ORDINANCE NO. JO-014-2021

A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL AND THE LAFAYETTE PARISH COUNCIL AUTHORIZING THE LAFAYETTE MAYOR-PRESIDENT TO EXECUTE THE ATTACHED FRANCHISE AGREEMENT WITH CONTERRA ULTRA BROADBAND, LLC AUTHORIZING OCCUPANCY OF THE RIGHTS-OF-WAY OF THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT

BE IT ORDAINED by the Lafayette City Council and the Lafayette Parish Council, that:

SECTION 1: The Lafayette Mayor-President is hereby authorized and directed to execute the attached Franchise Agreement (the "Agreement") with Conterra Ultra Broadband, LLC for occupancy of rights-of-way of the Lafayette City-Parish Consolidated Government in accordance with the terms and conditions of said Agreement.

SECTION 2: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 3: After first having been adopted by a majority of the authorized membership of both the Lafayette Parish Council and the Lafayette City Council, this joint ordinance shall become effective upon signature of this joint ordinance by the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon override of a veto, whichever occurs first.

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FRANCHISE AGREEMENT

This Agreement is entered into on the ____ day of _____, 2021 (the "Effective Date") by and between:

> **Lafayette City-Parish Consolidated Government** (herein referred to as **"City-Parish"**), and represented herein by the Honorable Josh Guillory, Mayor President, duly authorized by Joint Ordinance No. JO- ____- 2021 of the Lafayette City Council and the Lafayette Parish Council, a copy of which is attached hereto and made a part hereof;
>
> and
>
> **Conterra Ultra Broadband, LLC, a North Carolina limited liability company** (herein referred to as **"Grantee"**), represented herein by Shane Turley, Executive Vice President and General Counsel, duly authorized to act by Resolution, a copy of which is attached hereto and made a part hereof.

1. **Purpose.** City-Parish and Grantee desire to enter into this Franchise Agreement to grant the nonexclusive right to Grantee to occupy or work in the rights of way of the Lafayette City-Parish Consolidated Government, consisting of the rights-of-way located within the corporate limits of the City of Lafayette, Louisiana and the unincorporated areas of the Parish of Lafayette, Louisiana (hereinafter, the "City-Parish"), pursuant to the terms and conditions established herein.

2. **Rights granted**. The City-Parish hereby grants unto Grantee the nonexclusive right and authority to occupy the rights-of-way of the City-Parish for the purposes of placement, construction, operation, installation, repair, maintenance, and replacement of communications conduit and cable, and all appurtenances and appendages thereto, along with such other reasonable, customary, and ancillary equipment, devices, or apparatus as may be reasonably necessary or desirable in the operation of a communications system.

3. **Compensation for use of rights-of-way.** In addition to any and all other fees which may be required pursuant to this Agreement, Grantee shall pay annually in advance to the City-Parish a right of way occupancy fee, calculated as follows: Three percent (3%) of Grantee's gross revenues from operations in the City-Parish (as defined herein), or $10,000.00, whichever is greater.

For purposes of this Agreement, "gross revenues" are defined as all monies received directly or indirectly by the Grantee or any affiliates of the Grantee that are

derived from the Grantees operation of its communications system within the City-Parish for customers located within City-Parish.

The franchise fee levied herein shall be due and payable on the first business day of each January during the term of this Agreement. If the amount of fees due is not paid on or before each January 31 during the term of this Agreement, there shall be collected with said fee, interest upon said unpaid amount at the rate of one and one-quarter (1-1/4%) percent per month, or fractional part thereof; and in addition, there shall also be collected a penalty equivalent to five (5%) percent per month, or fractional part thereof, not to exceed twenty-five (25%) percent in aggregate, of the fee due, and both interest and penalty will be computed from the first day of the month next following the quarter for which the fee is due. In the event of suit to recover delinquent fees of any kind, attorney's fees will be charged at the rate of ten (10%) percent on the aggregate of fee, interest and penalty. All interest and penalties due for subsequent months will be due as of the first day of each succeeding month.

Grantee shall make a report and pay any fee to keep and preserve suitable records of its gross revenues, and such other books of account as may be necessary to determine the amount of fee due hereunder, and other information as may be required by the Chief Financial Officer of the City-Parish, and Grantee shall keep and preserve for a period of three (3) calendar years, in addition to the current year, all records of gross revenues. All such books and records shall be open to examination at all reasonable hours by the Chief Financial Officer of the City-Parish or any of her duly authorized agents.

Any information required during the conduct of an audit of Grantee's gross revenues shall be furnished to the Chief Financial Officer of the City-Parish or her duly authorized agent without cost. Such information may include, but is not limited to, specialized reports accumulating data from electronic data processing records.

No acceptance of any payment shall be construed as an accord or admission that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the City-Parish may have for further or additional sums payable pursuant to this Agreement.

