

**A BILL FOR AN ORDINANCE ESTABLISHING ) ORDINANCE BILL NO. 2022-24  
A NONEXCLUSIVE FRANCHISE FOR )  
IOT Fiber–Lebanon, LLC ) ORDINANCE NO. 3000  
d/b/a SANTIAM FIBER )**

WHEREAS, IOT Fiber-Lebanon, LLC d/b/a Santiam Fiber is a competitive communications provider that will be operated by Casco Communications, Inc., d/b/a PEAK Internet to bring enhanced communication services to the City of Lebanon (the “City”) and other surrounding areas; and

WHEREAS, providing communication services requires the installation, operation and maintenance of wires, cables, conduits, poles, equipment, appliances, and associated structures to be located within the public ways of the City; and

WHEREAS, the City desires to set forth the terms and conditions by which IOT Fiber-Lebanon, LLC d/b/a Santiam Fiber shall use the public ways of the City.

**THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

**SECTION 1: Grant of Franchise and General Utility Easement**

The City hereby grants to IOT Fiber-Lebanon, LLC d/b/a Santiam Fiber, referred to in this Franchise as Grantee, the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its wires, cables, conduits, poles, equipment, appliances, and associated structures (collectively referred to herein as “Communications Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting communication services to the inhabitants of the City and persons and corporations beyond the limits thereof.

**SECTION 2: Term**

The Term of this Franchise is five (5) years commencing on the date of acceptance by Grantee as set forth in Section 4 below.

**SECTION 3: Renewal**

At least 120 days prior to the expiration of this Franchise, Grantee and the City either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement franchise. This Franchise shall not be renewed until any ongoing violations or defaults in the Grantee’s performance have been cured.

**SECTION 4: Acceptance by Grantee**

Within sixty (60) days after the passage of this ordinance by the City, Grantee shall file an unqualified written acceptance thereof, with the City Recorder otherwise the ordinance and the rights granted herein shall be null and void.



impose no obligation or liability of any kind upon the company, its agents or representatives” shall be omitted.

- C. Within sixty (60) days after receipt by the City of said notice of cancellation, and in no event later than thirty (30) days prior to said cancellation, Grantee shall obtain and furnish to the City evidence that Grantee meets the requirements of this Section. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- D. Any deductible or self-insured retention must be declared to and approved by the City. At the adoption of the City, either the insurer shall reduce or eliminate such deductible or self-insured retention as respect the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**SECTION 8:**            **Indemnification**

8.1 Grantee shall indemnify and hold City harmless from any and all damages of any kind or character growing out of or arising by reason of the installation and maintenance of Grantee’s Communications Facilities in the City, except when resulting from negligence or willful misconduct of the City’s officers, employees, or agents.

8.2 Grantee also hereby agrees to indemnify and hold City harmless from any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee’s failure to remove, adjust or relocate any of its Communications Facilities within thirty (30) days following written notice from the City to relocate, unless Grantee’s failure arises directly from the negligence or willful misconduct of the City’s officers, employees, or agents or from causes beyond Grantee’s reasonable control.

8.3 If the City directly and proximately engages in willful, intentional, and malicious acts and is found legally liable to Grantee for damage to Grantee’s Communications Facilities, City’s liability shall be limited to the cost of repair or replacement of the damaged facilities, whichever is less. City shall not be liable to Grantee for lost revenue, lost profits, incidental or consequential damages or claims of third parties arising from damage to Grantee’s facilities. Grantee covenants that it will not assert any claim against the city for any liability, loss, or damage excluded under this Section.

**SECTION 10:**            **Annexation**

Upon the annexation of any territory to the City, the rights granted in this Agreement shall extend to the annexed territory to the extent the City has such authority. All Communications Facilities owned, maintained, or operated by Grantee located within any Public Ways of the annexed territory shall be subject to all of the terms of this Agreement.

