

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Title 5 of the Lincoln Municipal Code relating to Licenses and  
2 Regulations to create a new Chapter entitled “Residential Broadband” to establish licenses and  
3 regulations for residential broadband services.

4 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5 Section 1. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
6 numbered 5.12.010 to read as follows:

7 **5.12.010 Title.**

8 This chapter shall be known as the Residential Broadband Ordinance.

9 Section 2. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
10 numbered 5.12.020 to read as follows:

11 **5.12.020 Purpose.**

12 The general purposes of this ordinance are to:

13 (a) Provide for the franchising and regulation of systems utilizing the City's conduit  
14 system and providing broadband service within the City of Lincoln;

15 (b) Provide a legal framework for the deployment of broadband systems that meet the  
16 current needs of the City and that can be improved and upgraded to meet future needs;

17 (c) Provide for the payment of fees and other valuable consideration to the City for the  
18 use of the public ways and for the privilege to construct such systems;

19 (d) Provide for the development of systems as a means to improve communication  
20 between and among the members of the public and public institutions of the City; and

21 (e) Provide remedies and prescribe sanctions for violation of this ordinance and any  
22 franchise granted hereunder.

1 Section 3. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.030 to read as follows:

3 **5.12.030** **Applicability.**

4 This ordinance is applicable to any application for a broadband system franchise filed on or  
5 after the effective date of this ordinance and to any such franchise granted thereafter. Any franchise  
6 granted prior to the effective date of this ordinance shall be subject to the provisions of this chapter,  
7 as they may be amended from time to time. A broadband system operator utilizing any part of the  
8 City's conduit system to provide residential broadband, whether by direct lease or by sublease, must  
9 obtain a franchise prior to constructing a broadband system or providing such service within the  
10 City.

11 Section 4. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
12 numbered 5.12.040 to read as follows:

13 **5.12.040** **Definitions.**

14 For the purposes of this ordinance, the following terms, phrases, words, and their derivations  
15 shall have the following meanings. Unless otherwise expressly stated, words not defined therein,  
16 shall be given their common and ordinary meaning.

17 A. "Agent" shall mean any contractor, subcontractor, person, or entity, other than an  
18 employee of the Franchisee, which is under the direction, control, or authorization of Franchisee to  
19 affect, install, operate and maintain Facilities owned, managed, or operated by Franchisee in the  
20 Right of Way.

21 B. "Broadband Facilities" means all of the plant, electronic equipment, fixtures,  
22 appurtenances, and other facilities necessary to furnish and deliver Broadband Services, including  
23 but not limited to, poles with crossarms, poles without crossarms, wires, lines, conduits, innerducts,

1 cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all  
2 attachments, appurtenances, and appliances used in connection with or incidental to the distribution  
3 and use associated with an Optical Fiber system.

4 C. "Broadband Service" means a high speed Internet access service with a minimum  
5 speed of 100 Megabits per second and provided by the Franchisee for hire, sale, or resale to the  
6 general public.

7 D. "City" means the City of Lincoln, Nebraska, its agencies, departments, and divisions,  
8 successors, in its present form, or in any later reorganized, consolidated, or enlarged form.

9 E. "City Property" means and includes all real property owned by the City, other than  
10 Right of Ways, including, without limitation, City parks and all property owned in fee by the City.

11 F. "Conduit" means optical cable housing, jackets or casing, and pipes, tubes, or tiles  
12 used for receiving and protecting wires, lines, cables, and communication and signal lines, including  
13 Optical Fiber.

14 G. "Costs" means costs, expenses, and other financial obligations of any kind  
15 whatsoever.

16 H. "Data Caps" means any residential customer volume limitation on the amount of data  
17 per month per household or per device connected to the System where exceeding the cap could  
18 subject a household to alterations to its Internet access, possibly after one or more warnings, such  
19 as reduction of access speed, additional charges, suspension of service, or even termination of  
20 service.

21 I. "Effective Date" means five (5) days following the publication of this Ordinance or  
22 a summary thereof in an official newspaper of the City as provided by law.

1           J.       "Emergency" means a condition of imminent danger to the health, safety, and welfare  
2 of property or persons located within the City including, without limitation, damage to persons or  
3 property from accidents or natural consequences, such as storms, earthquakes, riots, or wars.

4           K.       "Existing" means in actual physical being upon the effective date of this Ordinance.

5           L.       "Fiber Optic Technology" means a transmission medium capable of carrying digitized  
6 bits, bytes, or packets of communications or information (such as voice, video, or data) by means  
7 of electric lightwave impulses along a glass or plastic strand or fiber.

8           M.       "Franchisee" refers to any person or entity that has been granted a franchise by the  
9 City in accordance with the provisions of applicable law, including any lawful successor, transferee,  
10 or assignee thereto.

11          N.       "Franchise Territory" means all of the area within the city limits of the City as well  
12 as any area henceforth annexed thereto during the term of the Franchise.

13          O.       "Information" means knowledge or intelligence represented by any form of writing,  
14 signs, signals, pictures, sounds, or any other symbols.

15          P.       "Obstruct" shall mean to place any tangible object or material in the Right of Way  
16 in a manner that stops, hinders, disrupts, or otherwise interferes with free and open passage over a  
17 specific area or part of the Right of Way. The term does not include the otherwise legal parking of  
18 a vehicle subject to all of the current parking regulations of the City.

19          Q.       "Optical Fiber" means wires, lines, and cables used to convey communications or  
20 information by means of Fiber Optic Technology.

21          R.       "Overhead Facilities" means facilities located above the surface of the ground,  
22 including the underground supports and foundations for such facilities.

1           S. "Person" means a natural person, joint venture, joint stock association, or company,  
2 partnership, firm, association, club, company, corporation, limited liability company, business trust,  
3 or organization.

4           T. "Public Street" means the surface, the area below the surface, and the airspace above  
5 the surface, of any highway, street, road, lane, alley, unpaved alley, path, parkway, viaduct, bridge,  
6 sidewalk, or other public right of way for motor vehicle or pedestrian travel under the jurisdiction  
7 and control of the City which has been acquired, established, dedicated, or devoted to such purposes.

8           U. "Right of Way" means and includes all present and future: (i) Public Streets and (ii)  
9 utility easements or similar properties in which the City now or hereafter holds a property interest  
10 and/or a maintenance responsibility which, consistent with the purposes for which it was granted  
11 or dedicated, may be used to install, operate, and maintain Optical Fiber or Facilities, now or  
12 hereafter owned by or under the jurisdiction and control of the City, but only to the extent of the  
13 City's right, title, interest, or authority to grant a license or franchise to occupy and use such Right  
14 of Way for Optical Fiber or Facilities. "Right of Way" does not include City Property; State  
15 highways; land dedicated for roads or streets but not opened or improved for motor vehicle use by  
16 the public; structures, including poles and conduits, located within the public way; federally granted  
17 trust lands or forest board trust lands; lands owned or managed by the state Game and Parks  
18 Commission; federally granted railroad rights of way that are not open for motor vehicle use; or  
19 utility easements granted to utility companies (which may be reflected in a real property deed,  
20 subdivision plat, or other real property record) with respect to which the City holds no property  
21 interest or maintenance responsibility.

1           V. "Right of Way Construction Permit" or "ROW Construction Permit" shall mean an  
2 authorization to excavate in or obstruct Right of Way at a specific place and time in order to install,  
3 operate, and maintain Facilities within a specified portion of Right of Way.

4           W. "Services" means Broadband Service and the low-cost Internet access service  
5 described in Section 5, paragraph (B) hereof offered and delivered by Franchisee to Subscribers over  
6 the System within the Franchise Territory. The Franchisee shall provide at least 2 levels of service  
7 over its facilities which shall include a basic Broadband Service equal to or greater than 100  
8 Megabits Per Second (Mbps) and a high level Broadband Service equal to or greater than 1 Gigabit  
9 Per Second (Gbps). Except as provided in Section 5, paragraph (B), no service speed shall be  
10 offered slower than 100 Mbps unless approved by the City Council.

