RESOLUTION NO. R-2023-04
A RESOLUTION GRANTING A NON-EXCLUSIVE FRANCHISE TO FATBEAM, LLC

THE KING CITY CITY COUNCIL FINDS AS FOLLOWS:

1. The City of King City ("City") is authorized to grant non-exclusive franchises to companies desiring to occupy public Rights-of-Way within the City boundaries.

2. Fatbeam, LLC ("Applicant"), a Washington Limited Liability Company, owns, maintains, and operates, in accordance with regulations promulgated by the Federal Communications Commission, Public Utility Commission, or other appropriate agency, a fiber optic network provider and desires to install, operate, and maintain its Equipment in Rights-of-Way in the City of King City.

3. The City's Municipal Code Section 5.12.045 requires any telecommunications carrier desiring to occupy the Rights-of-Way in the City to first obtain a telecommunications franchise authorizing use of the Rights-of-Way.

4. The City of King City agrees to grant a franchise to Applicant under the terms and conditions provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KING CITY

Section 1. Definitions. The following definitions shall apply generally to the provisions of this Franchise:

1.1 **Applicant.** "Applicant" means Fatbeam, LLC, a company duly organized and existing under the laws of the State of Washington, and its lawful successors, assigns, and transferees, as approved by the City under Section 12 of this Franchise.

1.2 **City.** "City" means the City of King City, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.

1.3 **City Facilities.** "City Facilities" means City-owned street light poles, lighting fixtures, electroliers, pipes, cable, wire, conduit, or other City-owned structures or equipment located within the Right-of-Way.

1.4 **Existing Structures.** "Existing Structures" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way.

1.5 **Equipment.** "Equipment" means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by Applicant for the provision of Services.

1.6 **Franchise.** "Franchise" means this franchise agreement as approved by the King City City Council and accepted by Applicant, according to the terms in Section 14.7 of this Franchise.

1.7 **Gross Revenues.** "Gross Revenues" means all revenues derived by Applicant within the City from Applicant's Telecommunication Services, which is specifically limited to the sale of a lit fiber optic services by third parties, minus any uncollectible revenue (i.e. bad debts) from subscribers with billing addresses in the City that was previously included in Gross Revenues. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, or sales at wholesale by Applicant to another utility when the utility purchasing such fiber optic network services is not the ultimate consumer. Gross Revenues also do not include revenue from joint pole use. For purposes of this subsection, revenue from joint pole use includes any revenue collected by Applicant from other franchisees, permittees or licensees of the City for the right to attach wires, cable or other facilities or equipment to Applicant's poles or place them in Applicant's conduits.

1.8 **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.

1.9 **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Applicant to use.

1.10 **Services.** "Services" means the fiber optic network services provided by Applicant and includes Telecommunications Service.

1.11 "**Telecommunications Service**" means two-way switched access and transport of voice communications but does not include: 1) Services provided by radio common carrier; or 2) One-way transmission of television signals; 3) Surveying.

Section 2. Nature and Term of Grant.

2.1 **Grant of Franchise.** Subject to the terms and conditions in this Franchise, the City hereby grants Applicant a franchise to install, operate, maintain, remove, reinstall, relocate, and replace, at Applicant's sole cost and expense, Equipment within the Right-of-Way, including on Existing Structures or City Facilities in the Right-of-Way. Before Applicant installs

Equipment on Existing Structures in the Right-of-Way, Applicant shall obtain permission from the owner of the Existing Structure. The grant of authority authorizes Applicant to use the Right-of-Way for Services. This Franchise does not authorize Applicant to install or use facilities in the Right-of-Way for anything other than the Services as defined in Paragraph 1.10. To the extent Applicant's Services change, the City may amend this Franchise. This Franchise does not authorize Applicant to operate a cable system or provide video programming services. This Franchise does not authorize Applicant to install Equipment on or in City Facilities unless Applicant enters into a separate written agreement with the City that authorizes such installations. All of Applicant's Existing Structures are covered by this Franchise. The City may require relocation in accordance with Section 4.7.

2.2 **Duration.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be from the Effective Date of this Franchise to January 31, 2028, unless terminated sooner as provided herein.

