communications by treating them with the highest level of confidentiality permitted under the law. Notwithstanding the above, nothing in this Section 10.1.D obligates either Party to intervene in a suit in which they have not been named, or to absorb any part of the other Party's legal expenses.

10.2 Insurance

A. Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, insurance and other forms of financial guarantees in accordance with applicable Portland City Code and implementing regulations. Until the time when such implementing administrative regulations are effective, Grantee shall maintain insurance in accordance with the following insurance coverage:

1. Commercial General Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Network, and the conduct of Grantee's business in the Franchise Area to the extent authorized by this Franchise.

2. Automobile Liability Insurance in the amount of one million dollars ($1,000,000) combined single limit for bodily injury and property damage coverage.

3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

4. Employers' Liability Insurance in the following amounts:

a. Bodily Injury by Accident: one hundred thousand dollars ($100,000); and

b. Bodily Injury by Disease: one hundred thousand dollars ($100,000) employee limit; five hundred thousand dollars ($500,000) policy limit.

5. The limits of the insurance as provided in this Section 10.2.A shall be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon during the term of this Franchise.

B. The City shall be designated as an additional insured under each of the insurance policies required in this Section 10.2 by endorsement on the policies, except Workers' Compensation, Employer's Liability Insurance and Automobile Liability Insurance. The insurance shall be without prejudice to coverage otherwise existing.

C. Grantee shall not cancel any required insurance policy, nor shall Grantee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this Franchise. For any of the insurance policies identifying the City as an additional insured, as provided under this Section 10.2, Grantee shall notify the City within thirty (30) days of any notice of non-renewal, cancellation or any change in coverage materially adverse to the City. Notices will be provided in accordance with the applicable policies. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 10.2 during the term of this Franchise, Grantee shall provide a replacement policy.

D. Unless Grantee opts to follow self-insurance procedures described in Section 10.2.F, each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition, or an equivalent rating entity.

E. Grantee shall provide the City, within fifteen (15) days of the Effective Date of this Franchise, a certificate of insurance certifying the coverage required, which certificate shall be subject to the approval of the City Attorney's Office as to whether the certificate and the insurance certified is consistent with the requirements of this Section 10.2. Failure to maintain adequate insurance as required under this Section 10.2 shall be deemed sufficient cause for revocation of this Franchise.

F. In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 10.2, Grantee may provide the City with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under this Franchise. The adequacy of such self-insurance shall be subject to

the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 10.2.F, any failure by Grantee to maintain adequate self-insurance shall be deemed sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 16.

10.3 Faithful Performance Bond

A. Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the sum of one hundred thousand dollars ($100,000), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by Grantee throughout the term of this Franchise.

B. Grantee shall pay all premiums charged for the bond required under this Section 10.3 and, unless the City Council specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

1. The remaining term of this Franchise; or

2. If required by the City, the removal of all of Grantee's Network installed in the City's Streets.

C. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days prior written notice first being given to the City Auditor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section 10.3. During the term of the bond, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the City.

D. Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or equivalent form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

Section 11 GENERAL STREET USE AND CONSTRUCTION

11.1 In General Grantee shall construct its Network in accordance with applicable City regulations and ordinances. The City shall perform its obligations with regard to the Network construction in accordance with applicable ordinances and regulations and the City's processes and practices generally made available to all third parties.

11.2 Construction

A. Grantee may perform all construction necessary for the operation and maintenance of its Network within the Streets. All construction and maintenance of Grantee's Network within

the Streets, regardless of who performs the construction, shall be and remain Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction, maintenance or installation of any Facilities, and for excavating and laying any Facilities within the Streets. Grantee shall pay all applicable fees due for such permits.

B. As Grantee undertakes and completes the incremental construction of its Network, Grantee shall provide updated "as-built" maps to the City Engineer showing the location of Grantee's installed Facilities in the Streets. Such "as-built" maps shall be on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon. Grantee's "as-built" maps shall be provided in an electronic format (such as pdf or a successor format) acceptable to the City and the Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Network.

11.3 Locates Grantee acknowledges that as a condition of constructing and maintaining Facilities within the Streets, Grantee shall be responsible for complying with ORS 757.542-757.562 and ORS 757.993 (2011), and the rules and regulations promulgated thereunder in OAR Chapter 952.

11.4 Restoration of Streets Grantee shall, after construction, maintenance or repair of Facilities, leave the Streets in as good or better condition in all respects as they were before the commencement of such construction, maintenance or repairs, excepting normal wear and tear, in strict compliance with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations, and the expense thereof shall be paid by Grantee.

