

1 Fiber Optic Network within the City. Gross revenue includes all consideration paid to the holder
2 of the Franchise which includes the following: (i) All fees charged to subscribers for any fiber optic
3 services provided by the Company; and, (ii) Compensation received by the Company that is derived
4 from the operation of a Fiber Optic Network including commissions that are paid to the Company.
5 Gross revenue does not include: (i) Any revenue not actually received even if billed, such as bad
6 debt; or, (ii) Any tax of general applicability imposed upon the Company.

7 “**Public Right-of-Way or City Right-of-Way**” shall mean streets, avenues, alleys, bridges,
8 viaducts, easements, grounds and other public places owned or controlled by, leased or granted to,
9 or otherwise under the jurisdiction and regulation of the City as provided by the laws of the State
10 of Arkansas as amended.

11 “**Small Wireless Facility**”, as defined in Little Rock, Ark., Ordinance No. 21,423 (June 6,
12 2017) means a wireless facility that meets both of the following qualifications: (1) each Antenna
13 is located inside an enclosure of no more than six (6) cubic-feet in volume, or, in the case of an
14 antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an
15 imaginary enclosure of not more than six (6) cubic-feet in volume; and, (2) all other wireless
16 equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic-feet in
17 volume. The following types of ancillary equipment are not included in the calculation of
18 equipment volume: electric meter, concealment elements, telecommunications demarcations box,
19 ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical
20 cable runs for the connection of power and other services. For this definition of Small Wireless
21 Facility within this Franchise, the term Antenna means communication equipment that transmits or
22 receives electromagnetic radio frequency signals used in the provision of wireless services.

23 **Section 2. City Grant of Authority.**

24 (a) **Grant of Franchise.** The Company is hereby granted a Franchise (“the Franchise”) to
25 occupy and use the public rights-of-way and airways within and belonging to the City in order to
26 construct, operate, maintain, upgrade, repair and remove a Fiber Optic Network subject to the terms
27 and conditions of this ordinance.

28 (b) **Term of Franchise.** This Franchise shall commence thirty (30) days from the date the
29 Little Rock Board of Directors passes an ordinance approving the Franchise and shall expire upon
30 the occurrence of an Event of Default, abandonment, or at such time as permitted by Arkansas State
31 Law if a term less than that set forth in Ark. Code Ann. § 14-200-103 is provided, or if there is a
32 ruling under Arkansas law that a Fiber Optic Franchise is not to be treated as a utility; provided,
33 that absent an Event of Default or abandonment, no single term of the Franchise shall be for a
34 period of less than five (5) years from the effective date of this ordinance.

1 (c) **Nonexclusive Franchise.** The Franchise is not exclusive. Except as expressly provided
2 herein, nothing in this Franchise shall limit or otherwise restrict the right of the City to enter into
3 similar agreements with other companies for the use of the City's rights-of-way.

4 (d) **Scope of Franchise.** The scope of the Franchise awarded pursuant to this ordinance is
5 limited to the incorporated area of the City. The City and the Company agree that entrance into this
6 Agreement is without prejudice to any positions that either may have taken previously, or may take
7 in the future, in any legislative, regulatory, judicial or other public forum addressing any matters,
8 including matters related to the same types of arrangements covered in this Franchise. This
9 Franchise shall not give the Company any right to use any property or Public rights-of-way
10 dedicated to the exclusive use of a utility within the City unless expressly agreed to by such utility.

11 (e) **Process for Renewal of Franchise.** Absent an Event of Default or abandonment, and
12 assuming the successful and satisfactory compliance with the terms of this Franchise, the City and
13 the Company anticipate that the Franchise will be renewed at the end of any term as set forth in
14 Section 2 (b) of this ordinance. Prior to any renewal, the following process shall be followed:

15 (i) Not less than 120 days prior to the end of the term of the Franchise, the Company
16 shall notify the City in writing of its intention to seek renewal of the Franchise;

17 (ii) Upon receipt of such a written intention, the City shall schedule a public hearing to
18 be held not later than sixty (60) days prior to the end of the term of the Franchise for the
19 purpose of seeking public input on the issue of renewal from all interested persons limited to
20 the issue of compliance with the terms of the Franchise by the Company;

21 (iii) If, as a result of these hearings, the City determines, in its sole discretion, that any
22 significant problems have occurred, the Company shall be required to respond to these
23 concerns in writing within ten (10) days of written notice by the City;

24 (iv) If the City is satisfied with the answers to these inquiries, or if the City determines,
25 within its sole discretion, that there have been no significant problems then the City shall
26 announce not less than thirty (30) days prior to the end of the terms of this Franchise its intent
27 to renew the Franchise and shall, by resolution, state an intended term for such renewal;

28 (v) All other terms and conditions are subject to renegotiation and an ordinance adopting
29 a new agreement shall be enacted prior to the end of the term of this Franchise, provided the
30 parties may agree in writing to extend the initial term in order to finalize any ongoing
31 negotiations, and provided further, that should the Company fail to negotiate in good faith
32 this shall be deemed an Event of Default which, in such case, permits the City to take such
33 action as permitted in Section 6 of this Franchise.

