

AGREEMENT

This Agreement ("Agreement") is made and entered into by the City of Oklahoma City, 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, AT&T Oklahoma transferred its U-verse IP-enabled video service to DIRECTV, AT&T Oklahoma's affiliate. AT&T remains the owner of all underground cables, wires and other such facilities used for provision of AT&T Oklahoma's telecommunications business and for its affiliate, DIRECTV's, U-verse IP-enabled Video Service ("Video Service"); and

WHEREAS, the 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-ways, 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 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 retroactively to January 1, 2022 , upon approval hereof by DIRECTV and the City, and shall be effective for a term of six (6) years thereafter, until December 31, 2027. 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 and Understanding of the Parties:

- (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 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 withheld.

3. Obligations of DIRECTV:

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

(1) For purposes of this Agreement, gross revenues are limited to the following:

- (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) 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 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
- (iv) 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 (less any commissions DIRECTV receives from any third parties for advertising) and home-shopping sales derived from the operation of DIRECTV's U-verse 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 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 during the term of this Agreement whereby it is required or allowed to pay a fee to the City that is similar to the IP-enabled Video Services Provider 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 four "streams" or "channels" of noncommercial educational and governmental programming through DIRECTV's IP-enabled Video Service so long as City and educational institutions designated by the City provide any educational or governmental programming content in a standard digital 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.

- (E) DIRECTV shall work with the City to identify an economically and technically feasible process for providing an appropriate message through DIRECTV'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.
- (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.).
- (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 Video Service or for any other purpose, within Oklahoma City, as those facilities remain the property of AT&T Oklahoma.
- (H) If in the future, DIRECTV decides to locate, construct, operate, repair, upgrade, and/or maintain any cable, wires, or other facilities for the provision of its 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.

4. Obligations of City.

The City will not attempt to nor subject the provision of DIRECTV's Video Service to regulation under any cable television or broadband telecommunications franchise ordinance or similar ordinance(s).

5. Miscellaneous.

- (A) DIRECTV and the City each hereby warrants that they have 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 intended 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 Oklahoma City, Oklahoma, as such area now exist or may be modified in the future by annexation or deannexation.
- (F) The parties agree that either Oklahoma County District Court (7th Judicial District) or the United States District Court for the Western District of Oklahoma shall be the sole and exclusive forums 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.
- (G) Modification/Termination. 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 or 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 parties 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. 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 franchise-like requirements or other local authorization.
- (H) This Agreement may be amended or modified only by a written instrument executed by both Parties.
- (I) This Agreement constitutes the entire agreement between the 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.

- (J) Failure on the part of any of the Parties 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.
- (K) This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, City Council members, officers, directors, shareholders, agents, employees, attorneys, successors and assigns, and any parents, subsidiaries, or affiliated corporations or entities, as applicable.
- (L) **NOTICES.** All notices and other communications required, permitted, or contemplated by this Agreement must be in writing, signed by the Party giving the Notice, and sent using the contact information below. Notices must be sent by: (1) hand-delivery in return for a receipt; (2) United States mail with postage prepaid; (3) nationally recognized overnight courier service; or (4) email, so long as the intended recipient acknowledges by email or other writing as having received the Notice (with an automatic "read receipt" not constituting acknowledgment). A Notice is effective on the earlier of: (1) the date of actual delivery; or (2) for mailed Notices (without a return receipt), three Business Days after the date of mailing. However, if the receipt of Notice is refused, the Notice is effective upon attempted delivery. Either Party may change its contact information by Notifying the other Party as required by this Section. Notwithstanding the foregoing, Notices advising the other Party of a breach of this Agreement must be sent by: (1) hand-delivery in return for a receipt; (2) certified United States mail, return receipt requested with postage prepaid; or (3) nationally recognized overnight courier service. Such Notices are effective on the date of actual delivery. However, if receipt of the Notice is refused, the Notice is effective upon attempted delivery.

Notices to DIRECTV will be addressed as follows:

DIRECTV
Legal/External Affairs
2260 E. Imperial Hwy.
El Segundo, CA 90245
Phone: 214-202-3185
E-mail address: scott.alexander@directv.com

Notices to the City will be addressed as follows:

City of Oklahoma City
Attn: Craig Freeman, City Manager
200 North Walker Avenue, 3rd Floor
Oklahoma City, OK 73102
Phone Number: 405-297-2345
Email Address: citymanager@okc.gov

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 _____ 2023 ("Effective Date").

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

APPROVED this 14th day of April, 2023 by DIRECTV, LLC.

Signed by: Hamlin L. Wade

Printed Name: Hamlin L. Wade

Title: AVP External Affairs- DIRECTV, LLC

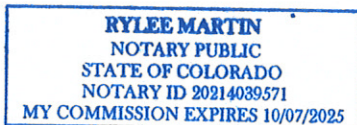
ACKNOWLEDGEMENT

STATE OF Colorado)
) ss.

COUNTY OF mesa)

This instrument was acknowledged before me on April 14, 2023 by Hamlin L. Wade
as AVP External Affairs of DIRECTV, LLC.

(Seal)

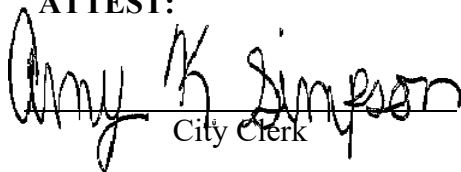


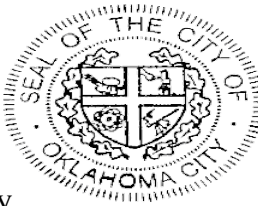
Rylee Martin
Notary Public
My Commission Expires: 10/07/2025
Commission # 20214039571

APPROVED this 23RD day of MAY, 2023 by the City Council of the City of Oklahoma City, Oklahoma.

THE CITY OF OKLAHOMA CITY

ATTEST:


City Clerk




VICE-MAYOR

REVIEWED for form and legality.


Assistant Municipal Counselor