11.5 Network Installation Grantee shall not require any Subscriber to install lines or cables in, under or over the Streets in order to connect with or receive Service from Grantee's Network.

11.6 Acquisition of Facilities Upon Grantee's acquisition of Facilities in any City Street, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any Streets, Grantee shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such acquired Facilities to the extent Grantee has possession of such information. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall immediately be subject to the terms of this Franchise within a reasonable period of time to bring the acquired Facilities into compliance with this Franchise.

11.7 Reservation of City Street Rights Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Network.

11.8 Street Vacation Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall without delay or expense to the City remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required consistent with the City Code, which shall be no worse than the condition of such Street immediately prior to removal. The City shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to restore, repair or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket.

11.9 Common Users

A. For the purposes of this Section 11.9:

1. "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

2. "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole, or other such facilities in the Grantee's Network.

3. "Duct" means a single enclosed raceway for power or communication lines, conductors, optical fiber, wire or other cable.

4. "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets.

5. "Surplus Ducts or Conduits" are Conduit Facilities other than: those occupied by the Grantee or any prior Licensee; one unoccupied duct held by Grantee as an emergency use spare; and other unoccupied ducts that Grantee reasonably expects to use within the next sixty (60) months.

B. Grantee acknowledges that the Streets have a finite capacity for containing conduits. Therefore, Grantee agrees that, whenever the City Engineer makes a reasonable determination that it is impracticable to permit construction of an underground conduit network by any other Licensee, the City Engineer may require upon reasonable notice and an opportunity to object, that Grantee afford to such person the right to use Grantee's Surplus Ducts or Conduits in

common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee, and to the safety and reliability of Grantee's Network and maintenance requirements. Any agreement governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

C. If Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, Grantee and the Licensee shall enter into non-binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate.

D. A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

E. Grantee shall give a Licensee a minimum of one-hundred-twenty (120) days notice of its need to occupy licensed Conduit Facility or Duct and shall propose that the Licensee take the first feasible action as follows:

1. Pay revised Conduit Facility or Duct rent designed to recover the cost of retrofitting the Conduit Facility or Duct with multiplexing, optical fibers or other space-saving technology sufficient to meet Grantee's space needs;

2. Pay revised Conduit Facility or Duct rent designed to recover the cost of new Conduit Facility or Duct constructed to meet Grantee's space needs;

3. Vacate the Conduit Facility or Duct that is no longer surplus; or

4. Construct and maintain sufficient new Conduit Facility or Duct to meet Grantee's space needs.

F. When two or more Licensees occupy a portion of Conduit Facility or Duct, the last Licensee to occupy the Conduit Facility or Duct shall be the first to vacate or construct new Conduit Facility or Duct as directed by Grantee. When Conduit Facility or Duct rent is revised because of retrofitting of space-saving technology or construction of new Conduit Facility or Duct, all Licensees shall bear the increased cost.

G. All Attachments under this Section 11.9 shall meet local, state and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. Grantee, at its option, may correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

H. The City will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under

Section 11.9 and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

11.10 Discontinuing Use of Facilities If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the City may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

11.11 Construction and Use of Poles If Grantee constructs any poles in the Streets, the poles shall be located and maintained in accordance with applicable Portland City Code and implementing regulations.

11.12 Tree Trimming

A. When Permits Needed Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets that interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below 30 feet (30') above sidewalk grade until seven (7) calendar days after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. The owner or occupant shall have seven (7) calendar days from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable Service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

B. Programmatic Permits The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a programmatic tree pruning permit if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any programmatic permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the programmatic permit,

after notice to the Grantee, if at any time Grantee or its agents: fail to use proper utility arboricultural practices; fail to properly notify the public in accordance with applicable City requirements; or violates any other City requirements on tree trimming.

C. Emergencies Notwithstanding the permit and notice requirements of this Section 11.12, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this subsection, emergencies exist when it is necessary to prune a tree or trees in order to restore Network services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

Section 12 EMERGENCY ALERTING

12.1 Emergency Alerting Grantee shall comply with all applicable federal and state regulations regarding emergency alert messaging.

12.2 PublicAlerts The Portland Bureau of Emergency Management ("PBEM") has developed PublicAlerts, available at http://www.PublicAlerts.org, to facilitate timely distribution of service outage and other emergency information to the public. Grantee will cooperate with PBEM to explore potential participation in PublicAlerts to provide outage information to the benefit of Subscribers and the community.

