



**CARMEN A. TRUTANICH**  
City Attorney

**REPORT NO.** R 1 3 - 0 1 8 1  
JUN 2 5 2013

**REPORT RE:**

**DRAFT ORDINANCE GRANTING A PRIVATE LINE FRANCHISE**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance grants a private line franchise (Franchise) to the University of Southern California (USC or Franchisee). The Information Technology Agency (ITA) is also submitting a report regarding this matter.

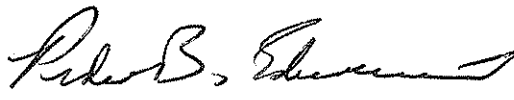
**Background**

The draft ordinance permits Franchisee to construct 483 underground fiber optic conduits, each being four inches (4") in diameter, as well 42 manholes occupying 10,011.25 cubic feet installed in the public right-of-way. The conduits will connect buildings within Franchisee's University Park Campus and Franchisee's Health Sciences Campus. The franchise fee to be paid for the period of the franchise is \$7,027,309.48 (21 year term franchise fee of \$5,938,891.98 + a retroactive fee of \$1,043,877.50), in addition to a required performance bond to be posted in the amount of \$4,500,000.00. This Franchise will expire on June 30, 2034.

If you have any questions regarding this matter, please contact Deputy City Attorney Michael Dundas at (213) 978-8147. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:MD:ac  
Transmittal

**ORDINANCE NO. \_\_\_\_\_**

An ordinance granting a franchise to University of Southern California (USC) to install and maintain a series of private line telecommunications facilities in the public rights-of-way in the City of Los Angeles.

**WHEREAS**, USC has requested permission of the City of Los Angeles (City) to encroach into numerous portions of the public rights-of-way in the City of Los Angeles, with permanent installations consisting of private line telecommunications facilities; and

**WHEREAS**, Los Angeles Administrative Code Section 13.62 requires that this permission be granted by a franchise and issued by the Council; and

**WHEREAS**, the following ordinance is adopted notwithstanding and as an exception to the other provisions of Division 13 of the Los Angeles Administrative Code.

**NOW, THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. GRANT OF AUTHORITY

1.1 Grant of Authority

Notwithstanding and as an exception to Division 13 of the Los Angeles Administrative Code, but in accordance with Los Angeles Administrative Code Section 13.62 and Charter Sections 240 and 390, the City hereby grants USC (Franchisee) a limited franchise to install and maintain specified private line telecommunications facilities (Facilities), which will encroach into numerous portions of the public rights-of-way in the City of Los Angeles, as further described below, subject to all of the terms and conditions set forth in this ordinance (Franchise).

1.2 Acceptance

Acceptance of the terms of this Franchise by the Franchisee shall be conclusively established by a writing reflecting those terms or by commencement of construction by the Franchisee or its agent or contractor. A replacement Franchise, as required by Section 2.11, shall not be issued, or deemed to have been issued, without this writing.

### 1.3 Encroachment Area

The two areas subject to encroachment by the Facilities (Encroachment Area) to be authorized pursuant to this Franchise are those portions of the public right-of-way as follows:

- 1) Between that portion of land in the City of Los Angeles, County of Los Angeles, State of California, lying within Interstate 5 on the western edge, moving south to Interstate 10, thence east along Interstate 10 to N. Eastern Ave., thence northwesterly along N. Eastern Ave. to N. Marianna Ave., thence north along N. Marianna Ave. to E. Valley Blvd., thence west along E. Valley Blvd. to N. Eastern Ave., thence north along N. Eastern Ave. to Huntington Drive N., thence southwesterly along Huntington Drive N. to N. Mission Rd., thence southwesterly along N. Mission Rd. to N. Broadway, thence west along N. Broadway to Interstate 5.
- 2) Between that portion of land in the City of Los Angeles, County of Los Angeles, State of California, lying within S. Western Ave. on the western edge, moving south to W. Martin Luther King Blvd., thence east along W. Martin Luther King Blvd. to S. Hill St., thence northeasterly along S. Hill St. to W. Adams Blvd., thence northwesterly along W. Adams Blvd. to S. Western Ave.