2.3 **Non-Exclusive.** This Franchise is not exclusive. The City expressly reserves the right to grant franchises or rights to other Persons, as well as the City's right to use the Right-of-Way for similar or different purposes, as allowed hereunder. This Franchise is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way. Nothing in this Franchise shall be deemed to grant, convey, create, or vest in Applicant a real property interest in land, including any fee, leasehold interest, or easement.

2.4 **Reservation of City Rights.**

A. Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities, or performing any other activity within its authority. All work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of Applicant's Services under this Franchise, and each party shall be responsible to the other for costs to repair any damage to the other's equipment or property that results from the acts or omissions of the damaging party, its employees, contractors or agents. However, if any of Applicant's Services interfere with the construction or repair of any Right-of-Way, public work, pre-existing franchised utility facilities or improvement, or City Facility, Applicant's Equipment shall be removed or replaced in the manner the City shall direct subject to the National Electrical Safety Code. Any and all removal or replacement shall be at Applicant's sole expense. Should Applicant fail to remove, adjust or relocate its Equipment by the date

established by the City, the City may cause and/or effect such removal, adjustment or relocation by a qualified contractor in accordance with applicable state and federal safety laws and regulations, Applicant's construction standards as provided to the OPUC, and NESC requirements, and the expense thereof shall be paid by Applicant, including all costs and expenses incurred by the City due to Applicant's delay.

B. The City shall not be liable for any consequential damages or losses resulting from any damage to or loss of any facility as a result of or in connection with any work by or for the City unless the damage or loss is the direct and proximate result of willful, intentionally tortuous, negligent, or malicious acts or omissions by the City, its employees, or agents. In such case, the City shall indemnify and hold harmless Applicant against any and all claims, damages, costs and expenses, including attorney fees and costs, arising from, subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act. The obligations imposed by this Section are intended to survive termination of this Franchise.

Section 3. Compensation.

3.1 **Franchise Fee Amount**. As compensation for the benefits and privileges granted under this Franchise, and for Applicant's entry upon and deployment within the Right-of-Way, Applicant shall pay to the City an amount equal to three and one-half percent (3.5%) of Applicant's Gross Revenues (the "Franchise Fee").

3.2 **Due Date.** The Franchise Fee shall be paid annually and shall be due for each calendar year or fraction thereof, on or before the first day of April. Because annual payments are paid on or before the first day of April of the calendar year for which they are due, the payment shall be based on the gross receipts from the previous year's Gross Revenues. Within thirty (30) days after the termination of this Franchise, the Franchise Fee shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest as established by the Bank of America or its successor, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until after the discovery of the error by Applicant or receipt by Applicant of notice of the error.

3.3 **Report.** Applicant shall furnish to the City with each payment of the Franchise Fee a statement, in a form acceptable to the City, executed by an authorized officer of Applicant or the officer's authorized designee, showing

the amount of Gross Revenues for the period covered by the payment. Applicant may identify information submitted to the City as confidential by prominently marking any such information with the mark "Confidential." The City shall treat any such information as confidential to the fullest extent allowed by law. Applicant understands and accepts the City's obligation pursuant to the Oregon Public Records Law.

3.4 **Acceptance of Payment and Recomputation.** If either party discovers any error in the correct amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through a confirmed error shall be refunded or offset against the next payment. Acceptance by the City of any payment due under this section shall not be deemed accord that the amount paid is the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this Franchise.

3.5 **Audit.** The City may audit Applicant at any time while this agreement is in effect to determine the accuracy of the reporting of Gross Revenues. Applicant shall make all records available to the City and any auditor retained by the City on demand.

3.6 **Volumetric Fee.** Reserved.

3.7 **Privilege Tax.** The City shall retain the right, as permitted by Oregon Law, to charge a privilege tax in addition to the Franchise Fee set forth herein. Applicant agrees to pay the City's Public Utilities Privilege Tax in accordance with Ordinance No. O-05-05 of the King City Municipal Code so long as the combined Franchise Fee and privilege tax does not exceed the maximum limit set by ORS 221.450 for utilities operating without a franchise. The privilege tax is passed through to customers within the City and is separately stated on the regular billings, pursuant to the regulations of the Oregon Public Utility Commission.

3.8 **Automatic Increase.** Reserved.