1 (f) **Reservation of Authority.**

2 (i) The City reserves the right to perform any necessary public works or make any
3 necessary public improvements to the City's rights-of-way during the term of this
4 Franchise. If, as a result of any such action by the City, or by any action authorized by the
5 City for the benefit of the public good, relocation of any of the Company's conduit or other
6 facilities is required, such relocation shall be accomplished at the sole expense of the
7 Company. Nothing in this Franchise shall be deemed a waiver of the right of the City to
8 require the Company to comply with all applicable zoning and other applicable regulatory
9 ordinances or to pay any reasonable permit fees or to seek appropriate authorizations from
10 the Company to perform any work in connection with the Franchise. Should the City close,
11 eliminate, or discontinue the use of any City rights-of-way during the term of this Franchise,
12 or any renewal term, this Franchise shall cease with respect to such right-of-way upon the
13 date of final action by the City with respect to the closure, elimination or discontinuance of
14 such street or City rights-of-way, provided the Company shall be provided notice of the
15 City's intent to do so and to appear and state its position on such City abandonment of
16 right-of-way.

17 (ii) In all cases where there is a likelihood that the Company may be required to relocate,
18 or change the route of or reposition its poles, lines, or conduits, the City shall give notice, in
19 the form of written plans, at a utility coordination meeting called by the City to discuss such
20 plans. The meeting at which the relocation plans are discussed shall be held at least thirty
21 (30) days before relocation is required. The City shall not be entitled to be paid its cost and
22 expense for any such relocation, or any damages incurred as a result of such relocation, unless
23 such expenses are reimbursable or payable to the City, directly or indirectly, but nothing shall
24 obligate the City to pay any cost of expense unless and until the City actually receives funds
25 from the State of Arkansas, the United States, or any governmental agency of either, for the
26 express purpose of payment of costs and expenses incurred by the relocation.

27 (g) **Notice of Intention to Construct.** The City has a vested interest in assuring that any
28 disruption of the flow of traffic, or the digging or creation of a trench in any of the streets, be kept
29 to a minimum. In order to facilitate this interest, the City and the Company agree as follows:

30 (i) Upon application of the Company, or on behalf of the Company, for a construction
31 permit to open the street, the City shall provide notice to all utility and any Fiber Optic
32 Network. During such time not to exceed fifteen (15) days from the date of the application,
33 the City shall withhold approval of any such permits so that any other utility that desires to
34 do so will be allowed to ask to simultaneously lay conduct, or other appropriate equipment
35 in, or adjoining, any trench opened by the Company. The City may extend this time period

1 for emergency situations if the City or a utility or order of a Fiber Optic Network so desires.
2 The Company shall permit that utility or Fiber Optic Network to do so provided:

3 (A) The other utility or Fiber Optic Network shares in the cost of opening and
4 repairing any trench; and,

5 (B) The desire of the other utility or Fiber Optic Network to so participate does not
6 unnecessarily delay the Company's construction schedule.

7 (ii) the Company agrees that if, pursuant to a similar application from other utilities or
8 another Fiber Optic Network, it receives notice from the City of a request for a permit to
9 open the streets, the Company shall determine whether to participate in the opening of any
10 such trench by that utility or Fiber Optic Network and shall participate in such a project
11 pursuant to the terms of this subsection.

12 (iii) For purposes of this subsection, "utility" means any gas provider, cable television
13 company, electric service provider, interexchange, long distance or local exchange
14 telecommunications services provider, Central Arkansas Water, Little Rock Water
15 Reclamation Commission, Little Rock Ambulance Authority, Little Rock Airport
16 Commission, Little Rock Port Authority, or any other entity laying pipes, cables, conduits,
17 or wire on, over, or beneath City rights-of-way and that has a Franchise with the City.

18 **Section 3. Construction Requirements.**

19 (a) **Quality.** All work involved in the construction, operation, maintenance, repair, upgrade,
20 and removal of the Fiber Optic Network that is permitted by this Franchise shall be performed in a
21 safe, thorough, reliable manner using materials of good and durable quality in accordance with
22 generally accepted construction standards, and in compliance with all of the applicable ordinances
23 of the City and laws and regulations of any governmental entity having jurisdiction. If, at any time,
24 it is determined by the City that any part of the Fiber Optic Network is harmful to the health of
25 safety of any person, then the Company shall, at its own cost and expense, promptly correct all such
26 conditions. For purposes of this subsection, promptly shall mean twenty-four (24) hours, or a longer
27 period of time if, and only if, additional time is granted in writing by the City.

28 (b) **Construction Requirements.**

29 (i) Before the Company constructs, extends, makes major repairs to or replaces its Fiber
30 Optic Network (not including lateral connections that provide minimal interference with flow
31 of traffic on City rights-of-way for which permits have been properly issued), it shall file
32 with the City's Public Works Department a written work description, including scale
33 drawings, digital location data showing the Fiber Optic Network's existing and planned
34 location and, if applicable, estimated depth of any facilities. The description and map shall
35 also include information concerning the Company's fiber access Points of Presence ("POP").