**SECTION 11:**        **Planning, Design, Construction and Installation of Company Facilities**

11.1 Grantee shall make commercially reasonable efforts to contract with another City franchisee to employ that franchisee's above-ground facilities in place at the time this Franchise is granted. It shall be lawful for Grantee to make all necessary excavations in any public ways for the purpose of constructing and maintaining its Communications Facilities. Provided, however, that Grantee's use of the public ways shall be subject to the City's authority to prescribe which public way will be used and the location within the public way, which authority is hereby expressly reserved to the City.

11.2 Grantee's use of the public ways and all construction by Grantee shall be subject to and shall comply with all standard specifications and any special provisions of the City, the Charter and ordinances of the City, and all other applicable federal, state, and local laws and regulations. No work affecting the public ways shall be done by the Grantee without first obtaining the permits required by the City.

11.3 Applications for permits to construct Communications Facilities shall be submitted upon forms to be provided by the City and shall be accompanied by: (1) the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings referenced in this Section submitted with the application comply with applicable codes, rules and regulations; (2) a written construction schedule, subject to approval by the City Manager, which shall include a deadline for completion of construction, and a traffic control plan which demonstrates the protective measures and devices which will be employed; (3) drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- B. That the facilities will be constructed in accordance with this Franchise.
- C. The location and route of all facilities to be installed aboveground or on existing utility poles.
- D. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route. Existing facilities shall be differentiated on the plans from new construction.
- E. The location of all Grantee's existing utilities, conduits, ducts, pipes, mains and installation which are within the Public Way along the route proposed by Grantee. For underground facilities, a cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or Public Way.
- F. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the Public Way, and description of any improvements that applicant proposes to temporary or permanently remove or relocate.

11.4 Where Grantee installs its Communications Facilities under or adjacent to any existing paved Public Way, the Public Way shall be overlaid with a new asphalt surface after construction. Where Grantee installs its Communications Facilities along the route of a planned bicycle path or pedestrian trail, the City may require Grantee to construct the bicycle path as a condition of plan approval. All such path and trail repair and construction shall be at Grantee's expense.

11.5 Except in the case of an emergency or extenuating circumstances regarding critical customer service activities, Grantee shall notify the City not less than seven (7) working days in advance of any permitted excavation or construction activity in the Public Ways and will continue to provide the City daily notification of time and location of permitted construction crews if crews are to occupy any Public Ways or easement on public or private property. In addition, Grantee shall provide to the City, a weekly summary of all construction activity within any Public Way or easement. Grantee shall also provide in writing, to all property owners and residents adjacent to such easement, a seven (7) day advance notice of intent to occupy easement. The City recognizes that a seven (7) day notice may not be possible in emergency situation, however, the City does encourage Grantee to provide as much notice to property owners and residents as is reasonably possible under such conditions.

11.6 Grantee shall promptly complete all construction activities so as to minimize disruption of the City Public Ways and other public and private property. All construction work within the City, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City Manager. Upon completion of construction of any new facilities, Grantee shall promptly furnish the City two (2) sets of "as built" plans within sixty (60) days after completion showing the exact location and construction details of all of Grantee's facilities. Grantee may provide these plans in hard copy or electronically, in accordance with instructions to be provided by the City. New plans will be furnished promptly for any additions or modifications.

11.7 Nothing in this Franchise shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any Public Way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the free use by Grantee of its Communications Facilities.

11.8 Grantee shall at all times maintain all of its Communications Facilities in a good state of repair. Motorized vehicles shall not be allowed on any public bicycle paths, pedestrian trails and landscaped areas, except when necessary to install, remove or repair Grantee's facilities. Except in an emergency, permission shall be obtained from the City before using motorized vehicles on any public bicycle paths, pedestrian trails and landscaped areas. Any damage to any Public Way caused by Grantee shall be repaired by Grantee at no cost to the City. Grantee shall have a local representative available at all times through the City to locate Grantee's facilities for persons who need to excavate in the Public Way.