3.8 **Obligation to Pay Survives Franchise.** If this Franchise expires before the parties finish negotiating a new agreement, Applicant's payment obligations created by this Section 3 will survive expiration of this Franchise. If this Franchise is terminated before expiration, Applicant will make remaining payments owed, if any, within ninety (90) days of the termination date.

Section 4. Construction, Installation and Relocation.

4.1 **Construction and Installation.** Subject to applicable City regulations, Applicant may enter upon the Right-of-Way to perform all work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on Existing Structures within the Right-of-Way, in or on City Facilities, provided the City has authorized the installation on a

City Facility in a separate written agreement, as required under Section 2.1, or under the surface of the Right-of-Way. Applicant shall be responsible for all construction, installation, and maintenance that is performed, regardless of who performs the work.

4.2 **No Interference.** Applicant, in the performance and exercise of its rights and obligations under this Franchise, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected property or properties.

4.3 **Prohibitions.** Reserved.

4.4 **Compliance With Laws.** Applicant shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations in the exercise and performance of its rights and obligations under this Franchise.

4.5 **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way requires any permits, Applicant shall obtain the permits and pay any required permit fees. Applicant shall supply such information for its permits as required by the City Public Works Director. The City shall promptly respond to Applicant's requests for permits and shall otherwise cooperate with Applicant in facilitating the deployment of Equipment in the Right-of-Way in a reasonable and timely manner. In the event of an emergency situation where repairs to or relocation of Applicant's Equipment and/or Existing Structures are necessary, Applicant shall as soon as reasonably possible notify the City of the need for such repairs. If permits are required by City, Applicant shall apply for appropriate permits as soon as reasonably possible following discovery of the emergency situation, but no later than five (5) business days following the discovery. If the Applicant, or the Applicant's contractor, subcontractor or agent, fails to obtain a permit in accordance with this Section, the Applicant shall pay the City a $500 fee for noncompliance and shall obtain the permit within 15 days of being notified of the failure to obtain the permit.

4.6 **Maps.** Applicant shall maintain maps and data pertaining to the location of Applicant's Facilities on file at its corporate offices or at an office in Oregon. After providing Applicant with twenty-four (24) hours prior notice, the City may inspect the maps (excluding Applicant's proprietary information) at any time during Applicant's business hours. Upon request of the City and without charge, Applicant shall furnish current maps to the City by electronic data in read-only format showing the general location of Applicant's Facilities, excluding Applicant's proprietary information. Unless required by law, the City will not sell or provide Applicant's prepared maps or data to

third parties without written permission from Applicant. Upon request of Applicant, the City will make available to Applicant any relevant City prepared maps or data at no charge to Applicant.

4.7 **Relocation.**

A. **Permanent Relocation - General.** In accordance with ORS 221.420, City may by written order require Applicant to move any facility in the Right-of-Way. If the relocation is the result of a public project, Applicant shall be responsible for the costs of relocation. If the relocation is required to accommodate a private party development or project, Applicant shall have the right to seek reimbursement from the private party. In no event shall the City be responsible for the costs of relocation of any of Applicant's facilities.

B. **Permanent Relocation - Undergrounding.** As permitted by law, the City may require Applicant to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to Applicant's engineering and safety standards. The expense of such a conversion shall be paid by Applicant, and Applicant may recover its costs from its customers in accordance with state law. Nothing in this paragraph prevents the City and Applicant from agreeing to a different form of cost recovery on a case-by-case basis.

C. **Temporary Relocation at Request of Third Parties.** Whenever it is necessary to temporarily relocate or rearrange any facility of Applicant to permit the passage of any building, machinery or other object, Applicant shall perform the work on 30 days' written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) bear the approval of the City Public Works Director; (2) detail the route of movement of the building, machinery or other object; (3) provide that the person requesting the temporary relocation shall be responsible for Applicant's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Applicant from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Applicant's facilities; and (5) be accompanied by a cash deposit or other security acceptable to Applicant for the costs of relocation. Applicant in its sole discretion may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by Applicant to cover Applicant's costs of temporary relocation and restoration.

D. **Temporary Relocation at Request of City.** In accordance with ORS 221.420, the City may require Applicant to remove and relocate transmission and distribution facilities maintained by Applicant in any public Rights-of-Way, property, or place of the City by giving notice to Applicant. Prior to such relocation the City agrees to provide a suitable location which includes a minimum or maximum square footage set by Applicant and the required easements from private property owners

for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by Applicant; however when relocation is to be temporary and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of the Applicant and subsequent relocations occurring less than two (2) years after the initial relocation shall be at the expense of the City. In the event that any relocation is requested by or is to accommodate a private party, Applicant shall seek reimbursement from the private party and not from the City. The City and Applicant agree to cooperate to minimize the economic impact of such temporary relocation on each party.

4.8 **Damage to Right-of-Way.** Whenever the installation, operation maintenance, removal, reinstallation, replacement or relocation of Equipment damages or disturbs the Right-of-Way, Applicant, at its sole cost and expense, shall promptly repair and return the Right-of-Way to the condition it was in before it was damaged or disturbed, as approved by the Public Works Director; provided, however, Applicant shall not be required, at Applicant's expense, to pave a gravel street that was gravel prior to Applicant's work, install sidewalk panels or curbs that did not exist prior to the work, or construct additional improvements in the Public Right-of-Way that did not exist prior to the work. If Applicant does not repair the Right-of-Way as just described, then the City may, upon fifteen (15) days' prior written notice to Applicant, repair the Right-of-Way at Applicant's sole expense. Upon the receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for all reasonable costs the City incurred to repair the Right-of-Way to the standard required by this Section 4.8.

4.9 **Use by City.** The City may install, maintain, and replace wires and other equipment for municipal purposes on or in any of Applicant's Existing Structures within the Right-of-Way and may install pipes or conduit, in any openings created by Applicant, provided that: a) space therein or thereon is reasonably available; b) the City does so in compliance with all applicable state and federal safety rules, including but not limited to the NESC and OSHA regulations; c) the City's excess capacity on such wires and equipment is not leased to, sold to or otherwise used by non-governmental third parties; and d) the City holds Applicant entirely harmless from all claims, costs, damages and expenses which arise out of (i) the City's installation, operation, maintenance and repair of such wires, equipment, pipes and conduit and (ii) the presence of the City's wires and equipment on or in Applicant's Existing Structures, except to the extent such claims, costs, damages or expense is caused by the negligence or willful misconduct of Applicant. There shall be no charge to the City for such use of Applicant's Existing Structures or openings, but the City agrees to submit permit requests to Applicant for engineering purposes and the City shall be responsible to pay for any make-ready and inspections Applicant must perform in order to

provide access to Applicant's Existing Structures for City wires and equipment in accordance with the NESC. Should any of the City's attachments to Applicant's Existing Structures violate the NESC, the City shall work with Applicant to address and correct such violations in an agreed-upon period of time. For purposes of this Franchise, "make-ready" shall mean engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

4.10 **Safety.** Applicant shall insure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public. As a minimum, Applicant shall provide signs, signals, and flaggers as necessary to control traffic.

4.11 **Use by Others.** Applicant agrees to make its conduits and ducts available to any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Right-of-Way in a written agreement on terms and conditions that are consistent with the OPUC regulations, the NESC and sound engineering practices.

Section 5. Maintenance. Applicant shall install and maintain all Equipment in a manner that prevents injury to the Right-of-Way, the City's property or the property belonging to another Person within the City. Applicant shall, at its own expense, repair, renew, change, and improve Equipment from time to time as may be necessary to accomplish this purpose, subject to OPUC regulations, the NESC and sound engineering principles.

Section 6. Vacation. If the City vacates any Right-of-Way, or portion thereof, that Applicant uses, unless the City specifically reserves to Applicant the right to continue its installation in the vacated Right-of-Way, or Applicant secures such right from the third party that will have title to the area in which Applicant has its Equipment, Applicant shall remove its Equipment from the Right-of-Way at its own expense. If Applicant fails to remove its Equipment following ninety (90) days written notice from the City to do so, the City may remove the Equipment at Applicant's sole expense. Upon receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for any reasonable costs the City incurred to remove the Equipment.

Section 7. General Financial, Liability and Insurance Provisions.

