

Ordinance No. 187887

Grant a franchise to ExteNet Systems, Inc. for telecommunications services, for a period of 5 years. (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT.

1.1 Grant of Franchise.

(A) ExteNet Systems, Inc. has requested the City grant to it a franchise to design, own, and operate outdoor neutral-host low powered access nodes, such as distributed antenna systems and small cells, in the Streets. As a neutral-host provider, ExteNet owns and leases space on its wireless facilities to serve its wireless carrier customers. The City and ExteNet have agreed upon terms and conditions for a franchise for use of the Streets.

(B) The City of Portland, Oregon does hereby grant to ExteNet Systems, Inc., a Delaware corporation qualified to do business in Oregon, and to its successors and assigns as approved by the City under Section 8, a franchise to construct, operate, repair and maintain a Telecommunications System, with all necessary Facilities, located within the Streets.

(C) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and ExteNet Systems, Inc. shall be referred to as "Grantee."

(D) Grantee may construct, operate, repair and maintain Grantee's Telecommunications System within the Streets in the manner and under the conditions set forth in this Franchise.

(E) This Franchise does not authorize Grantee to operate a cable system or provide video programming, as defined by 47 U.S.C. §522.

1.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be five (5) years from the effective date of this Franchise, unless terminated sooner as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 12.9, 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. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar 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.

1.5 Compliance with Laws. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed 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. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS.

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

2.2 Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below 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.

(A) "Attached Facilities" are any Facilities affixed to a Structure except optical fiber, wires, coaxial cable and the mounting hardware used to attach optical fiber, wires, coaxial cable. Examples of "Attached Facilities" include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on Structures.

(B) "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.

(C) "City Council" means the Council of the City of Portland.

(D) "Duct" means any single enclosed raceway for power or communication lines, conductors, optical fiber, wire or other Facilities for use in connection with Grantee's System.

(E) "Facility" means Grantee's equipment and property, including optical fiber, wires, conduits, ducts, antennas, pedestals, cabinets, vaults, and radio equipment boxes, switches, power sources, power supplies, and electronic equipment as part of a wireless network, such as a small cell or distributed antenna system network, located in the Streets used for transmitting, receiving, distributing, providing or offering Telecommunication Services over the spectrum of radio frequencies licensed by the Federal Communications Commission.

(F) "Franchise" means this ordinance, as approved by the City Council and accepted by Grantee pursuant to Section 12.9.

(G) "Gross Revenues" means, any and all gross revenues derived by Grantee from the provision of any and all products, services or charges, originating or terminating in Portland, Oregon

or billed to a circuit, switch or address in Portland, Oregon, including revenues from dedicated private networks. Gross revenues shall include any and all revenue from leases and IRUs for the Portland portion of Grantee's system.

(H) "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.

(I) "Person" means any natural person, and any individual, sole proprietorship, partnership, association, corporation, cooperative, municipal corporation or other form of organization authorized to do business in the State of Oregon.

(J) "Streets" means the surface of and the space above and below any public street, road, alley or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow Grantee to use them.

(K) "Structure" means any utility pole, guy pole, utility pole extension, light standard or other similar pole in the Streets that is suitable for the installation of Facilities. An "Original Structure" is a Structure that has not been replaced to accommodate Facilities.

(L) "Telecommunications Service" means products and services used or useful to the transport of radio frequency signals for providers of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on October 1, 2005.

(M) "Telecommunications System" or "System" means all Facilities owned or used by Grantee for the purpose of providing Telecommunications Services and located in, above or below the Streets excluding Ducts, Conduits and vaults leased from any other Licensee.

(N) "Year," "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.

Section 3. COMPENSATION.

3.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets, Grantee shall pay an annual franchise fee to the City through the duration of this Franchise, which must be the greater of either: (a) a minimum annual franchise fee of \$5,000; or (b) an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payment of Compensation.

(A) Grantee's first annual franchise fee payable under Section 3.1 shall be paid to the City forty-five (45) days after the effective date of this franchise, as defined in Section 1.3. Thereafter, Grantee shall pay each franchise fee on or before May 15, and Grantee's franchise fee payment will apply to the current calendar year (January 1 through December 31).

(B) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) per month, compounded monthly. 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.

(C) 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) payment receipts. The City may approve any written requests from Grantee for waivers from the ACH requirement.

3.3 Reports. Payments pursuant to this Section 3 shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Grantee shall submit gross revenue reports for each calendar year, even if the payment amount for any calendar year is zero. Such reports shall be in form satisfactory to the City.

