



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/23/2025

File ID: TMP-6156

Department: Legal

Subject:

Type of Action: Introduction

Introduction of an Ordinance concerning a Rights-of-Way Use Agreement between Fiber Utility Network, Inc. d/b/a Alabama Fiber Network, Inc., and the City of Huntsville.

Ordinance No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

ORDINANCE NO. - _____

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama as follows:

Section 1. Fiber Utility Network, Inc., d/b/a. Alabama Fiber Network, Inc., an Alabama corporation, ("Alabama Fiber") may utilize the rights-of-way in the corporate limits of the City of Huntsville, Alabama, ("City") in order to construct its network and to provide its communications services in accordance with and subject to the terms and conditions of the *Rights-of-Way Use Agreement between Fiber Utility Network, Inc., d.b.a. Alabama Fiber Network, Inc and the City of Huntsville, Alabama*, to be executed by the City and Alabama Fiber ("Use Agreement").

Section 2. The Mayor of the City of Huntsville is hereby authorized for and on behalf of the City, to enter into and execute the Use Agreement with Alabama Fiber, which said Use Agreement shall be in a form substantially similar to that certain agreement attached hereto and identified as "*Rights-of-Way Use Agreement between Fiber Utility Network, Inc., d.b.a. Alabama Fiber Network, Inc, and the City of Huntsville, Alabama*" consisting of Thirty (30) pages, plus Exhibit A and Exhibit B, and the date of _____ appearing on the margin of the first page, together with the signature of the President or President Pro Tempore of the City Council, with an executed copy of said Use Agreement being kept on file permanently in the Office of the City Clerk of the City of Huntsville. The City Clerk is authorized to attest thereto.

Section 3. The Use Agreement shall be effective in accordance with its terms.

Section 4. Alabama Fiber shall assume all publication costs with respect to this Ordinance, including the Use Agreement, as such publication is required by law.

ADOPTED this the ____ day of _____, 2025.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the ____ day of _____, 2025.

Mayor of the City of Huntsville,
Alabama

**RIGHTS-OF-WAY USE AGREEMENT BETWEEN
FIBER UTILITY NETWORK, INC., D.B.A. ALABAMA FIBER NETWORK, INC., AND THE CITY OF
HUNTSVILLE, ALABAMA**

This **RIGHTS-OF-WAY USE AGREEMENT** (hereinafter referred to as “Use Agreement” or “Agreement”) is made and entered as of the 17 day of October, 2025, by and between the City of Huntsville, a municipal corporation of the State of Alabama (hereinafter referred to as the “City”), and Fiber Utility Network, Inc., d.b.a. Alabama Fiber Network, Inc., a Alabama corporation (hereinafter referred to as the “Company”), (individually “Party” and collectively “Parties”).

WHEREAS, the Company is developing and will operate a fiber network that represents the most significant component of Governor Ivey’s BeLinked Alabama plan, with over 73% of its \$365 million in funding coming from the Alabama Department of Economic and Community Affairs (ADECA). The Company network, which will stretch over 6,000 miles when complete, will bring high-speed fiber broadband connectivity to unserved and underserved Alabama communities and educational institutions; and

WHEREAS, the Company desires to use the City’s public rights-of-way to install, operate and maintain its network and facilities in order to provide communications services to its customers; and

WHEREAS, the City has the authority to grant the right to use and occupy the public rights-of-way for such use, to manage and control the rights-of-way, and to obtain fair and reasonable compensation for such use; and

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police powers and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City has considered the request of the Company to use the City’s rights-of-way and is desirous of granting the Company a non-exclusive right to use the City’s rights-of-way for the purposes hereinafter set forth and for no other purposes, subject to the terms and conditions of this Use Agreement; and

WHEREAS, the Company has agreed to accept the use of the rights-of-way in accordance with the terms and conditions of this Use Agreement.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Use Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

Sec. 1. Preservation of police power authority; reservation of rights; the Company warranties.

(a) *Police powers.* The Company, the construction and operation of its network, and its provision of communications services under this Agreement are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and general welfare of the public, including

the continuing authority over the construction of the network in the rights-of-way. The Company shall comply with all applicable laws enacted by the City pursuant to its police powers, to the extent that they are not preempted by applicable law.

(b) *Company warranties, etc.* The Company makes the following representations, warranties, and covenants as the basis for the benefits and obligations contained in this Use Agreement:

(1) The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Alabama, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to execute and accept this Use Agreement, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this Use Agreement.

(2) The Company, as of the date of this Use Agreement, has adequate financial resources to construct and to operate the network in accordance with the provisions of this Use Agreement, and knows of no technical or legal impediment which would prevent it from performing as contemplated in this Agreement.

(3) The Company is not prohibited by any agreement or applicable law from executing and accepting this Use Agreement or from discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Use Agreement.

(4) All corporate actions and consents required on the Company's part to execute and accept this Use Agreement have been completed.

(5) The Company, during the term of this Use Agreement, will comply with all applicable laws concerning the construction and operation of the network, including all requirements to obtain and comply with the conditions of applicable certificates, licenses, permits, and other governmental approvals and applicable environmental-related requirements.

(6) To the extent the Company's network occupies or will occupy that portion of a right-of-way that is inside a public utility easement burdening private property, the Company warrants that it is a utility or otherwise has the right to use and occupy such easement.

The foregoing covenants, warranties, and representations are material to this Agreement. A breach of any of the covenants, warranties, or representations in paragraphs (1) through (4) above shall constitute a non-curable default under this Use Agreement, and shall entitle the City to immediately terminate the Lease Agreement for cause. A breach of any of the covenants, warranties, or representations in paragraphs (5) or (6) above shall constitute a curable default under this Use Agreement wherein, following written notice, the Company will have reasonable time to cure such default. Failure to cure in a reasonable time (given the nature of such alleged default) shall entitle the City to immediately terminate the Use Agreement for cause. In the event the Use Agreement is terminated pursuant to this paragraph, the Company hereby agrees that the disposition of the network in the rights-of-way shall be governed by applicable provisions of Section 10 below.

Sec. 2. Compliance; City makes no warranty.

(a) *Compliance with law.* This Agreement will be construed in a manner consistent with all applicable laws.

(b) *No warranty.* The City makes no express or implied representation or warranty regarding its right to authorize or permit the construction of the network on any particular segment of the rights-of-way or the location or dimensions of any particular segment of the rights-of-way, nor does the City make any express or implied representation or warranty regarding its right to authorize the construction or placement of the network in any public utility easement. The burden and responsibility for making all such determinations in advance of construction shall be entirely upon the Company.

Sec. 3. Defined Terms.

