

**RESOLUTION #2023-24**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH CHARTER COMMUNICATIONS OPERATING, LLC, TO PROTECT PROPRIETARY AND/OR CONFIDENTIAL INFORMATION BEING RELEASED TO THE CITY AS PART OF THE PLANNING PROCESS FOR PHASE 2 OF THE INTERNET ACCESS PROJECT.**

**WHEREAS**, Charter Communications Operating, LLC ("Charter") is currently working to install and maintain broadband infrastructure to serve over two thousand unserved or underserved households and businesses in the City and to provide high-quality broadband services thereto; and

**WHEREAS**, the City has identified additional areas within the boundaries of the City that contain unserved and underserved households and businesses; and

**WHEREAS**, the City Council desires to make additional investments in broadband infrastructure to provide high-quality broadband service to the remaining unserved and underserved households and businesses located in the City; and

**WHEREAS**, Charter desires to submit a proposal to design, construct, install, and maintain broadband infrastructure to service the remaining unserved and underserved households within the City ("Internet Access Project - Phase 2"); and

**WHEREAS**, Charter and the City desire, in connection therewith, to conduct an exchange of information relating to the project; and

**WHEREAS**, the City desires to encompass all unserved and underserved households and businesses in Phase 2 of the project; and

**WHEREAS**, the information transferred by Charter to the City in the process of developing plans for Internet Access Project – Phase 2 may include trade secrets and other confidential or proprietary information protected from disclosure by law; and

**WHEREAS**, the parties desire to protect the proprietary and/or confidential nature of the information to be shared in connection with the Internet Access Project - Phase 2.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

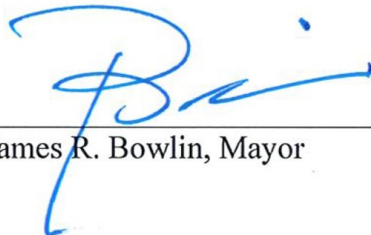
**Section One.** That the form, terms, and provisions of the of the Confidentiality and Non-Disclosure Agreement ("Agreement") by and between the City and Charter Communications Operating, LLC, attached hereto, marked as Exhibit A, and incorporated by reference herein (the "Agreement"), be and they hereby are approved and the Mayor shall be and is hereby authorized,

empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Resolution.

**Section Two. Severability.** If any term, condition, or provision of this Resolution shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Resolution without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

**Section Three.** This Resolution shall be effective upon its passage and approval by the City Council of the City of Wildwood, Missouri.

Passed and Resolved by the Council of the City of Wildwood this 11th day of December, 2023.

  
\_\_\_\_\_  
James R. Bowlin, Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



Exhibit A

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement") is made and entered into as of the 11<sup>th</sup> day of December, 2023 (the "Effective Date") by and between Charter Communications Operating, LLC, a Delaware limited liability company, having a place of business at 12405 Powerscourt Drive, St. Louis, Missouri 63131-3668 ("Charter") and the City of Wildwood, Missouri, a City in the State of Missouri, where its main government center is located at 16860 Main Street, Wildwood, MO 63040 ("City"). Charter and City may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Charter, either directly or through its Affiliates (defined below), provides broadband communications services to residential and commercial subscribers located in various communities throughout the United States; and

WHEREAS, the City desires to grant certain Coronavirus Local Fiscal Recovery Fund (together, the "Fiscal Recovery Funds") received by the City pursuant to the American Rescue Plan Act ("ARPA") to make necessary investments in broadband infrastructure within the City; and

WHEREAS, Charter desires to submit a proposal to the City to design, construct, install and maintain broadband infrastructure to service approximately \_\_\_\_\_ unserved and underserved households within the City (the "Project"); and

WHEREAS, the parties desire, in connection therewith, to conduct an exchange of information relating to the Project; and

WHEREAS, the parties desire to protect the proprietary and/or confidential nature of the information to be shared in connection with the Project.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions.