## **SECTION 12: Relocation of Communications Facilities**

12.1 The City shall have the right to require Grantee to change the location of any Communication Facility within the Public Way when the public convenience requires such

change; and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may affect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the City, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the Public Way. Except in case of emergency, the City shall give Grantee written notice to relocate its facilities at least thirty (30) days prior to the date established by the City as the deadline for relocation.

12.2 Should it ever become necessary to temporarily rearrange or temporarily remove Grantee's Communications Facilities at the request of a private person or business, Grantee shall perform such rearrangement or removal as expeditiously as possible upon receipt of reasonable written notice from the business or person desiring the temporary change of the Communications Facilities. The notice shall:

- (a) be approved by the City Manager,
- (b) detail the route of movement,
- (c) provide that the costs incurred by Grantee in making the temporary change be borne by the person or business giving said notice.
- (d) provide that the person or business giving the notice shall indemnify and hold harmless Grantee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary change of the Grantee's Communications Facilities, and
- (e) if required by Grantee, be accompanied by a cash deposit or a good and sufficient bond to pay any and all of Grantee's estimated costs as estimated by Grantee.

### **SECTION 13: Compensation**

13.1 In consideration of the rights, privileges and franchise hereby granted, Grantee shall pay to City from and after the effective date of the acceptance of this franchise, annually, six percent (6%) of its Gross Revenues, as defined below, derived from its Communications Facilities that utilize the Public Way within the corporate limits of the City, less net uncollectibles.

- A. Gross Revenues: Revenue of the Grantee or any affiliate of the Grantee in whatever form accrued from all sources in connection with operation of Communications Facilities throughout the entire franchise area, and includes any amount even if separately identified or accounted for by the Grantee as franchise or other license fees, including but not limited to, revenues from subscribers and customers, and other fees related to the communications service; advertising revenue; access and attachment charges paid to the Grantee by other communications services or carriers; and revenue from the sale or lease of any wire, cable, facility, pole, duct, conduit or similar

transmission equipment, all as subject to FCC rules and regulations to exclude revenues from internet access services while prohibited by law.

13.2 To the extent that any separate fees are imposed by the City on Grantee for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the franchise fee payments required by this Section. However, Grantee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions or permit conditions from the franchise fee payments required by this Section.

13.3 The payment of the franchise fee shall be in addition to, not in lieu of, any local business license tax, or other taxes and permit fees not within the scope of this Franchise.

13.4 Grantee shall allow City use of Grantee's Communications Facilities to provide communication service to City facilities. The reasonable value of any of Grantee's facilities used or reserved for use by the City without Grantee's prescribed charges shall be credited toward any payment due the City under this provision.

13.5 In the event that Grantee wishes to add Cable television services to its list of services, as regulated by the federal Communications Act of 1934, as amended, Grantee agrees that it must negotiate an additional agreement with City setting forth the terms and conditions governing such service.

13.6 Other than any fees payable due to additional services offered or provided by Grantee such as those mentioned in Section 13.5, Grantee shall not be required to pay any additional fee, compensation or consideration to the City for its use of the Public Way. However, Grantee shall pay any charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions or permit conditions.

13.7 Grantee shall make quarterly payments to the City on or before the 15<sup>th</sup> day following the quarter immediately preceding. Grantee shall pay a pro rata fee for the last annual payment to the date of termination in addition to any other sums due the City and shall make such payment within thirty (30) days of termination.

13.8 With each franchise fee payment, Grantee shall furnish a sworn statement setting forth the amount and calculation of the payment. The statement shall detail the revenues received by the Grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenues claimed by Grantee in calculating the franchise fee.

13.9 The City shall have the right to annually audit the books and records of Grantee, upon 5 days notice and during normal business hours, to verify compliance with the terms and conditions of this Franchise. At the City's request, Grantee shall provide the City's agents access to Grantee's books and records, as necessary, to conduct a thorough audit.