11           X. "State" means the State of Nebraska, its agencies, departments, and governmental  
12 subdivisions.

13           Y. "Subscriber" means any Person who entered into an agreement with Franchisee to  
14 subscribe to and is lawfully receiving Services provided by Franchisee on the Franchisee's System.

15           Z. "System" means Grantee's network of Optical Fiber and Facilities used to furnish and  
16 deliver Services in the Franchise Territory.

17           AA. "Underground Facilities" means facilities located under the surface of the ground,  
18 other than underground foundations or supports for overhead facilities.

19           BB. "Utility Poles" means poles, crossarms, devices, and attachments directly affixed to  
20 such poles which are used for the transmission and distribution of electrical energy, signals, or other  
21 methods of communication.

1 Section 5. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.050 to read as follows:

3 **5.12.050 Requirement of a Franchise.**

4 1. It shall be unlawful to construct, install, maintain, or operate a Broadband Facility  
5 within the City without a valid franchise obtained pursuant to the provisions of this chapter.  
6 Conversion of a franchised Broadband system to any other similar system in accordance with  
7 applicable FCC regulations shall not alter or in any way limit the terms or enforceability of the  
8 franchise granted by the City and the franchise agreement executed by the City and the franchisee.

9 2. Any person or entity occupying the public ways of the City for the purpose of  
10 operating or constructing a Broadband Facility, which person or entity does not hold a valid  
11 franchise from the City, shall be subject to all provisions of this chapter, to the extent permitted by  
12 law. The City at any time: (i) may require such person or entity to obtain a franchise within thirty  
13 (30) days of receipt of a written notice from the City that a franchise is required; (ii) require such  
14 person or entity to remove its property from the public ways and, at such person's or entity's sole  
15 expense, restore the area to a condition satisfactory to the City within a reasonable period of time  
16 as the City shall determine; (iii) remove the property itself and restore the area to a satisfactory  
17 condition and charge the person or entity the costs therefore; and/or (iv) take any other action  
18 permitted by law, including, but not limited to, filing for and seeking damages for trespass. In no  
19 event shall a franchise be created unless it is approved by action of the City Council and the  
20 franchise terms are set forth in a franchise agreement.

21 3. Any act that a franchisee is or may be required to perform under this chapter, a  
22 franchise or other applicable laws or regulations shall be performed at the franchisee's expense,  
23 unless expressly provided to the contrary in this chapter, a franchise, or applicable law. Nothing in

1 this paragraph shall prohibit a franchisee from recovering such expenses from the franchisee's  
2 subscribers, to the extent permitted by applicable law.

3 Section 6. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
4 numbered 5.12.060 to read as follows:

5 **5.12.060 General Franchise Characteristics.**

6 Any franchise issued pursuant to the provisions of this chapter shall be deemed to:

7 (a) Authorize use of the public ways for installing cables, wires, lines, fiber, and other  
8 facilities necessary and appurtenant to the operation of a Broadband Facility within a franchise area,  
9 but shall neither expressly nor impliedly be deemed to authorize a grantee to provide service to, or  
10 install a Broadband Facility and related equipment on, private property without owner consent or  
11 to utilize publicly- or privately-owned utility poles or conduits without a separate agreement with  
12 the owners thereof;

13 (b) Be nonexclusive, and shall neither expressly nor impliedly be deemed to preclude  
14 the issuance of subsequent franchises to operate one or more other Broadband Facilities within the  
15 City; and shall not affect the City's right to authorize the use of public ways as the City deems  
16 appropriate;

17 (c) Constitute a right to operate a Broadband Facility regulated by the provisions of this  
18 chapter and a franchise;

19 (d) Be subordinate to, without limitation, the City's use and any prior lawful occupancy  
20 of the public ways;

21 (e) Be subject to the City's right to reasonably designate where a franchisee's facilities  
22 are to be placed within the public ways and to resolve any disputes among users of the public ways  
23 on a non-discriminatory basis; and

1           (f)     Convey no property right to a franchisee or right to renewal.

2           Section 7. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
3 numbered 5.12.070 to read as follows:

4     **5.12.070       Franchise as a Contract.**

5           A franchise issued pursuant to the provisions of this chapter shall be deemed to constitute  
6 a contract between the franchisee and the City. A franchisee shall be deemed to have contractually  
7 committed itself to accept and comply with the terms, conditions, and provisions of the franchise  
8 documents. No franchise shall be deemed to waive or in any other way restrict the City's police  
9 powers or the franchisee's rights under state or federal law.

10          Section 8. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
11 numbered 5.12.080 to read as follows:

12     **5.12.080       Conflicts.**

13          (a)     All terms, conditions, and provisions of this chapter and any application for a  
14 franchise shall be deemed to be embodied in a franchise, and conflicts in terms, conditions, or  
15 provisions between these documents shall be resolved as follows:

16               (1)     The express terms of this chapter shall prevail over conflicting or inconsistent  
17 provisions of the franchise; and

18               (2)     The express terms of a franchise shall prevail over conflicting or inconsistent  
19 provisions in a franchise application or any requests for proposals; and

20               (3)     The express terms of any request for proposals shall prevail over conflicting  
21 or inconsistent provisions in the application for the franchise.

22          (b)     The provisions of a franchise shall be liberally construed in order to effectuate its  
23 purposes and objectives consistent with this chapter and the public interest. In the event one or more

1 provisions of a franchise or this chapter are subsequently found to be unlawful, null and void or  
2 unenforceable, the City shall consider said provision(s) severed from the franchise so as to continue  
3 the franchise's effectiveness. A franchise agreement shall be construed under the laws of the State  
4 of Nebraska.

5 Should any provision of a franchise or of this chapter be found unlawful, null, void, or  
6 unenforceable, the parties shall negotiate in good faith any replacement provisions to carry out the  
7 full intent and purpose of this agreement.

8 Section 9. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
9 numbered 5.12.090 to read as follows:

10 **5.12.090 Company Subject to Police Power.**

11 In accepting this Franchise, a grantee acknowledges that its rights hereunder are subject to  
12 the police powers of the City to adopt and enforce general ordinances necessary to the safety and  
13 welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted  
14 by the City pursuant to such power. Any conflicts between the provisions of this chapter and any  
15 other present or future lawful exercise of the City's police power shall be resolved in favor of the  
16 latter, except that any such exercise that is not of a general application in the jurisdiction or applies  
17 exclusively to grantee which contains provisions inconsistent with this chapter shall prevail only if,  
18 upon such exercise, the City finds that an emergency exists constituting a danger to health, safety,  
19 property, or general welfare or such exercise is mandated by law.

20 Section 10. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
21 numbered 5.12.100 to read as follows:

22 **5.12.100 Franchise Validity.**

1 A grantee shall agree, by the acceptance of a franchise, to accept the validity of the terms and  
2 conditions of this ordinance and the franchise in their entirety subject to applicable law.

3 Section 11. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
4 numbered 5.12.110 to read as follows:

5 **5.12.110 Filing of Applications.**

6 (a) An operator and/or owner of a Broadband system seeking an initial or renewal  
7 franchise shall file a written application with the City. The application must contain the information  
8 set forth in §5.12.120 of this chapter, and such additional information as the City may from time to  
9 time require.

10 (b) A franchisee requesting a modification to its franchise shall file a written application  
11 with the City. The application must contain the information set forth in §5.12.130 of this chapter,  
12 and such additional information as the City may from time to time require.