The following words, terms and phrases, when used in this Agreement, whether capitalized or not, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or unless otherwise more specifically defined in this Agreement. Words in the single number include the plural number, and words in the plural number include the singular. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

Affiliate or affiliated person means any person, directly or indirectly, controlling, controlled by, or under common control with the Company; provided, however, that affiliate shall not include any limited partner or shareholder holding an interest of less than fifteen percent (15%) of the Company, or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, the Company.

Applicable law means any or all federal, state, or City statutes, ordinances, rules, regulations, standards, and other laws, that are now existing or hereafter adopted, as such laws are amended or as they may be from time to time amended or superseded, which apply to the Company’s communications services, its network, or the matters covered by this Agreement, including City laws. Where reference is made to a specified law, including a specified City law, the United States Code, and the Code of Federal Regulations, it shall mean and include such laws as amended or as may be from time to time amended or superseded.

Cable Service has the meaning set forth in 47 U.S.C. Section 522(6).

City means the City of Huntsville, Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement shall include the City’s delegated authorities or representatives authorized to perform as contemplated. The term shall also mean and include, where appropriate, the City d/b/a Huntsville Utilities.

City laws mean the duly adopted laws and legislation of the City including the Code of Ordinances of the City and any codes, regulations, standards, or specifications adopted by reference; and shall also include the subdivision regulations and any other such rules or regulations that departments, agencies,

commissions, boards, or bureaus of the City are authorized to establish; all of which are as amended or as may from time to time be amended or superseded.

City Attorney means the City Attorney for the City or his/her designee.

City Clerk means the City Clerk for the City or his/her designee.

City Engineer means the City Engineer for the City or his/her designee.

Communications Act means the federal Communications Act of 1934, as amended (codified at 47 U.S.C. §§ 151 *et seq.*), and as that Act may, from time to time, be hereinafter amended.

Communications services mean services, other than cable service or any other multichannel video services, which are available to customers or subscribers, either on a wholesale or retail basis, through facilities that enable the provision, whether bundled or unbundled, of voice, video, data, or advanced communications services, including telecommunications services, information services, data services, and Internet services. The term also includes the lease, license, sale, or other right of use provided to other persons, including other communications service providers, of portions of the network including facilities, fiber (whether dark or lit), conduit, or capacity thereon.

Company means Fiber Utility Network, Inc., d.b.a. Alabama Fiber Network, Inc., or the lawful and permitted successor, transferee, or assignee thereof.

Confidential information means any written, non-verbal, information or communication for which there is sound legal basis to assert that such information or communication is confidential or proprietary in nature and which has been clearly and conspicuously marked as such by the Party asserting its proprietary or confidential status. This Agreement, including the consideration flowing to either Party under this Agreement, is not considered to be confidential information.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.
- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

Construct, including its derivations, means to construct, re-construct, excavate for, repair, rehabilitate, place, replace, erect, maintain, install, relocate, or remove all or any portion of the network.

Effective date means the date of publication of this Agreement.

Fiber facilities or facilities means the portion of the Company's network that consists of aerial or underground fiber, or fiber-related, installations consisting of all internal and external components, such as wires, cables, ducts, and conduits, including Company-owned or leased facilities which are more particularly described in **Exhibit A** hereto.

Franchise Manager means the person or persons authorized, assigned, or delegated the responsibility to administer and enforce this Agreement on behalf of the City, and that person(s) designee(s).

Gender. Words of one gender include all other genders and also include firms, partnerships, corporations, and other legal entities, as appropriate.

Gross revenue means any and all payments made to, or compensation or consideration of any kind or nature, including cash or credits, received, directly by the Company, or by any affiliate, from the operation or use of the network to provide communications services to customers that are physically located in or have a billing address within the City, or the physical facility leased (such as conduit or dark fiber) is located within the City. Gross revenues include, by way of illustration and not limitation, revenue whether retail or wholesale in nature, information and data services revenue; revenues from the lease of conduit, dark fiber or other system capacity; Internet services revenue; telecommunications services revenue (except that portion of revenues from the provisioning of interstate communications services, unless such revenues are a result of activity which originates or terminates within the City and are charged to a service address within the City). Gross revenue shall not apply to any up-front, non-recurring charges attributable to the costs associated with construction of the network or as a one-time payment for sale of communications facilities. The term does not include unrecovered bad debts written off after diligent, unsuccessful efforts to collect; and taxes of general applicability imposed on the customer or the transactions (but not on the Company or any of its affiliates) by federal, state, or local law and required to be collected and remitted by the Company or any of its affiliates to the governmental unit, including sales, use, and utility user taxes.

In, when used in conjunction with rights-of-way, means over, above, in, within, on, or under a right-of-way.

Include, including its derivations, does not limit a term to a specified example.

Internet means the combination of Internet protocol-based networks interconnecting millions of computers throughout the world. It allows computers to trade information over public and private networks using telecommunication lines, fiber optic cables, terrestrial wireless networks, and satellite links. It is also referred to as the "net."

Internet access services or Internet services means the offering of direct access and information transport via wireless communications service or wireline communications service to the network of both federal and non-federal interoperable packet-switched, Internet protocol-based data networks to customers for a fee. For purposes of this Agreement, Internet service shall mean the information transport and direct access to the Internet provided to customers over the Company's network and shall include the provision of incidental services or revenues that are required by law to be treated under the same regulation as such direct access service.

Linear facilities mean fiber facilities or other linear portions of the network that are physically connected, wrapped, or lashed singly or in a bundle.

Multichannel video service means facilitating the delivery to subscribers of multiple channels of video programming or other programming service, regardless of the technology used to provide it. Multichannel video service specifically includes, but is not limited to, cable service, as such term is defined in Title VI of the Communications Act of 1934, 47 U.S.C. Section 522(6). Multichannel Video Service includes:

- (1) The one-way transmission to subscribers of (i) video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of whether such transmission, service(s), or interaction relies upon Internet protocol.
- (2) Open video system or "OVS."
- (3) Any other service using a multichannel video system which is not a telecommunications service or an information service (other than cable service), where under applicable law a franchise or similar permission or approval from the city is required or permitted.

Multichannel video system means facilities, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed or used to provide multichannel video services and which is capable of being provided to multiple subscribers within the facilities area, but such term does not include:

- (1) Facilities that serve only to retransmit the television signals of one (1) or more television broadcast stations.
- (2) Facilities that serve subscribers without using any rights-of-way.
- (3) Facilities of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a multichannel video system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facilities are used in the transmission of multichannel video services directly to subscribers.
- (4) Facilities of any electric utility used solely for operating its electric utility system.