### 1.4 Facilities Description

"Private Line Telecommunications Facilities" or "Facilities" means four hundred eighty three (483) underground fiber optic conduits, each being four inches (4") in diameter, as well as forty-two (42) manholes occupying ten thousand eleven and one quarter cubic feet (10,011.25 ft<sup>3</sup>) installed in the Encroachment Area connecting or accessing the following buildings:

<u>Building Name</u>	<u>Address</u>
Alpha Delta Pi	814 W. 28th St.
Alpha Epsilon Pi	904 W. 28th Street
Anna Bing Arnold Child Care	2715 University Ave.
Annenberg House	711 W. 27th St.
Cardinal Gardens	3131 McClintock Ave.
Cardinal 'N' Gold	737 W. 30th St.
Centennial Apartments	2390 Portland St.
Carol Little Building	3434 S. Grand Ave.
Chi Phi Fraternity	720 W 28th Street
Cockins House	27th & Hoover St.
Credit Union Building	3720 S Flower Street
Delta Chi Fraternity	920 W 28th Street
Delta Tau Delta	801 W. 28th Street
Exposition Blvd Parking Structure	3533 S. Flower Street
Fairmont Apartments	2629 Portland St.

Forthmann House	2801 S. Hoover St.
Founders Apartments	2610 Portland St.
Gamma Epsilon Omega	2831 University Avenue
Gamma Phi Beta	737 W. 28th St.
Helena Apartments	1220 W. 28th St.
Ickovics Family Trust Building	3001 S. Flower Street
La Sorbonne Apartments	1170 W. 31st St.
McCulloch Townhomes	W. 30th St. at Hoover St.
Parking Center	3401 Grand Ave.
Parking Structure One	3701 S. Flower St.
Pi Kappa Phi	742 W. 28th St.
Research Annex	3716 S. Hope St.
Senator Apartments	1101 W. 28th St.
Seven Gable Apartments	620 W. 30th St.
Sigma Chi Fraternity	907 W. 28th Street
Stardust Apartments	634 W. 27th St.
Sunset Apartments	1144 W. 29th St.
Terrace Apartments	2822 Ellendale St.
Thirtieth Street House (was Colonial Apartments)	921 W. 30th St.
Troy Hall	3025 Royal St.
Troyland Apartments	955 W. Adams Bl.
Tyler Building	3601 S. Flower St.
University Gardens	3500 S. Figueroa St.
University Gateway (was Theater Scene Shop)	624 W. 32nd St.
University Regent Apartments	1219 W. 27th St.
University Village	3375 S. Hoover St.
Windsor Apartments	1149 W. 28th St.
Zemeckis Center for Digital Arts (was Performing Arts Annex)	3131 S. Figueroa St.

as well as the cross street connections between the following buildings, listed by the nearest connection points

<u>Address 1</u>	<u>Address 2</u>
Center For Health Professions 1540 Alcazar St.	Norris Research Tower 1450 Biggy St.
Doheny Eye Institute 1537 Norfolk St.	Broad CIRM Center 1425 San Pablo St.
Health Science Telephone Vault 1521 San Pablo St.	USC Healthcare Consultation Center 1510 San Pablo St.
San Pablo Surface Parking Lot 1630 San Pablo St.	Center For Health Professions 1540 Alcazar St.
Zilkha Neurogenetic Institute 1501 San Pablo St.	Estelle Doheny Eye Foundation 1355 San Pablo St.
Zilkha Neurogenetic Institute 1501 San Pablo St.	Norris Research Tower 1450 Biggy St.

as well as the cross street connections between the following buildings proposed for new and future construction, listed by the nearest connection points.

<u>Address 1</u>	<u>Address 2</u>
Soto Street Building 2001 N. Soto St.	USC Kidney Center 2310 Alcazar St.
Health Science Child Care Center 2250 Alcazar St.	USC Kidney Center 2310 Alcazar St.
Caruso Catholic Center 844 W. 32 <sup>nd</sup> St.	Existing manhole at 3205 Royal Street
New Buildings USC Healthcare Consultation Center 1510 San Pablo St. (replaces existing)	Center For Health Professions 1540 Alcazar St.
Soto Street Building 2001 N. Soto St.	Edmondson Research Building 1840 N. Soto St.
Social Work Center 655 W. 34 <sup>th</sup> St.	Existing manhole at 3205 Royal St.
University Village 3375 S. Hoover St.	Existing manhole at 3205 Royal St.