1 The plans will be reviewed by the City and any comments will be provided to the Company
2 within ten (10) business days. The City agrees to expedite its review when conditions
3 warrant. When an emergency occurs, the Company shall perform needed repairs to its Fiber
4 Optic Network in the City right-of-way and shall notify the Public Works Department within
5 twenty-four (24) hours following such emergency repairs.

6 (ii) Any construction project shall be completed within thirty (30) days from the date
7 that the Public Works Department properly issues any necessary permits, provided that the
8 City may allow reasonable extensions due to weather or Acts of God, or other reasonable
9 circumstances that in the sole discretion of the City justify an extension of the project target
10 completion date.

11 (iii) If the City requires the Company to remove, alter, change, adapt or conform its Fiber
12 Optic Network to enable any other person or entity, except the City, to sue, or to use with
13 greater convenience, the City right-of-way, the Company shall be obligated to make such
14 changes to its Fiber Optic Network only if said person or entity pays the Company or posts
15 an appropriate bond if required by the Company, to reimburse the Company for any loss and
16 expense which will be caused by or which will arise out of such changes to the Company's
17 Fiber Optic Network. **THE CITY SHALL NOT BE LIABLE FOR ANY**
18 **REIMBURSEMENT, LOSS, OR EXPENSE WHICH IS CAUSED BY OR WHICH**
19 **ARISES OUT OF CHANGES TO THE COMPANY'S FIBER OPTIC NETWORK.**

20 (c) *No Liability to Company.* Neither the City nor its officers, employees, agents, attorneys,
21 consultants or independent contractors shall have any liability to the Company as a result of any
22 disruption or damages to the Fiber Optic Network that occur as a result of or in connection with
23 any protection, breaking through, movement, removal, alteration, or relocation of any part of the
24 Fiber Optic Network by or on behalf of the Company or the City in connection with any emergency
25 public work of any nature whatsoever, improvement, alteration of municipal structure, any change
26 in the grade or line of any street, or the elimination, discontinuation, or closing of any street, as
27 provided for in this Franchise; except, however, the City shall reasonably attempt to avoid any
28 damage to Company's Fiber Optic Network and shall provide reasonable notice to Company so as
29 to allow Company to protect its Network.

30 **Section 4. *Compensation to the City.***

31 (a) ***Franchise Fees – Amount.***

32 (i) The Company shall pay to the City Franchise Fees beginning with the quarterly
33 payment immediately following the date upon which the Company begins to receive Gross
34 Revenue, an amount equal to 5% of Gross Revenue as defined in this Franchise.

1 (ii) The payment of a Franchise Fee by the Company in no way limits the right of the
2 City to charge fees for any permits the Company is required to obtain for any construction
3 project; nor does the payment of a Franchise Fee preclude the right of the City to assess a
4 reasonable business license fee on the Company.

5 (b) **Franchise Fee – Payment.** All such payments of Franchise Fees required by this section
6 shall be made quarterly and, in any event, no later than fifteen (15) days after March 31st, June 30th,
7 September 30th, and December 31st of each year.

8 (c) **Franchise Fees Subject to Audit: Remedy for Underpayment by the Company.** The
9 Company shall provide business records which shall be sufficient for the City to verify the accuracy
10 of the Franchise Fees upon reasonable request by the City. No acceptance of any Franchise Fee
11 payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact
12 the correct amount, nor shall acceptance be deemed a release of any claim the City may have for
13 further or additional sums payable pursuant to this Franchise. All amounts shall be subject to audit
14 and re-computation by the City in accordance with the provisions of this Franchise.

15 (d) **Service to Governmental and Institutional Facilities.** In addition to any Franchise Fee
16 collected pursuant to this Franchise, the Company shall provide the fiber and facilities to the
17 governmental and institutional facilities attached hereto as Exhibit A that are adjacent to any City
18 right-of-way within which the Company has installed fiber or may in the future install fiber. Exhibit
19 A is not exclusive and may be amended by the City to include additional City facilities as deemed
20 desirable. This section shall apply to:

21 (i) Any facilities which are or have been constructed by a third-party
22 telecommunications company or Fiber Optic Network owner or operator to which the
23 Company has either legal title or a right to use of specified strands (“Third-Party Facilities”);
24 or,

25 (ii) Any facilities constructed by Company to create a connection between Third-Party
26 Facilities and a Company customer or third-party POP.

27 (e) **Dark Fiber for the City.** In addition to the Franchise Fee set forth in this Franchise, the
28 Company shall provide the City without charge, and solely for the City’s noncommercial
29 municipal purposes, four (4) dark fiber pairs in all fiber cables, whether underground or aerial,
30 installed within the City right-of-way, with sufficient space for necessary joints, and the
31 Company shall provide space in all Company POP’s sufficient to access and interconnect with any
32 or all of the four (4) dark fiber pairs allocated to the City, upon written request by the City.
33 Additional, the Company shall provide adequate space in all facilities constructed on, over, or
34 within City right-of-way for the City to attach transmission media for the City’s noncommercial
35 use.