4. **Site-specific permits required.** Prior to its installation, removal, relocation or modification of facilities, Grantee shall secure from the City-Parish's Director of Public

Works, or his designee, a site-specific permit authorizing the same, after first showing compliance with the terms of this permit and other applicable rules and regulations. The City-Parish may charge a commercially reasonable fee for review of applications for such permits and for issuance of such permits, which shall be paid by Grantee in addition to any and all other fees which may be required pursuant to this Agreement.

The City-Parish does not by this permit guarantee to Grantee that the City-Parish will grant such approvals, permits, authorizations or licenses. The granting or denial of such approvals, permits, authorizations or licenses shall depend upon Grantee's compliance with all relevant procedures and policies, and the availability of adequate space in the public rights-of-way, including easements/servitudes therein.

Issuance of a permit by the City-Parish shall not be construed by Grantee as a warranty that the erection or placement by Grantee of conduits, cables or pole lines or the start by Grantee of any other type of construction is in compliance with any applicable rules, regulations or laws.

5. **Relocation of facilities.** In the event the City-Parish determines it necessary to: (1) widen, relocate, or otherwise improve its roads, streets, or other public ways, or (2) install, improve or otherwise modify City-Parish utility facilities and the same cannot be accomplished because of the location of Applicant's/Permittee's facilities, Grantee, upon reasonable notice by the City-Parish, shall re-lay or relocate Grantee's facilities at its sole expense.

6. **Repairs.** Grantee shall, at its own cost, replace and repair without delay any public rights-of-way that have been excavated, broken, removed, or displaced by Grantee in the conduct of construction, maintenance or operation of its facilities, or as a result of the deterioration of Applicant's/Permittee's facilities, and restore the same to as good a condition as existed prior to Grantee occupying the public right-of-way at issue. Upon failure of Grantee to do so after twenty (20) days written notice by the City-Parish, the City-Parish may make such repairs and replacements as it deems reasonably necessary and Grantee shall reimburse the City-Parish for all costs of such repairs and replacements.

7. **Indemnification.** As a condition of the consent, permission, and authority herein granted, Grantee shall, at its own expense, indemnify, defend, save and hold harmless the City-Parish, its officials, employees, agents, servants, attorneys', consultants

and independent contractors from any and all liabilities, suits, causes of action, claims, damages, judgments, costs, penalties and expenses of every kind which may arise or result by reason of or in consequence of, any of the following: (a) the acts or omissions of Grantee, its agents, servants, employees, or contractors, (b) the failure of Grantee, it agents, servants, employees, or contractors, to fully comply with the provisions of this permit, and (c) any work herein authorized by this permit or any site-specific permit, and (d) failure of Grantee, its agents, servants, employees, or contractors, to comply with any law, ordinance, or regulation regulating the use of the streets and ways of the City-Parish.

8. **Insurance.** Grantee shall carry liability insurance issued by an insurance carrier satisfactory to the City-Parish necessary to protect both Grantee and the City-Parish against any and all claims, demands, suits, actions, proceedings, causes of action, judgments, costs, expenses, payments, damages, injuries, losses, or liabilities of any kind or character (including, but not limited to, claims for damages or equitable relief), arising out of, or claimed to arise out of, Applicant's/Permittee's occupancy of City-Parish rights-of-way, or the obligations of Grantee undertaken in this permit, or both.

The amounts of such insurance, without deductibles, shall be as follows:

(a) against liability due to damage to property shall not be less than $1,000,000 as to any one claim and $2,000,000 as to any one occurrence; and

(b) against liability due to injury or to death of persons shall not be less than $3,000,000 as to any one person and $5,000,000 as to any one occurrence.

Grantee shall also carry such insurance as will protect it from all claims under any worker's compensation laws in effect that may be applicable to Grantee.

All insurance required shall be procured prior to the grant of this permit and shall remain in force for the entire life of this permit. Grantee shall submit to the City-Parish certificates by each company insuring Grantee to the effect that such insurance company has named as additional insureds the Lafayette City-Parish Consolidated Government, its officers, officials, agents, and employees for all matters described in this Section 6, and all such policies shall be replaced by Grantee with similar policies, prior to their termination or cancellation. Failure of Grantee to so replace any such policy or policies within thirty (30) days after receipt of written notice from the City-Parish shall constitute a breach by Grantee of the conditions of this permit.

All insurance policies maintained by Grantee pursuant to this permit shall contain the following conditions by endorsement:

(a) Each policy shall require that thirty (30) days prior to a cancellation of or material change in policies, a written notice thereof shall be delivered to the City-Parish Attorney; and

(b) Insurers shall have no right of subrogation or recovery against the City-Parish, it being the intention that the insurance policies shall protect Grantee and the City-Parish and shall be primary coverage for all losses covered by the policies.