#### 1.5 Limited Purpose

The authorized purpose of construction of the Private Line Telecommunications Facilities is to provide a pathway for installation of telecommunications cables between the USC's facilities. The conduit links various buildings owned and operated by USC, which link would not be possible without permission to cross the City's public right-of-way separating the structures.

This Franchise shall endure only as long as the purpose remains valid. In the event any material fact justifying the limited purpose of the Franchise no longer exists, Council may revoke the Franchise in accordance with the procedures set forth in Section 8.1, below.

#### 1.6 Limitations on Use

The privileges granted by this Franchise are limited to installation of Facilities to be used solely for the private telecommunications purposes of the Franchisee. These purposes include only voice, video and data transmissions originating or terminating at one of the buildings mentioned in Section 1.5 or at another location contiguous to these buildings and under common ownership and use of the Franchisee.

Use of the Facilities for telecommunications signal transmissions of any other type is expressly outside the scope of the authority granted by this Franchise. Use of the Facilities for purposes outside the scope of the authority granted by this Franchise shall be deemed a material violation of this Franchise and the Franchise shall then be subject to revocation by the City Council in accordance with the procedures set forth in Section 8.1.

1.7 Effective Date

This Franchise shall become effective on the earliest date after passage provided for by the City Charter and/or applicable law.

Sec. 2. GENERAL CONDITION

2.1 Non-Exclusivity

Nothing in this Franchise shall affect the right of the City to grant to any person a Franchise, consent or right to occupy and use the streets or public right-of-way, or any part of the streets or public right-of-way, for the construction, operation or maintenance of a communications facility within all or a portion of the encroachment area or anywhere else in the City.

2.2 Non-User

If the Franchisee fails to complete construction of the Facilities within six (6) months of the date this ordinance is adopted by City Council, the authority granted by this Franchise shall terminate, except that the Franchisee may request an extension of time to complete construction.

2.3 Priority of Public Works

Nothing in this Franchise shall abrogate the right of the City to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event that the Facilities interfere with the construction, operation, maintenance or repair of any public work or public improvement, the Franchisee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the Facilities, or any part of the Facilities, as reasonably directed by the City. In the event the Franchisee refuses or neglects to protect, alter or relocate all or part of the Facilities, the City shall have the right, in connection with the performance of the public work or public improvement, to break through, remove, alter or relocate all or any part of the Facilities without any liability to the Franchisee, except the liability as is directly caused by the City's willful misconduct or negligence, and the Franchisee shall promptly pay to the City the costs incurred by the breaking through, removal, alteration or relocation of the Facilities.

2.4 No Waiver of Regulatory Authority

Except as expressly stated here, nothing in this Franchise shall be construed as a waiver of any code or ordinance of the City or the City's right to require the Franchisee or any person utilizing the Facilities to secure all appropriate Franchises or authorizations for this use.

## 2.5 Compliance with Laws

The Franchisee shall comply with: (i) all applicable laws and all requirements of the State of California, the FCC and any other federal or State agency or authority of competent jurisdiction; (ii) all local laws, rules, regulations and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations and all other directives of the City issued pursuant to this Franchise.

## 2.6 Material Violation

Failure to comply with the requirements set forth in Sections 1.6, 3.1, 3.2, and 5.1 shall constitute a material violation of the Franchise. In the event that the Franchisee fails to comply with one of the above-referenced sections, then, in accordance with the procedures provided in Section 8, the City Council may revoke the franchise granted here and terminate this Franchise.

## 2.7 Conflict with Other Installations

No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein. Any privilege claimed under this Franchise by the Franchisee in any street shall be subordinate to any prior lawful occupancy of the street.

## 2.8 Authorization of Additional Franchise Facilities

Franchisee shall not install additional conduits or lines, replace conduits or lines, or construct or install facilities other than those contemplated in Section 1.3, without prior authorization from the City. Franchisee may seek this authorization by filing an application with the City, as set forth in Los Angeles Administrative Code Section 13.11, *et seq.* Within thirty (30) days of receipt of the application from the City Clerk, the General Manager of Information Technology Agency (ITA) shall deny or approve such application. ITA shall report to USC and to the City Council the General Manager's action relative to the Franchisee's application within fifteen (15) calendar days of the denial or approval being made. The decision of the General Manager relative to an application may be appealed by USC to the City Council so long as the appeal is made within thirty (30) days after receiving notice of the decision by ITA.

