

## EXHIBIT A

### City of Portland and Utility Operator Temporary Agreement to Use City Right-of-Way to Provide Utility Services

This Agreement (**Agreement**) is between the City of Portland, Oregon (**City**), and \_\_\_\_\_ (**Utility Operator**). This Agreement may refer to the City and the Utility Operator as a Party or jointly as the Parties.

#### RECITALS:

WHEREAS, the City has typically granted individually negotiated franchises to each utility operator using the City's right-of-way to provide utility service, which franchises set forth the terms of use and compensation to be paid for such use.

WHEREAS, the City has determined it can more effectively, efficiently, fairly and uniformly manage the City's right-of-way and provide consistent standards for utility use of the right-of-way through licenses rather than franchises.

WHEREAS, the City has drafted a new code to issue utility licenses, which draft code is currently circulating for public review and comment before the City's Office for Community Technology brings the draft code to City Council for its consideration and anticipated adoption in early 2022 and anticipated implementation in January 2023.

WHEREAS, the Utility Operator wants to use the City's right-of-way to provide utility service before January 2023.

#### THE PARTIES HEREBY AGREE AS FOLLOWS:

##### 1. Use of Right-of-Way.

A. Grant of Authority. The City grants to the Utility Operator, a corporation qualified to do business in Oregon, a temporary right to construct, operate, repair and maintain utility infrastructure, with all necessary facilities, located within the right-of-way for the provision of communications services. "Communications services" means any service provided for the purpose of transmission of information including but not limited to voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications services includes all forms of telephone services and voice, video, data or information transport, but does not include: (i) cable service; (ii) open video system service, as defined in 47 C.F.R. 76; (iii) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor; (iv) public communications systems; and (v) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

##### 2. Compensation for Use of Right-of-Way.

A. Compensation. The Utility Operator will pay the City five percent (5%) of its gross revenue. "Gross revenue" means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectables, derived from the operation of utility facilities in the City, subject to all applicable

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limitations in state or federal law. Compensation will be paid according to the provisions set forth in Portland City Code 7.14 (Utility License Law).

### 3. Insurance and Indemnification.

A. Insurance. Work will not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the City Auditor. All required insurance must be issued by companies or financial institutions with an AM Best rating of A- or better and dully authorized to do business in the State of Oregon.

1. *Insurance Certificate*. As evidence of the required insurance coverage, the Utility Operator will furnish compliant insurance certificates, including required endorsements, to the City. The certificates will list the City as a Certificate Holder. There will be no cancellation of the insurance without thirty (30) calendar days' prior written notice to the City. If the insurance is cancelled or terminated prior to the end of this Agreement, the Utility Operator will provide a new policy with the required coverage. Failure to maintain insurance as required may be considered a breach of this Agreement.
2. *Additional Insureds*. The coverage will apply as to claims between insureds on the policy. The insurance will be without prejudice to other coverage. For liability coverage, the insurance certificate will list the City as a Certificate Holder and include as additional insureds "the City of Portland, Oregon and its officers, employees and agents" and an endorsement to the liability policy will confirm the listing of the City as an additional insured. Notwithstanding the listing of additional insureds, the insurance will protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
3. *Insurance Costs*. The Utility Operator will be financially responsible for all pertinent deductibles, self-insured retentions or self-insurance.
4. *Required Coverage*. The limits provided below will be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon by Oregon state law during the term of this Agreement.
  - a. **Commercial General Liability**. The Utility Operator will provide and maintain commercial general liability and property damage insurance in the amount of \$2,000,000 (two million dollars) per occurrence, and aggregate limit of \$4,000,000 (four million dollars) that protects the Utility Operator and the City and its officers, employees and agents from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Utility Operator's work under this Agreement.
  - b. **Automobile Liability**. The Utility Operator will carry automobile liability insurance with a combined single limit of \$1,000,000 (one million dollars) each occurrence, and an umbrella or excess liability coverage of \$2,000,000 (two million dollars), for bodily injury and property damage. The insurance will

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include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Utility Operator.

- c. **Workers' Compensation.** The Utility Operator will comply with the workers' compensation law, ORS Chapter 656, as it may be amended. If required, the Utility Operator will maintain coverage for all subject workers as defined by ORS Chapter 656 and will maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under this Agreement.

### B. Indemnification.

1. To the fullest extent permitted by law, the Utility Operator will defend, indemnify and hold harmless the City and its officers, employees and agents from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or other misconduct of the Utility Operator or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this Agreement. Upon notification of any such claim, the City will notify the Utility Operator and provide the Utility Operator with an opportunity to provide defense regarding any such claim.
2. The Utility Operator will also 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 the Utility Operator's failure to remove or relocate any of its facilities in the right-of-way or easements in a timely manner, unless the Utility Operator's failure arises directly from the City's negligence or willful misconduct.
3. The Utility Operator will also forever indemnify the City and its officers, employees and agents 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 the utility operator's work in the right-of-way. Hazardous substances will have the meaning given by ORS 465.200(16).

### 4. **Financial Assurance.**

A. Before this Agreement is effective, and as necessary thereafter, the Utility Operator will provide a financial assurance, such as a performance bond or other security, in a form acceptable to the City, as security for the full and complete performance of the Agreement, including any costs, expenses, damages or loss to the City because of any failure attributable to the Utility Operator to comply with this Agreement and applicable ordinances, resolutions,

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rules, regulations or policies. The Utility Operator will also provide, upon request, written evidence of payment of the required premium.

B. The amount of such financial assurance will be in an amount of one-hundred thousand dollars (\$100,000). The Utility Operator will immediately replace or replenish to the full amount any draw-down of the financial assurance by the City. The financial assurance will be in effect until the later of: (i) termination of this Agreement; or (ii) removal of all or part of the Utility Operator's utility facilities. This obligation is in addition to any performance guarantees required by applicable City Code and regulations.

C. The financial assurance will contain a provision that it will not be terminated or otherwise allowed to expire without thirty (30) calendar days' prior written notice first being given to the City. The financial assurance is subject to review and approval by the City Attorney.

D. In no event will the City exercise its rights under the financial assurance if a bona fide, good-faith dispute exists between the City and the Utility Operator.

### 5. General Provisions.

A. Effective and Termination Dates. This Agreement will be effective on the date last signed by each of the Parties (**Effective Date**). This Agreement will terminate on the date the draft code described in the recitals is effective or five (5) years from the this Agreement's Effective Date, whichever date is sooner. Upon the draft code's effective date, the Utility Operator must comply with the code.

B. Oregon Law and Forum. This Agreement will be construed according to the laws of the State of Oregon. Any litigation between the Parties arising under this Agreement will 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.

C. Compliance with Laws. The Utility Operator will comply with all local, state and federal laws and regulations.

D. Assignment. The Utility Operator will not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

E. Amendments. The City and the Utility Operator may amend this Agreement at any time only by written amendment executed by authorized representatives of the Parties and approved as to form by the City Attorney.

F. Integration. This Agreement contains the entire agreement between the City and the Utility Operator and supersedes all prior written or oral discussions or agreements.

G. Electronic Signatures/Counterparts. The Parties agree that they may execute this Agreement by electronic means, including the use of electronic signatures. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement:

**CITY OF PORTLAND**

**UTILITY OPERATOR**

\_\_\_\_\_  
Name  
Title, Bureau  
City of Portland, Oregon  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name  
Title, Company  
City, State  
Date: \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney