

AGREEMENT

This Agreement ("Agreement") is made and entered into this _____ of _____, 2018, by and between the CITY OF NORMAN, a municipal corporation, hereinafter referred to as the "City," and OKLAHOMA FIBER, LLC, an Oklahoma limited liability company, doing business as OEC Fiber, hereinafter referred to as "OEC Fiber" or "Company," with OEC Fiber and City sometimes separately referred to hereinafter as a "party," and sometimes collectively as "parties."

WITNESSETH:

WHEREAS, Oklahoma Electric Cooperative, an Oklahoma not for profit cooperative ("OEC") has a franchise with City that grants OEC with the right to produce, sell, transmit, and distribute electricity within certain sections of City's limits, and to sell electricity therein, and to construct and maintain the system of poles, wires, conduits and other facilities to provide electricity in, upon, across, under and over the streets, alleys, and public grounds in the City in exchange for a franchise fee equal to five percent (5%) of its gross revenues from the sale of electricity within City limits; and

WHEREAS, OEC Fiber is a wholly owned subsidiary of OEC and OEC is installing fiber optic cables along and under its electric facilities in order to supply broadband data to those facilities; and

WHEREAS, OEC has a lease agreement for OEC Fiber to utilize OEC's fiber optic cables for the purpose of selling broadband data and voice over internet protocol ("VOIP") Services ("Services"); and

WHEREAS, OEC Fiber represents that it intends to use the fiber optic cables and associated facilities and equipment to offer, among other things, an integrated internet protocol platform of voice, data and information within the geographic boundaries of the City; and

WHEREAS, OEC Fiber is seeking a Certificate of Convenience and Necessity from the Oklahoma Corporation Commission requesting authority to provide competitive local exchange carrier services, which, if granted, would designate OEC Fiber as a public utility as defined by Oklahoma Statutes, Title 17, Section 131 (17 O.S. § 131 et. Seq.); and

WHEREAS, OEC Fiber represents that it does not intend to provide video services through an integrated internet protocol ("Video Service") within the geographic boundaries of the City initially, but does intend to provide Video Service in the future; and

WHEREAS, OEC Fiber takes the position that it is not required to obtain authorization from the City in order to provide its Services as currently planned; however, notwithstanding its position and in consideration of requirements negotiated with other internet protocol based video service providers, OEC Fiber is willing to enter into this Agreement and to pay an Video Service Provider Fee, with such payment of fee to become

effective when it begins offering such Video Service in the future, as set forth more fully below so that both OEC Fiber and the City can achieve the full benefits that competition and the availability of such services will bring to the community and the citizens of the city; and

WHEREAS, in consideration of the payment of the Video Service Provider Fee on any Video Services as may be offered in the future by OEC within the geographic boundaries of the City, as well as other consideration provided herein, the City is willing to enter into this Agreement; and

WHEREAS, the parties understand and agree that neither party shall be deemed to have waived any of its legal rights by entering into this Agreement except as expressly provided herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties agree as follows:

1. Term of Agreement: This non-exclusive Agreement shall take effect upon approval hereof by OEC Fiber and by the City Council of the City and shall be effective for a term of five (5) years thereafter. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification, and/or extension of this Agreement.
2. Nature of Agreement:
 - a. No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.
 - b. This Agreement shall not relieve OEC Fiber of any existing obligations involved in obtaining permits, pole or conduit space from any department of the City, utility company, or from others maintaining utilities in the streets or easements for the same.
 - c. This Agreement shall not be sold, transferred, leased, assigned or disposed of (except to an affiliate of OEC Fiber), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall not, however, be unreasonably withheld.
3. Access to the City's Rights of Way.
 - a. The City acknowledges that OEC has a right to use the City's rights of way to provide electric service under a franchise agreement (as may be amended and affirmed by the voters). In addition to the rights granted therein, the City hereby acknowledges and grants OEC and OEC Fiber, in accordance

with the provisions herein contained, the right to access the City's rights-of-way to provide telecommunications services and video services.

- b. OEC Fiber represents and claims that its Video Service, if offered, would not be a "cable service" under Oklahoma or federal law. The City is entering into this Agreement in reliance on this representation. In the event a court or federal agency or any governmental legislative body with jurisdiction, rules or declares that OEC Fiber's Video Service is a cable service, or that it is subject to the same laws and regulations as a cable service provider or cable television system, and if the ruling or declaration is effective and binding upon either the City or OEC Fiber, this Agreement shall become null and void at the City's option, after ninety (90) days written notice to OEC Fiber. Barring such a determination by a court or federal agency, or any governmental legislative body with jurisdiction, the City will not attempt to nor subject the provision of OEC Fiber's IP-enabled Video Service to regulation under any cable television or broadband telecommunications franchise ordinance or similar ordinance(s).
- c. City agrees to subject the construction and installation of the facilities that will be used in whole or in part to provide OEC Fiber's Video Service to the same process and review as it subjects the installation and construction of traditional telecommunications infrastructure.
- d. City agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide OEC Fiber's Services.
- e. City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner;

4. Video Services:

- a. OEC Fiber agrees to notify the City of its intent to provide Video Services in writing at least thirty (30) days prior to the provision of such services.
- b. Video Service Provider Fee: During the term of this Agreement, to become effective upon such time when OEC Fiber begins offering a Video Service product to subscribers, OEC Fiber shall pay to City a fee equal to 5% of the gross revenues, as defined herein, of OEC Fiber and its affiliates collected from each subscriber to OEC Fiber's Video Services product. The Video Service Provider Fee may be identified and passed through on any subscriber bill by OEC Fiber, and all such fees collected will be forwarded to the City on an annual basis within forty-five (45) days after the end of each year.