13 (c) To be considered accepted for filing, a fully completed, signed original application,  
14 in a form prepared by or acceptable to the City, shall be submitted as provided herein together with  
15 six copies. The application shall be accompanied by any required filing fee, shall conform to any  
16 applicable request for proposals, and shall contain all information required by the City.

17 (d) To the extent permitted by law, all applications accepted for filing shall be made  
18 available by the City for public inspection.

19 Section 12. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
20 numbered 5.12.120 to read as follows:

21 **5.12.120 Content of Applications for a Broadband System Franchise.**

22 To be acceptable for filing, an application for an initial or renewal Broadband system  
23 franchise shall, at a minimum, contain the following information:

1           (a)    The identity of the applicant; the persons or entities who exercise working control  
2 over the applicant; and the persons or entities who control those persons or entities, to the ultimate  
3 parent entity.

4           (b)    A proposal for construction of the Broadband system with a proposed system  
5 description including:

6                   (1)    A description of the services that are to be provided over the facility.

7                   (2)    The identification of the area of the City to be served by the facility.

8                   (3)    The location of the proposed facility and facility design, including a  
9 description of the miles of plant to be installed; a description of the size of equipment cabinets,  
10 shielding, and electronics that will be installed along the plant route; a description of the power  
11 sources that will be used; and a description of the noise, exhaust, and pollutants, if any, that will be  
12 generated by the operation of the same.

13                   (4)    A map of the route the facility will follow; a designation of the portions of  
14 the system that will be placed above-ground and the portions that will be placed underground; the  
15 construction techniques that the operator proposes to use in installing the system above-ground and  
16 underground; a schedule for construction of the facility, describing when and where construction  
17 will begin, how it will proceed, and when it will be completed; and the expected effect on  
18 right-of-way usage, including information on the ability of the public rights-of-way to accommodate  
19 the proposed system, including, as appropriate given the system proposed, an estimate of the  
20 availability of space in conduits and an estimate of the cost of any necessary rearrangement of  
21 existing facilities. To the extent plans for the facility required under this subsection have not been  
22 completed, an applicant may so state, but (i) the best available equivalent must be provided and (ii)  
23 no construction may begin, even if a franchise issues, until this information has been provided to and

1 approved by the City. Any such grant will be conditional upon receipt and approval of this  
2 information by the City.

3 (5) A description, where appropriate, of how services will be converted from  
4 existing facilities to new facilities and what will be done with existing facilities.

5 (c) Proof, attested to by a certified public accountant, that the applicant has the financial  
6 resources to complete the proposed project and to construct, operate, maintain, and repair the  
7 proposed facility over the proposed franchise term. Such proof shall include, but not be limited to:

8 (1) a certified statement prepared by a certified public accountant regarding the  
9 applicant's financial ability to complete the construction proposed, to meet the time frame proposed,  
10 and to operate the system proposed. If an applicant is a joint venture or partnership, the same  
11 information shall be provided for each participant in the joint venture or partnership;

12 (2) pro forma financial projections for the proposed franchise term, including a  
13 statement of projected income and a schedule of planned capital additions, with all significant  
14 assumptions explained in notes or supporting schedules; and

15 (3) the applicant's proposed rate structure, including prospective charges for  
16 service, installation, converters, and all other proposed equipment for the ensuing five years.

17 (d) Proof that an applicant is technically qualified to construct, operate, maintain, and  
18 repair the proposed facility. At a minimum, the applicant must show that it has the experience or  
19 resources to ensure that work is to be performed adequately and can respond to emergencies during  
20 and after construction is complete.

21 (e) Proof that the applicant is legally qualified, which proof must include a demonstration  
22 that the applicant:

1           (1)    has received, or is in a position to receive, necessary authorizations from state  
2 and federal authorities;

3           (2)    has not engaged in conduct (fraud, racketeering, violation of antitrust laws,  
4 consumer protection laws, or similar laws) that allows the City to conclude the applicant cannot be  
5 relied upon to comply with the requirements of a franchise, or the provisions of this chapter and  
6 other applicable laws, regulations, and requirements; and

7           (3)    is willing to enter into a franchise, to pay required compensation, and to abide  
8 by the provisions of applicable law, including those relating to the construction, operation, or  
9 maintenance of its facilities, and has not entered into any agreement that would prevent it from doing  
10 so.

11          (f)    To the extent an applicant is in any respect relying on the financial or technical  
12 resources of another person or entity, including another affiliate, the proofs required under  
13 §5.12.120(c) - (d) should be provided for that person or entity.

14          (g)    A description of the applicant's prior experience in Broadband Facility ownership,  
15 construction and operation, and an identification of cities and counties in Nebraska in which the  
16 applicant or any of its principals have a franchise or any interest therein, including the name,  
17 address, and phone number of each local franchising authority and references from each authority.  
18 If an applicant has no other franchise in Nebraska, it shall provide the information for its operations  
19 in other states.

20          (h)    Copies of any agreements which an applicant has entered into or proposes to enter  
21 into with any other person or entity relating to the system.

22          (i)    Any additional information that the City or the City Council may request of the  
23 applicant that is relevant to the City's consideration of the application.

1           (j) An affidavit or declaration of the applicant or authorized officer thereof certifying  
2 the truth and accuracy of the information in the application and certifying that the application meets  
3 all requirements of applicable law.

4           (k) A declaration that the applicant agrees to comply with this chapter and will abide by the  
5 City Council's decision to grant or deny a franchise.

6           Section 13. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
7 numbered 5.12.130 to read as follows:

8 **5.12.130       Applications for Modification of a Franchise.**

9           (a) An application for modification of a franchise shall include, at a minimum, the  
10 following information:

11                   (1) The specific information requested;

12                   (2) The justification for the requested modification, including the impact of the  
13 requested modification on subscribers, the City, and others, and the financial impact on the applicant  
14 if the modification is approved or disapproved, demonstrated through, inter alia, submission of pro  
15 forma statements;

16                   (3) Any other information the applicant believes is necessary for the City to make  
17 an informed determination on the application for modification; and

18                   (4) An affidavit or declaration of the applicant or authorized officer certifying  
19 the truth and accuracy of the information in the application, and certifying that the application is  
20 consistent with the requirements of applicable law.

1 Section 14. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.140 to read as follows:

3 **5.12.140 Applicant Representatives.**

4 Any person who files an application with the City for a franchise or modification shall  
5 forthwith, at all times, disclose to the City, in writing, the names, addresses, and occupations of all  
6 persons who are authorized to represent or act on behalf of the applicant in those matters pertaining  
7 to the application. The requirement to make such disclosure shall continue until the City shall have  
8 rejected or approved an applicant's application or until an applicant withdraws its application.

9 Section 15. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
10 numbered 5.12.150 to read as follows:

11 **5.12.150 Consideration of Applications for a Franchise.**

12 (a) The City shall consider each application for a franchise where the application is found  
13 to be acceptable for filing and in full compliance with the requirements of this chapter and any  
14 applicable request for proposals. In evaluating an application for a franchise, the City shall consider,  
15 among other things, the following factors:

16 (1) The extent to which the applicant has substantially complied with applicable  
17 law and the material terms of any existing franchise for the City;

18 (2) Whether the quality of the applicant's service under any existing franchise or  
19 similar grant in the City, including signal quality, response to consumer complaints, billing  
20 practices, and the like, has been reasonable in light of the needs and interests of the communities  
21 served;

22 (3) Whether the applicant has the financial, technical, and legal qualifications to  
23 provide Broadband service;

1           (4)    Whether the application satisfies the requirements established by the City  
2 under this chapter or in an RFP;

3           (5)    Whether a Broadband system franchise application is reasonable to meet the  
4 future Broadband-related needs and interests of the community, taking into account the cost of  
5 meeting such needs and interests;

6           (6)    Whether issuance of a franchise is in the public interest considering the  
7 immediate and future effect on the public ways and private property that would be used by the  
8 Broadband facility, including the extent to which installation or maintenance as planned would  
9 require replacement of property or involve disruption of property, public services, or use of the  
10 public ways; and the comparative superiority or inferiority of competing applications; and

11          (7)    Whether approval of the application may eliminate or reduce competition in  
12 the delivery of Broadband service in the City.