**SECTION 14:        No Waiver**

Neither the City nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or

agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 15:        Transfer**

15.1 Neither this Franchise nor any property owned and operated by Grantee by authority hereof shall be sold, leased, mortgaged, assigned or otherwise transferred without the prior consent of the City as expressed by ordinance, except to entities that control, are controlled by, or are under common control with Grantee or Casco Communications, Inc. Grantee shall notify the City of any transfers to such entities within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

- A. The proposed assignee or transferee of this Franchise or system shall agree, in writing, to assume and abide by all of the provisions of the Franchise.
- B. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualification to own, hold and operate the communications system pursuant to this Franchise.
- C. Unless otherwise provided in this Franchise, Grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise.
- D. Any transfer or assignment of this Franchise, system or integral part of a system without prior approval of the City under this Section or pursuant to this Franchise shall be void and is cause for revocation of the Franchise.

15.2 Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of fiber optic cable system tangible assets for the purpose of financing the acquisition of equipment for or the construction and operation of the system without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Franchise.

15.3 Grantee shall not lease or sublease any of its pipes, wires, conduits, or other facilities, or the Public Way in which such are contained, without the City's consent as expressed by ordinance. However, Grantee may dedicate or lease its fiber optic cable system or any portion thereof, or otherwise make its fiber optic cable system available in the ordinary conduct of its business as a communications company, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its fiber optic cable system.

**SECTION 16:        Amendment**

At any time during the term of this Franchise, the City or Grantee may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be



effective until mutually agreed upon by the City and Grantee and formally adopted as an ordinance amendment, which is accepted in writing by Grantee.

**SECTION 17: Non-Contestability**

Neither the City nor Grantee will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall Grantee be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

**SECTION 18: Revocation or Termination**

18.1 This Franchise may be revoked for the following reasons:

- A. Construction or operation in the City or in the Public Way without a construction permit, or failing to construct as per Section 11.2, or improperly maintain existing facilities;
- B. Construction or operation at an unauthorized location;
- C. Failure to comply with Section 15 herein with respect to sale, transfer or assignment of this Franchise;
- D. Failure to relocate or remove facilities as required in this Franchise;
- E. Failure to pay taxes, compensation, fee, penalties or costs when as due to the City under this Franchise;
- F. Insolvency or bankruptcy of Grantee;
- G. Violation of material provisions of this Franchise.

18.2 In the event that the City believes that grounds exist for revocation of this Franchise pursuant to Section 18.1, the City shall give Grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general acts of the violation or noncompliance, and providing the grantee a reasonable period of time, of not less than five (5) days and not exceeding thirty (30) days, to furnish evidence that corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

18.3 In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in 18.2, the City Manager may refer the apparent violation or non-compliance to the City Council. The City Council shall provide Grantee with notice and a reasonable opportunity to be heard concerning the matter.

18.4 If City Council determines Grantee has violated or failed to comply with material provisions of this Franchise, Council may, (1) revoke the Franchise, or (2) establish some

lesser sanction and cure which may include, recovery of City administrative costs and penalties of not less than two hundred fifty dollars (\$250.00) per day for each provision not fulfilled. In determination of the penalty, City Council may take into consideration the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

- A. The misconduct was egregious.
- B. Substantial harm resulted.
- C. The violation was intentional.
- D. There is a history of prior violations of the same or other requirements.
- E. There is a history of overall compliance.
- F. The violation was voluntarily disclosed, admitted, or cured.

**SECTION 19: General Ordinance Provisions**

19.1 Governing Law: This Franchise is subject to the provisions of the Constitution and laws of the United States and the State of Oregon and the ordinances and Charter of the City.

19.2 Nonexclusive Grant: This Franchise shall not confer any exclusive right, privilege, license or franchise to occupy or use of the Public Way for delivery of communications services.

19.3 Severability and Preemption: If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decisions, the remainder of the Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision of limit the enforcement of a provision of this Franchise, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City. If, for any reason, the franchise fee or compensation is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee or compensation allowed by such court or other governmental agency shall be the franchise fee or compensation charged by this Franchise.