Notwithstanding the existence of any appeal, the Council may consider the action taken by the General Manager on its own authority. The City Council may deny or approve the granting of the additional franchise facilities as defined in the application. The City Council may also amend the terms and conditions of the application prior to approval. If the Council does not take action on the decision within sixty (60) days of the receipt of the report from ITA, then Council



is deemed to have approved the decision by the General Manager relative to the application, and the General Manager's action shall become final.

Facilities constructed, installed or replaced pursuant to any authorization by ITA or the City Council shall be subject to all the provisions of this Franchise, and to any additional conditions relating to construction, specifications, operation and the utilization of facilities or other conditions as may be prescribed by the authorization. The term of any additional franchise facilities approved pursuant to this section shall run through and including June 30, 2034.

## 2.9 Term

The term of this Franchise shall run through and including June 30, 2034.

## 2.10 Rights Upon Termination

The termination, expiration, or revocation of this Franchise shall not operate as a waiver or release of any obligation of the Franchisee or any other person, as applicable, arising pursuant to this Franchise prior to its termination. All these obligations shall survive the termination, expiration or revocation of this Franchise.

## 2.11 Renewal

The Franchisee shall apply for a replacement Franchise at least twelve (12) months prior to the expiration date of this Franchise. In the event that the replacement Franchise has not taken effect prior to the expiration date of this Franchise, the City may impose new compensation rates retroactive to the date of expiration of this Franchise.

# Sec. 3. TRANSFERS AND HYPOTHECATIONS

## 3.1 Restrictions Against Transfers

This Franchise is a privilege to be held in personal trust by the Franchisee. Except as provided in Section 3, neither the Franchise nor any rights or obligations of the Franchisee in, or pursuant to, the Franchise or the Facilities shall be transferred, in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge or other hypothecation, and is not to be sold, transferred, leased, assigned, or disposed of, in part or as a whole, either by forced sale, merger, consolidation, or otherwise; nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity; nor shall a change in control of the Facilities occur, either by act of the Franchisee, by operation of law or otherwise, without the consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be

expressed by ordinance; and then only under conditions as may be prescribed in the ordinance.

### 3.2 Effect of Unauthorized Action

The taking of any action described in Section 3.1 without the prior consent of the City shall be deemed a material violation of this Franchise, and the Franchise shall then be subject to revocation by the City Council in accordance with the procedures set forth in Section 8.1.

### 3.3 Exceptions

Nothing contained in this section shall be deemed to prohibit, or require City approval of, any assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation of all, or any part of, the stock of (or other evidence of ownership in) or assets (not including the Franchise) of the Franchisee or the Facilities, or any right or interest therein, for securing an indebtedness, provided that each assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation shall be subject to this Franchise and applicable law.

### 3.4 Approval Procedure

Pursuant to Los Angeles Administrative Code Section 13.11, *et. seq.*, the Franchisee shall file with the City Clerk a written application for any action affecting this Franchise.

Franchisee shall promptly notify the General Manager of the ITA, in writing, of any application filed with the City Clerk and requiring consent of the City. All correspondence to the General Manager of ITA shall be sent to:

General Manager  
Information Technology Agency  
Room 1400, City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

ITA shall complete its review of the petition as promptly as is reasonably possible and, thereafter, shall forward the petition and its recommendation to the City Council for final action.

## Sec. 4. FACILITY REQUIREMENTS

### 4.1 Construction

Throughout the term of this Franchise, the Franchisee shall construct, install, operate and maintain the Facilities in a manner consistent with all laws, ordinances and construction standards of the City.

Any change regarding construction of the Facilities from the description set forth in Section 1.4 shall be subject to the approval of the City as set forth in Section 2.8. The Franchisee is aware that Franchisee's proposed use of the public right-of-way requires approvals from various City departments, including, but not limited to, the Department of Public Works and the Department of Water and Power. This Franchise does not exempt the Franchisee from the necessity of obtaining any permits required by any City office or department.