Section 13 ASSIGNMENT OR TRANSFER OF GRANTEE'S FRANCHISE

13.1 Council Consent Grantee shall not sell, lease, mortgage, assign, merge or otherwise transfer this Franchise (a "Transfer"), except to an entity that controls, is controlled by or is under common control with Grantee (each an "Affiliate"), without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, delayed or conditioned. Grantee shall give written notice to the City of any Transfer to an Affiliate within ten (10) days of such transfer. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, sale or assignment of tangible assets of Grantee's Network for any purpose without the City's consent. Grantee acknowledges that any purchaser of any or all of the assets of Grantee may not continue to maintain the Network in the Streets unless it is permitted to do so under the terms of a franchise or other grant of authority from the City Council by ordinance.

13.2 Review

A. In determining whether the City will consent to any Transfer that requires its consent, the City may inquire into the technical, legal and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any Transfer that requires its consent upon such conditions related to the technical, legal and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems reasonably appropriate or to the resolution of outstanding and unresolved issues of Grantee's noncompliance with the terms and conditions of this Franchise.

B. No Transfer for which the City's consent by ordinance is required may occur until the transferee has complied with the requirements of Section 10 of this Franchise, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City Auditor an executed counterpart or certified copy thereof.

13.3 Leases Grantee may lease any portion of its Network in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Network or the lessee is permitted to maintain the Network in the Streets under the terms of a franchise or other grant of authority from the City Council by ordinance. A lessee of any portion of Grantee's Network shall not thereby obtain any rights under this Franchise.

Section 14 CITY REGULATORY AUTHORITY

14.1 City Regulatory Rights

A. The City Council shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

B. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of this Franchise by any failure of the City to promptly enforce compliance with this Franchise.

Section 15 EQUAL EMPLOYMENT OPPORTUNITY/ DIVERSITY IN WORKFORCE/ MINORITY BUSINESS ENTERPRISES

15.1 Equal Employment Opportunity

A. Throughout the term of this Franchise, Grantee shall fully comply with applicable equal employment opportunity ("EEO") requirements of federal, state and local law. Upon request by the City, Grantee shall furnish the City a copy or a valid Internet link to Grantee's annual statistical EEO report filed with the Federal Communications Commission ("FCC"), along with proof of Grantee's annual certification of compliance. Grantee shall immediately notify the City in the event Grantee is at any time determined not to be in compliance with FCC EEO rules or regulations.

B. Throughout the term of this Franchise, Grantee shall maintain a policy that all employment decisions, practices and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, sexual orientation or disability.

15.2 Diversity in Workforce Grantee is expected to make a determined and good-faith effort to employ and advance in employment women, minorities and persons with disabilities.

15.3 Minority and Female Business Enterprises Grantee is expected to make determined and good faith efforts to use Minority-Owned, Women-Owned and Emerging Small Businesses ("MWESBs") in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies and equipment used in the construction, maintenance and operation of its Network. In furtherance of Grantee's efforts in this area, the City will be available to consult with Grantee in providing information on, and support regarding, certified MWESB enterprises.

Section 16 FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

16.1 Remedies for Franchise Violations

A. In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise, receives written notice of such violation and fails to cure such violation in accordance with Section 16.2 of this Franchise.

1. Initiate Escalated Dispute Resolution as provided in Section 16.1.C;

2. Recover specific damages from all or any part of the security provided pursuant to this Franchise, including without limitation any performance bond, letter of credit or other security, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;

3. Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available; or

4. Shorten the term of or revoke this Franchise.

B. Compliance and Enforcement

1. Grantee shall not be relieved of its obligations to comply promptly with this Franchise by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition or obligation imposed upon Grantee under this Franchise, nor a waiver of rights by the City or acquiescence in Grantee's conduct. A specific waiver of a particular term, condition or obligation imposed upon Grantee under this Franchise shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of affiliates are not beyond Grantee's control, and the knowledge of affiliates shall be imputed to Grantee.

2. Subject to applicable law, the remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any available rights of the City at law or equity.