19.4 Penalties: Whenever the City Manager finds that Grantee has violated one (1) or more items, conditions or provisions of this Franchise, a written notice, or a verbal notice

followed by a written notice, shall be given to Grantee informing it of such violation or liability. If the violation concerns requirements mandated by the Oregon Occupational Safety and Health Administration, Oregon Department of Transportation or the National Electric Safety Code, a verbal notice followed by a written notice may be given. For these safety or permit violations, Grantee shall have twenty-four (24) hours from notification to correct the violation. For all other violations and liabilities, the written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days subsequent to receipt of the notice to which correct the violation; provided that if the violation is not able to be cured in twenty (20) days, Grantee is making diligent efforts to cure said violation. Subject to the requirement of prior notice for violations occurring without just cause, the City Manager may assess penalties against grantee as follows:

- A. For failure to adhere to material provisions of this Franchise, the penalty shall be not less than Two Hundred Fifty Dollars (\$250.00) per day for each provision not fulfilled.
- B. For failure to comply with Oregon Occupational Safety and Health Administration, or Oregon Department of Transportation safety requirements of the National Electrical Safety Code rules and regulations, the penalty shall be not less than Two Hundred Fifty (\$250.00) per day, per occurrence.
- C. For failure to comply with any provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be not less than One Hundred Twenty-Five Dollars (\$125.00) per day, per occurrence.
- D. For failure to comply with reasonable requests of the City Manager related to service, the penalty shall be not less than Seventy-Five Dollars (\$75.00) per day per request.

19.5 Appeal Penalty: Grantee may, within ten (10) days of receipt of notice, notify the City Manager in writing, that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City Manager shall specify with particularity the matters disputed by Grantee. The City Manager, within ten (10) days of receiving written notification and summary of dispute, shall decide if a violation or failure has, in fact, occurred. If Grantee disputes the decision of the City Manager, Council shall hear Grantee's dispute at its next regularly or specially schedule meeting. If after hearing the dispute the claim is upheld by the Council, Grantee shall have ten (10) days from such a determination to remedy the violation or failure. Penalties shall accrue from time of initial notification until such time as the violation or failure is resolved to the satisfaction of the City Manager.

19.6 Other Remedies: Nothing in this Franchise shall be construed as limiting any judicial remedies the City may have, at law or in equity, for enforcement of this Franchise.

19.7 Consent: Wherever the consent of either the City or of the Grantee is specifically required by this Franchise, such consent will not be unreasonably withheld.

19.8 Confidentiality: The City agrees to use its best efforts to preserve the confidentiality of information as requested by Grantee, to the extent permitted by the Oregon Public Records Law.

**SECTION 20:        Notices**

20.1 The City Manager or another designee named by City is authorized to act for the City in all matters pertaining to this franchise.

20.2 Whenever any notice is given pursuant to this ordinance, it shall be effective on the date it is sent in writing by registered or certified mail, addressed as follows:

To the City: City Manager  
Lebanon City Hall  
925 Main Street  
Lebanon, Oregon 97355


To Grantee: Karen Woodliff  
IOT Fiber-Lebanon, LLC  
5520 Spring Valley Road  
Suite 522  
Dallas, Texas 75254

To Operator: President/CEO  
Casco Communications, Inc. d/b/a PEAK Internet  
PO Box 1150  
Philomath, Oregon 97370

Notice of change of address may be given in the same manner as any other notice.

Passed by the Lebanon City Council and executed by the Mayor on this 9<sup>th</sup> day of November 2022 by a vote of 5 yeas and 0 nays.

CITY OF LEBANON, OREGON

  
\_\_\_\_\_  
Paul R. Aziz, Mayor   
Michelle Steinhebel, Council President

ATTESTED BY:

  
\_\_\_\_\_  
Kim Scheafer, MMC City Recorder