1 (f) **Dark Fiber for the City in New Construction.** In the case of new construction of a Fiber
2 Optic Network, the Company, at its sole cost and expense, shall provide to the City for
3 noncommercial municipal purposes four (4) dark fiber pairs throughout the portion of the Fiber
4 Optic Network used for transmission purposes, as required by the City and suitable for the City's
5 stated needs. In addition, the Company shall provide lateral lines and necessary related facilities
6 connecting the City's locations to the Network as required by the City and any necessary facilities
7 to accomplish the interconnection of City fiber networks at Company cost. Building entrance
8 facilities may be constructed to facilitate the City's use of the four (4) dark fiber pairs; however,
9 the cost of construction of such building entrance facilities shall be borne by the City; provided,
10 that based upon the specifications provided by the Company, the City reserves the right to obtain
11 bids for placement of laterals from vendors other than the Company. The Company should provide
12 all specifications required for the City or the City's sub-contractor to connect to the four (4) dark
13 fiber pairs. The Company shall provide a splice, or splices, to the four (4) dark fiber pairs when
14 requested by the City.

15 (g) **Authority to Pass Franchise Fee Payments on to System End Users.** To the extent
16 permitted by law, the Company is permitted to collect any Franchise Fee assessed by the City from
17 its customer.

18 **Section 5. Oversight Regulation.**

19 (a) **City's Right of Oversight.** The City shall have the right to oversee and periodically inspect
20 the construction, operation, maintenance and upgrade of the Fiber Optic Network, and all parts of
21 the same, in accordance with the provisions of this Franchise and applicable law. The City
22 reserve the right to adopt such rules, regulations, orders, or other directives governing the
23 Company's construction and maintenance of the Fiber Optic Network as it shall find necessary or
24 appropriate in the exercise of its Police Power, and such other orders as the City shall find necessary
25 or appropriate pursuant to and in furtherance of the purposes of this Franchise. The Company
26 expressly agrees to comply with all lawful rules, regulations, orders, or other directives issued
27 pursuant to this section. No rule, regulation, order, or other directive issued pursuant to this section
28 shall constitute an amendment of this Franchise.

29 (b) **Proprietary Information as Property of Company.** The City and the Company recognize
30 that in order to comply with all the terms and conditions of this Franchise it may, on occasion, be
31 necessary for the Company to provide the city access to certain proprietary information. To the
32 extent that such information is individually noted and marked "PROPRIETARY" by the Company,
33 the City acknowledges that such information will always be considered to be in the sole custody
34 and control of the Company, that the information will only be reviewed by the City and, that despite
35 the immediate location of such material, the Company shall never be deemed to have provided it

1 to the City for the City's possession and control nor to include such information as a part of any
2 public record. In the absence of a court order issued by a court of competent jurisdiction, or a
3 subpoena duly issued according to law, should any person request access to such information upon
4 the basis of State or Federal Freedom of Information Laws, the City shall immediately return the
5 information to the Company with notice of the request, shall refuse access to the records to the
6 requesting party, and shall complete any necessary review at the Company office listed below.
7 Nothing in this Franchise should be considered to mean that in the event it is necessary for purposes
8 of litigation, State or Federal Public Finance Laws, or otherwise, for the City to publish information,
9 the City is waiving any right to request publication or to comply with any appropriate order, Statute,
10 regulation, subpoena or request for publication of such material.

11 **Section 6. *Restrictions as to Assignments and Other Transfers.*** The Company may assign, sell, or
12 transfer in any manner, in whole or in part, its right, title or interest in any part of the Fiber Optic Network,
13 provided the Company shall give written notice to the City within thirty (30) calendar days of the closing
14 of such a transaction, and provided further that the new owner or assignee is duly authorized by the state to
15 own and operate the Fiber Optic Network. The Company shall have the right to mortgage or pledge a portion
16 or all of the Fiber Optic Network in order to secure financing of the Company's operations obtained in the
17 ordinary course of business. Notwithstanding the foregoing, no mortgage or pledge entered into by the
18 Company shall relieve any person including the Mortgagor or pledger, of any of the terms and conditions
19 of this Agreement. Should any person, including the Company, default or otherwise be deemed in violation
20 of the terms of this Franchise, the City shall be permitted to exercise all its rights, privileges and remedies
21 pursuant to this Franchise.