3.4 Cost of Pre-franchising and Publication. Grantee shall pay the costs of publication of this Franchise and any amendments thereto, if such publication is required by the City Charter.

3.5 Acceptance of Payment and Recomputation. Acceptance of payment pursuant to Section 3 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. All amounts paid under Section 3 shall be subject to review by the City, provided that only payments which occurred during a period of sixty (60) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 3 that is disclosed as the result of an audit, such interest to be calculated at the interest rate pursuant to Section 3.2(B).

(B) 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 audit.

3.6 Authority to Conduct Financial Reviews.

(A) The City and its agents and representatives shall have authority to arrange for and conduct 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. Following availability being made by the Grantee of complete, necessary financial documentation, the City and its agents and representative shall use best efforts to complete any review under this Section 3.6 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 sixty (60) month period.

(B) 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 3 of this Franchise for the period at issue.

(C) Subject to the requirement set forth in Section 3.6, 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.

3.7 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.

3.8 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.

3.9 The definition of "Gross Revenues" in this Franchise was negotiated based upon representations to the City of Grantee's accounting methodologies for revenue accounting and allocation among Grantee's various operations, intrastate and interstate. If at any time during the Term of this Franchise, Grantee alters or otherwise modifies its revenue accounting methodologies, Grantee shall have an affirmative obligation to promptly notify the City. If the changes to the accounting methodologies have a material impact upon the franchise fee compensation, the parties shall negotiate appropriate changes to the Gross Revenues definition so that the City remains whole regarding franchise compensation.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

4.1 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.

4.2 Insurance. 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 System, and the conduct of Grantee's business in the City 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 4.1 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 4.1 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 4.1, 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 4.1 during the term of this Franchise, Grantee shall provide a replacement policy.

(D) 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, upon 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 4.1. Failure to maintain adequate insurance as required under this Section 4.1 shall be deemed sufficient cause for revocation of this Franchise.

4.2 Faithful Performance Bond.

(A) Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, a faithful performance bond running to the City, with good and sufficient surety approved by the City, in accordance with applicable Portland City Code and administrative regulations. Until such time when such administrative regulations are effective, and 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 penal sum of not less than \$100,000, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Such bond shall be maintained by Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for the bond, and unless the City Council specifically directs otherwise, shall keep the bond in full force and effect at all times throughout the term of the Franchise, including the later of either

(1) The remaining term of this Franchise; or

(2) If required by the City, the removal of all 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 thirty (30) days prior written notice first being given to the City. The bond is subject to review and approval by the City Attorney as to its adequacy under the requirements of this Section 4.2. During the term of the Franchise, Grantee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4.2 if a bona fide, good faith dispute exists between the City and Grantee.

(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 5. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.

5.1 Indemnification – General. Grantee shall indemnify, defend and hold harmless the City, its officers, agents and employees, from any claims, damages, costs or expenses, including but not limited to reasonable attorney 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 or for Grantee, its agents or employees, or (2) any neglect or omission of Grantee to keep its System with all necessary Facilities 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 practical 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.

5.2 Indemnification – 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 System with all related Facilities in the Streets in a timely manner in accordance with a relocation schedule consistent with the City Code, furnished to Grantee by the City's duly authorized agent in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

5.3 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 5.3, "Hazardous Substances" shall have the meaning given by ORS 465.200(16) (2013).

Section 6. GENERAL STREET USE AND CONSTRUCTION.

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

6.2 Permits.

(A) Grantee may perform all construction necessary for the operation and maintenance of its System. All construction and maintenance of any and all Facilities within the Streets shall, regardless of who performs construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction, maintenance or installation of any such Facilities, and for excavation and laying of any Facilities within the Streets. Grantee shall pay all applicable fees due for such permits.

(B) Maps.

(1) In accordance with Section 10-209(C) of the Portland City Charter, Grantee shall provide the City Engineer through the permitting process an initial construction schedule for work in the Streets and the estimated total cost of such work when submitting permit applications.

(2) As Grantee undertakes and completes the incremental construction of its System, 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 System.

6.3 Installation of Equipment. Grantee's Facilities shall be installed and maintained in accordance with the laws of the State of Oregon and the ordinances and standards of the City regulating such construction.