13          (b)    Where the City determines that an applicant's franchise application would serve the  
14 public interest, after considering the factors in §5.12.130(a) and any other relevant factors permitted  
15 by law to be considered, and subject to the applicant's agreement to the terms of an appropriate  
16 franchise agreement, the City Council may grant a franchise to the applicant, after complying with  
17 any public hearing requirements. The franchise agreement shall constitute a contract, freely entered  
18 into, between the City and the grantee. Said franchise agreement shall incorporate by reference the  
19 relevant provisions of this chapter. Any such franchise must be approved by ordinance of the City  
20 Council pursuant to Article II, Section 2(21) of the City Charter. If the City Council denies a request  
21 for a franchise, it shall issue a written decision explaining why the franchise was denied, which  
22 decision may be in any appropriate form. Without limiting its authority to deny an application for  
23 a franchise, the City specifically reserves the right to reject any application that is incomplete or fails

1 to respond completely to an RFP. This chapter is not intended and shall not be interpreted to grant  
2 any applicant or existing franchisee or any third party standing to challenge the denial of an  
3 application or the issuance of a franchise to another.

4 Section 16. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
5 numbered 5.12.160 to read as follows:

6 **5.12.160 Filing Fees.**

7 To be acceptable for filing, an application for an initial franchise, a renewal franchise, or a  
8 franchise modification shall be accompanied by a nonrefundable filing fee, payable to the City  
9 Treasurer, in the following amount or the maximum amount permitted by law, whichever is greater,  
10 to cover costs incidental to the award or modification of a franchise, as appropriate.

- |    |   |                    |
|----|---|--------------------|
| 11 | <u>(a) For an initial franchise:</u>                  | <u>\$50,000.00</u> |
| 12 | <u>(b) For modification of an existing franchise:</u> | <u>\$15,000.00</u> |
| 13 | <u>(c) For renewal franchises, costs incidental</u>   |                    |
| 14 | <u>to the award of a franchise:</u>                   | <u>\$50,000.00</u> |

15 In addition to the foregoing initial filing fees, an applicant shall reimburse the City for the  
16 actual costs and expenses incurred by the City that are related to, or arise in the course of, reviewing  
17 and processing each application described in subsections (a), (b), and above, including the costs of  
18 legal, engineering, accounting, and other consultants retained by the City, or services obtained by  
19 the City, to assist in reviewing the application. An applicant or franchisee, as the case may be, shall  
20 reimburse the City for any such costs within thirty (30) days of receipt of an invoice from the City.  
21 All fees and costs paid under this section shall be in addition to (and not in lieu of or offset against)  
22 all franchisee fees and other support paid or provided pursuant to this chapter and a franchise.

1 Section 17. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.170 to read as follows:

3 **5.12.170 Acceptance.**

4 A franchise and its terms and conditions shall be accepted by a grantee by written instrument,  
5 in a form acceptable to the City Attorney, and filed with the City Clerk within thirty (30) days after  
6 the granting of the franchise by the City. In its acceptance, the grantee shall declare that it has  
7 carefully read the terms and conditions of this ordinance and the franchise and accepts all of the  
8 terms and conditions of this ordinance and the franchise and agrees to abide by the same. In  
9 accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all  
10 relevant facts and that it was not induced to accept the franchise.

11 Section 18. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
12 numbered 5.12.180 to read as follows:

13 **5.12.180 Franchise Term.**

14 The term of a franchise shall be as specified in a franchise agreement, but shall not exceed  
15 twenty five years, except that a franchisee may apply at any time for renewal or modification.

16 Section 19. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
17 numbered 5.12.190 to read as follows:

18 **5.12.190 Franchise Fee.**

19 (a) A franchisee, in consideration of the privilege granted under a franchise for the use  
20 of public ways and the privilege to construct and operate a Broadband Facility, shall pay to the City  
21 a franchise fee as negotiated with the City. Every franchise shall reserve the right to increase the  
22 franchise fee to the maximum that may be charged consistent with federal and state law.

1           **(b)**    The City shall have the right, consistent with the provisions of §5.12.330 of this  
2 chapter, to inspect a franchisee's books, files, and records, in whatever form or medium maintained,  
3 to audit any and all relevant books, files, and records pursuant to the Franchise Agreement, and to  
4 recompute any amounts determined to be payable under a franchise and this ordinance.

5           **(c)**    In the event a franchise is revoked or otherwise terminated prior to its expiration date,  
6 the franchisee shall file with the City, within ninety (90) days of the date of revocation or  
7 termination, a gross revenue statement certified by an officer of the franchisee showing the gross  
8 revenues received by the franchisee for each revenue stream since the end of the previous year and  
9 shall make adjustments at that time for the franchise fees due up to the date of revocation or  
10 termination.

11           **(d)**    Payment of the franchise fee or any other compensation hereunder shall not be  
12 considered in the nature of a tax or in lieu of other taxes, fees, or assessments imposed by the City.  
13 Unless otherwise provided by applicable law, the franchise fee and any other compensation required  
14 under this section is in addition to all other taxes, fees, and payments that a franchisee may be  
15 required to pay under its franchise or any federal, state, or local law.

16           **(e)**    A franchise fee shall not designate the franchise fee or other compensation paid to  
17 the City as a tax in any communication to a subscriber unless the franchise fee has been deemed a  
18 tax under applicable law.

19           **(f)**    No acceptance by or payment to the City of a franchise fee or other compensation,  
20 or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the  
21 City may have for further or additional sums due or for the performance of any other obligation of  
22 a franchisee, or as acknowledgment that the amount paid is the correct amount due.

1 Section 20. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.200 to read as follows:

3 **5.12.200 Insurance, Surety Instruments, Indemnity.**

4 1. Indemnification. To the fullest extent permitted by law, Franchisee shall indemnify  
5 and hold harmless City, its elected officials, officers, agents, and employees, as indemnitees, from  
6 and against all claims, damages, losses, and expenses, including but not limited to attorney's fees,  
7 arising out of or resulting from Franchisee's performance under this Ordinance that results in any  
8 third-party claim for damages whatsoever, including without limitation, any bodily injury, sickness,  
9 disease, death, or any injury to or destruction of tangible or intangible property, including any loss  
10 of use resulting therefrom, that is caused in whole or in part by Franchisee or anyone directly or  
11 indirectly employed by Franchisee or anyone for whose acts any of them may be liable. This section  
12 will not require Franchisee to indemnify or hold harmless the City for any losses, claims, damages,  
13 and expenses arising out of or resulting from the negligence of the City. The City does not waive  
14 its governmental immunity by adopting this Ordinance and fully retains all immunities and defenses  
15 provided by law with regard to any action based on this Ordinance. The provisions of this section  
16 survive any termination of the Franchise granted hereunder.

17 2. Assumption of risk. Franchisee assumes the risk of damage to its facilities located  
18 in Right of Way from activities conducted by third parties or the City, its elected officials, officers,  
19 employees, servants, agents, or representatives. Franchisee releases and waives any and all claims  
20 against the City, its elected officials, officers, employees, servants, agents, and representatives for  
21 damage to or destruction of Franchisee's facilities except to the extent any such damage or  
22 destruction is caused by or arises from active sole negligence of the City.