Network means all or any portion of the facilities used by the Company or its affiliates and located along the route in the rights-of-way, including the fiber facilities, manholes, equipment, and other component parts or appurtenances, that the Company or any of its affiliates owns, leases, or holds under an indefeasible right of use (IRU) agreement or other similar arrangement. The term does not mean or include all or any portion of any wireless communications facilities owned or controlled by Company or any other entity.

Open video services mean any video programming provided to any person by a provider certified by the FCC to operate an open video system pursuant to Section 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

Person means any human being, any governmental or political subdivision or public agency, any public or private corporation, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity.

Rights-of-way means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive, public utility easement (to the extent of the City's interest or authority), or public rights-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle the Company to the use thereof for the purpose of constructing and operating its network and providing its communications services. This term shall not include any state or federal rights-of-way or any property owned or controlled by any person other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such governmental entity or person. The term shall also not include property, such as City parks, City property, or public works facilities, owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility distribution facilities.

Rights-of-way management means the exercise of the City's police powers for the purpose of managing and controlling the occupancy of the rights-of-way in order to keep them functioning and operational for their dedicated or intended purpose; maintain them in good condition, order, and repair; control the orderly flow of vehicle and pedestrian traffic; administer their use by public or private users and their facilities; preserve the public asset; obtain fair compensation for their use; recover costs; and such other acts reasonably necessary to protect the public health, safety, and welfare.

Route means the route is particularly described in **Exhibit B** hereto, as such may be modified at any time and from time to time..

Subscriber means any person, who or which lawfully elects to subscribe for any purpose to a communications service of the Company or any of its affiliates and whose premises or facilities are physically wired or otherwise lawfully activated to receive such services from the Company's network in the City.

Telecommunications means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications service means the offering of telecommunications for a fee or other compensation directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used. This term does not include multichannel video service.

Use fee means the fee described in subsection 16(a).

Video programming means programming provided by or generally considered comparable to programming broadcast station.

Wireless communications facilities mean facilities used for the transmission or reception of wireless communications services, usually consisting of an antenna array or micro facility, connection cables, an equipment facility, and a support structure such as a tower, monopole, or utility pole to achieve the necessary elevation.

Wireless communications services means communications services made available to subscriber through wireless communications facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity (“WiFi”) and personal wireless services as defined by the Communications Act, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term does not include broadcast radio or television services.

Wireline communications services means communications services made available through wire or fiber facilities.

Tree regulations means chapter 27, article II of the City Code as such ordinance may be superseded or amended from time to time and such other regulations as may be now or hereafter adopted or promulgated that establish standards for tree planting, maintenance, or protection of trees in the rights-of-way.

Visual obstruction regulations mean chapter 25, article IX of the City Code, as such ordinance may be superseded or amended from time to time, and such other regulations as may be now or hereafter adopted or promulgated that govern visual obstructions.

Sec. 4. Administration.

(a) ***Administration of agreement.*** The Franchise Manager is hereby authorized to administer and enforce this Agreement on behalf of the City.

(b) ***Administrative authority.*** In accordance with applicable law, the City or its designees shall have continuing jurisdiction over construction and operation of the network in the rights-of-way with the right to conduct periodic inspections of the network, provided such inspection, which shall be solely for the benefit of the City, does not unduly interfere with the network or the Company’s operations.

Sec. 5. Enforcement.

(a) ***Notice of violation; opportunity to cure.***

(1) If the Franchise Manager is of the opinion that the Company is in violation of this Agreement, he shall provide the Company with a written notice of violation describing the nature of the violation and requirements for correction.

(2) Within ten (10) business days of receiving a written notice of apparent violation, the Company shall present facts and arguments in refutation or excuse of the alleged violation, or

present a plan for correction of the violation including an estimated schedule for completion of the corrective action. The Franchise Manager shall thereafter determine whether the violation has been refuted or excused, or may approve the corrective plan in whole or part, or require changes thereto. The cure period for any corrective action shall be as reasonably established by the Franchise Manager, provided that the period shall not be less than thirty (30) days in the case of any fees or other charges due under this Agreement and not less than sixty (60) days in all other cases, except in the case of an emergency or except as otherwise expressly provided for in this Agreement.

(3) During the cure period any action to prosecute the violation, including revocation of the Agreement, shall be held in abeyance.

(b) *Dispute resolution between the Parties.* Except as otherwise provided for in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and will consider in good faith whether to use a non-binding mediator when such discussions have failed. Each Party shall bear its own costs of mediation, including attorney fees.

(c) *Revocation.*

(1) In addition to all other rights or remedies which the City has pursuant to law or equity or under this Agreement, and subject to applicable law, the City reserves the right to revoke this Agreement, and all rights and privileges pertaining thereto, in the event that:

a. The Company is in violation of any material provision of this Agreement and the violation is not capable of being cured or the Company has not, to the City's satisfaction, refuted or excused the failure to comply or has not complied with the cure provisions set forth hereinabove in subsection (a).

b. The Company has engaged in an evasion or attempt to evade any material provision of this Agreement and fails or refuses to cure it.

c. The Company has perpetrated or attempted to perpetrate any fraud or deceit upon the City.

d. There is any material misrepresentation of fact by the Company in the application for, negotiation or renegotiation of, or renewal of, the Agreement.

(2) Prior to revoking the Agreement, the City Council shall schedule a hearing on the matter and the Company shall be given at least thirty (30) days' advance notice of the date and time for the hearing and the grounds for revocation. At such hearing the Company shall have the right to be heard on the matter and may present evidence on its behalf including proof refuting or excusing the violation.

(3) Within thirty (30) days of the conclusion of the hearing, the City Council may adopt a resolution revoking the Agreement where it finds that there is a basis to do so and the Company shall, thereafter, be notified in writing of the Council's decision.

(d) *Enforcement; attorneys' fees.* Unless prohibited by applicable law, the City shall be entitled to enforce this Use Agreement through all remedies lawfully available, and the Company shall pay the City's costs of enforcement, including reasonable attorneys' fees, in the event that the Company is determined judicially to have violated the provisions of this Use Agreement.

Sec. 6. Grant.

(a) *Grant.*

(1) Subject to the requirements of this Agreement and applicable law, the Company is hereby granted by the City, where the City has the right and authority to do so, the non-exclusive right to construct, maintain or operate its network in the rights-of-way to provide communications services, provided that prior to: (i) expanding the dimensions of Company-owned fiber facilities beyond those described in **Exhibit A** hereto, (ii) expanding its network beyond the route shown on **Exhibit B** hereto, or (iii) expanding its communications services beyond the fiber-based services set forth in its application, the Company shall notify the Franchise Manger of its intention to do so. Failure to do so is a material breach of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Company agrees that neither it nor any affiliated person will be providing cable or any other multichannel video services directly to residents and businesses located in the City pursuant to this Agreement. In the event the Company intends to commence providing services or to conduct any other activity not authorized by this Agreement, it must first request and obtain a separate franchise, license or other right of use agreement with the City. This Agreement does not authorize the installation of any facilities other than the Company's fiber facilities.