### 4.2 Plans

The Franchisee shall file with ITA prints, plans and maps showing the proposed and as-built location of each conduit, pole or other portion of the Facilities to be installed (and, if using existing poles or conduits, the location of each pole attachment or conduit to be entered), and the location of each manhole or other opening installed to gain access to the Facilities and or its components.

### 4.3 Quality of Work

All work involved in the construction, operation and maintenance, repair and removal of the Facilities shall be performed with due diligence and using materials of good and durable quality.

### 4.4 Safety

The Franchisee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting.

No less than 24-hours advance notice shall be provided to ITA prior to commencing construction activities.

### 4.5 Street Work

In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City. The Franchisee shall obtain the prior approval of the City before altering any water main, sewage or drainage facility,

or any other municipal structure in any public way or street. Any alteration shall be made by the Franchisee, at its sole cost and expense, and in a manner reasonably prescribed by the City. The Franchisee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible and in a manner reasonably specified by the City, any public way, street or any municipal structure involved in the construction of the Facilities that may become disturbed or damaged as a result of any work by, or on behalf of, the Franchisee pursuant to this Franchise.

The Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same street or public way, or remove from any street or public way, any Facilities when required by the Board of Public Works, or by any other governmental agency acting in a governmental capacity, by reason of traffic conditions, public safety, street vacation, freeway construction, or any public improvement or structure. The privileges and obligations as to abandonment of the Facilities in place, provided in Section 4.6, shall apply when a governmental agency requires a permanent removal or relocation of the Facilities.

Upon failure of the Franchisee to commence, pursue or complete any repair or restoration work required of it by law or by the provisions of this Franchise in any street or public right-of-way, the City, at its option and according to law, may cause the work to be done and the Franchisee shall pay to the City the cost of the work in the itemized amounts reported by the City to the Franchisee within thirty (30) days after receipt of the itemized report.

#### 4.6 Removal or Abandonment

In the event the use of the Facilities is permanently discontinued, or upon termination, expiration or revocation of this Franchise, the City shall have the right to require the Franchisee to remove, at the Franchisee's own expense, all portions of the Facilities from the Encroachment Area. The Franchisee shall promptly remove all portions of the Facilities involved, other than any portions that the Board of Public Works may authorize to be abandoned in place. Facilities to be abandoned in place shall be abandoned in the manner as the Board of Public Works shall prescribe. Upon abandonment of any Facilities in place, the Franchisee shall submit to the City an instrument satisfactory to the City Attorney and ITA transferring to the City the ownership of the Facilities.

#### 4.7 Completion and Performance Bond

The Franchisee shall obtain, maintain and file with ITA, on or before the effective date of this ordinance, a performance bond or other instrument approved by the City Attorney and issued by a corporate surety or financial institution authorized to do business in the State of California. The bond or other instrument shall guarantee the compliance with any one or more of the provisions of this

Franchise and the safeguarding against damage to public or private property and the restoration of any damaged property. The bond or other instrument shall be maintained in addition to any the Department of Public Works' required General Improvement Performance Bond. The performance bond or other instrument shall be maintained in the amount of \$4,500,000.00 throughout the term of the Franchise.

If, at any time during the term of this Franchise, the condition of the corporate surety or financial institution shall change in a manner as to render the performance bond or other instrument unsatisfactory to the City, the Franchisee shall replace the bond or other instrument with a bond or other instrument of like amount and similarly conditioned, issued by a corporate surety or financial institution satisfactory to the City.

The bond or other instrument shall contain the following provisions: "It is hereby understood and agreed that this bond may not be cancelled by the surety or financial institution nor the intention not to renew be stated by the surety or financial institution until sixty (60) days after receipt by the City, by registered mail, of written notice of the intent to cancel or not to renew."

The bond or other instrument shall further provide that: "There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the City resulting from: (i) any loss or damage to any municipal structure during the course of construction of the Facilities; and (ii) the removal of all, or any part of, the Facilities from the public right-of-ways and streets."

