

## ORDINANCE NO. 724

### AN ORDINANCE GRANTING A FRANCHISE FOR COMMUNICATIONS PURPOSES TO FTX NETWORKS, LLC BY THE CITY OF AUMSVILLE

**WHEREAS**, FTX Networks, LLC ("FTX") is a competitive provider that provides telephone and other communication services to the citizens of Aumsville (the "City") and other surrounding areas; and

**WHEREAS**, The City, through Ordinance No. 625, granted a ten-year non-exclusive franchise to FTX to conduct a general telecommunications business within the City; and FTX desires to continue the operation of its communications system within the City through a renewed franchise agreement; and

**WHEREAS**, providing communications services requires the installation, operation and maintenance of poles and other related facilities to be located within the public ways of the City; and

**WHEREAS**, the City desires to set forth the terms and conditions by which FTX shall use the public ways of the City.

**NOW, THEREFORE**, the City of Aumsville ordains as follows:

**Section 1. Grant of Communications Franchise.** Subject to the conditions and reservations contained in this ordinance and Ordinance No. 460 as amended from time to time (the "Communications Ordinance"), and any generally applicable ordinances, the City of Aumsville ("City") hereby grants to FTX ("Grantee"), the nonexclusive privilege, and franchise authority within the City to provide communications service, as defined in the Communications Ordinance, within the City of Aumsville, including any lands that may be annexed by the City throughout the term of this franchise; and to place, erect, lay, maintain and operate in, upon, under and over the streets, alleys, avenues, thoroughfares and public ways or highways within the said City poles, wires whether copper, fiber optic or other technology, and other appliances and conductors for communication service purposes, but only to the extent the City has the right, title, interest or authority to grant a franchise to occupy and use such areas for communications facilities. Except as otherwise required herein or in the Communications Ordinance, such wires and other appliances and conductors may be strung upon poles and other fixtures above ground or, at the option of the Grantee, may be laid underground in pipes and conduits or otherwise protected; and such other apparatus may be used as may be necessary or proper to operate and maintain the same. In locations where aerial or above ground utility facilities (including aerial cable supports, but not including high voltage power lines) exist as of the effective date of this franchise, Grantee shall be allowed to overbuild,

upgrade, maintain, replace or add to its existing aerial facilities and supporting structures unless all facilities, other than high voltage power lines, in such area have been mandated to be placed underground per a plan as outlined by the City. Grantee shall be allowed to place above ground, subject to the provisions herein and in locations approved by the City; its fiber distribution hubs, cross connect/digital subscriber line boxes and other cabinet type facilities that are normally placed above ground. Notwithstanding any provision of this franchise, nothing in this franchise authorizes Grantee to provide cable service, as defined in the Communications Ordinance and Grantee agrees that it must apply for and receive a cable franchise prior to providing cable service in the City.

**Section 2. Excavation and Underground Installation.** No newly overlaid street or newly constructed street shall be excavated by Grantee for a period of 5 years from the time of completion of the street overlay or the street construction, unless specifically authorized by City, or in cases of an emergency declared by authorized City, state, or federal officials. Such authorization shall not be unreasonable withheld. Otherwise, it shall be lawful for Grantee to make all needful and necessary excavations in any of said streets, alleys, avenues, thoroughfares and public ways or highways in the City. Said work shall be done in compliance with the rules, regulations, ordinances and orders which have been heretofore or which may hereafter during the continuance of this franchise be required by the City.

All installations by Grantee in new residential subdivisions shall be underground, unless the City and Grantee mutually agree that such installation will create an undue burden for Grantee, placed in conjunction with all other utility installations in compliance with existing regulations.

**Section 3. Restoration, Repairs, and Maintenance.** Whenever Grantee shall disturb any of the streets, alleys, avenues, thoroughfares and public ways or highways for the purposes aforesaid, it shall be subject to and comply with applicable provisions of the Communications Ordinance and any other generally applicable ordinances of the City. Grantee shall fully and promptly repair any damage to private property, including restoration of property after installation of service drops, caused by Grantee or its contractors or subcontractors.

Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/blueprints for the following work so long as the work will not impact vehicular traffic by closing or blocking a lane of vehicular travel: 1) Customer service connections/drops, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk, and 2) Routine maintenance or repair of Equipment. All other construction is subject to applicable provisions of the Communications Ordinance and any other generally applicable ordinances of the City.

Grantee may authorize qualified contractors or subcontractors to perform any of the work

authorized or required in this franchise on Grantee's behalf. Any contractor or subcontractor performing work on Grantee's behalf shall be subject to applicable provisions of this franchise and City ordinances, including the Communications Ordinance, and Grantee shall remain responsible and liable for compliance with those provisions by its contractors and subcontractors.

**Section 4. Improvements or Work by City.** Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from grading, paving, repairing, altering or improving any City facilities or the streets, alleys, avenues, thoroughfares and public ways or highways in or upon which the poles, wires, conductors, pipes or other apparatus may be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.