(2) This Agreement does not grant to the Company, or any of its affiliates or any other person providing services over its network, the right to use the rights-of-way or to use the Company's network in the rights-of-way, to provide cable service or any other multichannel video services.

(3) The City makes this grant without reducing its police powers and expressly reserves the right, consistent with applicable law, to adopt and enforce, now and in the future, in addition to the provisions of this Use Agreement and existing laws, ordinances, and regulations, such additional laws, ordinances, and regulations as it may find necessary in the exercise of its police power to provide for the health, safety, or welfare of the public.

(4) Subject to applicable provisions of this Agreement, the location and construction details of each part of the network shall be subject to the approval of the City Engineer, in accordance with the plans and specifications submitted to and approved by the City Engineer, as such plans and specifications may be modified from time to time with the approval of the City Engineer.

(5) Notwithstanding any provision of this Agreement to the contrary, this Agreement does not grant to the Company the right to install in the rights-of-way any tower or pole of any type, or to otherwise install in the rights-of-way small wireless facilities or any other wireless communications facilities.

(6) Notwithstanding anything contained in this Agreement to the contrary, the Company agrees that neither it nor any affiliate, nor any other person using its network to provide service in the City, will be providing, through the Company's network in the rights-of-way, cable service or any other multichannel video services, that no other person will be providing cable service or any other multichannel video services through the Company's network, and that the grant of this Agreement does not relieve the Company from any obligation it may have now or in the future to obtain a franchise, license, or other right to use the rights-of-way for the provision of cable service or any other multichannel video services. In the event the Company, any affiliate or any other person using the Company's network intends to commence providing services or to conduct any other activity not authorized by this Use Agreement, it must first obtain a separate franchise, license, or other right of use agreement, or, where appropriate, an amendment to this Agreement.

(7) The use of the rights-of-way authorized by this Agreement shall in all matters be subordinate to the City's use and rights.

(b) *Nonexclusive.* The Company's use of the rights-of-way pursuant to this Agreement shall be nonexclusive. The City expressly reserves the right to grant, at any time and from time to time, such additional use agreements or other rights to use the rights-of-way for any purpose as determined by the City, and to any other person, including itself, as it deems appropriate, subject to applicable law.

(c) *No title.* This Agreement shall not convey title, equitable or legal, in the rights-of-way, and the Company acknowledges it receives under this Agreement only the right to occupy rights-of-way only for the specific purposes and for the specified period stated in this Agreement and as may be further limited by the specific terms of the Agreement. This Agreement and the rights granted hereunder do not excuse the Company from obtaining appropriate access or attachment agreements before locating its facilities on another person's poles, conduits or other facilities, including the City d/b/a Huntsville Utilities.

(d) *Permits.* Nothing in this Agreement shall be construed to relieve the Company from obtaining licenses and permits required by applicable City law.

(e) *No vested right to City location; priority of use.*

(1) The Company acknowledges by acceptance of this Agreement that it obtains through this Agreement no rights to or further use of the rights-of-way other than those expressly stated herein. This Agreement does not give to the Company any right in any facilities' particular location for its network, and the Company acknowledges and accepts at its own risk, provided that the City has the legal authority for the use or uses in question, that the City may make use in the future of the rights-of-way where the Company's network is located in a manner inconsistent with the Company's use of such rights-of-way for its placement and use of its network, and that in such event the Company will not be entitled to compensation from the City. If the Company occupies private property by way of a private easement and that property is taken for or otherwise becomes rights-of-way, then the Company shall retain the right to occupy the easement subject to the City's right of condemnation.

(2) This Agreement does not confer upon the Company any priority over the use of the rights-of-way. In the event of a dispute as to priority of use of the rights-of-way, the first priority shall be

to the public generally, the second priority to the City and its agencies, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees, licensees and others having the right to use the rights-of-way, as determined by the City, consistent with applicable law, in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Alabama.

(f) *Records and reports.* The Company shall cooperate with the City with respect to the administration of this Agreement and to this end, subject to Section 8 concerning confidential information, shall furnish or make available to the City upon request, at no cost to the City, such records, reports, and other information reasonably necessary, as determined by the City, for the administration and enforcement of this Agreement and in such form and manner as prescribed by the City.

Sec. 7. Publication; exhibits.

(a) *Acceptance.* By its execution of this Agreement, the Company agrees to an unconditional acceptance of its terms and conditions and warrants that the person executing the Agreement on its behalf is duly authorized to do so. No later than 30 days after its execution of this Agreement, or such extension of such time as may be allowed by the Franchise Manager, the Company shall provide the Franchise Manager with proof of insurance coverage, posting of security if required by the Franchise Manager, payment of any amounts due at signing, and other requirements as may be included in this Agreement.

(b) *Publication.* This Agreement, or a synopsis of this Agreement in accordance with applicable state law, shall be published in a newspaper having general circulation in the City. Such publication shall be done by or at the direction of the City Clerk, and the expenses thereof shall be paid in advance by the Company, or the Company shall make arrangements with the newspaper to be billed directly.

(c) *Incorporation of exhibits.* This Agreement hereby incorporates by reference all exhibits appended hereto.

Sec. 8. Confidential information.

(a) *Acceptance of public records law.* The Company acknowledges and understands that the City, as a municipality, is subject to laws governing the disclosure of public records including disclosure or release of the contents of this Agreement. The City will comply with applicable law concerning confidential information clearly identified as such by the Company. Notwithstanding anything to the contrary in this Agreement, all obligations of the City in this section are subject to, and limited by, the requirements of Alabama open records laws.

(b) *Release of confidential information.* Where the release of confidential information to a third party is necessary for rights-of-way management purposes, the City and the Company shall mutually agree on what, if any, such information can be released to the third party. The City will confer with the Company prior to releasing any confidential information.

(c) *City responsibility.* The City's responsibility to maintain confidential information as set forth in this section shall not apply to any such information which (i) becomes publicly available other than through the disclosing Party; (ii) is required to be disclosed by applicable law or by administrative or

judicial order; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party.

(d) *Disclosure of confidential information.* Notwithstanding anything to the contrary in this Agreement, the City may disclose, as necessary, any confidential information to its officials, officers, boards, commissions, agencies, employees, agents, representatives, or contractors in order to administer or enforce this Agreement, or otherwise for rights-of-way management purposes.

(e) *Continuing obligation concerning confidential information.* The provisions of this section shall survive expiration, termination, or revocation of this Agreement.