6.4 Common Users.

(A) Grantee acknowledges that the Streets have a finite capacity for containing Structures and other Facilities. Therefore, Grantee agrees that whenever the Grantee and any Licensee determine that collocation of Licensee's Facilities is safe, practical and will not result in signal or other interference, the Grantee shall allow such collocation on its Structures or Facilities, subject to the approval of the City and the negotiation of a mutually acceptable collocation agreement between Grantee and Licensee. This right of use shall be subject to the requirements of this Section 6.4, to the terms and conditions of an agreement for use of Structures or Facilities entered into by the Grantee and the Licensee, and to the safety and reliability of Grantee's Telecommunications System and maintenance requirements.

(B) Coordination of Licensee Usage. All Facilities and Structures shall meet local, state and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's Facilities may cause the Grantee to incur.

6.5 Facility and Structure Standards. Grantee shall comply with applicable Portland City Code, administrative regulations and City policies in applying for and installing wireless attachments within the Streets. Until the time when such City Code administrative regulations and City policies are effective, and upon effective date of this Franchise, Grantee shall comply with this Section 6.5 in applying for and installing wireless attachments within the Streets.

(A) Facility and Structure standards. This section establishes standards for attaching Facilities to Structures in the Streets. Unless otherwise specified, all references in this Section

6.5 to the existing or allowed height of a Structure or utility pole are measured from ground level.

(1) Structure selection.

(a) Grantee shall co-locate wireless Facilities on existing buildings, water towers or tanks, or on Original or Replacement Structures in the Streets.

(b) The Streets are prioritized for siting wireless Facilities. The categories for Streets may be identified by referring to the City's official map of Wireless Street Priorities. Grantee must attach Facilities onto Structures in the Streets in the following order of priority:

- i. Priority 1 Streets (generally freeways, highways, and streets in industrial areas), before using poles on;
- ii. Priority 2 Streets (generally high traffic volume streets), before using poles on;
- iii. Priority 3 Streets (generally medium traffic volume streets), before using poles on; or,
- iv. Priority 4 Streets (generally low traffic volume residential streets).

If Grantee selects a Structure to support its Facilities on a Priority 4 street, Grantee shall provide RF contour maps (in color) illustrating the calculated coverage using the proposed antennas at the target signal level, plus and minus 5 dBm, and the calculated coverage areas for all existing adjacent cell sites, to support the rejection of other Structures. If other Structures were ruled out for non-RF coverage reasons, Grantee shall identify and explain those reasons.

(c) For all Structures except those in Priority 1 Streets, Grantee must place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this Section 6.5(A), "high voltage transmission" means lines with capacity for transmitting electricity of 57,000 volts or greater.

(2) Original Structures. Facilities may be attached to Original Structures in the Streets, provided:

- (a) The requirements in Section 6.5(A)(1) are met;
- (b) Facilities do not jeopardize the physical integrity of the Structure;
- (c) Antennas and antenna mounting devices below the top of the Structure shall be mounted flush with the Structure or on extension arms that shall not be greater than one (1) foot in length.

(d) Antennas and antenna mounting devices above the top of the Structure:

i. Mounting devices and antennas other than omni-directional or “whip” antennas shall be concealed within a canister or unicell-style cylinder, the diameter of which shall be no greater than twelve inches (12) more than the diameter of the Structure as measured six (6) feet from the butt of the Structure.

ii. The combined height of the antennas and mounting device on a Structure that carries high voltage transmission lines shall not project more than:

(a) Twenty (20) feet above the Structure if the Structure is in a Priority 2 or 3 Street;

(b) Fifteen (15) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) less than or equal to fifty (50) feet in height; or

(c) Twenty (20) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) more than fifty (50) feet in height.

(d) The combined height of the antenna and mounting device on Structures in Priority 1 Streets is not regulated.

iii. The combined height of the antennas and mounting device on a Structure that does not carry high voltage transmission lines shall not project more than:

(a) Fifteen (15) feet above a Structure in a Priority 2 or 3 Street; or

(b) Ten (10) feet above a Structure in a Priority 4 Street.

(c) The combined height of the antennas and mounting device on Structures in Priority 1 Streets is not regulated.

(e) All Facilities mounted on an Original Structure shall be camouflaged by being painted, coated, or given a surface application to conform to the color and surface of the Structure. If cabinets require a special heat-reducing paint finish, they must be camouflaged with a neutral color such as beige, off-white, or light gray; and

(f) The dimensions of equipment cabinets mounted on poles in Priority 1, 2, and 3 Streets are not regulated. The height plus width plus depth of equipment cabinets mounted on poles in Priority 4 Streets shall be no more than 120 lineal inches combined.