22 **Section 7. *Specific Rights and Remedies.***

23 (a) ***Nonexclusive Remedies.*** The City and the Company agree that the other party shall have
24 the specific rights and remedies set forth in this Franchise. These rights and remedies are in addition
25 to and cumulative with any and all other rights or remedies, express or implied now or hereafter
26 available at law or in equity in order to enforce the provisions of this Franchise. Such rights and
27 remedies shall not be exclusive, but each and every right and remedy specifically provided or
28 otherwise existing or given may be exercised from time to time and as often and in such order as
29 may be deemed expedient. The exercise of one (1) or more rights or remedies shall not be deemed
30 a waiver of or acquiescence to any default. The exercise of any such right or remedy shall not
31 release the other party from its obligations or any liability under this Franchise, except as expressly
32 provided for in this Franchise or as necessary to avoid duplicative recovery by the Company or any
33 Guarantor.

1 (b) **Events of Default.** The Company agrees that an Event of Default shall include, but shall
2 not be limited to, any of the following acts or failures to act by the Company or any employee,
3 agent, or assignee of the Company:

4 (i) Failure to obtain any applicable permits from the City before construction or making
5 material expansions in the Fiber Optic Network;

6 (ii) Failure to supply insurance, bonds, or letters of credit as may be required by the City
7 to assure the proper completion of any restoration or repair performed pursuant to the
8 Franchise;

9 (iii) Failure to make any of the payments set forth in this Franchise;

10 (iv) Failure to pay any permit fees, or substantial failure to comply with any applicable
11 rules, regulations, orders or directives of the City as set forth in this Franchise;

12 (v) Failure to give notice to the City of assignment, sale or transfer of the Fiber Optic
13 Network;

14 (vi) Refusal to relocate any aspect of the Fiber Network Franchise as required by the City
15 for a municipal purpose when given written direction to do so by the City Manager so that a
16 City project, even one performed in conjunction with the State of Arkansas, the Federal
17 Government, another governmental subdivision, or any such combination; for purposes of
18 this subsection, “refusal” shall mean that the process of relocation does not begin within ten
19 (10) calendar days of the receipt of the letter from the City Manager, and further means the
20 reasonable and expeditious continued process on the relocation of facilities so the City
21 project may proceed without delay.

22 (vii) Refusal to cooperate with a City Franchise Fee Audit, whether conducted by City
23 personnel or by personnel or third-parties hired by the City, including but not limited to the
24 failure to provide access to financial records of the company within five (5) calendar days of
25 a request for such records.

26 (c) **City Action Upon Occurrence of an Event of Default.** Upon the occurrence of an Event
27 of Default and in accordance with the procedures provided for in this ordinance, the City may:

28 (i) Require the Company to take such actions as necessary to cure the Event of Default;

29 or,

30 (ii) Seek money damages from the Company as compensation for such Event of Default;

31 or,

32 (iii) Declare an abandonment of the Franchise and revoke and terminate the Franchise.

33 (d) **Procedure to Follow upon Default.** The City shall exercise the rights set forth in this
34 section in accordance with the following procedures:

1 (i) The City Manager shall notify the Company, in writing, of an alleged Event of
2 Default. This written notice shall set forth with reasonable specificity the facts the City
3 believes are the basis for declaring that an Event of Default has occurred. The Company shall,
4 within thirty (30) business days of the date of the notice is postmarked, emailed, or otherwise
5 noted to have been delivered, or such additional time as the City Manager may specify in the
6 notice, cure the alleged Event of Default, or, in writing, present for review by the City
7 Manager a reasonable time frame and method to cure the Event of Default. The Company,
8 in lieu of the cure of the Event of Default as set forth, may present written facts and arguments
9 as to why the Company disagrees that an Event of Default has occurred.

10 (ii) If the Company presents a written response that challenges whether an Event of
11 Default has occurred, the City Manager shall within ten (10) calendar days review the
12 submitted materials and determine again whether an Event of Default has occurred. If the
13 City Manager reaffirms that an Event of Default has occurred, the Company shall be notified
14 in writing of this decision and shall, within ten (10) calendar days, cure the alleged Event of
15 Default, provided the Company may immediately request, and the City Manager may
16 provide, for a reasonable extension of time for the cure of the Event of Default for good cause
17 shown. The determination of good cause is solely within the discretion of the City.

18 (iii) If the Company still fails to cure the Event of Default so declared pursuant to this
19 section within the time permitted by the City Manager, the City Manager shall notify the
20 Board of Directors and an ordinance to revoke the Franchise and require the Company to
21 remove all facilities associated with the Fiber Optic Network within thirty (30) days of the
22 passage of the ordinance repealing the Franchise.

23 (e) *Procedure to Follow upon Default with Relation to Sections 7 (b) (v) and (vi).*
24 Notwithstanding any other provision of this ordinance, if the Event of Default by the Company is
25 covered by Section 7 (b) (v) or Section 7 (b) (vi) of this ordinance, the time frames set forth in these
26 subsections shall be followed. At the end of the times frames enumerated, if the Company has not
27 cured the Event of Default, then the City Manager shall proceed pursuant to Section 7 (d) (iii).