Sec. 9. Construction.

(a) Subject to subsection (b), except as may expressly be otherwise provided for in this Agreement, the provisions of Chapter 23, Article VII, Division 2 ("Division 2") of the Code of Ordinances of the City of Huntsville ("City Code"), as such may be amended from time to time, and which are hereby incorporated into this Agreement by reference as if fully set forth herein, shall apply to the Company's network, including its construction, removal, abandonment, maintenance, and relocation. In the case of an irreconcilable conflict between Division 2 and this Agreement, this Agreement shall control.

(b) The Company shall bear the costs and expenses for relocation of its facilities when the purpose involves a lawful public purpose, including the City's exercise of its police powers for the public health, safety, and general welfare, and public infrastructure projects, public building projects, and other public improvements funded in whole or part by the City.

Sec. 10. Rights and obligations upon termination of this Agreement or abandonment of network.

(a) *Termination, revocation, expiration, and abandonment.* Upon termination, revocation, or expiration of this Agreement, or by abandonment of the network, all rights and obligations between the City and the Company created by this Agreement shall cease other than (1) the Company's obligation to pay outstanding fees and other amounts due to the City; (2) the Company's obligation to maintain security until released by the City or otherwise in accordance with this Agreement; (3) the Company's defense and indemnification obligations as set forth in this Agreement; and (4) such other provisions in this Agreement which expressly provide for survival beyond the term thereof. The disposition of the Company's network, including removal, and restoration of the rights-of-way and other public or private property shall be governed by applicable law and this Agreement.

(b) *Operation after termination; holding over.* Notwithstanding anything to the contrary contained in this Agreement, in the event the Company, at the sufferance of the City, holds over beyond the term of this Agreement and continues to operate, lease or otherwise use all or any part of its network, provide all or any communications services over its network, or otherwise exercise all or any of the rights granted hereunder, after the term of this Agreement, then the Company shall continue to comply with and be subject to all applicable provisions of this Agreement, including all compensation and other payment provisions, throughout the period of such holding over, provided that any such holding over shall in no way be construed as a renewal or other extension of the Agreement. In the event the term of this Agreement has expired and the Parties are in the process of re-negotiating a renewal of this Agreement or negotiating

a new agreement relative to the Company's network or use of the rights-of-way, or as they may otherwise agree, this Agreement shall continue on a month-to-month basis, unless either Party gives 30-day advance written notice to the other that they desire to terminate the Agreement.

Sec. 11. Damages and defense.

(a) Hold harmless and indemnification.

(1) The Company by its acceptance of this Agreement, agrees to and does thereby indemnify, defend, and hold the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees whole and harmless from and against all third-party claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, license fees, or infringement of copyright or patent rights, resulting from or related to or arising out of or by reason of: (1) the Company's actions pursuant to this Agreement and the rights awarded hereunder, or the procedures leading thereto, (2) any act or omission of the Company, its agents, employees, representatives, contractors, or sub-contractors, including in the construction, maintenance, or operation of, or the provision of service over, the network in the City, or any portion thereof, (3) any failure by the Company to comply with any applicable law or the terms and conditions of this Agreement, (4) the Company's performance under this Agreement, (5) the use of portions of the network by other persons, including other communications service providers, or (6) the presence of any hazardous substance or environmental hazard brought into the rights-of-way by the Company or by any contractor, subcontractor, or other person acting on its behalf or under the rights granted under this Agreement.

(2) The foregoing obligations of this subsection (a) shall survive the expiration, termination, or revocation of the Agreement.

(b) *Notice.* In order for the City to assert its rights to be indemnified, defended, or held harmless, the City must notify the Company within a reasonable time of any claim or legal proceeding which gives rise to such right.

(c) *Defense.* With respect to the Company's indemnity obligations set forth in this section and in Section 12, the Company shall provide the defense of any claims brought against the City by selecting counsel of the Company's choice to represent the City and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Company and participating in the defense of any litigation by its own counsel at its own cost and expense. After consultation with the City, the Company shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and the Company shall have the authority to decide the appropriateness and the amount of any such settlement, provided, however, that any such settlement shall include at a minimum a full and final release of all applicable claims against the City and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the City. In the event that the terms of any such settlement do not include a full and final release of the

City, the Company shall not settle the claim or action. All of the Company's right to enter a settlement shall entail only payment of monetary amounts by the Company or obligations to be performed fully by the Company, and under no circumstances shall the Company have the power to bind the City to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition).

(d) *Indemnification not limited.* The Company's indemnification obligations of this Agreement are not limited in any way by limitation of the amount or type of damages or compensation payable by or for the Company under workers' compensation, disability or other employee benefits acts, or the City's acceptance of insurance certificates required by this Agreement, or the terms, applicability, or limitations of any insurance held by the Company.

(e) *No waiver of City rights.* The City does not and shall not waive any rights against the Company which it may have by reason of the Company's indemnification, or because of the acceptance by the City of the Company's proof of insurance or deposit with the City of any insurance policies described in this Agreement.

Sec. 12. Limitation of liability; immunity.

Except to the extent expressly provided for otherwise in this Agreement, the City shall be responsible for its own acts of negligence, or intentional or willful misconduct committed by the City for which the City is legally responsible, subject to defenses, immunities, and limitations of liability provided by applicable law; provided, however, notwithstanding anything to the contrary contained in this Agreement and in no event shall the City, its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, or employees be liable to the Company, its affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages, including any loss, expense, or damage to profits, business, revenue, or income (whether arising out of the damage to or destruction of the network, in whole or in part, transmission interruptions or problems, any interruption or degradation of service or otherwise), arising in any manner, including the City's negligence, and the Company shall indemnify, defend, and save harmless the City and its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, with respect to such special, indirect, or consequential damages. The foregoing obligations of this section shall survive the expiration, termination or revocation of the Agreement.

Sec. 13. Liability insurance; security.

(a) *Insurance.*

(1) *Commercial General Liability.* The Company shall, at its sole expense, maintain, throughout the term of this Agreement and any extension or renewal thereof, and such other period of time during which the Company operates or is engaged in the removal of the network (hereinafter referred to as "coverage period"), Commercial General Liability Insurance using

carriers licensed in the State of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual, personal and advertising injury, and broad form property damage and shall name as Additional Insureds the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If the Company employs independent contractors, the Company shall insure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each policy by blanket endorsement. Insurance will be written on an occurrence basis.

(2) *Business Automobile Liability.* The Company shall, at its sole expense, maintain during the coverage period Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) combined single limit for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under this Agreement. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Such insurance shall name the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

(3) *Workers' Compensation and Employer's Liability.* The Company shall, at its sole expense, maintain, during the coverage period, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than One Million Dollars (\$1,000,000).