(g) The Original Structure is not replaced with a taller Structure, except as authorized in Section 6.5(A)(3).

(3) Replacement Structures. For purposes of this Section “Replacement Structure” shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility or guy poles in the Streets except as otherwise approved by the City Engineer. Facilities may be attached to Replacement Structures in the Streets, provided:

(a) The Replacement Structure is of sufficient integrity to support the Facilities;

(b) The Replacement Structure must comply with the requirements of Sections 6.5(A)(1)a and b, and 6.5(A)(2)e and f;

(c) For all Structures except those in Priority 1 Streets, Grantee shall place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this subsection, “high voltage transmission” means either power lines with capacity for transmitting electricity of 57,000 volts or greater, or a skipped pole between high voltage transmission power lines. Skipped poles are defined in Section 6.5(A)(3)e.ii, below.

(d) Color. Prior to installation, if the Replacement Structure is not made entirely of wood, it shall be camouflaged by being painted, coated, or given a surface application to conform to the color of the Original Structure.

(e) Replacement Height Limits. A Structure or Original Structure may be replaced with a Replacement Structure that is taller than the Original Structure. The total combined height of a Replacement Structure and any mounting devices shall be no greater than that allowed in Table 1, below.

i. Guy poles. Guy poles are shorter than the utility poles they support. On Priority 1, 2, and 3 streets a guy pole may be replaced as if it is the same height as the pole it supports using Table 1, below. On Priority 4 streets a Guy pole may be replaced up to the height of the pole it supports.

Example 1: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 3 Street may be replaced as if it is 30 feet tall. Therefore, the pole may be replaced with a pole up to a maximum of 45 feet tall (30' + 50% of 30');

Example 2: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 4 Street may be replaced up to a maximum of 30 feet.

ii. Skipped poles. There are Streets where runs of taller poles (typically high voltage transmission) and shorter poles (typically low voltage distribution or communication) are located on the same side of the Street. Where the shorter pole is situated adjacent and between two taller poles in the same run, the shorter pole is known as a “skipped pole.” A skipped pole may be replaced with a pole of the same height as the adjacent taller poles.

Example: A 45 foot pole is situated adjacent and between two 65 foot poles on the same side of a Priority 4 Street. The 45 foot pole may be replaced as if it were 65 feet tall using Table 1, below. Therefore, it may be replaced with a pole 80 feet tall (65' + 15'). If the 45 foot pole is on the opposite side of the Priority 4 Street from the taller poles, it may not be replaced as if it were 65 feet tall; it may only be replaced up to a height of 60 feet (45' + 15').

Table 1	
Maximum Combined Additional Height Allowed for Replacement Structures and Antenna Mounting Devices (All figures are in feet over the height of the existing Structure measured from ground level)	
Street Type	Additional Height
Priority 1 (freeways, highways, and streets in industrial areas)	80 feet
Priority 2 (high traffic volumes)	Lesser of 40 feet or 50% of the height of the pole
Priority 3 (medium traffic volumes)	Lesser of 35 feet or 50% of the height of the pole
Priority 4 (low traffic volumes; residential streets)	Lesser of 15 feet or 45% of the height of the pole

(f) Antennas above the top of the Replacement Structure and Mounting Device. Antennas shall not project more than three (3) feet above the maximum allowable height of the Replacement Structure and mounting device. Example: A 35 foot pole on a Priority 4 Street may be replaced with a pole and mounting device, the top of which is no more than 50 feet tall, and the measurement to the top of the antennas shall be no more than 53 feet.

(g) Replacement Structure Engineering. In the event that a Structure needs to be replaced to provide structural capacity to support the Facility, Grantee must provide to the City a written statement from the pole owner that the Replacement Structure is no greater in width than the engineering minimum required by the Oregon Public Utility Commission.

(h) Street Trees. If a Structure in a Priority 4 street is proposed for replacement, Grantee shall submit the sum of One Thousand Dollars (\$1,000) to the Bureau of Parks to fund street tree planting. Grantee shall consult with the owner of the Structure and the Bureau of Parks to determine if a tree could be planted in the parking strip such that a mature tree canopy could develop around the Replacement Structure to reduce the visual impact of the Replacement Structure to the abutting property. If it is not feasible to plant a tree to achieve this result, then the Park Bureau will deposit the funds into its Tree Damage Fund.

