

ORDINANCE NO. 502

**AN ORDINANCE GRANTING TO SEAMLESS FIBER
INNOVATIONS, LLC CERTAIN RIGHTS WITHIN THE
PUBLIC RIGHT-OF-WAY IN THE
CITY OF CASEY, ILLINOIS**

**ADOPTED BY THE CITY COUNCIL
OF THE CITY OF CASEY
THIS 6TH DAY OF DECEMBER, 2021**

**PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE CITY COUNCIL OF
THE CITY OF CASEY, CLARK COUNTY, ILLINOIS, THIS 6TH DAY OF
DECEMBER, 2021.**

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WHEREAS, the City of Casey, Illinois, is authorized, pursuant to 625 ILCS 5/11-208, to regulate the use of public right-of-ways, streets, and highways within the corporate boundaries of the City of Casey, Illinois; and,

WHEREAS, Seamless Fiber Innovations LLC (hereinafter “Seamless Fiber” or “Company”) proposes to construct and install certain fiber optic facilities within the City of Casey, Illinois, and to provide Fiber Optic Services (as defined below) within the corporate limits of the City; and,

WHEREAS, the City of Casey, Illinois, has relied on Seamless Fiber’s representations and has, after such consideration, analysis and deliberation as required by law, approved and found sufficient the technical, financial and legal qualifications of Seamless Fiber, and has determined that Seamless Fiber intends, through the terms and conditions of a franchise agreement, to meet the fiber optic service related needs and interests of the citizens of the City of Casey, Illinois; and,

WHEREAS, the City Council of the City of Casey, Illinois, finds that the installation of high-speed fiber optic facilities within the City will increase opportunities for economic growth, job creation, improved education, health care and public safety for the citizens of Casey; and,

WHEREAS, the City of Casey, Illinois, and Seamless Fiber have reached an agreement regarding the grant of a franchise to Seamless Fiber under the terms and conditions as provided for herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASEY, ILLINOIS, AS FOLLOWS:

Section 1. The findings and determinations set forth in the preamble to this Ordinance (hereinafter “Ordinance” or “Agreement”) are hereby made findings and determinations of the City Council of the City of Casey, Illinois, and incorporated into the text of this Ordinance by reference.

Section 2. The term “Fiber Optic Service” shall mean the transmittal of information, by electromagnetic means, including light, transmission with or without benefit of any closed

transmission medium, including all instrumentalities, facilities, apparatus, equipment and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission and also includes access and interconnection arrangements, internet service, the transmission of high speed data and information services, by fiber optics or any other means.

Section 3. There is hereby given and granted to Seamless Fiber a non-exclusive franchise (hereinafter "Franchise") for the right, privilege, and authority to construct, excavate, erect, renew, operate and maintain in, upon, along, over, across, and under the streets, alleys, and public ways of the City of Casey and any area hereinafter annexed (hereinafter referred to as "City Right-of-Way"), all lines, wires, fiber optic lines, cables, conduits, vaults, laterals and other fixtures, equipment, or apparatus (hereinafter referred to as "Structures") as may be necessary or convenient to conduct and operate a Fiber Optic Service within the City for the period of twenty (20) years from the date of the acceptance of this Ordinance by the Company. This Franchise shall automatically renew on a year-to-year basis under the same terms and conditions as set forth herein unless either party serves written notice of termination not earlier than 12 months and not later than 6 months prior to the end of the initial term or any extended annual term.