(4) *Umbrella or Excess Liability.* The Company shall, at its sole expense, maintain during the coverage period Umbrella or Excess Liability insurance in the amount of Two Million Dollars (\$2,000,000). Such insurance shall name the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds by blanket endorsement.

(5) *Evidence of Insurance; deductibles; approval; reservation.* On or before filing its acceptance of this Agreement and upon each policy renewal, the Company shall, at no cost to the City, furnish to the City Certificates of Insurance evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require complete, certified copies of all required insurance policies or proof of self-insurance at any time and from time to time, at no cost to the City. The Company has the right to maintain reasonable deductibles and the City reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed. The policies obtained by the Company, and proof thereof, shall be subject to the City's approval. The City reserves the right to review these insurance requirements during the coverage period and to adjust insurance coverages and their limits when deemed necessary and prudent by the Franchise Manager, based upon changes in statutory law, court decisions, or the claims history of the industry, as well as the Company.

(6) *Maintenance of Insurance Policies; the Company's coverage primary.* The liability insurance policies required under this section, if any, shall be maintained by the Company through the coverage period. Each such policy of insurance shall provide that it not be cancelled or not renewed, without thirty (30) days' written notice to the City. An endorsement shall be provided which states that the Company's coverage is primary and any other insurance carried by the City, if applicable to a loss, is excess.

(7) *No Limit of Liability.* The legal liability of the Company to the City, and any person for any of the matters that are the subject of the insurance policy(ies) required by this section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

(8) *Certificate of Insurance.* Certificates of Insurance, if any, shall name the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized city functions and employees as Additional Insureds, by blanket endorsement, in the case of Commercial General Liability, Business Automobile Liability, and Umbrella or Excess Liability insurance. Worker's Compensation and Employer's Liability insurance shall waive rights of subrogation in favor of the City. Each policy shall contain a provision that coverage afforded under the policies will not be cancelled unless at least thirty (30) days' prior written notice has been given to the City. All subsequent notices or certificates shall be delivered to the Franchise Manager and the City Attorney at 308 Fountain Circle, Huntsville, Alabama 35801. All deductibles under said policy shall be the sole responsibility of the Company.

(b) *Security.*

(1) Subject to the following subsection (2), the Company shall obtain, maintain, and replenish, at its sole cost and expense, and file with the Franchise Manager, an irrevocable standby letter of credit in favor of the City and suitable in form and content, including any amendments thereto, to the Franchise Manager ("letter of credit" or "security") in an amount established by the Franchise Manager both to guarantee the timely completion and faithful performance of all work required in connection with the network, including the construction and operation of the network and to secure performance of the Company's obligations and faithful adherence to all requirements of this Use Agreement. Throughout the term of this Use Agreement, and for one hundred twenty (120) days thereafter, the Company shall maintain the required letter of credit in the amount specified in accordance with this section.

(2) Based on then-current factors including the construction activity of the Company, whether the Company is engaged in the removal of the network, an increase in the amount of compensation payments to be made pursuant to this Use Agreement, the Company's history of compliance with the terms and conditions of this Agreement, or such other factors which reasonably necessitate the contemplated action, the Franchise Manager may, in his sole discretion, modify the obligations of the foregoing subsection (1). Such modifications include: (i) upon the written request of the Company, a waiver of the requirement to post security, or a whole or partial release of the security posted; provided that at any time and from time to time the Franchise Manager may require the posting of any security so waived or released; and (ii) upon the written notice to the Company, an increase in the amount of security posted. The Company shall post the required security within

thirty (30) days or such additional time as the Franchise Manager may allow, without the right of an additional cure period, and the Franchise Manager may delay any construction activity of the Company until the required security is posted.

(3) The letter of credit may be drawn on directly by the City at any time and from time to time for the payment of liquidated damages, or for the following purposes, but not before the expiration of any notice or cure provisions to the extent applicable:

- a. To secure the faithful performance by the Company of all terms, conditions, and obligations of this Use Agreement and any later enacted regulations and ordinances pertaining to the rights-of-way or their use, including the proper installation, maintenance, operation, and removal of the network;
- b. To compensate the City for any loss or damage to any municipal structure or other property of the City, during the course of any construction of the network by the Company, its agents, or employees, or any contractors or subcontractors of the Company;
- c. To compensate the City for any expenditure, damage, or loss incurred by the City occasioned by the Company's non-compliance with the provisions of this Use Agreement or default under any later enacted regulations and ordinances pertaining to the rights-of-way or their use, or its failure to comply with all rules, regulations, orders, permits, and other directives of the City, issued pursuant to this Use Agreement or other present or future ordinances adopted by the City;
- d. To secure the payments of premiums for the liability insurance required pursuant to this Use Agreement;
- e. The payment to the City of any amounts for which the Company is liable that are not paid by the Company's insurance; or
- f. As otherwise may be provided for in this Use Agreement.

(4) For the City to recover under this subsection (b) for any failure to properly construct or operate the network or any alteration, repair, maintenance, or restoration of City structures or property, in connection with such construction or operation, it is not necessary that the City first perform such work.

(5) The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Use Agreement or authorized by law; and no action, proceeding, or exercise of a right with respect to such letter of credit shall affect any other rights the City may have.

(c) *Right to Require Replacement of Letter of Credit or Insurance.* If the financial conditions of any company issuing a letter of credit or insurance policy pursuant to this Section 13 materially and adversely change, the City may, at any time and from time to time, require that any such letter of credit or insurance policy be replaced with such other letter of credit or other insurance policy consistent with the requirements set forth in this section.

(d) *Notice.*

(1) Each insurance policy shall contain a covenant or endorsement of the insurer to provide sixty (60) days' advance written notice by certified mail of such insurer's intention to cancel, substantially change, or not to renew such policy to both the Franchise Manager, City Attorney, and the Company; provided, however, in the event said policy fails to so contain a notice provision to the Franchise Manager and City Attorney, then the Company shall be responsible for same. The Company shall, in the event of any such notice, obtain, pay premiums for, and file with the Franchise Manager and City Attorney written evidence of the issuance of replacement policies prior to the expiration of any such policy.

(2) In no event shall the letter of credit be canceled without sixty (60) days' advance written notice by certified mail to both the Franchise Manager and City Attorney. The Company shall, in the event of any such cancellation, obtain and file with the Franchise Manager and City Attorney written evidence of the issuance of a replacement letter of credit that conforms to the requirements of this section prior to the expiration of any such letter of credit.

