

AGREEMENT

This Agreement (“Agreement”) is made and entered into this ____ day of _____, 2024, by and between the City of Norman, OK, a municipal corporation, hereinafter referred to as the “City,” and DIRECTV, LLC, hereinafter referred to as “DIRECTV,” with DIRECTV and City sometimes separately referred to hereinafter as a “Party,” or sometimes collectively as “Parties.”

WHEREAS, on or about July 31, 2021, Southwestern Bell Telephone Company, LLC d/b/a AT&T Oklahoma, hereinafter “AT&T Oklahoma”, transferred its U-verse IP-enabled Video Service to DIRECTV, an affiliate. AT&T Oklahoma remains the owner of all underground cables, wires, and other such facilities used for the provision of AT&T Oklahoma’s telecommunications business and for its affiliate, DIRECTV’s, U-verse IP-enabled Video Service, sometimes referred to hereinafter as “IP-enabled Video Service” or “Video Service”; and

WHEREAS, this Agreement will allow DIRECTV the ability to operate its Video Service via AT&T Oklahoma’s cables, wires, and other such facilities, which are located within the City’s rights-of-way, easements, and on City owned property, on terms similar to those of other video providers with facilities occupying the City’s rights-of-way; and

WHEREAS, DIRECTV represents that it does not own any cables, wires, and/or other facilities located in the City’s easements, rights-of-way, or on City owned property; and

WHEREAS, the City’s role as manager of public rights-of-way and easements, and as a regulator of cable services, video services, and IP-enabled video services, requires it to maintain a fair and level playing field for all such service providers; and

WHEREAS, the City Council of Norman has relied on DIRECTV’s representations and has considered all information presented to it by DIRECTV, by City staff, and the public, and has determined that DIRECTV has the technical, legal, and financial ability to operate an IP-enabled video service and to provide IP-enabled video services; and

WHEREAS, based upon such representations, the City Council of Norman has determined to grant DIRECTV a non-exclusive permit to operate IP-enabled video services in the City, subject to the terms and conditions set forth herein and applicable federal, state, and municipal statutes, laws, rules, regulations, ordinances, and other governmental requirements, would be in the best interests of the City and is consistent with the public interest.

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, THEREFOR, 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 the last date of signature below by the City and by DIRECTV 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) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City by this Agreement shall be subject to transfer by the City to any other legally authorized officer, employee, department, or board of the City.
- (C) This Agreement shall be a privilege to be held in personal trust by DIRECTV for the benefit of the public. Said privilege cannot in any event be sold, transferred, leased, assigned, or disposed of, 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 conditioned, withheld, or delayed.
- (D) If either Party is not in compliance with the terms of the Agreement, after written notice is provided by the non-breaching Party, the offending Party has forty-five (45) calendar days to cure the breach, and in the event that any particular breach cannot be reasonably cured within such a period, provided the Party in breach is exerting good faith efforts to cure the breach, the period shall toll for so long as such efforts continue in good faith and with the approval of the non-breaching Party. No cure period shall be permitted if a Party to this Agreement is found to have already materially breached this Agreement three (3) times during any calendar year. In the event a Party to this Agreement is in breach and such breach is not cured within the cure period set out above, or has had three (3) prior material breaches in any calendar year, the non-breaching Party may require the breaching Party to pay reasonable expenses to cure the breach by providing no less than ninety (90) calendar days prior written notice of request for payment to the breaching Party.

3. Obligations of DIRECTV:

- (A) DIRECTV represents and claims that its IP-enabled Video Service is not 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 of federal agency or any governmental legislative body with jurisdiction rules or declares that DIRECTV’s IP-enabled 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 DIRECTV, this Agreement shall become null and void at the option of either Party and the

Parties shall negotiate, in good faith, a new agreement, or franchise, if required by law.

(B) During the term of this Agreement, DIRECTV shall pay to City a fee equal to 5% of the gross revenues of DIRECTV and its affiliates collected from each subscriber to DIRECTV's IP-enabled Video Services product, and 5% of the portion of gross revenues from advertising which are defined in Subsection 3(B)(3), below. This fee ("IP-enabled Service Provider Fee") may be identified and passed through on any subscriber bill by DIRECTV, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each calendar quarter.