1           3. Franchisee bears sole responsibility to insure its property. Franchisee shall ensure  
2 that its insurance contracts waive subrogation claims against the City, its elected officials, officers,  
3 employees, servants, agents, and representatives, and Franchisee shall indemnify, defend, and hold  
4 harmless the City, its elected officials, officers, employees, servants, agents, and representatives  
5 against any and all subrogation claims if it fails to do so.

6           4. Franchisee shall obtain and maintain, at its cost, worker's compensation insurance  
7 and the following liability insurance policies insuring both the Franchisee and the City, and its  
8 elected and appointed officers, officials, agents, employees, representatives, engineers, consultants,  
9 and volunteers as additional insureds against claims for injuries to persons or damages to property  
10 which may arise from or in connection with the exercise of the rights, privileges, and authority  
11 granted to Franchisee:

12           A. Comprehensive general liability insurance, written on an occurrence basis,  
13 with limits not less than:

- 14           i. \$2,000,000.00 for bodily injury or death to each person;  
15           ii. \$1,000,000.00 for property damage resulting from any one accident;  
16           and  
17           iii. \$1,000,000.00 for all other types of liability.

18           B. Automobile liability for owned, non-owned, and hired vehicles with a limit  
19 of \$1,000,000.00 for each person and \$1,000,000.00 for each accident;

20           C. The liability insurance policies required by this section shall be maintained  
21 by Franchisee throughout the term of the Franchise, such other periods of  
22 time during which Franchisee's facilities occupy Right of Way, and while  
23 Franchisee is engaged in the removal of its facilities. Franchisee shall

1 provide an insurance certificate, together with an endorsement naming the  
2 City and its elected and appointed officers, officials, agents, employees,  
3 representatives, engineers, consultants, and volunteers as additional insureds,  
4 to the City prior to the commencement of any construction or installation of  
5 any facilities pursuant to this Ordinance or other work in a Right of Way.  
6 Any deductibles or self-insured retentions must be declared to and approved  
7 by the City. Payment of deductibles and self-insured retentions shall be the  
8 sole responsibility of Franchisee. The insurance certificate required by this  
9 section shall contain a clause stating that coverage shall apply separately to  
10 each insured against whom claim is made or suit is brought, except with  
11 respect to the limits of the insurer's liability. Franchisee's insurance shall be  
12 primary insurance as respects the City, its officers, officials, employees,  
13 agents, consultants, and volunteers. Any insurance maintained by the City,  
14 its officers, officials, employees, consultants, agents, and volunteers shall be  
15 in excess of the Franchisee's insurance and shall not contribute with it.

16 Section 21. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
17 numbered 5.12.210 to read as follows:

18 **5.12.210 Forfeiture and Termination.**

19 1. The Franchise granted hereunder, and any right, privilege, or authority of Franchisee  
20 to enter, occupy, or use Right of Way may be revoked by the City for the following reasons:

21 A. Violation of or noncompliance with any material term or condition of this  
22 Ordinance by Franchisee;



1           B. That rebuts the alleged violation, noncompliance, or other grounds for  
2           revocation; or

3           C. That it would be in the public interest to impose some penalty or sanction  
4           less than revocation.

5           3. In the event that Franchisee fails to provide evidence reasonably satisfactory to the  
6           City as provided in subsection (2) of this section, the City shall refer the apparent violation,  
7           noncompliance, or other grounds for revocation to the City Council. The City Council shall provide  
8           the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

9           4. If the City Council determines that the violation, noncompliance, or other grounds  
10           for revocation arose from willful misconduct or gross negligence by Franchisee, then Franchisee  
11           shall, at the election of the City Council, forfeit all rights, privileges, and authority conferred under  
12           this Ordinance or any use and/or development authorization or permit granted by the City, and this  
13           Ordinance and any such use and/or development authorization or permit may be terminated or  
14           cancelled by the City Council. The City Council may elect, in lieu of the above and without any  
15           prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining  
16           an order compelling Franchisee into compliance or to take corrective action, or to recover damages  
17           and costs incurred by the City by reason of Franchisee's actions or omissions.

18           5. The City Council's choice of remedy shall not excuse Franchisee from compliance  
19           with any term or condition of this Ordinance or the material terms of any use and/or development  
20           authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy  
21           any violation, noncompliance, or other grounds for revocation. Further, nothing herein shall be  
22           construed as limiting any remedies that the City may have, at law or in equity, for enforcement of  
23           this Ordinance and any use and/or development authorization or permit granted to Franchisee.

1           6. In addition to any other remedies the City may have, violation of any provision of  
2 this Ordinance shall be deemed to be a violation of Chapter 5.12 of the Lincoln Municipal Code and  
3 subject to the penalty provisions prescribed by Lincoln Municipal Code. Franchisee shall ensure  
4 that its contractors, agents, and assigns have knowledge of the provisions of this Ordinance, and  
5 violations of the provisions of this Ordinance by Franchisee's contractors, agents, or assigns shall  
6 be deemed to be violations by Franchisee.

7           Section 22. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
8 numbered 5.12.220 to read as follows:

9           **5.12.220 Foreclosure.**

10           Upon the foreclosure or other judicial sale of any of the facilities, equipment, or property of  
11 a franchisee, or upon the termination of any lease covering all or a substantial part of a Broadband  
12 Facility, or upon the occasion of additional events which effectively cause termination of a  
13 Broadband Facility's operation, a franchisee shall immediately notify the City of such fact, and such  
14 notification or the occurrence of such terminating events shall be treated as a notification that a  
15 transfer of the franchisee has taken place, and the provisions of this ordinance governing the consent  
16 of the City to such a transfer shall apply.

17           Section 23. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
18 numbered 5.12.230 to read as follows:

19           **5.12.230 Purchase or Transfer of a Broadband System by the City.**

20           1. If a Broadband franchise granted under this chapter expires and the renewal thereof  
21 is denied and all appeals have been exhausted, the City may acquire ownership of the Broadband  
22 Facilities and System pursuant to the provisions in the franchise, unless prohibited by applicable law  
23 binding on the City.

1           2. If the City terminates or forfeits a Broadband system franchise for cause, the City  
2 may acquire ownership of the Broadband system at an equitable price, unless prohibited by  
3 applicable law binding on the City.

4           3. Nothing in this section shall be interpreted to limit whatever powers under eminent  
5 domain the City may have.

6           4. Any transfer, assignment, or disposal of Franchisee's rights, privileges, and authority  
7 under this Ordinance may be subject to the following reasonable conditions:

8           A. Absent extraordinary and unforeseeable circumstances, no facility shall be  
9 assigned, transferred, or disposed of before construction of the facility has  
10 been completed and restoration has been performed to the satisfaction of the  
11 City.

12           B. Franchisee and the proposed assignee or transferee shall provide and certify  
13 the following information to the City not less than one hundred and eighty  
14 (180) days prior to the proposed date of assignment, transfer, or disposal:

15           i. Complete information setting forth the nature, terms, and condition  
16 of the proposed assignment, transfer, or disposal;

17           ii. Any other information reasonably required by the City directly  
18 related to the standards set forth in subsection 5 below; and

19           iii. A transfer application fee in an amount to be determined by the City  
20 to recover actual administrative costs directly related to receiving and  
21 approving the proposed assignment, transfer, or disposal, not to  
22 exceed (i) twenty-five thousand dollars (\$25,000).

1           5. No assignment, transfer, or disposal may be made or shall be approved unless the  
2 assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate,  
3 maintain, repair, and remove facilities constructed or installed pursuant to this Ordinance and to  
4 comply with the terms and conditions of this Ordinance.

5           6. Any transfer, assignment, or disposal of rights, privileges, and authority under this  
6 Ordinance without prior written approval of the City pursuant to this section shall be void and is  
7 cause for termination of the Franchise.