(3) Failure to carry or keep such insurance and letter of credit in force throughout the period set forth in this section shall constitute a default of this Use Agreement. The City, through its Franchise Manager, reserves the right to stop any work related to the network until proper evidence of insurance and the letter of credit is furnished.

(e) *Commencement of Work.* The Company shall not commence any work in the rights-of-way, including the work of constructing its network, until the insurance and letter of credit requirements of this section have been complied with.

Sec. 14. Term. The term of this Agreement shall commence upon the effective date and shall continue for up to ten (10) years thereafter, unless renewed, revoked, or terminated sooner as herein provided.

Sec. 15. Application fee. Unless otherwise prohibited by applicable law, in addition to all other fees, permits or charges required by the City, the Company shall pay to the City within forty-five (45) days after the effective date, one thousand dollars (\$1,000.00) as a non-refundable fee in order to defray in whole or part the City's costs in the review and processing of the Company's request and the negotiations and preparations of the Agreement. In addition, the City reserves the right to charge an additional fee should the City's actual costs exceed the costs of the fee. The Company may offset its use fee payable to the City by any such additional fee.

Sec. 16. Payment to City.

(a) *Use fee.* As compensation for the rights and privileges granted by this Agreement, the Company shall pay to the City a use fee equal to five percent (5%) of its gross revenue, which fee shall be paid quarterly in accordance with subsection (c) of this section.

(b) *Itemization Permitted.* The Company may, subject to, and in a manner consistent with, applicable law, itemize on the subscriber's bill that portion of the bill attributable to the fees imposed

pursuant to this section. The Company shall not bill subscribers in the City for franchise or other similar rights-of-way use fees imposed by other franchising authorities.

(c) *Quarterly computation; report.*

(1) Unless otherwise provided for in this Agreement, the use fee payments due to the City shall be computed and paid on a calendar quarterly basis, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the preceding sentence. Each payment shall be accompanied by a brief report by the Company, signed by an official of the Company who shall certify to its accuracy, showing the basis for the computation and such other relevant facts as may reasonably be required by the City. At the request of the City, payments will be made electronically if technically feasible and at no cost to the Company.

(2) The City may require the Company to submit a statement, certified as true by an independent auditor or chief financial officer of the Company, setting forth its gross revenue by category, and describing what revenue categories were included and excluded in calculating the use fee, and any adjustments made to gross revenue. The request shall be made by the City no more than once per calendar year, and the Company shall have forth-five (45) days to respond.

(d) *Inspection and audit; verification.*

(1) *Inspection and audit.* Subject to subsection (d)(2) of this section, the City shall have the right to inspect and audit, no more than one time per calendar year, upon reasonable written notice, at the Company's offices where such records are located, all business records relevant to calculating the use fee in the form and manner as solely prescribed by the City to verify compliance with the use fee or other payment requirements of this Agreement.

(2) Should the Company's business records be located in another city or state, the Company shall, upon the request of the City, make such records or information available to the City at a convenient location in the City within a time agreed to by the City. Each Party shall pay its own costs and expenses incurred in connection with any such audit, except in the event there is a final and non-appealable determination of an underpayment of five percent (5%) or more of the amount that was due and payable to the City, in which case, in addition to making full payment of the relevant obligation, the Company will promptly pay to the City the actual costs and expenses incurred by the City associated with the audit, including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, the Company's obligations to pay such costs and expenses shall be capped at \$15,000.00 for any one audit. The City may not retain any person or entity to perform the audit whose compensation for performing the audit is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

(3) Any additional amount due to the City as a result of the audit, including any applicable interest, shall be paid by the Company within thirty (30) days after the Company receives a written notice from the City accompanied by a copy of the audit report and any other supporting document necessary to determine the alleged amount due is correct.

(e) *Final payment.* Notwithstanding the foregoing, in the event the Company quits its operations or network within the City, whether by transfer or otherwise, it shall make a final payment of any amounts owed to the City within ninety (90) calendar days thereof, and shall provide a report for the calendar year through the date of cessation of the operations or network, which report shall contain the information and certification required hereinabove.

(f) *Evasion of use fee prohibited.* Any transactions or actions which have the effect of circumventing payment of the use fee are prohibited.

(g) *No waiver of City rights.* No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City in compliance with this Agreement.

(h) *Application of interest.* In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

(i) *City office for payment.* Unless otherwise provided for, all remittances for the monies due according to the terms of this Agreement are to be made payable to the City of Huntsville and mailed or delivered to:

City of Huntsville, Alabama
Finance Department
Revenue Division
305 Fountain Circle
Huntsville, AL 35801

Such remittances shall clearly identify or reference this Agreement.

Sec. 17. Sale or transfer of use agreement.

(a) *Restrictions on sale or transfer.*

(1) The Company shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either directly or indirectly, either voluntarily or by force or involuntary sale, or ordinary sale, consolidation, transfer of control of the Company or any of its affiliates through merger or equity sale, or otherwise (except for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with the Company, including its parent corporation) this Agreement or its network within the City or any of the rights or privileges granted by this Agreement without providing the City with prior written notice: (1) identifying the person (hereinafter referred to in this section as "successor in interest") that will acquire control of the Company, or that will acquire the Agreement or the rights, interest, or obligations of the Company in the network; (2) a summary of the proposed transaction; and (3) a

statement from a person with authority to bind the successor in interest certifying under penalty of perjury that the successor in interest agrees to and accepts, and is able to meet the terms and conditions of this Agreement.

(2) Within forty-five (45) days after the closing of the transaction (including any inter-affiliate transfer exempted from the prior notice requirement of subparagraph (a)(1) above), or such additional time as the Contract Manager may allow, the Company's successor in interest shall submit to the City: (i) a written certification, executed by an authorized senior officer or executive of the Company's successor in interest, certifying under penalty of perjury that (A) the successor in interest accepts and agrees to be bound by, and to assume all liabilities and obligations of its predecessor under, this Agreement, and (B) all required licenses, consents, certificates of public convenience and necessity, or other governmental authorizations issued by the Federal Communications Commission, the Alabama Public Service Commission or any other agency with jurisdiction over the successor in interest's acquisition of an interest in the Company's network or services have been obtained; (ii) proof of insurance and the posting of any required security in accordance with Section 13 of this Agreement; (iii) the names and addresses of those persons to whom notice should be sent in accordance with Section 23 of this Agreement; (iv) the name and contact information of the technical point of contact in accordance with Chapter 23, Article VII, Division 2, Section 23-363 of the City Code; and (v) such other information as may be required by the Franchise Manager in the administration of this Agreement. In the event the Company has outstanding compensation, other payments or other liabilities due to the City under this Agreement that have not been paid or satisfied prior to close of the transaction, both the Company and its successor in interest shall be jointly and severally liable to the City for same.