28 (f) **Removal. IN ADDITION TO THE RIGHTS UNDER THIS SECTION, THE CITY,**
29 **UPON ANY TERMINATION, MAY, AT ITS SOLE DISCRETION, DIRECT THE**
30 **COMPANY TO REMOVE, AT THE COMPANY'S SOLE COST AND EXPENSE, ANY**
31 **AND ALL OF THE FIBER OPTIC NETWORK THAT IS THE SUBJECT OF THIS**
32 **ORDINANCE FROM THE CITY RIGHT-OF-WAY IF THE FAILURE TO REMOVE THE**
33 **FIBER OPTIC NETWORK WILL, WITHIN THE SOLE DISCRETION OF THE CITY,**
34 **ENDANGER THE PUBLIC HEALTH AND WELFARE OR OTHERWISE ADVERSELY**
35 **AFFECT THE PUBLIC INTEREST, SUBJECT TO THE FOLLOWING:**

1 (i) The City may determine that removal of buried fiber optic cable or conduit is not
2 necessary;

3 (ii) In removing any part of the Fiber Optic Network, the Company shall refill and
4 compact, at its own expense, any excavation that shall be made by it and shall leave all City
5 right-of-way in as good a condition as that prevailing, in the sole opinion of the City, as that
6 prevailing prior to the Company's removal of the Fiber Optic Network;

7 (iii) The City shall have the right to inspect and approve the conditions of the City right-
8 of-way after removal has occurred;

9 (iv) The removal shall commence within ten (10) business days of an order to remove
10 issued by the City Manager;

11 (v) Prior to the City's exercise of this right, the Company's mortgagees, pledgees, or
12 other persons providing financing to the Company shall have the right to cure the Company's
13 default under this Agreement. The City acknowledges that its right to direct the Company to
14 remove the Fiber Optic Network provided for in this Franchise shall be subject and
15 subordinate to the rights of the Company's mortgagee, pledgee, or other person providing
16 financing to the Company, as described in the written documents evidencing the financing
17 or the security for the financing, provided that such mortgagee, creditor, pledgee, or other
18 person providing financing to the City complies with each and every term and condition of
19 this Franchise.

20 (e) **Consent Not a Waiver**, The grant or waiver of any one or more of the consents required
21 by this Franchise shall not render unnecessary any subsequent consent, nor shall the grant of any
22 such consent constitute a waiver of any other rights of the City or the Company.

23 **Section 8. Subsequent Action.**

24 (a) **Current Enforceability of Agreement.** The City and the Company agree that the execution
25 of this Franchise and the terms and conditions are valid in their entirety.

26 (b) **Indemnification.** The Company shall indemnify and hold harmless the City and all of its
27 Officers, agents, and employees from all suits, actions, or claims of any character, style and
28 description brought for or on account of any injuries or damages, including death, received or
29 sustained by any person or any property occasioned by, arising out of, or in connection with the
30 grossly negligent or negligent acts or omissions of the Company regarding the erection,
31 construction, location, replacement, reconstructions, maintenance, repair, or operation of the Fiber
32 Optic Network, and the Company shall pay any judgments, interest, and costs which may be
33 obtained against the City arising out of such injury or damage. If the Franchise granted by this
34 ordinance is terminated, abandoned, or is not renewed, and the Company does not remove its

1 facilities from the City right-of-way, the Company shall continue to indemnify and hold harmless
2 the City pursuant to this section as long as its facilities are located in the City right-of-way.

3 (c) ***Procedure to Follow upon Default with Relation to Sections 7 (b) (v) and (vi).***
4 Notwithstanding any other provision of this ordinance, if the Event of Default by the Company is
5 covered by Section 7 (b) (v) or Section 7 (b) (vi) of this ordinance, the time frames set forth in these
6 subsections shall be followed. At the end of the times frames enumerated, if the Company has not
7 cured the Event of Default, then the City Manager shall proceed pursuant to Section 7 (d) (iii).

8 (d) ***Procedure to Follow upon Default with Relation to Sections 7 (b) (v) and (vi).***
9 Notwithstanding any other provision of this ordinance, if the Event of Default by the Company is
10 covered by Section 7 (b) (v) or Section 7 (b) (vi) of this ordinance, the time frames set forth in these
11 subsections shall be followed. At the end of the times frames enumerated, if the Company has not
12 cured the Event of Default, then the City Manager shall proceed pursuant to Section 7 (d) (iii).

13 **Section 9. Insurance Requirements.** The Company shall maintain the following insurance coverages
14 and the respective policies shall cover all risks related to the use and occupancy of the City right-of-way
15 and all other risks associated with this Franchise.

16 (a) **Description of Insurance and Limits**

17 (i) ***Commercial General Liability Insurance*** – Two Million Dollars (\$2,000,000.00)
18 for each occurrence coverage which shall include the following: premises, operations,
19 independent contractors, products/completed operations, personal injury, contractual
20 liability, explosion/collapse/underground property damage. This insurance shall be provided
21 on an occurrence basis and be as comprehensive as the current Insurance Services Office
22 (ISO) Policy.

23 (ii) ***Automobile Liability Insurance*** – One million Dollars (\$1,000,000.00) each
24 accident with coverage on any automobile including lease, hired, owned, non-owned, or
25 borrowed vehicles.