**Section 5. Relocation or Removal of Facilities.** Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the wires, cables or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require; provided, however, that if it is not for the City, the person or persons desiring to move any such buildings, machinery or other objects shall pay the entire cost to Grantee of changing, altering, moving, removing, or replacing its wires, cables or other plant so as to permit such passage, and shall deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and shall pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing, or placing of said wires, cable or other plant, except as may be occasioned through the sole negligence of Grantee. Grantee shall be given reasonable written notice by the party desiring to move such building or other objects. Such notice shall detail the route of movement of such buildings or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. In case of the failure of Grantee to comply with the terms of this section, after the actual costs thereof have been paid by the person having permission to move such building or other object to Grantee, the proper officer of the City is authorized to remove said wires at the expense of the Grantee. The City and its employees shall not be liable for the consequences of any act done in connection with the moving of the building or other object or the rearrangement or temporary removal of the wires or for the cost of rearranging the wires. Grantee shall hold the City harmless from these potential liabilities.

All other relocation or removal of facilities is subject to the applicable provisions of the Communications Ordinance.

**Section 6. Franchise Fee.** Grantee shall pay 5% of gross revenue from the provision of communications services to customers in the area within the legal boundaries of City, and include areas annexed during the term of franchise. "Gross revenue" means any and all revenue of any kind, nature or form, without deduction for expense, less net uncollectables, subject to all applicable limitations imposed by federal or state law. City may adjust the franchise fee pursuant to state law not more than on an annual basis. Any change to the franchise fee shall be implemented by the Grantee no later than the 1st of the month following 30 days written notice of any statutory change that is provided by the City. Such payments shall be made by Grantee quarterly no later than 30 days after the end of each calendar quarter. At the time payments are made, Grantee shall provide a written summary of gross revenue included in payment by Grantee from its operations in the City for the period immediately preceding the date of payment of the fee. Payments not received by the 30<sup>th</sup> day after the end of each quarter will be assessed interest at the rate of one and one-half percent per month until paid. In addition to interest, Grantee shall pay a late payment fee of \$100 per quarter for each late payment. The failure to comply with these requirements shall be considered a material breach of this franchise contract. The interest and late payment fees provided in this Section are not in lieu of and do not preclude the City from assessing penalties for violations of this franchise pursuant to Section 13. City's acceptance of any payments due under this section shall not be considered a waiver by City of any violation of this franchise.

**Section 7. Franchise Term; Insurance.** The privileges and franchise hereby granted shall continue and be in full force for a period of 10 years from the date of passage of this ordinance. However, each party agrees to negotiate amendments to this franchise agreement necessitated by any significant change in state or federal law which materially affects the rights and obligations of the parties under this franchise. This franchise shall not be effective until Grantee secures, and shall at all times be conditioned upon Grantee maintaining, insurance protection as described in the Communications Ordinance. This franchise is inoperative unless it is unconditionally accepted by Grantee in writing, signed by an authorized officer of the corporation, and filed with the City Administrator within 60 days after the date this ordinance is passed by the City; otherwise the ordinance and the franchise granted herein shall be null and void.

A current certificate evidencing insurance as described in the Communications Ordinance shall be deposited with the City at or prior to the time Grantee files its written acceptance with the City Administrator and thereafter during the full term of franchise or any renewal thereof.

**Section 8. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by Grantee of its communications facilities or its provision of services in the City. Grantee shall indemnify, defend, and hold the City and its

elected or appointed officers, officials, employees and agents harmless from and against any and all claims, demands, liens and all liability or damage of whatsoever kind on account of Grantee's use of the streets, alleys, avenues, thoroughfares and public ways or highways within the City and/or its provision of services in the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. Notwithstanding any provision hereof to the contrary, Grantee shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises solely out of the negligence or willful misconduct of the City or any of its officers or employees.

**Section 9. Facilities/Maps.** Prior to the effective date of this ordinance and, thereafter, upon any request by the City, Grantee shall furnish and file with the City an accurate map or maps certifying the location of all communications facilities within the public rights of way in compliance with the Communications Ordinance and any generally applicable ordinances of the City, and shall amend all maps to keep the City informed as to the location of all facilities installed in the franchise territory.

**Section 10. Nondiscriminatory Pole Attachment Agreement.** Aumsville's fire alarm and police signal circuits or other signal circuits required by the City may be placed on Grantee's poles in accordance with Oregon law and Public Utility Commission rules regarding pole attachments.

**Section 11. Sale or Transfer of Franchise.** In the event Grantee desires to directly or indirectly transfer, assign or dispose of its communications system or this franchise, Grantee and the City shall comply with applicable provisions of the Communications Ordinance.

**Section 12. Repeal.** Ordinance No. 625 adopting the former franchise, enacted June 10, 2013, is hereby repealed.

**Section 13. Violation.** Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this ordinance shall be fined not less than \$1,000.00 nor more than \$5,000.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

**Section 14. Compliance with Ordinance No. 460.** This ordinance is subject to the Communications Ordinance, as amended from time to time. The City agrees to discuss any proposed changes to the Communications Ordinance or this franchise with Grantee before making the changes. The City will consider, but is not required to adopt, Grantee's comments on the changes. Grantee does not waive its right to challenge changes to this franchise, Communications Ordinance or other ordinances that change the requirements of this franchise or Communications Ordinance, to which the City and Grantee do not mutually agree.

**Section 15. Effective Date.** This ordinance shall take effect on the thirtieth day after its enactment.

PRESENTED AND PASSED the first reading on the 13th day of May 2024. PASSED its second reading on the 13th day of May 2024. ADOPTED by the Aumsville City Council on the 13th day of May 2024.

ATTEST:

\_\_\_\_\_  
Angelica Ceja, Mayor

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Ron Harding, City Administrator

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Date