Section 4. Seamless Fiber shall not conduct any excavation or otherwise erect, construct, install, repair, and/or maintain any Structures within the City Right-of-Way unless it has submitted plans and specifications to the office of the Superintendent of Utilities and has received approval and acknowledgement from the Superintendent's office to proceed with the proposed excavation, erection, construction, installation, repair, or maintenance. Planning of excavation, erection, construction, installation, repair, or maintenance of Structures shall be coordinated with the City to avoid the City's utility infrastructure. Notwithstanding anything contained herein to the contrary, Company is hereby authorized to excavate to respond to emergencies or customer after calling 911 without regard to any notice requirements contained herein. All Structures hereafter installed shall be so placed, and all works in connection with such installation shall be so performed to safely minimize any impact to the ordinary travel on the City Right-of-Way. Company shall install all Structures, and perform all work in connection with the excavation, erection, construction, installation, repair, and/or maintenance of any Structures, so as to not unreasonably interfere with any City fiber, electric, gas, water or sewer systems then in place. The tops of all vaults constructed by said Company within the City shall present an even surface with the pavement at the point where laid, and, shall be lowered or raised to conform to the top of paving or improvement as required by the City whenever the grade of the City's Right-of-Way in which any such vault is located may be hereafter lowered or raised by the City.

Section 5. The Company, after doing any excavating, shall leave the surface of the ground in a neatly graded condition. All sidewalks, parkways, pavements, or City owned property disturbed by said Company shall be restored by it to as good condition as before said sidewalk, parkway, pavement, or City owned property was disturbed by it, and in the event that any such sidewalk, parkway, pavement, or City owned property shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, then the Company, as soon as climatic conditions will permit, shall, at Company's expense promptly, upon receipt

of notice from the City so to do, cause such sidewalk, parkway, pavement, or City owned property to be repaired or restored to as good condition as before said sidewalk, parkway, pavement, or City owned property was disturbed by said Company. Company shall keep all Structures which it shall construct by virtue of this Franchise, in a reasonably safe condition at all times, and shall maintain such barriers and danger signals during the excavation, erection, construction, installation, repair, maintenance, or renewal work performed hereunder as will reasonably avoid damage to life, limb and property.

Section 6. The Company shall, at its own expense, defend all suits that may be brought against the City, and its officers, boards employees, contractors and agents, on account of or in connection with the violation by the Company of any of the obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of any of the Structures constructed by it under or by virtue of this Ordinance, and shall protect, indemnify, save and keep harmless the City, and its officers, boards, employees, contractors, and agents, from any and all liability, obligations, claims, damages, penalties, causes of action, costs and expenses, and including, without limitation, attorneys' fees and expense imposed upon, incurred by or asserted against the City of every kind, that may arise by reason thereof; provided, that notice in writing shall be given to the Company, within twenty (20) days of any claim or suit against the City which, by the terms hereof, and the Company shall be obligated to defend, or against which the Company has hereby agreed to protect, indemnify, save and keep harmless the City and provided further that the City shall furnish to the Company all relevant information in its possession relating to said claim or suit, and cooperate with the Company in the defense of said claim or suit. Nothing herein shall be deemed to prevent the City from participating in the defense of any litigation by City's own counsel, at City's own expense.

Section 7. Relocation of Structures.

- A. Relocation for the City.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) calendar days, the Company shall, at Company's sole expense, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the City's Right-of-Ways, any Structures or other property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Company's services. The Company shall, in all cases, have the right of abandonment of its property.
- B. Relocation for a Third Party.** The Company shall, on the request of any person or company holding a lawful permit or franchise issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the City's Right-of-Ways as necessary any Structures or other property of the Company, provided: (A) the expense of such is paid by said third person or company benefiting from the relocation, including, if required by the Company, making such payment in advance; and (B) the Company is

given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) calendar days in the event of a temporary relocation, and no less than sixty (60) calendar days for a permanent relocation.

Section 8. In case said Company shall fail or neglect to comply with any or all of the provisions of this Ordinance (unless by order of the Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction, said Company is otherwise directed, or unless the compliance by said Company with such provision is prohibited or adjudged unlawful by an order of the Illinois Commerce Commission or by an order of any other body, board, commission or court of competent jurisdiction), the City reserves the right to repeal this Ordinance or rescind this contract, and forfeit the rights hereby created or sought to be created, provided that no such repeal, rescission or forfeiture shall exist or be claimed because of such failure or neglect, until written notice of such failure or neglect so claimed shall have been given to said Company, and a reasonable opportunity afforded it to comply with the provisions hereof or to prove that such compliance already exists. In the event that said Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction shall adjudge any provision or provisions hereof invalid or illegal, or direct a change by the Company in any matter or thing herein contained, such invalidity or illegality or change shall in no way affect the remaining provisions of this Ordinance, or their validity or legality, and this Ordinance in all other respects shall continue in full force and effect, as if said provision or provisions had not been so adjudged invalid or illegal or such changed directed.