If the Franchisee fails: (i) to make any payment required by this Franchise within the time fixed herein; (ii) to pay to the City, within ten (10) working days after receipt of written notice, any taxes or liens relating to the Facilities that are due and unpaid; (iii) to pay to the City, within ten (10) working days after receipt of written notice from the General Manager, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any material act or violation by the Franchisee; or (iv) to comply, within ten (10) working days after receipt of written notice from the General Manager, with any material provision of this Franchise that the General Manager reasonably determines can be remedied by an expenditure of an amount from the bond or other instrument, then the General Manager may order the withdrawal of the amount from the performance bond or other instrument for payment to the City, provided that, prior to each withdrawal: (A) the Franchisee shall be afforded an opportunity to cure any of the failures within thirty (30) days after written notice from the General Manager that the withdrawal is to be made, or (B) if the cure cannot be reasonably accomplished within the thirty (30) days, then the Franchisee shall have a reasonable time to cure, provided that the Franchisee commences the cure within that 30-day period and diligently pursues the cure to completion.

Throughout the term of this Franchise, the Franchisee shall maintain the performance bond or other instrument in the amount specified in this Section. Within ten business days after receipt of notice from the General Manager that any amount has been withdrawn from the performance bond or other instrument, as provided in this Section, the Franchisee shall restore the bond to the then applicable amount specified in this Section; provided, however, that the restoration obligation shall be suspended during the period of any judicial challenge by the Franchisee to the propriety of the withdrawal from the bond. If it is determined that the withdrawal by the City was improper, the City shall restore to the performance bond or other instrument an amount equal to the improperly withdrawn amount.

No action, proceeding or exercise of a right with respect to the completion and performance bond or other instrument shall affect any other right which may be held by the City; and the faithful performance by, and the liability of, the Franchisee pursuant to this Franchise shall not be limited by the acceptance of the bond or other instrument required by this Section 4.7.

## Sec. 5. PAYMENT OBLIGATIONS

### 5.1 Compensation

In order to compensate the City for the burden of private occupation of its public right-of-way, the increased maintenance and repair expenses associated with private occupation of the public right-of-way, and the increased costs of supervision thereof, a fee for the use and occupation of the public right-of-way by the Franchisee is hereby imposed. Within fifteen (15) days of the effective date of this ordinance, the Franchisee shall tender the first annual right-of-way use fee payment to the City in a form and amount specified below. The Franchisee shall continue to pay the annual right-of-way use fee periodically during the term of this Franchise. Failure to comply with any of the payment obligations set forth in this Section is a material violation of the Franchise and shall render the Franchise revocable in accordance with the procedure set forth in this Franchise.

The right-of-way use fee shall be in addition to, and shall not constitute an offset or credit against, any and all taxes or other fees or charges that the Franchisee shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of taxes, fees or charges shall not constitute a credit or offset against the right-of-way use fee, all of which shall be separate and distinct obligations of the Franchisee. No tax, fees or charges shall be used as offsets or credits against the right-of-way use fee.

### 5.2 Linear and Cubic Foot Formula

For underground occupation, the Franchisee shall pay an amount based on the street space required for the Facilities at the rate of \$2.50 per linear foot per

year, per conduit, assuming the maximum cross-sectional diameter of each conduit is six inches (6") or less. For underground occupation, the Franchisee shall pay an amount based on the street space required for the Facilities at the rate of \$7.50 per linear foot, per year, per conduit, assuming the maximum cross-sectional diameter of each conduit is more than six inches (6"). For overhead occupation, the Franchisee shall pay an amount based on the air space required for the Facility at the rate of \$1.25 per linear foot per year, per wire or cable.

### 5.3 Annual Payment

The first annual right-of-way use fee shall be due upon the effective date of this ordinance and annually thereafter on July 1 of each year.

For the first year, the annual fee shall be pro-rated down to equal the corresponding cost incurred between the effective date of this ordinance and June 30 of the same fiscal year. For example, assuming this ordinance becomes effective on April 1, the Franchisee would owe the pro-rated fee that is owed for the months of April, May and June (*i.e.*, 25% of the annual Franchise fee).

The annual Franchise payment amount shall be calculated as follows:

$$\begin{aligned} 83,088 \text{ linear feet} \times \$2.50/\text{linear foot} &= \$207,720.00 \\ 10,011.25 \text{ cubic feet} \times \$7.50/\text{cubic foot} &= \$75,084.38 \end{aligned}$$

As four years have passed since the expiration of the prior ordinance, a retroactive fee calculated in accordance with the linear and cubic foot formula described in Section 5.2 shall also be due within thirty (30) days of the effective date of this ordinance.