(1) For purposes of this Agreement, gross revenues means amounts actually collected by DIRECTV for the following limited charges:

- (i) recurring charges for IP-enabled Video Services;
- (ii) event-based charges for IP-enabled Video Services, including but not limited to, pay-per-view and video-on-demand charges;
- (iii) rental of set top boxes and other IP-enabled Video Services equipment;
- (iv) service charges related to the provision of IP-enabled Video Services, including but not limited to, activation, installation, and repair;
- (v) administrative charges related to the provision of IP-enabled Video Services, including, but not limited to, service order and service termination charges; and
- (vi) amounts billed to IP-enabled Video Services subscribers to recover the IP-enabled Video Services Provider Fee authorized by this section.

(2) For purposes of this Agreement, gross revenues do not include:

- (i) Uncollectable 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 IP-enabled Video Services and not for the provisioning of any other service provided by DIRECTV or its affiliates;
- (iv) amounts billed to IP-enabled Video Service subscribers to recover taxes, fees, or surcharges imposed upon IP-enabled Video Services Subscribers in connection with the provision of IP-enabled Video

- Services, other than the IP-enabled Video Services Provider Fee authorized by this section;
- (v) revenue from the sale of capital assets or surplus equipment; or
 - (vi) charges, other than those described in subsection (1), that are aggregated or bundled with amounts billed to IP-enabled Video Services subscribers.
- (3) “Gross Revenues” which are subject to the IP-enabled Video Services Provider Fee paid by DIRECTV additionally include a pro rata portion of all revenue collected by DIRECTV pursuant to compensation arrangements for advertising to be aired within the City (less commissions DIRECTV receives from any third parties for advertising) and home-shopping sales derived from the operation of DIRECTV’s IP-enabled Video Service within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts DIRECTV may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation 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.
- (4) Bundling discounts shall be apportioned fairly among video and other services. DIRECTV shall not apportion revenue in such a manner as to avoid the IP-enabled Video Services Provider Fee. Further, DIRECTV represents that all charges as set forth in Section 3(B)(1) and (3) herein are collected by DIRECTV and constitute the revenue of DIRECTV and not that of some other entity in an attempt to avoid payment in full of the IP-enabled Video Services Provider Fee.
- (5) 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 prior to or during the term of this Agreement whereby it is required or allowed to pay a fee to the City that is similar to the Fee described herein, City shall allow DIRECTV 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 DIRECTV.
- (6) DIRECTV will grant the City the right to conduct reasonable audits to assure that the IP-enabled Video Services Provider Fee has been properly calculated.
- (C) DIRECTV and City agree that the IP-enabled Video Services Provider Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments that could be charged DIRECTV, except for sales taxes, personal or real property taxes, and ad valorem taxes.

- (D) During the term of this Agreement, DIRECTV shall provide capacity for up to four (4) “streams” or “channels” of noncommercial educational and governmental programming through DIRECTV’s IP-enabled Video Service for the use of City, Norman Public Schools, the University of Oklahoma, and other educational institutions designated by the City. All programming shall be provided by the City or educational institutions designated by the City in a format compatible with DIRECTV’s IP-enabled video technology. City and educational institutions designated by the City shall provide this programming, and DIRECTV shall receive this programming, using internet protocol specifications provided by DIRECTV. City and educational institutions designated by the City will be solely and individually responsible for their own programming content. DIRECTV shall not be required to share video programming with any other video service provider authorized to do business in the City.
- (E) DIRECTV shall comply with the federal Emergency Alert System (“EAS”) regulations (47 C.F.R. Part 11).
- (F) DIRECTV shall determine, in its sole discretion, where in the City to provide its IP-enabled Video Services. However, DIRECTV agrees that it will offer a competitive video service through the technology of its choosing, which may include, but is not limited to, direct-to-home satellite service, to all residential subscribers residing within the boundaries of the City, subject to density, technical feasibility, and access limitations based on standard industry practice (e.g., density limitation of thirty (30) homes per mile, authorized access to private property/developments, etc.). No user of the IP-enabled Video Service who lawfully receives IP-enabled Video Service with DIRECTV’s express permission shall be refused service arbitrarily.
- (G) DIRECTV represents and warrants that DIRECTV does not own or control or maintain any cables, wires, or other facilities located in the City’s easements, rights-of-way, or on City owned property. DIRECTV further represents and warrants that it will not construct, operate, maintain, repair, or upgrade any such facilities used for the provision of its IP-enabled Video Service or for any other purpose within the City, as those facilities remain the property of AT&T Oklahoma.
- (H) If at some time after the execution of this Agreement DIRECTV decides to locate, construct, operate, repair, upgrade, and/or maintain any cable, wires, or other facilities for the provision of its IP-enabled Video Service, or for any other purpose, it shall provide written notice of such to the City and the Parties shall negotiate a new agreement, or franchise, if required by law.
- (I) DIRECTV shall afford equal opportunity in employment to all qualified persons as required by applicable federal, state, and municipal statutes, laws, rules, regulations, ordinances, and other governmental requirements. No person shall be discriminated against in employment because of race, color, sex, religion, gender,