Section 9. Each and every provision hereof shall be subject to, acts of God, extreme temperatures, floods, tornados, fires, strikes, riots, war, acts of terrorism, and any other events beyond the Company's control.

Section 10. At the termination of this Franchise, all of the Structures shall remain the property of the Company.

Section 11. Company shall not assign the rights and obligations under this Ordinance to any other party without the prior written consent of City. The City shall be under no obligation whatsoever to consent to any assignment or other transfer of this Ordinance by Company. Other than as set forth above, any assignment, attempted assignment, transfer, or attempted transfer of this Ordinance by Company shall constitute a material breach of this Ordinance and the City shall thereupon have the right to immediately terminate this Ordinance.

Section 12. The parties agree that in the event of a breach of this Agreement, the prevailing party shall recover its attorney fees, expert witness fees, and costs from the other party.

Section 13. Whenever the reference to "City" or "City of Casey" is used herein, it is agreed by the parties that it is referring to the governmental City entity in Clark and Cumberland Counties commonly known as "Casey". Whenever the word "Company" or the word "Seamless Fiber" is used in this Ordinance, they shall be construed to mean the Seamless Fiber Innovations, LLC, its successors, lessees, and assigns, and this Ordinance, subject to the restrictions contained

in Section 11 of this Ordinance, shall be binding upon and inure to the benefit of the said Company, and its successors, lessees, and assigns.

Section 14. In the event the City vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, City agrees to reserve unto Company the rights, privileges and authority herein given and granted to Company in upon, along, under, over and across each and all of such vacated premises which are at the time in use by Company.

Section 15. The City shall have the right to inspect all construction work performed within the City public rights-of-way. Any inspections of construction work made by the City shall be at the expense of the City.

Section 16. The Company shall be responsible for contacting J.U.L.I.E. (the Joint Utility Location Information for Underground Excavator) or any successor agency for all of its construction and for responding in a timely manner to request from J.U.L.I.E. or successor agency in the City to locate its facilities. Company is responsible for accurately marking its facilities in conformance with J.U.L.I.E or successor agency standards. All crossing of City owned facilities must be potholed by Company or its subcontractors for visual inspection before directional boring fiber or conduit under or above City owned facilities.

Section 17. Company is responsible for all of its personnel, including its contractors, agents, employees and subcontractors engaged in construction and maintenance. Company will disclose to the City the identity of all subcontractors prior to performing work for the Company in the City.

Section 18. Company shall maintain in full force and effect and by its acceptance of the Franchise specifically agrees that it will, at its own cost and expense, maintain throughout the term of the Ordinance and any extension of such term, insurance insuring the City and the Company in the minimum amounts of:

1) Commercial general liability insurance, including premises-operations, explosion, collapse and underground hazard (commonly referred to as "X," "C," and "U" coverages) and products-completed operations coverage with limits not less than:

i) Four million dollars (\$4,000,000) per occurrence for bodily injury or death to each person;

ii) Four million dollars (\$4,000,000) per occurrence for property damage resulting from any one accident;

iii) Four million dollars (\$4,000,000) per occurrence for all other types of liability; and,

iv) Five million dollars (\$5,000,000) aggregate coverage.

2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of One million dollars (\$1,000,000) for personal injury and property damage for each accident;

3) Worker's compensation insurance with the prescribed statutory limits; and,

4) Employer's liability insurance with limits of not less than One million dollars (\$1,000,000) per employee and per accident.

The Company's subcontractors must also have insurance.

Alternatively, Company may obtain lower coverage amounts as set forth above provided Company also purchases an umbrella insurance policy so that the combined limits equal the coverage amounts set forth for each category above. The Certificate of Insurance obtained by the Company in compliance with this Section shall name the City as an additional insured party, on a primary, non-contributory basis, and such insurance shall be noncancellable except upon thirty (30) calendar days prior written notice to the City. Evidence of the coverage required by this Section shall be filed and maintained with the City during the term of the Ordinance and any renewal thereof.