The retroactive fee, which had previously accrued is as follows:

$$\begin{aligned} 82,048 \text{ linear feet} \times \$2.50/\text{linear foot} \times 4 \text{ years} &= \$820,480.00 \\ 10,011.25 \text{ cubic feet} \times \$7.50/\text{cubic foot} \times 4 \text{ years} &= \$300,337.50 \end{aligned}$$

Discounted for monies already paid by USC over the past four (4) years in the amount of \$32,400, the retroactive fee due and payable totals to \$1,088,417.50.

Any annual payment made after the due date shall accrue interest at an annual rate of eight percent (8%).

#### 5.4 Option to Pay Lump Sum

In lieu of making the above annual payments specified in Section 5.3 above, the Franchisee may, at its option, elect to prepay the sum of \$7,027,309.48 (full term franchise fee of \$5,938,891.98 + retroactive fee of \$1,043,877.50) in one payment, within thirty (30) days of the effective date of this Franchise.

#### 5.5 Payment Terms

All payments by the Franchisee to the City pursuant to this Franchise shall be made payable to the City of Los Angeles and deposited with the General Manager of ITA at the address set forth in Section 3.4. Acceptance of any payment made by the Franchisee pursuant to this Franchise shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall acceptance of payment be construed as a release of any claim that the City may have for additional sums due and payable.

#### 5.6 Revocation for Non-payment

In the event that any payment required by this Franchise is not actually received by the City on or before the applicable date fixed in this Franchise, then this Franchise shall be subject to revocation by the City Council as set forth in Section 8.1.

### Sec. 6. OVERSIGHT AND REGULATION

#### 6.1 Notices

Notice of a public meeting relating to this Franchise shall be posted not less than 72 hours prior to the meeting, and shall remain posted until after the meeting.

The Franchisee shall maintain an address on file with ITA and with the City Clerk. Notices to the Franchisee shall be addressed or delivered to the Franchisee at that address.

Notices to the City required by law or by this Franchise shall be delivered in person or by first class, receipted mail or certified mail as appropriate, to the City Clerk, Room 395, City Hall, 200 North Spring Street, Los Angeles, California 90012, and to the General Manager of ITA, at the address set forth in Section 3.4, not less than ten (10) business days prior to the day on which the party giving the notice shall commence any activity that requires the giving of notice. In computing business days, Saturdays, Sundays and holidays recognized by the City shall be excluded.

All required notices shall be in writing.



## 6.2 Inspections

Upon reasonable notice to the Franchisee, the City may conduct any reasonably necessary inspection of the portion of the Facilities sited in the public right-of-way for the purpose of ensuring compliance with the terms of the Franchise. The Franchisee shall cooperate in providing access to all such portions of the Facilities, and to any other location on private property necessary to access the Facilities or otherwise effect the inspection. The reasonable costs of such inspections shall be borne by the Franchisee.

## Sec. 7. LIABILITY AND INSURANCE

### 7.1 Indemnification of City

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Franchisee undertakes and agrees to defend, indemnify and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Franchisee's employees and agents, or damage or destruction of any property of either party to this Franchise or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Franchise by the Franchisee. The provisions of this paragraph survive expiration or termination of this Franchise.

### 7.2 Insurance Requirement

During the term of this Franchise and without limiting the Franchisee's indemnification of the City pursuant to Section 7.1, the Franchisee shall provide and maintain, at its own expense, continuously during the terms specified below, a program of insurance as listed in Sections 7.3-7.5 covering installation or operation of the Facilities, commencing no later than the effective date of this Franchise and subject to the following conditions:

The City shall be named as an additional insured in all insurance policies. The City shall be named Loss Payee as its interest may appear in all required property fidelity and surety coverage.

Evidence of insurance shall be submitted to the City Administrative Officer, Risk Management, for approval prior to commencement of any operations under this Franchise, which approval shall not be unreasonably withheld.

With respect to the interests of the City, this insurance shall not be cancelled, reduced in coverage or limits, or non-renewed except after sixty (60) days written

notice, by hand delivery or certified mail, has been given to the City Administrative Officer, 200 North Main Street, 12th Floor, Los Angeles, California 90012, Attention: Risk Management.