26 (iii) ***Environmental Impairment Liability.*** This insurance should include Pollution
27 Liability Insurance, and the amount should be One million Dollars (\$1,000,000.00) per
28 occurrence if such insurance can be reasonably obtained. This coverage is to be provided on
29 an occurrence basis and it shall include claims arising from gradual emissions and sudden
30 accidents. Clean-up and defense costs shall be covered.

31 (iv) ***Workers Compensation Insurance Statutory Limits*** – Employer’s Liability
32 minimum of Five Hundred Thousand Dollars (\$500,000.00) for each accident/disease-each
33 employee/disease-policy limit.

1 **(b) Other Insurance Related Requirements**

2 (i) The City shall be named as an additional insured, by endorsement, on applicable
3 insurance policies;

4 (ii) Applicable insurance policies shall each be endorsed with a waiver of subrogation in
5 favor of the City;

6 (iii) Insurers shall be rated “A-7” or better by A.M Best and such companies shall be
7 authorized to do business and be in good standing in the State of Arkansas, or otherwise
8 approved by the City.

9 (iv) The City shall be notified within a minimum of thirty (30) days prior to the insurer’s
10 action in the event of cancellation, non-renewal or material change coverage regarding any
11 policy providing insurance coverage required in this Franchise.

12 (v) Full limits of insurance required in Subsection (a) of this section shall be available
13 for claims arising out of this Franchise with the City.

14 (vi) Certificates of Insurance shall be provided by the Company to the City prior to
15 commencement of operations pursuant to this Franchise. Any failures on the part of the City
16 to request such documentation shall not be construed as a waiver of the specified insurance
17 requirements.

18 (vii) The City shall be entitled, upon reasonable request, to review the insurance policies
19 including endorsements to the policies and, at its discretion, to require proof of payment for
20 policy premiums.

21 (viii) The City reserves the right to review and revise the insurance requirements
22 specified in this Franchise and requirement the company to comply with any such revisions
23 within thirty (30) days of official notice from the City.

24 (ix) The City shall not be responsible for paying the cost of insurance required by the
25 Franchise.

26 (x) “Other insurance,” as referenced in any policy of insurance providing coverages
27 required by this Franchise shall not apply to the City.

28 (xi) The Company shall agree to either require its contractors to maintain the same
29 insurance coverages and limits that are specific in this Franchise or such coverage on the
30 Company’s contractors shall be provided by the Company.

31 **Section 10. Miscellaneous Issues.**

32 (a) **Controlling Law.** This Franchise shall be determined according to the laws of the State of
33 Arkansas and venue and jurisdiction to challenge, contest, review, or otherwise subject its terms
34 and conditions to litigation shall occur in Little Rock, Pulaski County, Arkansas, or in the United
35 States District Court for the Eastern District of Arkansas.

1 (b) **Captions.** The captions given to various provisions of this Franchise are for purposes of
2 convenience only and are to have no impact upon the interpretation of any such provisions.

3 (c) **Entire Agreement.** This Franchise, with its exhibits, comprises the entire Agreement
4 between the City and the Company for purposes of this Franchise, provided, that any
5 modification to Little Rock, Ark., Rev. Code 2-350 to -357 (1988) – the City utility relocation
6 policy – may be applied to this Franchise.

7 (d) **Nondiscrimination.** The Company agrees to comply with all applicable local, State and
8 Federal Laws and regulations the prohibit discrimination against any individual on the basis of race,
9 color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender
10 identity, or genetic information. Further, the Company agrees to comply with Title VI of the Civil
11 Rights Act of 1964 – 42 U.S.C. § 2000d and following, 78 Stat. 252) and its applicable statutory,
12 regulatory authorities, other pertinent directives, circulars, policy, memoranda, and guidance
13 prohibiting discrimination on the basis for race, color national origin, age, sex and disability and
14 give assurance that it will promptly take any measures necessary to assure such compliance at any
15 site, or as a part of any project, that triggers that applicability of Title VI.

16 (e) **Burden of Proof.** In any disagreement upon the terms and conditions of this Franchise,
17 the Company shall bear the burden to demonstrate that it is in compliance with each term and
18 condition of the Franchise for all purposes.

19 (f) **No Coercion.** The Company and the City enter into this Franchise Agreement willingly
20 and voluntarily and without any coercion, undue influence, or duress.

21 (g) **Multiple Originals.** This Franchise may be executed in any number of copies and any fully
22 executed copy of this Franchise shall be deemed an original for purposes of authentication or
23 presentation in evidence before any court, administrative tribunal, or alternative dispute resolution
24 proceeding.