(4) Notice and Meeting. In the case of Grantee Facilities not otherwise co-located with existing Facilities, and proposed in or within 400 feet of a Priority 4 Street, Grantee shall provide written notice and conduct an informational neighborhood meeting according to applicable rules promulgated by the City. The meeting shall occur at least 30 days before Grantee submits its application to the City to place Facilities on a Structure.

(5) Grantee may connect its Facilities in the Streets to Facilities located on property adjacent to the Streets in accordance with applicable City Code sections and with the prior written permission of the adjacent property owner. Grantee may locate any Facilities, such as cabinets, at grade within the Streets, pursuant to applicable City Code and administrative rules.

(6) Grantee may make excavations in the City Streets for any Facility needed for the maintenance or extension of its Telecommunications System subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees, or permittees of the City, or bureaus of the City, or other units of government owning or maintaining facilities that may be affected by the proposed excavation.

(7) In the event that emergency repairs are necessary for Grantee's underground Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

(B) Small cells and distributed antenna systems. As of the effective date of this Franchise, the City is overseeing a pilot project studying the installation and operation of distributed antenna systems ("DAS") and small cell equipment in the Streets. For the duration of this pilot project, Grantee may choose to notify the City that Grantee will participate in the pilot, subject to the standard terms and conditions of the pilot project.

Grantee shall apply for and obtain all permits and permissions necessary from the City, the utility pole owners, and any other required entities for the construction, installation and operation of small cells and DAS. All construction and maintenance of small cells and DAS shall be the responsibility of Grantee, regardless of who performs the installations and/or construction.

6.6 Relocation. The City shall have the right to require Grantee to change the location of its Facilities in the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The City shall provide Grantee with the standard notice given under the circumstances to other lessees, franchisees, licensees, or permittees. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all expenses incurred by the City due to Grantee's delay. If the City requires

Grantee to relocate its Facilities located within the City's Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its Facilities within the City's Streets.

6.7 Record of Installations.

(A) On the date Grantee files its acceptance in accordance with Section 12.9, and annually thereafter, in the event any new Facilities are constructed or any existing Facilities are relocated, Grantee shall provide to the City's Office for Community Technology, or its successor, a list that identifies the location of Grantee's Facilities in the Streets. In addition, Grantee shall provide confirmation that each existing and new Facility that is installed on Structures in the Streets. Such confirmation shall be in a format acceptable to the City. For new Facilities, the form shall be filed within ten (10) days of the date the Facility is attached to the Structure in the City Streets, and within ten (10) days after modifications thereafter.

(B) Within thirty (30) days following Grantee's acquisition of any Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by agreement, license, permit or any other form of prior right, and specifying the location of all such Facilities. Facilities acquired by Grantee shall immediately be subject to the terms of this Agreement, within a reasonable period of time to bring such acquired Facilities into compliance with this Agreement. The City expressly reserves the right to install, affix, maintain, remove or relocate City streetlights and other City owned facilities, including traffic signals, beacons, signs, and transportation control equipment, in the Streets without charge, for use by the City or other government entities and for emergency services.

(C) Radio frequency emission levels. All Grantee's Facilities shall comply with the radio frequency emission standards specified in Part 1, Practice and Procedure, Title 47 of the Code of Federal Regulations, Section 1.1310, Radio Frequency Radiation Exposure Limits.

6.8 Restoration After Construction. Grantee's responsibility for maintaining repairs to any Street surface areas disturbed by Grantee's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by the City, whichever occurs first.

6.9 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 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 utility 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 discretion to cancel the programmatic permit, notification and single tree permit process if, at any time, Grantee or its agents fail to either use proper utility arboricultural practices or to properly notify the public in accordance with applicable City requirements.

(C) Emergencies. Notwithstanding the permit and notice requirements of this Section 6.9, 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 System operations, or to protect the public from imminent danger, or to prevent the imminent destruction of Facilities.

6.10 Reservation of City Street Rights. Nothing in this Franchise shall be construed to 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 injure or prevent the unrestricted use and operation of Grantee's System under this Franchise. However, if any portion of Grantee's System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in applicable regulations of the City.

6.11 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 expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required consistent with City Code, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by 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. 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.

6.12 Acquisition of Facilities. Within thirty (30) days of Grantee's acquisition of Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee owns or operates any Facility within the streets, Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise, license, permit or any other similar form of right granted by the City, and specifying the location of all such acquired Facilities. 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, with a reasonable period of time to bring the acquired Facilities into compliance with this Franchise.

6.13 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.

6.14 Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2015), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952.

Section 7. CITY DUCTS IN CONNECTION WITH NEW CONSTRUCTION.