7.1 **Insurance**

A. Applicant shall maintain general liability and property damage insurance that protects Applicant and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 7.2. Such coverage shall contain Completed Operations and Contractors Liability coverage. The insurance shall provide coverage at all times of not less than $3 million for personal injury to each person, $3 million in the aggregate for each occurrence, and $3 million for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than $3 million covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be

subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. Applicant may self-insure all or part of its obligations under this Section 7.1.

B. Applicant shall maintain workers' compensation coverage as required by law, as well as employer's liability insurance with limits of not less than $1 million.

C. Applicant shall maintain business automobile liability insurance to cover any owned, nonowned and hired vehicles used in connection with its activities under this Franchise, with a limit of $1 million for each person and $3 million for each accident.

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3 million.

E. Applicant shall maintain on file with the City a certificate of insurance or self-insurance certifying the coverage required above. The certificate of insurance or self-insurance shall be reviewed and approved as to form by the City Attorney. Applicant shall name the City as an additional insured on all applicable policies except for workers' compensation, employer's liability coverage, and policies which Applicant self-insures.

F. Any insurance policy under this Section shall not be canceled or not renewed without 90 days prior written notice to the City.

7.2 **Indemnification.** To the fullest extent permitted by law, Applicant shall indemnify, defend, and hold harmless the City and its officers, employees, agents and representatives against any and all claims, damages, losses and expenses, including reasonable attorney's fees and costs, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Applicant or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Equipment, and in providing or offering Telecommunications Services over the Equipment. The obligations imposed by this Section are intended to survive termination of this Franchise.

7.3 **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO EACH OTHER FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

Section 8. Vegetation. Applicant shall prune or cause to be pruned any vegetation, including but not limited to tree limbs and roots, that protrudes into the Right-of-Way and contacts, or is likely to interfere with, Applicant's Equipment in accordance with the ANSI A300 pruning standards. Applicant shall reimburse the City for any costs City incurs, including but not limited to costs or damages associated with third party claims, when the costs or damages incurred by the City are caused by or directly attributable to the Applicant's failure to prune vegetation in accordance with the ANSI A300 pruning standards.

Section 9. Discontinued Use. Whenever Applicant discontinues use of any Equipment and does not intend to use the Equipment in the future to provide Services, Applicant shall remove the Equipment from the Right-of-Way unless the City agrees, in writing, that the Equipment may remain in the Right-of-Way and the Applicant conveys title or ownership of the Equipment to the City. If Applicant fails to remove Equipment that is no longer going to be used, the City may remove the Equipment at Applicant's sole expense using a qualified contractor in accordance with applicable state and federal regulations, Applicant's construction standards as provided to the OPUC and NESC requirements. Upon receipt of a demand for payment from the City, Applicant shall promptly pay the City for all reasonable costs the City incurred to remove the Equipment.

Section 10. Notices.

10.1 **Manner.** All notices that shall or may be given pursuant to this Franchise shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by e-mail transmission, if a hard copy of the same is followed by delivery through the United States mail or by overnight delivery service as just described and there is written confirmation of the facsimile or e-mail, addressed as follows:

If to the City:
City of King City
15300 SW 116th Avenue
King City, Oregon 97224
Attention: City Public Works Director
Email:

If to Applicant:
Fatbeam, LLC
2065 West Riverstone Drive, Suite 105
Coeur d'Alene, ID 83814
Attention: Project Coordinator/Operations
Email:

10.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed effective upon receipt in the case of personal delivery, one (1) business day after delivery to overnight courier, three (3) business days after deposit in the United States mail, or for e-mail, upon delivery . Either party may from time

to time designate other addresses for providing notice, if the change of address is provided in writing and delivered in the manner set forth above.

Section 11. Termination and Remedies.

11.1 **Termination.** In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to terminate the Franchise, and all of Applicant's rights arising thereunder, in the following circumstances: a) Applicant has been judged to have committed fraud or deceit upon the City in a court of applicable jurisdiction; b) Applicant is unable to pay its debts when due or is declared bankrupt; c) Applicant fails to pay the Franchise Fee in accordance with the terms of this Agreement; d) Applicant fails to provide information regarding its calculation of the Franchise Fee in a timely manner upon request by the City; or e) Applicant commits a material breach of Section 4, 5 or 7 of this Franchise. Notwithstanding the foregoing, it shall not be a circumstance justifying termination under this Section 11.1 if Applicant fails to pay the full amount of the Franchise Fee owed due to an error in calculation, or a bona fide dispute exists between the parties concerning circumstance c), d) or e), above.