(a) **Affiliate.** As used in this Agreement, the term "Affiliate(s)" means (i) with respect to Charter, Charter Parent, any entity that is Controlled by Charter Parent, or any entity in which Charter Parent holds the power to vote, directly or indirectly, 25% or more of the voting securities; or (ii) with respect to City, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, City. For purposes of the foregoing, "Charter Parent" means the ultimate parent entity of Charter, which is the parent entity that holds the power to vote, directly or indirectly, 50% or more of the voting securities of Charter but in which no person or entity holds the power to vote 50% or more of such parent entity's voting securities; and "Control" means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities by contract or otherwise.



(b) Confidential Information. As used in this Agreement, the term "Confidential Information" means all non-public information, ideas, concepts, plans and data communicated, whether in writing, by computer memory, orally or in any other form or manner, by Charter to City and clearly designated as being confidential in writing, including, but not limited to, information relating to Charter's products, services and strategies and; provided, however, the term "Confidential Information" shall not include information which (s) agreed to by Charter (t) City may use to provide generalized information and data about the Project, including the number of users of the Project and similar information (u) any Confidential Information Required to be disclosed by a court of competent jurisdiction; (v) any agreement entered into by and between Charter and the City, including any exhibits or attachments to same, and any ordinances, resolutions, minutes of meetings or other records evidencing approval of same; (w) is or becomes generally available to the public other than as a result of a disclosure by City or any of its Representatives (as defined below) in violation of this Agreement; (x) was within City's possession or knowledge prior to it being furnished to City pursuant to this Agreement, as shown by the files of City in existence at the time of disclosure, and at a time when City was under no obligation to Charter to keep such information confidential and provided that the source of such information was not known by City to be bound by an obligation of confidentiality to Charter; (y) becomes available to City on a non-confidential basis from a source other than Charter, provided that, to City's knowledge, such source is not bound by a confidentiality agreement with, or similar obligation to, Charter with respect to such information; or (z) is independently developed by City under circumstances not involving a breach of this Agreement by City and without any authorized use of any Confidential Information.

(c) Representatives. As used in this Agreement, the term "Representatives" means, with respect to either Party, such Party's directors, officers, employees, agents, legal counsel, consultants or other representatives.

(d) City is a government entity required to comply with records requests from the public through Chapter 610, RSMo., and other similar state or local law or regulation applicable to City ("Government Records Request Law"). City agrees to maintain Charter's Confidential Information as exempt from such disclosure under the applicable Government Records Request Law as confidential trade secrets or commercial or financial information, or similar applicable exemption under the Government Records Request Law applicable to City. To the extent that City is otherwise required to disclose Charter Confidential Information in response to a Government Records Request, City will provide Charter written notice reasonably sufficient to allow Charter to seek a protective order or other appropriate remedy. In any cause of action brought against City for reasons of City's asserting any Confidential Information as a closed record under Chapter 610, RSMo., Charter agrees to indemnify City against any and all costs associated with the defense against such cause of action, including, but not limited to reasonable attorney fees and any fees and penalties levied against the City pursuant to Section 610.027, RSMo.

2. Proprietary Nature and Use of Confidential Information. City acknowledges the confidential and proprietary nature of the Confidential Information, and agrees to use the Confidential Information for the sole purpose of understanding broadband deployment within the City. Any shapefiles provided by Charter may only be aggregated anonymously with shapefiles provided to the City by other broadband providers so that aggregated data or resulting map would not identify the area served by any particular broadband provider. City shall treat the Confidential



Information with the same degree of care with which it treats its own confidential information, and in no event less than a reasonable degree of care.

3. Disclosure and Confidentiality of Confidential Information. City agrees that, without the express written consent of Charter, City will not, at any time, (i) divulge, furnish, disclose or make accessible to any person, firm, organization or corporation, in any manner whatsoever, any of the Confidential Information; or (ii) use any of the Confidential Information for City's own benefit or for the benefit of any third party. Notwithstanding the foregoing, City may disclose the Confidential Information to those of City's Representatives who are directly involved in the evaluation or administration of the Project, provided that each such Representative is required to protect and otherwise not disclose or use the Confidential Information other than as provided in this Agreement, and is advised of the confidential nature of the Confidential Information. City shall refrain from copying the Confidential Information, in whole or in part, except as required in furtherance of the uses permitted by this Agreement and subject to the accurate reproduction of all proprietary legends and notices located in the originals. In the event of any loss or unauthorized disclosure of or any unauthorized use of, the Confidential Information, City shall promptly notify Charter in writing thereof.