7.1 In connection with new construction by Grantee, Grantee will provide additional Duct(s) under the process described in this Section 7:

(A) The City may request that Grantee construct up to two (2) Ducts for the City ("City Ducts") whenever Grantee undertakes planned underground Capital construction, following the Effective Date of the Franchise, for construction of its Telecommunications System (as opposed to, for example, unplanned, one-off projects to support a single customer) within the Franchise Area. The parties shall negotiate in good faith when the City identifies that it desires Grantee to construct City Ducts. The City shall not delay or withhold from Grantee the issuance of any necessary permits for construction in the Streets while the City contemplates whether it desires

Grantee to construct City Ducts. Grantee acknowledges that all permits for planned, general expansion-type underground construction projects are subject to City's right to request construction of City Ducts consistent with the terms and timelines of this Section 7.

(B) The City and Grantee shall meet at least annually, as convened by the City, to discuss:

(1) Anticipated general Telecommunications System expansion construction projects, including underground Capital projects, planned for the next twenty-four (24) month window of either Party. During these planning meetings, the Parties shall disclose to one another the general routes and scope of such planned projects; and,

(2) Anticipated general Telecommunications System expansion underground construction projects that have moved into the planning and design phase and affecting the Streets within the next twelve (12) month timeframe. In regard to projects within the next twelve (12) month window, if the City identifies that it has a need for City Ducts along the Grantee's planned route, the City will notify Grantee in writing within fifteen (15) business days to request that Grantee provide a detailed cost estimate of project with the anticipated Incremental costs related to the provision of the City Ducts (which may include a burdened cost charge of up to fifteen percent (15%) for internal labor, engineering and design costs), and an estimated timeline for completion of the project. Grantee shall provide the cost estimate within thirty (30) business days of receipt of the City's request. After receipt of the Grantee's cost estimate, the City shall have fifteen (15) business days to notify Grantee if it desires construction of the City Ducts. During the fifteen (15) business days following the City's receipt of the cost estimate, the City may ask Grantee for additional information relevant to its decision to construct the City Ducts, and Grantee shall timely respond to such information requests.

(C) If, prior to or during construction of the City Ducts, but after the City has elected to have Grantee undertake such construction, Grantee realizes that actual construction costs are likely to exceed one hundred fifteen percent (115%) of the cost estimate, Grantee shall provide the City a revised cost estimate. After receipt of the Grantee's revised cost estimate, the City shall have fifteen (15) business days to notify Grantee if it desires to continue construction of the City Ducts. During the fifteen (15) business days following the City's receipt of the revised cost estimate, the City may ask Grantee for additional information relevant to its decision regarding whether to continue with construction of the City Ducts, and Grantee shall timely respond to such information requests.

(D) Upon completion of construction and proof of Acceptability, Grantee shall provide the City with an invoice. Upon submission by the Grantee of an invoice, and upon certification by the City that the invoice is in accordance with this Section 7 and confirmation by Grantee that the City Ducts have been installed, the City shall reimburse Grantee the amount specified in the invoice within thirty (30) days. Such reimbursement shall not be withheld, delayed, or used to offset any disputed or undisputed amounts owed by Grantee to the City.

7.2 Following receipt of payment from the City, Grantee will provide suitable documentation of the City's ownership of the City Ducts and identify the location of the City Ducts in maps

submitted under Section 6.2(B). The City will own the City Ducts, including being responsible for maintenance of the City Ducts.

7.3 For purposes of this Section 7, the following terms, phrases, and their derivations shall have the meanings given in this Subsection:

(A) "Capital" or "Capital Costs" means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one (1) year or longer.

(B) "Incremental" costs means the difference between the amount actually expended by Grantee in meeting its obligations under this Franchise that Grantee would not otherwise have expended in order to construct, operate or conduct the business of its Telecommunications System or to meet another obligation of this Franchise and the cost, based on units and quantities, of the City Ducts.

(C) "Acceptability" means confirmation by the City of Grantee having demonstrated the City's ability to use the completed City Ducts through inspection and certification. The process of inspection and certification shall be performed by pulling a mandrel through each City Duct from end-to-end. The mandrel will conform to industry standards, including an outside diameter of 80% (eighty percent) or more of the inside diameter of the City Duct, and a length 20-30% (twenty to thirty percent) greater than the inside diameter of the City Duct.

7.4 As part of its construction of the City Ducts, Grantee will provide separate access vaults for the City at City's cost, at locations to be determined by the City.