C. Escalated Dispute Resolution

1. If the City and Grantee are unable to resolve Franchise violation disputes informally, the City and Grantee agree to use escalated dispute resolution to attempt to resolve disputes regarding violations of the following Franchise provisions:

a. Failure to provide reports, maps or other requested information or data as required under this Franchise;

b. Failure to respond to review requests as required by Section 7.8 of this Franchise; and

c. Failure to comply with Section 13 in connection with an assignment, transfer, merger, lease, sale or mortgage of this Franchise.

2. The City shall deliver written notice ("Notice") to Grantee describing the violation with sufficient detail to adequately identify the nature of the dispute. Grantee shall designate a representative ("Representative") with actual authority to cure the violation. Within thirty (30) business days of the Notice, the Representative shall meet with the City at least once in person in Portland in an effort to reach agreement on resolving the dispute. Within forty-five (45) business days from the date of the Notice, the City and the Representative shall produce a written report describing the dispute and memorializing its resolution (or their respective proposals for resolving it, if they cannot agree).

3. If the dispute is not resolved by the Parties under subsection (2), their respective superiors ("Level II Management") shall meet at least once in person in the Portland metropolitan area within thirty (30) business days of the completion of the Representatives' written report in an effort to resolve the dispute. If Level II Management cannot resolve the dispute or agree upon a written plan to do so within ten (10) days after their initial meeting, or if the Parties settle the dispute but one party subsequently believes that the other party has not complied with the terms of the settlement, either party may request that the dispute be addressed by the Parties' respective senior management ("Senior Management").

4. If Senior Management are unable to resolve the dispute within thirty (30) business days after it is referred to them, either Party may request mediation under Section 17.1 of this Franchise.

5. Except as necessary to avoid irreparable injury or as specifically provided in the Franchise, the City will not otherwise exercise its remedies under Section 16 unless and until this escalated dispute resolution procedure under this Section 16.1.C has been fully employed or waived. Neither Party shall be excused from performance in accordance with this Franchise while a dispute is being addressed through the procedure outlined in this Section 16.1.C.

16.2 Notice and Opportunity to Cure

A. The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 16.1.A.2-4 of this Franchise, identifying the reasons for such action.

B. If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 16.1.A.2-4 of this Franchise.

C. If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 16 or such other rights as the City may possess.

16.3 Minor Variances The City may, upon request of Grantee or its own motion, permit the Grantee to vary its manner of performance under this Franchise so long as the variance does not result in a substantial change in the terms of this Franchise or a substantial reduction in the services to be provided.

16.4 Expiration

A. Upon the expiration of this Franchise, the City shall have the right, at its election, to:

1. Renew or extend Grantee's Franchise; or

2. Decline to grant a renewed franchise.

B. Until such time as the City exercises its rights under this Section 16.4, the Grantee's rights and responsibilities to operate the Network within the City shall be governed by the terms of this Franchise.

Section 17 MISCELLANEOUS PROVISIONS

17.1 Mediation

A. The Parties agree that should any dispute arise between them concerning any aspect of this Franchise that is not resolved by mutual agreement of the Parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute may be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Parties may agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties. In the absence of such mutual agreement, each

party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the Parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written termination notice has been received by the other party, either party may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the Parties.

B. In any mediation regarding a modification of this Franchise, the Parties agree that they shall attempt, in good faith, to agree to modifications to the Franchise so that the net rights and obligations of the Parties remain substantially the same after the modification, as they were prior to the events and circumstances leading to the mediation proceeding.

17.2 Severability and Survivability If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such Section, provision or clause was material to the City's agreement to issue the Franchise. All provisions concerning indemnification, or removal of Grantee's Facilities from the Streets, shall survive the expiration of this Franchise or termination of this Franchise for any cause. Expiration or termination of this Franchise shall not extinguish, prejudice or limit either party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

17.3 Limited Recourse against City To the extent provided by law, Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief.

17.4 Nonenforcement by the City Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

17.5 Action by Agencies or Courts Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Oregon or any court with competent jurisdiction requires Grantee to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or Grantee may determine if a material provision of this Franchise has been affected. Upon such determination, the City or Grantee may seek to modify or amend this Franchise, pursuant to this Section 17.5, as may be necessary to carry out the Parties' intentions and purposes under this Franchise.