8           7. Any transactions which singularly or collectively result in a change of 50% or more  
9 of the ownership or working control of the Franchisee or of the ownership or working control of  
10 affiliated entities having ownership or working control of Franchisee, shall be considered an  
11 assignment or transfer requiring City approval. Transactions between affiliated entities are not  
12 exempt from City approval. A Franchisee shall promptly notify the City prior to any proposed  
13 change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change,  
14 transfer, or acquisition of control of a Franchisee shall cause a review of the proposed transfer. City  
15 approval shall not be required for mortgaging purposes.

16           8. It is understood that Franchisee intends to sell, lease, or license capacity on its  
17 network to third-party Internet service providers or other entities that will provide service to end  
18 users. Accordingly, the sale, lease, or license of Franchisee's network capacity, not involving  
19 transfer of ownership or working control of facilities constructed or installed pursuant to this  
20 Ordinance, shall not be deemed a transfer, assignment, or disposal subject to this section.

21           9. All terms and conditions of this Ordinance shall be binding upon all successors and  
22 assigns of Franchisee and all persons who obtain ownership or working control of any facility  
23 constructed or installed pursuant to this Ordinance.

1           10. Notwithstanding anything to the contrary in this Ordinance, the rights, privileges, and  
2 authority under this Ordinance may be assigned or transferred to any Person who at the time of the  
3 assignment or transfer controls, is controlled by, or is under common control with, Franchisee. In  
4 the event Franchisee intends to sell the facilities or system constructed or installed under this  
5 franchise, the City shall have an equal opportunity to purchase such facilities or system as other  
6 potential buyers. City shall be given the same notice and opportunities to purchase as other potential  
7 buyers.

8           Section 24. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
9 numbered 5.12.240 to read as follows:

10       **5.12.240       Effects of Litigation.**

11           Pending litigation or any appeal to any regulatory body or court having jurisdiction over a  
12 franchisee shall not excuse the franchisee from the performance of its obligations under this chapter  
13 or its franchise unless a stay specifically applicable to the performance of the obligation is obtained  
14 from a court or regulatory body of competent jurisdiction. Failure of the franchisee to perform such  
15 obligations because of pending litigation or a petition, in the absence of a stay issued by a court or  
16 regulatory body of competent jurisdiction, may result in forfeiture or termination pursuant to the  
17 provisions of this chapter and/or a franchise.

18           Section 25. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
19 numbered 5.12.250 to read as follows:

20       **5.12.250       Removal of Broadband System.**

21           At the expiration of the term for which a franchise issued hereunder is granted (and the  
22 denial of any renewal thereof and the exhaustion of all appeals), or upon its termination as provided  
23 herein, a franchisee shall forthwith, upon notice by the City, remove at its own expense all

1 designated portions of the Broadband facility from all streets and public ways within the City, and  
2 shall restore said streets and public ways to their former condition; provided, however, the  
3 franchisee shall have the right to sell its physical plant to a subsequent franchisee, subject to City  
4 approval, in which case said plant need not be removed. If a franchisee fails to remove its facilities  
5 upon request, the City may perform the work at the franchisee's expense. Regardless of the existence  
6 or amount of any security fund, bond, or letter of credit, the obligation of a franchise to remove shall  
7 survive the termination of the franchise. This provision, however, does not require a franchisee to  
8 remove any facilities that are used to provide another service for which the franchisee holds a valid  
9 franchise or other authorization issued by the City. Nothing herein shall affect the City's right to take  
10 possession of abandoned facilities.

11 Section 26. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
12 numbered 5.12.260 to read as follows:

13 **5.12.260 Rate Regulation.**

14 1. The City may regulate a franchisee's rates and charges to the maximum extent  
15 permitted by law or regulation.

16 2. A franchisee shall provide at least one billing cycle prior written notice (or such  
17 longer period as may be specified in FCC regulations) to subscribers and to the City of any changes  
18 in rates or charges, regardless of whether or not the franchisee believes the affected rates or charges  
19 are subject to regulation, except to the extent that such notice requirement is specifically waived by  
20 governing law.

21 Section 27. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
22 numbered 5.12.270 to read as follows:

1     **5.12.270**     **Reports.**

2             Unless otherwise set forth in a franchise agreement, a franchisee shall submit to City, upon  
3 request, existing reports which are reasonably necessary or desired to determine compliance with  
4 franchise obligations and ordinance requirements.

5             Unless otherwise provided in the franchise agreement, such reports shall include, but not be  
6 limited to:

7             (1)     Annual Report. No later than ninety days after the end of each of the franchisee's  
8 fiscal year, the franchisee shall file a written report with the City, which shall include:

9                     (a)     A summary of the previous calendar year's activities in development of this  
10 system, including but not limited to services begun or dropped, number of subscribers, including  
11 gains and losses, homes passed, and miles of cable distribution plants in service, including different  
12 classes if applicable.

13                     (b)     An audited financial statement, including a statement of income, a balance  
14 sheet, and a statement of sources and applications of funds. The statement shall include notes that  
15 specify all significant accounting policies and practices upon which it is based, including, but not  
16 limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods,  
17 and basis for interest expense. A summary shall be provided comparing the current year with the  
18 three previous years. The statement shall contain a summary of franchise fee payments and any  
19 adjustment thereto as specified in §5.12.190 of this chapter. If the franchisee operates other cable  
20 systems, then, in lieu of audited financial statements of the system, the franchisee may submit the  
21 financial statement referred to above as supplementary information to the audited financial  
22 statements of its entire operations. Such audited financial statements of a multiple system operator  
23 shall contain an accountant's report stating what procedures have been applied to the supplementary

1 information and the accountant's opinion on the supplementary information in relation to the basic  
2 financial statements taken as a whole. The franchisee shall obtain written permission from the City  
3 in advance in order to submit its financial statements in this manner and an officer of the company  
4 shall attest to the accuracy of the financial information provided.

5 (c) A current statement of cost of any construction by component category.

6 (d) An operating budget for the system for the next year and capital expenditures  
7 budget for the next two years. All significant assumptions upon which the budgets and underlying  
8 projections are based should be duly noted.

9 (e) A reconciliation between previously projected estimates and actual results.

10 (f) A summary of complaints, identifying the number and nature of complaints  
11 and their disposition.

12 (g) If the franchisee is a corporation, a list of officers and members of the board  
13 and the officers and board members of any parent corporation.

14 (h) A list of all partners or stockholders holding one percent or more ownership  
15 interest in the franchisee and any parent corporation; provided, however, that when any parent  
16 corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock  
17 exchange, then a list of the twenty largest stockholders of the voting stock of such corporation shall  
18 be disclosed.

19 (i) A report of franchisee's employees in the City designed to demonstrate  
20 compliance with §5.12.360 of this chapter upon a form prescribed by the City.

21 (j) A copy of all the franchisee's rules and regulations applicable to subscribers  
22 and users of the cable communications system.

1           (k)    A report relating to all copyright fees paid and copies of all reports or  
2 documents submitted to the copyright office of the Library of Congress.

3           (2)    The City may specify the form and details of all reports, with the franchisee given  
4 an opportunity to comment in advance upon such forms and details. The City may change the filing  
5 dates for reports upon reasonable request of the franchisee.