11.2 **Notice and Opportunity to Cure.** The City shall give Applicant thirty (30) days' prior written notice of its intent to exercise its rights under this section, stating the reasons for such action. If Applicant cures the stated reason within the thirty (30) day notice period, or if Applicant initiates efforts to remedy the stated reason and, to the City's satisfaction, the efforts continue in good faith, the City shall not exercise its remedy rights under this section. If Applicant fails to cure the stated reason within the thirty (30) day notice period, or if Applicant does not undertake and/or maintain efforts to remedy the stated reason to the City's satisfaction, then the City may impose any or all remedies available under this section. In no event shall the City exercise its rights under this section if a bona fide, good-faith dispute exists between the City and Applicant.

11.3 **Additional Remedies.** In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

A. Impose a financial penalty of up to $1,000.00 per material Franchise violation; or,

B. Revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City expressly finds that such provision constituted a consideration material to the grant of the Franchise.

11.4 **Termination for City Provision of Service.** The City may terminate this agreement upon one year's written notice to Applicant in the event that the

City decides to engage in public ownership of fiber optic networking to customers throughout the City.

11.5 **Electing Remedies.** In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further violation and any other matters the City deems appropriate.

Section 12. Assignment. This Franchise shall not be assigned or transferred without the prior written consent of the City. The City's consent shall not be unreasonably withheld, conditioned, or delayed if the Franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Applicant. If the City consents to an assignment or transfer of the Franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 7 and filed a signed acceptance of the terms of this Franchise.

Section 13. Expiration. At the end of the Franchise term, if the City and Applicant are negotiating another franchise and have not concluded their negotiations, Applicant's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Applicant accepts it.

Section 14. Performance Surety. Applicant shall provide a performance bond in the amount of thirty thousand dollars ($30,000), in form and substance acceptable to the City, as security for the full and complete performance under this Franchise, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Applicant to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required for construction of facilities.

Section 15. Miscellaneous Provisions.

15.1 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise.

15.2 **Severability of Provisions.** If any one or more of the provisions of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable or pre-empted by federal or state laws or regulations, such provision(s) shall be deemed severable from the remaining provisions of this Franchise and shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise.

15.3 **Contacting Applicant.** The staff of any City department may contact Applicant twenty-four (24) hours a day, seven (7) days a week, to respond to problems or complaints resulting from the installation, operation, maintenance, or removal of the Equipment. The City may contact Applicant at 503-736-5665 regarding such problems or complaints.

15.4 **Governing Law and Choice of Forum.** This Franchise shall be governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Washington, or in the United States District Court for the District of Oregon.

15.5 **Representations and Warranties.** Each of the parties to this Franchise represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

15.6 **Amendment of Franchise.** This Franchise may not be amended, except pursuant to a written instrument signed by Applicant and approved by the King City City Council.

15.7 **Acceptance.** Applicant shall, within thirty (30) days after the Council adopts this resolution, file with the City Recorder a written unconditional acceptance of this Franchise. If Applicant fails to file its acceptance, this resolution shall be void, unless the City grants Applicant an extension of time.

15.8 **Entire Agreement.** This Franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein. To the extent that a provision of this Franchise conflicts with a section of the King City Municipal Code Chapter 5.12, the Franchise shall take precedence.

Section 16. This resolution shall be effective immediately upon its passage.

INTRODUCED AND ADOPTED by the City Council of King City this 15th day of February, 2023.

YEAS: 6

NAYS: 0

ABSTAINED: 0

ABSENT: 1

FATBEAM, LLC

By: _____
Name: Jason Koenders
Title: COO
Date: Feb 16, 2023

CITY OF KING CITY, OREGON

By: _____
Name: Jaimie Fender
Title: Mayor
Date: 3.16.23

_____
Ronnie Smith, City Recorder

SEAL King City INC. 1966 A Community For All Ages