17.6 Choice of Forum Any litigation between the Parties arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

17.7 Choice of Law This Franchise shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

17.8 Notice Any notice provided for under this Franchise shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier; (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City: Office for Community Technology
City of Portland, Oregon
111 SW Columbia St, Suite 600
Portland, OR 97201

With a copy to: City Attorney's Office
Room 430, City Hall
1221 SW 4th Avenue
Portland, OR 97204

If to Grantee: Google Fiber Oregon, LLC
Attn: General Counsel
1600 Amphitheater Parkway
Mountain View, CA 94043

17.9 Reasonability of Actions In any matter provided for in this Franchise involving discretionary acts by the City or the Grantee, including but not limited to the giving of consent, approval or instructions, the Parties agree that they will each act in a manner that is reasonable under the circumstances.

17.10 Force Majeure

A. For purposes of this Franchise, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, partial or entire failure of utilities, documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and other similar events which are not reasonably within the control of the distressed party.

B. If either party is wholly or partially unable to carry out or perform its obligations under this Franchise as a result of Force Majeure, the distressed party shall not be deemed in violation or default during the duration of the Force Majeure. The distressed party shall take immediate and diligent steps to comply as soon as possible under the circumstances, and shall take all necessary corrective steps to remedy as expeditiously as possible the non-compliant responsibilities and duties affected by the Force Majeure. The distressed party shall give prompt notice of such Force Majeure, describing the same in reasonable detail. The distressed party's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure. In the event that delay in performance or failure to perform affects only part of the distressed party's capacity to perform, the distressed party shall perform to the extent that it is reasonably able to do so. Force Majeure shall not apply to any obligations under this Franchise for the payment of monies due. The acts or omissions of Affiliates are not beyond the Grantee's control, and knowledge of Affiliates shall be imputed to Grantee.

17.11 Integration and Written Modification Except as otherwise expressly provided within this Franchise, this Franchise contains the entire agreement between the Parties. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the Parties.

17.12 Changes in Law or Unenforceability of Franchise Provisions

A. The Parties have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The Parties reserve the right to mutually agree on modifications to this Franchise to account for changes in the law during the term of this Franchise, or to negotiate modifications in this Franchise if any provision of this Franchise becomes, or is declared, invalid or unenforceable.

B. Upon written notice from either party, the Parties may voluntarily agree to participate in a non-binding mediation proceeding under Section 17.1 of this Franchise to mediate, in good faith, modifications to the terms and conditions of this Franchise. The written request shall specifically identify the particular reasons for the modification sought by the requesting party.

17.13 Renegotiation If any provision of this Franchise becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to this Franchise, then the Parties shall renegotiate the terms of this Franchise, subject to the mediation procedures of Section 17.1. The party seeking renegotiation shall serve on the other party written notice of a request to mediate. The parties shall have ninety (90) days to conduct and complete the renegotiation.

Section 18 WRITTEN ACCEPTANCE

18.1 Written Acceptance On or before thirty (30) days after this Franchise becomes effective, Grantee shall file with the City Auditor's Office a written acceptance of this Franchise duly executed by Grantee, in the form provided in Exhibit A to this Franchise. Such acceptance

shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

18.2 Failure to File Acceptance Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this ordinance shall thereupon be null and void.

Passed by the Council:
Mayor Charlie Hales
Prepared by: MBHenry/BWalters
Date Prepared: April 17, 2014

LaVonne Griffin-Valade
Auditor of the City of Portland
By
Deputy

EXHIBIT A: Form of Acceptance

EXHIBIT A

ACCEPTANCE
[DATE]
Auditor of the City of Portland
City Hall Room 140
1221 SW 4th Avenue
Portland, Oregon 97204
This is to advise the City of Portland, Oregon that Google Fiber Oregon, LLC hereby unqualifiedly accepts the terms and provisions of Ordinance No. _____, passed by the Portland City Council on the _____ day of _____, 2014, granting a franchise to Google Fiber Oregon, LLC for a term until December 31, 2024. In consideration of the benefits to be received under the Ordinance, Google Fiber Oregon, LLC agrees to abide by and perform each and all of the applicable terms and provisions of Ordinance No. _____.
Google Fiber Oregon, LLC
By_____
Name:
Title:
Date:_____, 2014
STATE OF _____)
County of _____)
This Acceptance was acknowledged before me on the _____ day of _____, 2014, by _____ as _____, a duly authorized officer of Google Fiber Oregon, LLC.
Notary Public for _____
My Commission expires _____
Approved as to form:
_____
City Attorney
*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.
cc. Office for Community Technology
City of Portland, Oregon
111 SW Columbia St, Suite 600,
Portland, OR 97201 Exhibit A: Google Fiber Oregon, LLC Franchise Acceptance