Section 19. Any notice shall be provided to the respective individuals specified below. All notices or other written communications required to be provided to the City or Company under any provision of this Ordinance, shall be deemed to be received by the recipient thereof only when said notices or other written communications are actually received in the office of the recipient at the following addresses:

If to the City:

Attention Mayor
City of Casey, Illinois
101 W. Alabama Avenue
Casey, IL 62420

With a copy to:

Tracy A. Willenborg
City Attorney
Taylor Law Offices, P. C.
122 E. Washington Avenue
P. O. Box 668
Effingham, IL 62401

If to Company:

Joshua Esker, Manager
Seamless Fiber Innovations LLC
808 W Jefferson Avenue
Altamont, IL 62411

With a copy to:

William J. Bradley
Law Group of Illinois Ltd
303 S 7th Street, POB 399
Vandalia, IL 62471

Section 20. The Mayor and City Clerk are hereby directed to execute this Ordinance. This Ordinance shall be in full force upon receipt by the Clerk of the Company's written acceptance of all of the provisions of this Ordinance executed by its proper officer thereunto duly authorized which shall then be the effective date of this Ordinance.

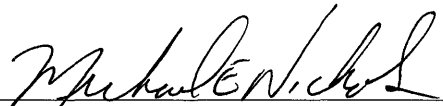
Placed on file this 6th day of December, 2021.

Presented, passed, and approved this 6th day of December, 2021.

Alderman Jenkins	<u>yes</u>
Alderman Mumford	<u>yes</u>
Alderman Richardson	<u>absent</u>
Alderman Ruffner	<u>yes</u>
Alderman Williams	<u>yes</u>
Alderman Wilson	<u>yes</u>

YEAS: 5
NAYS: 0

CITY OF CASEY, ILLINOIS

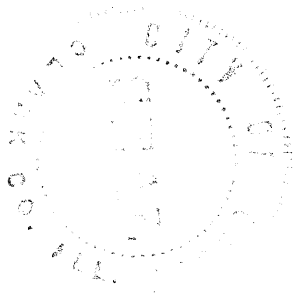


Michael E. Nichols, Mayor

ATTEST:



Jeremy Mumford, City Clerk



STATE OF ILLINOIS)
CITY OF CASEY)SS
COUNTY OF CLARK)

I, Jeremy Mumford, City Clerk within and for the City of Casey, in the State and County aforesaid, do hereby certify that:

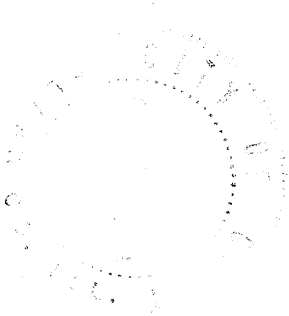
(1) the foregoing constitutes a full, true and correct copy of Ordinance No. 502 of said City as:

- (a) introduced before the City Council on the 6th day of December, 2021; and
- (b) passed by the City Council and approved by the Mayor on the 6th day of December, 2021, as fully as the same appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Casey, Illinois, at my office in said City this 6th day of December, 2021.

[SEAL]

Jeremy Mumford
City Clerk



ACCEPTANCE

Seamless Fiber Innovations, LLC, for and in consideration of the rights and privileges granted by Ordinance No. 502 of the City of Casey, Illinois, passed December 6th, A.D. 2021, approved December 6th, A.D. 2021, and entitled "An Ordinance Granting to Seamless Fiber Innovations, LLC Certain Rights within the Public Right-of-Way in the City of Casey, Illinois", hereby accepts said Ordinance and all the provisions thereof.

In Witness Whereof, Seamless Fiber Innovations, LLC, as aforesaid has caused by these presents to be signed by its duly authorized representative this 6th day of December, A.D. 2021.

Seamless Fiber Innovations, LLC

By: 

Joshua Esker, Authorized Manager
and Agent