Section 8. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

8.1 Council Consent. Neither this Franchise, nor all or substantially all of Grantee's System located in the Streets by authority of this Franchise, shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. 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, or assignment of tangible assets of Grantee's System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment with respect to Grantee's System shall be subject to the City's other rights contained in this Franchise.

8.2 Review.

(A) In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, 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 sale, lease, mortgage, assignment, merger or transfer 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 appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

(B) No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, 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.

8.3 Leases. Grantee shall not lease any portion of its franchised System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 8.1, Grantee may lease any portion of its System 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 System. A lessee of any portion of Grantee's System shall not obtain any rights under this Franchise.

8.4 Sales.

(A) Notwithstanding Section 8.1, Grantee may sell portions of its System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

(1) The sale is to the holder of a current existing, valid franchise, license, permit, or other similar right granted by the City;

(2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the System sold by Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6.1(B)(2)) and providing an executed counterpart or certified copy of the sales documents;

(3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining System; and,

(4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid franchise, license, permit or other similar right granted by the City. The purchaser shall not obtain any of Grantee's rights under this Franchise.

Section 9. FRANCHISE VIOLATIONS AND REMEDIES.

9.1 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, including but not limited to payment of franchisee fees, submitting timely and accurate reports, providing timely access to records, and maintaining all required insurance and performance bonds.

(1) Impose liquidated damages as provided in Section 9.1(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;

(4) Suspend Grantee's Franchise rights related to the violation, until Grantee corrects or otherwise remedies the violation;

(5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or,

(6) Revoke this Franchise.

(B) (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) Liquidated Damages.

(1) The City and Grantee recognize that delays, expense and unique difficulties would be involved in establishing actual losses suffered by the City and the public as a result of

Grantee's violation of certain material provisions of this Franchise. In circumstances identified in this Section 9.1(C), where proof of specific, actual damages would not be feasible, the City and Grantee agree that the City may require Grantee to pay liquidated damages to the City. The parties agree that such amounts are a reasonable estimate by the parties of the harm (including increased costs of administration and other damages difficult to measure) the City and the public would suffer in the event of Grantee's breach of such provisions of this Franchise. City and Grantee agree that the Franchise provisions to which such liquidated damages would apply are:

(a) Failure to send reports, maps, or other requested information or data as required by Sections 3 and 6;

(b) Failure to respond to financial review requests as required by Section 3.6;

(c) Failure to provide or maintain insurance or bonds as required by Section 4; and

(d) Failure to comply with Section 8 in connection with any assignment, transfer, merger, lease, or mortgage as defined in Section 8.

(2) Subject to Grantee's right to notice and the opportunity to cure as provided in Section 9.2, if the City determines that Grantee has violated any material provision of this Franchise, the City may assess liquidated damages of \$1,000. Liquidated damages will be assessed by the City on a per day or per violation basis or other reasonable measure based on the magnitude and duration of the breach of the franchise.

(3) The liquidated damage amounts are stated in 2015 dollars and shall be adjusted each year for any increase in the amount of change in the Consumer Price Index for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of labor and as published in such Bureau of Labor Statistics' Detailed Report (CPI). The adjustment will be calculated by multiplying the base liquidated damages amount by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year.

(4) The assessment and recovery of liquidated damages will not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise. The assessment and recovery of liquidated damages for a particular violation will substitute for the recovery of actual damages for the period of the assessment.

(5) Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages may be imposed. Thereafter, if Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue any other remedies available under this Franchise or applicable law.

(D) In determining which of the remedies available under this Franchise is appropriate, the City may consider, among other things: (1) the nature and extent of the violation; (2) whether Grantee has had a history of similar violations; (3) the Person burdened by the violation and the cost of remedying the violation; (4) the nature of the remedy required in order to prevent further such violations; and (5) such other factors as the City may deem appropriate.

(E) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 9.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

(1) Any failure to comply with the requirements of Section 4 of this Franchise, including but not limited to, any failure to provide uninterrupted insurance or performance bonds;

(2) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or,

(3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the System.

(F) In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right to revoke this Franchise after the appointment of a receiver or trustee to take over and conduct Grantee's business, or the initiation of receivership, reorganization, insolvency or other similar action or proceeding, unless Grantee, its receiver or trustee timely and fully perform all obligations, until such time as this Franchise is either rejected or assumed by Grantee, its receiver or trustee.

9.2 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 9.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures to the satisfaction of the City 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 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 9.1.