national origin, age, familial status, or disability in violation of applicable federal, state, and municipal statutes, laws, rules, regulations, ordinances, and other governmental requirements.

4. Obligations of City: The City will not attempt to nor subject the provision of DIRECTV's Video Service to regulation under any applicable cable television or broadband telecommunications franchise ordinance or similar ordinance(s) that are inconsistent with or more burdensome than those contained herein.

5. Miscellaneous:

- (A) DIRECTV and City each hereby represents and 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 deannexation.
- (F) The Parties agree that either Cleveland County District Court (21st Judicial District, State of Oklahoma) 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. The Parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any legal action or proceedings. The Agreement shall be governed by and interpreted in accordance with the laws of the State of Oklahoma, without giving effect to conflicts of laws principles.

6. Modification/Termination:

- (A) The Parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this

Agreement, in whole or in part. Should the finding be final, non-appealable, and binding upon either City of DIRECTV, this Agreement shall be deemed modified or limited to the extent necessary to address the subject or the finding unless any 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 mutually may 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.

- (B) In addition to the termination rights set forth above, DIRECTV shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days written notice to the City, if (i) DIRECTV concludes in its reasonable business judgment that IP-enabled Video Service in the City is no longer technically, economically or financially consistent with DIRECTV's business objectives; (ii) Title VI obligations or any similar obligations are imposed on DIRECTV; or (iii) it becomes clear that DIRECTV must offer or provide IP-enabled Video Service pursuant to a franchise (cable or otherwise) and/or applicable franchise-like requirements or other local authorization under which this Agreement is found to be inadequate or unenforceable, in which instance, the provisions of Section 6(A), herein, shall be applicable thereto.
 - (C) This Agreement may be amended or modified only by a written instrument executed by both Parties.
7. 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.
 8. 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, assigns, and any parents, subsidiaries, or affiliated corporations or entities, as applicable.
 9. Entire Agreement: This Agreement constitutes the entire agreement between City and DIRECTV with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and DIRECTV regarding the subject matter hereof.
 10. Notices: Unless otherwise provided by applicable federal, state, and municipal statutes, laws, rules, regulations, ordinances, and other governmental requirements, all notices, approvals, and other communications required, permitted, or contemplated by this Agreement shall be in writing, signed by the Party giving the notice, and shall be deemed to be sufficiently given upon delivery to the address set forth below by U.S. certified mail,

return receipt requested, or by nationally or internationally recognized courier service (such as Federal Express). If questioned, the party sending a notice shall have the burden to prove receipt or rejection. Rejected notices shall be deemed delivered. The Parties may designate such address or addresses from time to time by giving notice to the other in the manner provided for this section.

Notices sent to City shall be addressed as follows:

City Clerk
City of Norman
201 West Gray, P.O. Box 370
Norman, Oklahoma 73070

Copy to: Rick.Knighton@normanok.gov

Notices to DIRECTV shall be addressed as follows:

DIRECTV
Legal/External Affairs
2260 East Imperial Highway
El Segundo, California 90245

Copy to: scott.alexander@directv.com

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the dates set forth below.

[Remainder of page is blank. Signature page follows.]