6           Section 28. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
7 numbered 5.12.280 to read as follows:

8    **5.12.280        Access to Books and Records.**

9           (a)    The City shall have the right, upon reasonable notice, to inspect and have franchisee  
10 copy at the City's expense, at any time during normal business hours, the documents, books, and  
11 records and other like material of a franchisee which the City deems necessary in order to monitor  
12 compliance with a franchise. Access to records and other materials shall not be denied by a  
13 franchisee on the basis that said records and materials contain trade secret, proprietary, or  
14 confidential information; provided, however, that the franchisee may require that the City enter into  
15 a reasonable confidentiality agreement prior to inspecting any records or material that the franchisee  
16 reasonably believes contains trade secret, proprietary, or confidential information which the public  
17 release thereof would harm or jeopardize the franchisee's competitive position. Documents, books,  
18 and records shall be maintained for a period of at least five (5) years, except that (i) any record that  
19 is a public record shall be maintained for the period required by state law; (ii) any contract shall be  
20 maintained until it expires; and (iii) a franchise may specify a shorter period for certain categories  
21 of voluminous documents, books, and records where the information contained therein can be  
22 derived simply from other materials. If any of the information provided by a franchisee pursuant to  
23 this chapter is false or fraudulent, the City may impose sanctions on the offending franchisee or

1 declare its franchise forfeited, unless such action is prohibited by applicable law. In addition, failure  
2 to provide any information required by this chapter shall be grounds for appropriate remedies.

3 (b) For purposes of this chapter, the terms "records," "documents," and "books" shall be  
4 read expansively to include information in whatever format stored. Books, records, and documents  
5 requested shall be produced at the franchisee's local office.

6 Section 29. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
7 numbered 5.12.290 to read as follows:

8 **5.12.290 Service Characteristics.**

9 1. The System shall, at a minimum, provide the following capabilities and  
10 characteristics:

11 A. Net Neutrality: In the provision of Broadband Service, Franchisee shall  
12 comply with the Open Internet regulations.

13 B. No Blocking: Franchisee shall not block lawful content, applications,  
14 services, or non-harmful devices; and

15 C. No Throttling: Franchisee shall not impair or degrade lawful Internet traffic  
16 on the basis of Internet content, application, or service, or the use of  
17 non-harmful devices; and

18 D. No Paid Prioritization: Franchisee shall not engage in paid prioritization,  
19 where paid prioritization means the management of the System to directly or  
20 indirectly favor some traffic over other traffic, including through use of  
21 techniques such as traffic shaping, prioritization, resource reservation, or  
22 other forms of preferential traffic management, either (a) in exchange for

1 consideration (monetary or otherwise) from a third party, or (b) to benefit an  
2 affiliated entity.

3 E. No Data Caps: The Franchisee shall not assign Data Caps to Broadband  
4 Services provided within the Franchise Area.

5 2. Service Available to Every Residence.

6 A. Franchisee shall use commercially reasonable best efforts to extend the  
7 System to pass every residence within the Franchise Territory within the first four (4) years of the  
8 Initial Term. Commercially reasonable best efforts will take into consideration customer demand,  
9 competitive offerings from other providers, System extension costs, weather conditions, and other  
10 potential unforeseen issues outside of Franchisee's control that adversely affect the ability to extend  
11 the System within such timeframe.

12 B. The Franchisee shall offer and provide Services to all residential Subscribers  
13 under non-discriminatory rates, terms, and conditions.

14 C. The Franchisee shall not require residential contracts for service.

15 D. The Franchisee shall not charge a fee for the installation of services. In the  
16 unusual circumstance where Franchisee's installation costs are exceptionally high with respect to  
17 a particular customer (currently defined as greater than \$1,500 from easement to home), Franchisee  
18 may require an installation charge. Service installations requests will be completed within a  
19 commercially reasonable time and shall not be unreasonably withheld.

20 E. The Franchisee shall not charge any fee for Service delivery modems.

21 Section 30. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
22 numbered 5.12.300 to read as follows:

1     **5.12.300     Service to Government Buildings and Facilities.**

2             1.     Franchisee shall provide Metro Ethernet Service to no more than one hundred fifty  
3     (150) government-owned buildings, which are managed by the City, County, or Public Building  
4     Commission, and located in the Franchise Territory with no upfront or monthly recurring charges.  
5     Such service shall be made available on a non-blocking basis up to 1 Gigabit per second (Gbps) to  
6     one hundred (100) of such buildings and up to 10 Gbps to fifty (50) of such buildings. All buildings  
7     connected to the Franchisee's System shall be upgraded to 10 Gbps before the first renewal of this  
8     franchise. Replacement electronics necessary to maintain the service will be provided by the  
9     Franchisee at no additional cost.

10            2.     Franchisee shall provide fifteen (15) Virtual Local Area Networks (VLANs) across  
11     the entire System. Public VLAN shall be provided free of charge to the City for non-competitive  
12     use. These VLAN's shall be available at every connection and termination point on the Franchisee's  
13     network.

14            3.     Franchisee shall provide service on a non-blocking basis up to 1 Gbps to up to five  
15     hundred (500) traffic signals in the Franchise Territory for a non-recurring charge equal to the actual  
16     incremental cost (labor and materials cost only) to extend service to each traffic signal and no  
17     monthly recurring charges. Replacement electronics necessary to maintain the service will be  
18     provided by the Franchisee at no additional cost.

19            4.     The provision of the services described in subsections 1 and 2 above shall be subject  
20     to and contingent upon Franchisee's completion of construction of the System at such locations in  
21     accordance with its System development and extension plans, and as the City identifies the facilities  
22     to be served in such locations. Construction to all existing government buildings, facilities, and  
23     traffic signals described in subsections 1 and 2 above shall be complete by the end of the fifth (5th)

1 year of the Initial Term. New requests for government connections shall be submitted to the  
2 Franchisee by the City. Requests will be reviewed and construction completed within one hundred  
3 and twenty (120) calendar days of receipt of the new connection request.

4 Section 31. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
5 numbered 5.12.310 to read as follows:

6 **5.12.310 Enterprise Fund.**

7 The revenues generated from franchise fees, conduit lease fees, fiber infrastructure support  
8 fees, and other sources arising from the activities associated with a Broadband Franchise shall be  
9 deposited by the City into an Enterprise Fund. Such Fund shall be used solely to support the  
10 construction, reconstruction, maintenance, operations, extensions, and other associated activities of  
11 the City's Broadband system and facilities. In addition, such Fund shall be used to support the City's  
12 telecommunication needs.

13 Section 32. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
14 numbered 5.12.320 to read as follows:

15 **5.12.320 Institutional Services.**

16 Franchisee agrees to promote this Ordinance through development of a Public Benefits  
17 Program, which shall consist of the following initiatives and any additional initiatives mutually  
18 agreed to by the City and Franchisee.

19 1. Connections for Community Organizations. Franchisee shall provide up to  
20 seventy-five (75) qualifying non-profit organizations located within the City that provide services  
21 directly to citizens ("Community Organizations") with Broadband Service at Franchisee's standard  
22 one gigabit Broadband Service offering. The service shall be provided for no recurring monthly fee  
23 and for no construction fee for a period of ten (10) years from the date of activation of the service.

1 Participation in the program by any Community Organization shall be subject to a joint reasonable  
2 evaluation by the City and Franchisee of:

- 3 A. The proximity of the System to the Community Organization within a  
4 defined geographic area where Franchisee is offering Services;
- 5 B. The reasonable technical requirements and cost considerations;
- 6 C. The qualification and good standing as a non-profit organization under  
7 certain provisions of the Internal Revenue Code; and
- 8 D. Applicable program eligibility requirements, which shall include all of the  
9 Community Organization's other data, telecommunications, and video  
10 services, if any, being provided by Franchisee at its standard commercial  
11 rates.

12 Franchisee shall confer with the City to identify eligible Community Organizations and  
13 perform outreach. Following the initial ten (10) year service term, the Community Organization may  
14 continue to subscribe to some or all of the Services that Franchisee offers to similar Subscribers at  
15 then-current rates for such Services. The City understands and acknowledges that Franchisee's  
16 System design and construction plans will be based on optimal deployment of the System for  
17 residential services.