(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 9.1 or such other rights as the City may possess.

9.3 Removal of Facilities. If the City has revoked this Franchise as provided in Section 9.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, Grantee shall at its own expense remove its Facilities from the Streets and restore the Streets to the standards provided in applicable regulations of the City. In the event of a failure by Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from Grantee. The cost thereof shall be a lien upon the system of Grantee and a set-off against any sums owed Grantee by City.

Section 10. RENEGOTIATION.

In the event that 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 entering into this Franchise, the City and Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under Section 10, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 11. EXPIRATION.

Upon the expiration of this Franchise, the City shall have the right, at its election, to: (1) renew or extend Grantee's Franchise; (2) invite additional proposals and award the Franchise to another Person; (3) allow the Franchise to expire without further action; or (4) take such further action as the City deems appropriate. Until such time as the City exercises its rights under Section 11, Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

Section 12. MISCELLANEOUS PROVISIONS.

12.1 Severability. 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 a franchise to Grantee. All provisions concerning indemnity shall survive the 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.

12.2 Regulation and Nonenforcement by the City. 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. 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. Services furnished by Grantee under this Franchise shall be rendered using the best practicable commercial methods and practices, insuring the least danger to life and property compatible with good engineering practice.

12.3 Force Majeure.

(A) For the purposes of Section 12.3, 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, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) If Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

12.4 Choice of Forum. Any litigation between the City and Grantee 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.

12.5 Choice of Law. This contract 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.

12.6 Notice.

(A) Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier (such as Federal Express); or (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 Street, Suite 600
 Portland, Oregon 97201
 Email: ComTech@portlandoregon.gov

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

If to Grantee: ExteNet Systems, Inc.
 3030 Warrenville Road, Suite 340
 Lisle, Illinois 60532
 ATTN: CFO
 Email: myergovich@extenetsystems.com

With a copy to Grantee's General Counsel at the same address.

(B) In accordance with City Code, the Office for Community Technology ("OCT"), within the Revenue Division, Bureau of Revenue and Financial Services (or such other City bureau as the Council may designate) is responsible for supervising and coordinating franchising in the City, for monitoring the performance of all franchisees for franchise compliance, overseeing franchise and utility audits and revenues in coordination with other City offices and for performing all other necessary work relating to City franchises. As the designated City representatives for franchise responsibilities, OCT may give any notices from the City under this Franchise.

12.7 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. Nothing in this Section 12.7 affects Grantee's right to seek legal relief to prevent or remedy the City's release of Grantee's confidential information to the public.

12.8 Franchise Amendment. The City has negotiated this Franchise in good faith, in reliance upon the information provided by Grantee regarding the scope of its authority to offer services associated with its System. In the event that Grantee offers or receives authority to offer services outside the scope of this Franchise that utilize Grantee's Facilities in the Streets, Grantee shall immediately notify the City. Within ninety (90) days of receiving such notice, the City may elect, without limitation, to enter into negotiations with Grantee to revise or amend this Franchise, or to extend separate authority to Grantee for such services to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to reach mutual agreement on the lawful means to provide the necessary authority for Grantee to provide such services using Streets.

12.9 Written Acceptance. On or before the thirtieth day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by Grantee, meeting the approval of the City Attorney. 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 hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

12.10 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City is superseded by this Franchise.

Passed by Council, JUL 13 2016
Mayor Charlie Hales
Prepared by JLi/BWalters
Date Prepared: April 8, 2016

Mary Hull Caballero
Auditor of the City of Portland

By 
Deputy

Grant a franchise to ExteNet Systems, Inc. for telecommunications services, for a period of 5 years.
 (Ordinance)

INTRODUCED BY Commissioner/Auditor: Mayor Hales	CLERK USE: DATE FILED <u>MAY 31 2016</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales <i>JAH</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	Mary Hull Caballero Auditor of the City of Portland By: <u><i>Susan Parsons</i></u> Deputy ACTION TAKEN: JUN 08 2016 PASSED TO SECOND READING JUL 13 2016 9:30 A.M.
BUREAU APPROVAL Bureau: OMF/BRFS, Revenue CAO: Fred Miller <i>Fred Miller</i> CFO, Bureau Head: Kenneth L. Rust Division Head: Thomas W. Lannon <i>Thomas Lannon</i>	
Prepared by: Jennifer Li Date Prepared: May 12, 2016	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>Thomas Lannon</i>	
Council Meeting Date: June 8, 2016	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input checked="" type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	—	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	