(a) Charter asserts the Confidential Information are confidential and protected from disclosure as a matter of law, including, but necessarily limited to, The Missouri Uniform Trade Secrets Act, Sections 417.450 to 417.467, RSMo., as amended, and shall be considered closed records exempt from disclosure pursuant to Section 610.021(14), RSMo., as amended, or such other provisions of law, as may be applicable, unless a court of competent jurisdiction compels the disclosure of any of the Confidential Information.

(b) Should any person make a request for public records pursuant to Sections 610.010 to 610.026, RSMo., a response to which may include any of the Confidential Information, City shall endeavor to give Charter written notice of the request and the specifically identified Confidential Information responsive thereto. Charter shall, within three (3) business days of the date of the written notice, confirming with the City whether any of the identified Confidential Information is a closed record under Section 610.021(14), RSMo.

(c) Charter agrees to defend, indemnify and hold City harmless from and against any and all claims, suits, actions, losses, damages and liabilities (including, but not limited to reasonable attorneys' fees, court costs and civil penalties) on account of any assertion by the City that any Confidential Information is a closed record under Section 610.021(14), RSMo.

(d) In the event City is compelled, pursuant to a lawful requirement or request from a court or governmental agency acting within its jurisdiction, to disclose any of the Confidential Information, City shall (i) endeavor to give Charter written notice, to the extent not otherwise prohibited by law, sufficient to allow Charter enough time to seek a protective order or other appropriate remedy and shall consult, to the extent practicable, with Charter in an attempt to agree on the form, content, and timing of such disclosure; and (ii) disclose only such of the Confidential Information as is required, in the opinion of its counsel, to comply with such legal requirement, and shall use commercially reasonable efforts to obtain confidential treatment for any of the Confidential Information disclosed. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement.



4. Reports Generated from Confidential Information. Any reports or other documents, in whatever form or medium, which result from the efforts of the Parties hereto in connection with the discussions contemplated by this Agreement shall be governed by the same terms and conditions of this Agreement respecting confidentiality and use as applies to the Confidential Information itself, except that to the extent shapefiles are aggregated anonymously with shapefiles provided to the City by other broadband providers so that aggregated data or resulting map would not identify the area served by any particular broadband provider.

5. Ownership and Return of Information. All Confidential Information hereunder shall be and remain the property of Charter. City shall not obtain any rights in or to any of the Confidential Information disclosed to City as a result of such disclosure. Subject to records retention requirements of Chapter 109, RSMo., upon the written request of Charter, City shall promptly delete, destroy or return to Charter (whichever Charter elects) any or all of the Confidential Information received under this Agreement. Upon Charter's written request, City, or its Representative, as applicable, shall certify to Charter that the Confidential Information has been deleted, destroyed, or returned to Charter as instructed. City's counsel may retain one (1) copy of the Confidential Information for evidentiary purposes; and City shall not be required to delete or destroy any back-up tapes that capture Confidential Information which cannot be reasonably deleted or destroyed; provided, however, that any Confidential Information retained by City, as authorized under this Section of the Agreement, shall remain subject to this Agreement for so long as such Confidential Information is retained and, if City has incorporated the Confidential Information into any internal memoranda or other materials, City must exercise reasonable efforts to redact or otherwise expunge all such Confidential Information from such materials.

6. No Obligation for Further Agreement. Communication of any Confidential Information pursuant to this Agreement shall not obligate either party to enter into any further agreements relating to the Project among the parties.

7. Accuracy of Information. All information disclosed by Charter to City hereunder is provided "AS IS." Charter makes no implied or express representations or warranties as to the accuracy or completeness of the Confidential Information. Charter will have no liability to City resulting from City's use of the Confidential Information. City further agrees that City is not entitled to rely on the accuracy or completeness of the Confidential Information.