25 (h) **Notice.** Any notice or communication required in the administration of this Franchise shall
26 be sent by any method which assures overnight delivery and shall be addressed as follows:

27 (i) **For the City of Little Rock**

28 City Manager
29 500 West Markham Street, Room 203
30 Little Rock, Arkansas 72201

31 With a copy delivered to:

32 Office of the City Attorney
33 500 West Markham Street, Room 310
34 Little Rock, Arkansas 72201

35 And

1 Office of the Treasury Manager
2 500 West Markham Street, Room 100
3 Little Rock, Arkansas 72201

4 (ii) ***For the Company***

5 ExeNet Systems, Inc.
6 Attn: CFO
7 3030 Warrenville Road, Suite 340
8 Lisle, Illinois 60532

9 (iii) The City and the Company may, from time to time, designate a different person or
10 entity for notice by letter to the primary parties listed immediately above.

11 (iv) For purposes of notice, delivery to the primary party named is sufficient to establish
12 that the required notice has been accomplished, and such delivery to those copied with the
13 notice is not required to establish that notice has been accomplished.

14 (i) ***Access to Legal Counsel.*** The parties agree that each individual party has had independent
15 access to legal counsel as to the terms and conditions of this Franchise; therefore, no party shall be
16 entitled to any presumption based upon which party drafted the terms and conditions of this
17 Franchise.

18 (h) ***No Barrier to Competition.*** The parties agree that the terms and conditions of this
19 Franchise are reasonable, fair and equitable, and comply with all local, State and Federal Laws and
20 regulations; further, that nothing in the terms of this Franchise in any way constitutes a barrier to
21 competition.

22 (i) ***Change in Law.*** Notwithstanding any other term of condition set forth above, the parties
23 agree that should there be a significant change in the law that would govern a Franchise for a Fiber
24 Optic Network, the parties shall upon, the request of either the City or the Company, within forty-
25 five (45) days of such request, sit down to discuss and negotiate any necessary modifications of
26 this Franchise occasioned by such change in law.

27 (j) ***Signatories for Acceptance of Terms & Conditions of the Franchise.*** Exhibit A to this
28 Franchise is a signatory page for the City and for the Company to execute and represents that the
29 parties agree to the terms and conditions set forth within this ordinance, and that the persons
30 executing this Exhibit have the authority of the City and of the Company to do so.

31 **Section 11. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
32 word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or
33 adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and
34 effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the
35 ordinance.

1 **Section 12. Repealer.** All laws, ordinances, resolutions, or parts of the same that are inconsistent with
2 the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

3 **PASSED: July 17, 2018**

4 **ATTEST:**

APPROVED:

5
6 _____
7 **Susan Langley, City Clerk**

_____ **Mark Stodola, Mayor**

8 **APPROVED AS TO LEGAL FORM:**

9
10 _____
11 **Thomas M. Carpenter, City Attorney**

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1 **EXHIBIT A**

2 **EXECUTION OF FRANCHISE AGREEMENT**

3
4 **WHEREUPON**, the City and the Company, acting through their duly authorized officers and pursuant
5 to appropriate authority granted by their respective governing bodies, do hereby execute this Franchise.

6 **CITY OF LITTLE ROCK, ARKANSAS** _____

7
8 **By:** _____

9 **Bruce T. Moore**

10 **Title:** City Manager

11
12 **Date:** _____

By: _____

Title: _____

Date: _____

13 **ATTEST:**

14
15 _____

16
17 **Date;** _____

Date: _____

18
19 **CITY ACKNOWLEDGMENT**

20 **STATE OF ARKANSAS)**

21) ss

22 **COUNTY OF PULASKI)**

23 I, _____, a Notary Public in and for Pulaski County, Arkansas, do hereby
24 certify that Bruce T. Moore, personally known to me as the City Manager for the City of Little Rock,
25 Arkansas, and Susan Langley, personally known to me as the City Clerk for the City of Little Rock,
26 Arkansas, appeared before me this ____ day of July, 2018, in personally and severally acknowledged that
27 as the City Manager and City Clerk they signed and sealed this instrument and caused the seal of the Board
28 of Directors of the City of Little Rock, Arkansas, as their free and voluntary act and deed of said City of
29 Little Rock, Arkansas, for the uses and purposes therein set forth.

30 Given under my hand and notarial seal this ____ day of July, 2018.

31
32 _____
33 **Notary Public**

34 **My Commission Expires:**

35 **(Seal)**

1 **COMPANY ACKNOWLEDGMENT**

2 **STATE OF _____)**

3) ss

4 **COUNTY OF _____)**

5 BE IT REMEMBERED, that on this day before the undersigned, a Notary Public within and for the
6 county aforesaid, duly commissioned and acting, appeared in person
7 _____ and _____ to me well known, who
8 stated that they were the _____ and _____ of the company
9 executing this instrument, and were duly authorized in their respective capacities to execute the foregoing
10 instrument for the name and behalf of said company, and further stated that they had executed the same for
11 the consideration and purposes mentioned in the Franchise as set forth.

12 Given under my hand and notarial seal this ____ day of July, 2018.

13 WITNESS my hand and seal as such Notary Public on this ____ day of July, 2018.

14
15 _____
16 **Notary Public**
17

18 **My Commission Expires:**

19 **(Seal)**

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