9. Retention of right of way regulatory power; no vested rights created. It is expressly understood that this permit is subject to any future ordinance, rule, or regulation that may be enacted by the City-Parish subsequent to the effective date of this permit. Nothing in this permit shall be construed as surrender by the City-Parish of its right and power to adopt future ordinances, rules, and regulations regulating the use of its public roads, streets, and rights-of-way. Issuance of a permit shall not grant Grantee any vested rights, including any vested right for Grantee to remain regulated under the laws, ordinances, rules, and regulations in effect at the time of issuance of this permit.

10. No rights to attach or to erect certain free-standing structures granted by this Agreement. This Agreement grants no rights or authorization to Grantee to attach to the poles, buildings, constructions, or facilities of the City-Parish, or to erect free-standing structures, poles, or towers within the rights-of-way of the City-Parish for the placement of communications devices, small cell deployments, or distributed antenna systems. Any such rights or authorization must be obtained by Grantee pursuant to a separate agreement with the City-Parish. By entering into this Agreement, the City-Parish does not represent or warrant that it will grant rights or authorization for such attachment or erection to Grantee.

11. Term and termination. The term of this Franchise Agreement shall be ten (10) years, commencing with the date hereof.

The City-Parish may terminate this Agreement at any time for breach of any provision of this Agreement or violation of any rule, order, or determination made by the City-Parish pursuant to this Agreement. The right of termination of the City-Parish may only be exercised after first providing written notice of default to Grantee, specifying in reasonable detail the contemplated causes for termination and giving Grantee thirty (30) calendar days from the date of the notice to cure such causes.

12. **Notices.** For all purposes related to this Agreement, the notice addresses of the parties shall be as follows:

City-Parish:
Jessica Cornay
Public Works Dept. - Civil Engineering Supervisor
1515 E. University Avenue
Lafayette, LA 70502

With copy to:
Greg Logan, City-Parish Attorney
700 Jefferson St.
Lafayette, LA 70501

Grantee:
Conterra Ultra Broadband, LLC
2101 Rexford Road
Charlotte, NC 28211
Attn: Shane Turley__
sturley@conterra.com

13. **Assignment.** The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City, which said consent shall not be unreasonably delayed or denied.

THUS DONE AND SIGNED by the City-Parish and Grantee, as shown by their respective signatures below.

LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT	**CONTERRA ULTRA BROADBAND LLC**
BY:_____	BY:_____
Joshua S. Guillory	Shane Turley
Mayor-President	Executive Vice President
	General Counsel

Lafayette
CONSOLIDATED GOVERNMENT

Internal Memorandum

TO: **Cydra Wingerter, Chief Administrative Officer**

COPY: **Josh Guillory, Lafayette Mayor-President**
Greg Logan, City-Parish Attorney
Jessica Cornay, Civil Engineering Supervisor

FROM: **Michael D. Hebert, Assistant City-Parish Attorney**

SUBJECT: **Proposed Franchise Agreement with Conterra Ultra Broadband, LLC**

DATE: **March 11, 2021**

Cydra, I attach the following, and request placement of same on the agenda for introduction at the March 23, 2021 Council meeting:

1. *A Joint Ordinance of The Lafayette City Council and Lafayette Parish Council Authorizing and Directing the Lafayette Mayor-President to Execute the Attached Franchise Agreement with Conterra Ultra Broadband, LLC, Authorizing Occupancy of the Rights-of-Way of the Lafayette City-Parish Consolidated Government in Accordance with the Terms and Conditions of the Agreement; and*

2. *Accompanying franchise agreement sought to be authorized.*

Should you have any questions, please contact our office.

Michael D. Hebert
Assistant City-Parish Attorney

LAFAYETTE JOINT COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) JUSTIFICATION FOR REQUEST: A Joint Ordinance of the Lafayette City Council and the Lafayette Parish Council Authorizing and Directing the Lafayette Mayor-President to Execute a Franchise Agreement with Conterra Ultra Broadband, LLC

2) ACTION REQUESTED: Adoption of Ordinance

3) COUNCIL DISTRICT(S) (if applicable): n/a

4) REQUESTED ACTION OF COUNCIL:

A) INTRODUCTION: March 23, 2021

B) FINAL ADOPTION: April 6, 2021

5) DOCUMENTATION INCLUDED WITH THIS REQUEST:

A) Memo (1 page)

B) Ordinance (1 page)

C) Franchise Agreement (6 pages)

6) FISCAL IMPACT:

_____ Fiscal Impact

__X__ No Fiscal Impact

RECOMMENDED BY:

MICHAEL D. HEBERT
ASSISTANT CITY-PARISH ATTORNEY

APPROVED FOR AGENDA:

CYDRA WINGERTER
CHIEF ADMINISTRATIVE OFFICER