8. Remedies. City acknowledges that the Confidential Information is of such character as to render it unique and therefore agrees that disclosure or use thereof in violation of the within covenants may cause irreparable damage to Charter. Accordingly, City agrees and consents that in the event that any action or proceeding shall be instituted by Charter to enforce any provision of this Agreement, City waives the claim or defense in any such action that there is adequate remedy at law available to Charter, and City shall not urge in any such action or proceeding the claim or defense that such remedy at law exists. The Parties agree that Charter's remedies for any breach of this Agreement by City shall be cumulative, and the seeking or obtainment of injunctive relief shall not preclude a claim or award for damages or other relief.

9. Complete Agreement. This Agreement contains the complete understanding between the Parties hereto with respect to the treatment of the Confidential Information as defined



herein and may not be varied or terminated otherwise than in accordance with its terms, except by written agreement by the Parties.

10. Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, will be governed by the laws of the State of Missouri (without regard to any applicable conflicts of law rules) and the federal laws of the United States. With respect to this Agreement, and all matters arising out of or relating to this Agreement, the parties consent to exclusive jurisdiction and venue in the federal courts sitting in St. Louis, Missouri, unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue in the state courts sitting in St. Louis County, Missouri. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

11. Non-Assignability. City may not assign its rights under this Agreement without the prior written consent of Charter.

1420. Waiver. The failure by either Party to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

13. Severability. The provisions of this Agreement are divisible. If any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions shall remain in full force and effect, provided that if any such provision is deemed invalid or unenforceable as to any period of time, territory or business activities, such provision shall be deemed limited to the extent necessary to render it valid and enforceable.

14. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which (once executed) shall be deemed an original, and all of which shall together be deemed to constitute one agreement. A signature delivered by facsimile or electronic means shall be deemed to be an original and valid signature for all purposes hereunder.

15. Notices. All notices required or otherwise sent under this Agreement must be in writing and delivered via: (i) email and concurrent notice sent *via* certified mail, return receipt requested; (ii) certified mail (return receipt requested); or (iii) nationally recognized overnight courier with package location and delivery tracking capabilities. Notice shall be deemed to have been given upon receipt thereof as evidenced by the applicable documentation (electronic receipt for email, return receipt for mail, or receipt records of the courier). Notice must be addressed to the respective Party hereof using the following addresses:

<p>Spectrum Mid-America, LLC Attn: Robert Burton, AVP 4160 Old Mill Parkway St. Peters, MO 63376 <a href="mailto:Robert.Burton@charter.com">Robert.Burton@charter.com</a></p>	<p>City of Wildwood Attn: City Administrator 16860 Main Street Wildwood, MO 63040 <a href="mailto:tlee@cityofwildwood.com">tlee@cityofwildwood.com</a></p>
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<p><i>With copies to:</i>  Charter Communications  Legal Department - Operations  12405 Powerscourt Drive  St. Louis, MO 63131  AND  LegalNotices@charter.com</p>	<p><i>With copies to:</i>  Hamilton Weber LLC  Attn: John A. Young  200 N. 3<sup>rd</sup> St.  St. Charles, Missouri 63301  jyoung@hamiltonweber.com</p>
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Either Party may change its address at any time provided that it gives the other Party notice of such change in compliance with this provision.

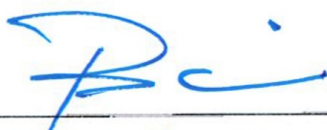
16. Term/Survival of Obligations. The term of this Agreement shall be one (1) year, beginning on the Effective Date and expiring at midnight at the one (1) year anniversary of the Effective Date. The obligations of confidentiality with regard to information disclosed under this Agreement or otherwise accessed or obtained in connection with the discussions covered by this Agreement, shall terminate five (5) years from the expiration of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates below.

Charter Communications Operating, LLC  
By: Charter Communications, Inc.,  
Its Manager

City of Wildwood, Missouri

By:   
Name: W. Sarah Falk  
Title: VP, Government Affairs  
Date: 10/10/2023

By:   
Name: Jim Baulin  
Title: Mayor  
Date: 12/11/23