The appropriate City Special Endorsement forms, obtainable from the City Administrative Officer, are the preferred forms of evidence of insurance. Alternatively, the Franchisee may submit two certified copies, with original signatures, of the full policies containing the appropriate cancellation notice language and additional insured/loss payee language as specified in this Section.

### 7.3 General Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000.00 per occurrence for Bodily Injury and Property Damage during construction only. This insurance must include: premises and operations, completed operations, contractual liability, and independent contractors and, during the course of construction, collapse and underground hazards.

### 7.4 Automobile Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000.00 per occurrence, for Bodily Injury and Property Damage, including coverage for owned automobiles, non-owned automobiles and hired automobiles. This coverage is required during construction only.

### 7.5 Worker's Compensation and Employer's Liability

By acceptance of this Franchise, the Franchisee certifies that it is aware of the provisions of California Labor Code Section 3700, *et seq.*, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with those provisions. A minimum limit of \$1,000,000.00 per employee is required for Employer's Liability with a Waiver of Subrogation in favor of the City. This coverage is required during construction only.

## Sec. 8. TERMINATION AND RELATED RIGHTS

### 8.1 Revocation

In the event that the Franchisee violates or fails to comply with any material condition of this Franchise, including, but not limited to Sections 1.6, 3.1, 3.2 and 5.6, the City Council shall exercise its right to revoke the Franchise in accordance with the following procedures:

- (a) The General Manager of ITA shall notify the Franchisee, in writing, of an alleged failure to comply with a material provision of this Franchise. The Franchisee shall cure the alleged material breaches of the Franchise Agreement within forty-five (45) days after receipt of the notice. In the event the alleged failure cannot be reasonably cured within forty-five (45) days and provided the Franchisee commences to cure within thirty (30) days and diligently pursues the cure to completion, the Franchisee can seek extension of the cure period by providing to the General Manager of ITA a written presentation explaining why the breach cannot be cured within forty-five (45) days and providing a date certain for completion of the cure.
- (b) The General Manager of ITA shall investigate whether a failure to comply with a material provision has occurred; whether the failure is excusable; and whether the failure has been cured or will be cured by the Franchisee.
- (c) If the General Manager of ITA determines that a failure to comply with a material provision has occurred and that the failure is either not excusable or will not be cured by the Franchisee, then the General Manager of ITA shall so notify the City Clerk and the City Council in a written report.
- (d) Within sixty (60) days of receipt of a report from the General Manager of ITA, the City Council or its duly designated Committee shall notice a public hearing at which the Franchisee shall have the opportunity to respond to the claim that a material breach has occurred and to present facts and arguments in refutation or excuse of the alleged breach.
- (e) After the conclusion of a public hearing, or at any time upon its own motion, the City Council, or its duly designated Committee may determine to recommend or order revocation by the City Council. All final City determinations with respect to the revocation or termination of the Franchise must be made by the City Council as set forth in the Los Angeles Administrative Code.

## 8.2 Termination Defined

The termination of this Franchise and the termination of Franchisee's privileges under this Franchise shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the City Council, as provided in Section 8.1; (ii) the abandonment of the Facilities, in whole or material part, as defined in Section 4.6, by the Franchisee, without the express, prior approval of the City; (iii) non-use of the Franchise privileges as set forth in Section 2.2; or (iv) the expiration of the term of the Franchise as set forth in Section 2.9.

### 8.3 Removal Upon Termination

Upon any termination of this Franchise, the Franchisee shall, at its own cost and expense, promptly remove that part of the Facilities located in the streets and public right-of-way and shall replace or repair and restore to serviceable condition each affected street, public way, and governmental structure therein, in a manner as may be reasonably specified by the City.

If the Franchisee fails to remove the Facilities from the public right-of-way within ninety (90) days of a City request to do so, or fails to repair or restore any street in conformance with the manner specified by the City, the City shall be permitted to initiate and/or complete the work at the expense of the Franchisee.

In the event of any acquisition of the Facilities by the City pursuant to Section 4.6, and subject to the requirements of applicable law, the City may lease, sell, operate or otherwise dispose of all or any part of the Facilities.

Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: One copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_ Deputy

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  \_\_\_\_\_  
MICHAEL DUNDAS  
Deputy City Attorney

Date 6/25/13

File No. \_\_\_\_\_