- c. Gross revenues, as used herein, include the following:
- i. Recurring charges for Video Services;
 - ii. Event-based charges for Video Services, including but not limited to pay-per-view and video-on-demand charges;
 - iii. Rental of set top boxes and other Video Services equipment, but not including any revenue towards capital costs of such equipment or towards replacement of such equipment due to malfunction;
 - iv. Services charges related to the provision of Video Services, including, but not limited to, service order and service termination charges;
 - v. Administrative charges related to the provision of Video Services, including, but not limited to, service order and service termination charges; and
 - vi. Amounts billed to Video Services subscribers to recover the Video Services Provider Fee authorized by this section.
 - vii. A pro rata portion of all revenue collected by OEC Fiber pursuant to compensation arrangements for advertising (less any commissions OEC Fiber receives from any third parties for advertising) and home-shopping sales derived from the operation of OEC Fiber's Video Service within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts OEC Fiber may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The pro rata portion of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- d. Gross revenues, as used herein, do not include:
- i. Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
 - ii. Late payment fees;
 - iii. Revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Video Services and not for the provisioning of any other service provided by OEC Fiber or its affiliates;
 - iv. Revenue from repairs or maintenance as received from subscribers in return for material and labor as performed by OEC Fiber;
 - v. Amounts billed to Video Services subscribers to recover taxes, fees or surcharges imposed upon Video Services subscribers in connection with the provision of Video Services, other than the Video Service Provider Fee authorized by this section;
 - vi. Revenue from the sale of capital assets or surplus equipment; or

- vii. Charges, other than those described in subsection b. that are aggregated or bundled with amounts billed to Video Services subscribers.
- e. Bundling discounts for multiple services including Video Services shall be apportioned fairly among video and other services. OEC Fiber shall not apportion revenue in such a manner as to avoid the Video Services Provider Fee.
- f. In the event that any other video services provider, including but not limited to a cable operator or open video service provider, enters into any agreement or makes any arrangement with City during the term of this Agreement whereby it is required or allowed to pay a fee to the City that is similar to the Video Services Provider Fee described herein, City shall allow OEC Fiber the option, but not the obligation, to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Agreement immediately upon request of OEC Fiber.
- g. OEC Fiber will grant the City the right to conduct reasonable audits to assure that the Video Services Provider Fee has been properly calculated.
- h. OEC Fiber and City agree that the Video Services Provider Fee, when and if it is implemented, shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments except sales taxes, personal or real property taxes, ad valorem taxes, any fees levied for the purpose of funding the E9-1-1 system, and the two percent (2%) Telephone Inspection Fee currently being paid by OEC Fiber.
- i. During the term of this Agreement, and only if OEC Fiber provides Video Services, then OEC Fiber shall provide capacity for six "streams" or "channels" of noncommercial public, educational and governmental programming through OEC's Video Services so long as the City and educational institutions designated by the City provide programming content in a standard digital format compatible with OEC Fiber's Video Services technology. City and educational institutions designated by the City shall provide this programming to OEC Fiber at a Point of Presence designated by OEC Fiber. City and educational institutions designated by the City will be solely and individually responsible and liable for their own programming content.
- j. OEC Fiber shall work with the City to identify an economically and technically feasible process for providing an appropriate message through OEC Fiber's IP-enabled Video Service in the event of a public safety emergency issued over the emergency alert system, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

5. Applicable Law, Severability, and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law, unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties may mutually agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.
6. Termination. OEC Fiber shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days written notice to the City, if (i) OEC Fiber concludes in its sole discretion that Video Service in the City is no longer technically, economically or financially consistent with OEC Fiber's business objectives; (ii) Title VI Communications Act of 1934 obligations or any similar obligations are imposed on OEC Fiber; or (iii) it becomes clear that OEC Fiber must offer or provide IP-enabled Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.
7. Technical Determinations Related to Services. OEC Fiber shall determine, in its sole discretion where in the City its facilities shall be constructed, operated, maintained, repaired and upgraded to provide, and if applicable, where in the City to provide its Video Services. However, OEC Fiber agrees that if it offers a Video Service, it will be a competitive video service through the technology of its choosing, which may include, but is not limited to, Fiber to the Home service within the boundaries of the City, subject to technical, feasibility and access limitations based on standard industry practice.
8. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.
9. Entire Agreement. This Agreement constitutes the entire agreement between City and OEC Fiber with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and OEC Fiber regarding the subject matter hereof.
10. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

11. Miscellaneous.

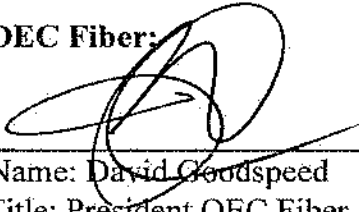
- a. OEC Fiber and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.
- b. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.
- c. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.
- d. This Agreement shall not be exclusive and the City expressly reserves the right to enter into similar agreements with any other company offering the same or similar video services at any time.
- e. The geographic area covered by this Agreement shall be the incorporated limits of the City of Norman, Oklahoma, as such area now exists or may be modified in the future by annexation or de-annexation.
- f. The parties agree that either Cleveland County District Court or the United States District Court for the Western District of Oklahoma shall be the sole and exclusive forum for any judiciable disputes concerning this Agreement.

12. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the day of _____, 2018 ("Effective Date").

OEC Fiber:



Name: David Goodspeed
Title: President OEC Fiber

City:

APPROVED by the City Council of The City of Norman, Oklahoma, on the day of _____, 2018.

MAYOR

ATTEST:

City Clerk

REVIEWED as to form and legality this _____ day of _____, 2018.

City Attorney