18 2. Low Cost and Discounted Service Tier to Low-Income Residents. Franchisee shall  
19 offer, regularly, a low cost Service tier to its residential Subscribers in accordance with this  
20 subsection. The low cost service tier shall provide a minimum of Twenty Megabits per second (20  
21 Mbps) of speed. In addition, Franchisee shall make available a Discounted Service Tier to  
22 Low-Income Residents program based on the low cost Service tier. In order for a residential  
23 Subscriber to be eligible for the discount Service, the resident must meet all eligibility and

1 participation requirements for the FCC's Lifeline program for discounted telephone service. The  
2 price for such discount Service tier for such qualifying low-income residential Subscribers shall  
3 reflect a discount, at the City's option, of either (a) fifteen percent (15%) off Franchisee's regular  
4 price for that tier of Broadband Service (the "Standard Discount"), or (b) thirty percent (30%) off  
5 Franchisee's regular price for that tier of Broadband Service (the "Enhanced Discount"). Franchisee  
6 shall confer with the City to review the eligibility of existing and new Subscribers on a bi-annual  
7 basis. If the City elects to require Franchisee to apply the Enhanced Discount, then the difference  
8 between the aggregate amount of reduced Broadband Service fees received by Franchisee as a result  
9 of applying the Enhanced Discount rather than the Standard Discount shall be applied to offset the  
10 amount of franchise fees payable hereunder or any other amounts payable by Franchisee to the City.  
11 If a federal or state broadband lifeline program becomes available, then Franchisee may adopt and  
12 implement that broadband lifeline program in lieu of compliance with the provisions of this  
13 subsection 2.

14 3. City Wi-Fi Services. Following the complete construction of fifty (50) percent of the  
15 System and the first delivery of Services to Subscribers (the "System Completion Date"), Franchisee  
16 shall use commercially reasonable efforts to construct and deploy up to three (3) wireless access  
17 networks (each, a "Wi-Fi Network") in outdoor public areas within the City (each, a "Wi-Fi Area"),  
18 with one such Wi-Fi Area to be established within eighteen (18) months of the System Completion  
19 Date, the second Wi-Fi Area to be established within thirty-six (36) months of the System  
20 Completion Date, and the third Wi-Fi Area to be established within fifty-four (54) months of the  
21 System Completion Date. Franchisee agrees to construct, operate, and manage each Wi-Fi Network  
22 at its own cost and provide Wi-Fi Network access without fees during the initial term of this  
23 Ordinance. Use of and access to each Wi-Fi Network shall be subject to each user's acceptance of

1 Franchisee's applicable Terms of Service. Franchisee shall confer with the City to identify and select  
2 optimal locations to deploy each Wi-Fi Network. The selection and deployment of each Wi-Fi Area  
3 shall be subject to (i) the design and proximity of the System to each Wi-Fi Area; (ii) reasonable  
4 technical requirements and cost considerations; and (iii) Franchisee's ability to secure rights to  
5 utilize limited private and public infrastructure, such as utility poles or attachment points, for  
6 purposes of constructing each Wi-Fi Network.

7 4. Franchisee agrees that the Public Benefits Program shall in no way modify or  
8 otherwise affect Franchisee's obligations to pay other fees to the City. The additional commitments  
9 in this Section are not to be offset or otherwise credited in any way against any franchise fee  
10 payments under this Ordinance, except as provided in subsection 2 of this section with respect to  
11 any Enhanced Discount for Broadband Service.

12 Section 33. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
13 numbered 5.12.330 to read as follows:

14 **5.12.330 Construction and Installation Work.**

15 1. The construction, repair, maintenance, and reconstruction of Broadband Facilities are  
16 subject to, and shall be performed in compliance with, all applicable federal, state, and City laws.  
17 The City shall have the right to inspect all construction and installation work performed by a  
18 franchisee subject to this chapter as it shall find necessary to ensure compliance with the provisions  
19 of applicable law.

20 2. Worker facilities, conditions, and procedures shall comply with the standards of the  
21 Occupational Safety and Health Administration.

22 Section 34. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
23 numbered 5.12.340 to read as follows:

1     **5.12.340**     **Service Area.**

2             In addition to satisfying such requirements as may be established in a franchise, every  
3 franchisee shall operate its Broadband Facility subject to the following conditions, except as  
4 prohibited by federal law:

5             (a)     Unless otherwise set forth in a franchise agreement, it is the policy of the City that  
6 every franchisee shall extend its Broadband facility throughout its Franchise Area upon request to  
7 any person or entity. Such extension shall be provided within a reasonable period of time taking into  
8 account the circumstances. A grantee shall endeavor to complete an extension within thirty (30)  
9 days.

10            Section 35. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
11 numbered 5.12.350 to read as follows:

12     **5.12.350**     **Continuity of Service.**

13            1.     It is the right of all subscribers in a franchise area to continuously receive all  
14 available services from a franchisee as long as their financial and other obligations to the franchisee  
15 are satisfied.

16            2.     A franchisee shall ensure that all subscribers receive continuous and uninterrupted  
17 service. At the City's request, a franchisee shall, as trustee for its successor in interest, operate its  
18 Broadband facility for a temporary period (the "Transition Period") following the expiration (and  
19 denial of any renewal thereof including the exhaustion of all appeals), termination, or other  
20 revocation of its franchise, or following a franchise transfer, as necessary to maintain service to  
21 subscribers, and shall cooperate with the City to assure an orderly transition from the existing  
22 franchisee to the successor franchisee.

1 Section 36. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
2 numbered 5.12.360 to read as follows:

3 **5.12.360 Equal Opportunity Employment; Non-Discrimination.**

4 1. Equal opportunity in employment shall be afforded by a franchisee to all qualified  
5 persons and no person shall be discriminated against in employment because of race, color, religion,  
6 sex, disability, national origin, ancestry, age, or marital status. A franchisee shall establish, maintain,  
7 and carry out a positive, continuing program of specific practices designed to assure equal  
8 opportunity in every aspect of company employment policy and practice. A franchisee shall  
9 immediately comply with all federal, state, and local equal opportunity employment acts and  
10 practices and shall forthwith comply with the equal employment opportunity program of the City.

11 2. A franchisee shall not deny service or otherwise discriminate against any person on  
12 the basis of race, color, religion, national origin, disability, ancestry, sex, marital status, or age.

13 3. A franchisee shall not discriminate among persons or the City, or take any retaliatory  
14 action against a person or the City because of that entity's exercise of any right it may have under  
15 federal, state, or local law, nor may the franchisee require a person or the City to waive such rights  
16 as a condition of taking service.

17 4. Except as federal law prohibits enforcement of this provision, a franchisee shall not  
18 deny service or levy different rates and charges on any group of potential subscribers because of the  
19 income of the residents of the local area in which such group resides.

20 Section 37. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
21 numbered 5.12.370 to read as follows:

1 **5.12.370** **No Recourse Against City.**

2 The City shall enjoy such immunities as it otherwise has under applicable law. Nothing in  
3 this chapter or any franchise entered into hereunder shall be deemed to expand or impair any  
4 immunity otherwise available to the City.

5 Section 38. That Title 5 of the Lincoln Municipal Code be amended by adding a new section  
6 numbered 5.12.380 to read as follows:

7 **5.12.380** **Severability.**

8 If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid  
9 or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be  
10 valid in all other respects and continue to be effective. In the event of a subsequent change in  
11 applicable law, so that the provision which had been held invalid is no longer invalid, said provision  
12 shall thereupon return to full force and effect without further action by the City or the City Council  
13 and shall thereafter be binding on a franchisee and the City.

14 Section 39. That Sections 1 through 38 of this Ordinance shall be codified in the Lincoln  
15 Municipal Code as Chapter 5.12 entitled Residential Broadband.

16 Section 40. That this Ordinance shall take effect and be in force from and after its passage  
17 and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

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

<p>Approved this ___ day of _____, 2015:</p> <p>_____</p> <p>Mayor</p>
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