(b) *Prior notice not required.* In the normal course of its business the Company may enter into agreements with customers, including resellers, that authorize the customers to use capacity, or lease portions of the network or fiber which is located within the Company's network. The customer(s)'s rights to use such capacity or fiber will not constitute an assignment, license, lease, or other transfer under subsection (a) above, provided that the Company does not in any way surrender control over its network and remains responsible for its obligations under this Agreement. Nothing in this provision waives the City's right to require the Company's customers to obtain any required franchise, license, use agreement, permits, or other applicable authorizations.

Sec. 18. Representations, warranties, and covenants; validity of Agreement. The Company shall, by its execution and acceptance of this Agreement, warrant and covenant that it has read and understood this Agreement and that it has all requisite authority to obtain and accept the Agreement and perform the obligations hereunder, and that by making such execution and acceptance, expressly agrees that its covenants and warranties are a material condition of the Agreement. The Company shall also, by its execution and acceptance of this Agreement, attest to the validity of its terms and conditions in their entirety, and its willingness to voluntarily and without coercion, undue influence, or duress enter into this Agreement.

Sec. 19. Foreclosure. Upon the foreclosure or other judicial sale of the Company's network, the Company shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this Agreement governing the

transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

Sec. 20. Receivership.

(a) *Cancellation.* The City may cancel this Agreement, subject to any applicable law including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of this Agreement and remedied all defaults hereunder; and

(2) Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

(b) *Bankruptcy filing effect.* Consistent with federal law, the filing of a bankruptcy petition alone shall not constitute a material default of the Agreement, provided, however, and subject to valid applicable federal law, in the event of a bankruptcy or other insolvency proceeding, the City retains all existing rights and enforcement authority under the Agreement and its police powers.

Sec. 21. Compliance with federal, state and city laws; severability.

(a) *Compliance with applicable law.* In addition to the requirements of this Agreement, the Company shall adhere to all generally applicable law. The Company shall obtain and maintain any necessary and lawful permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including the City, the Federal Communications Commission, or the Alabama Public Service Commission.

(b) *Consultation.* The Parties agree to consult in the event that 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 the City or the Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within sixty days of receipt of notice of such finding from the other Party, provides written notice to that Party of its election to terminate, in which case this Agreement shall terminate within six (6) months of such notice or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification of this Agreement, 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 this Agreement on the provision of thirty (30) days' written notice.

Sec. 22. Waiver. The Company shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to insist upon or to

seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement, or a waiver of any legal or equitable rights or remedies the City may have in this Agreement, or applicable law.

Sec. 23. Notices. All notices or demands provided for under this Agreement shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier; (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day. Notices shall be addressed as follows:

If to the City, to:	Franchise Manager c/o Director of ITS Department of the City of Huntsville Huntsville City Hall 5 th Floor 305 Fountain Circle Huntsville, AL 35801
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With a copy to:	City Attorney City of Huntsville Huntsville City Hall 5 th Floor 305 Fountain Circle Huntsville, AL 35801
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If to the Company, to:	Alabama Fiber Network, Inc. 103 Jesse Samuel Hunt Blvd., Suite 203 Prattville, AL 36066 Attention: President and CEO (334) 325-2300
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At no time will the City be required to send notice to more than two persons/addresses. It shall be the duty of the Company to promptly update in writing any changes in its contact information provided above, and failure to do so shall not render ineffective the notice or demand sent by the City and shall constitute a material violation of the Agreement.

Sec. 24. Rights and remedies cumulative; interpretation; jurisdiction; venue.

(a) *Rights and remedies cumulative.* The rights and remedies of the City shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other breach or violation.

(b) *Interpretation; jurisdiction; venue.* This Agreement shall be construed, controlled, enforced, governed, and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama, and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

Sec. 25. Taxes.

(a) *Fees not a tax.* The Parties agree that the use fee and other payments to be made by the Company to the City pursuant to this Agreement are not a tax and are not in the nature of a tax and are in addition to any and all lawful taxes or other fees or charges (including any fees or charges which may be imposed on the Company for the use of poles, conduits, or similar facilities that may be owned or controlled by the City) which the Company or any affiliated person shall be required to pay to the City or to any other governmental authority, and nothing herein shall be construed to relieve the Company from any obligation under applicable law for the payment of all ad valorem, property, use, and other taxes applicable to its communications services or network.

(b) To the extent taxes or other assessments are imposed on the City by taxing authorities other than the City on the use of City property as a result of the Company's use or occupation of the rights-of-way for its network or of City-owned facilities located in the rights-of-way, the Company shall be responsible for payment of such taxes.

Sec. 26. Force Majeure. Neither the City nor the Company shall be responsible for any resulting loss if the fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by revolutions, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God, or by any other cause not within the control of the Party whose performance is interfered with which by the exercise of reasonable diligence such Party is unable to prevent, whether of the class of causes enumerated above or not.

Sec. 27. Captions. The section and subsection captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

Sec. 28. Calculation of time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday observed by the City, that day shall be omitted from the computation.

Sec. 29. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Company with respect to the subject matter contained herein and supersedes all prior or

contemporaneous discussions, agreements, or representations of or between the City and the Company regarding the subject matter hereof.

Sec. 30. No third-party rights. 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.

Sec. 31. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile, and any signature transmitted by facsimile will be given the same force and effect as an original signature.

Sec. 32. Amendment. This Agreement, together with any exhibits, may be amended or modified only by a written instrument executed by both Parties.

Sec. 33. Relationship of the Parties. The Parties understand, acknowledge and agree that by making and entering into this Agreement, the City is not in any way or for any purpose a partner of or joint venturer with the Company.

Sec. 34. Binding effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have caused this Agreement to be executed under their respective seals as of the date first written above.

[Signatures on following pages]

Fiber Utility Network, Inc., d.b.a Alabama Fiber Network, Inc., a Alabama corporation

By: Terry J. Metze [SEAL] Date: 10/17/2025 | 15:54 CDT
Name: Terry Metze
Title: CEO

STATE OF Alabama §
COUNTY OF Montgomery §
§

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **Terry Metze**, whose name as CEO of Fiber Utility Network, Inc., d.b.a. Alabama Fiber Network, Inc., a Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such CEO and with full authority, executed the same voluntarily for and as the act of said corporation, as of the day the same bears date.

Given under my hand and official seal this 17 day of October, 2025

Valerie Seefeld
NOTARY PUBLIC



[Signatures continued]

**City of Huntsville, Alabama,
a municipal corporation**

By: _____ [SEAL] Date: _____
Tommy Battle, Mayor
City of Huntsville, Alabama

Attest:

_____ Date: _____
Shaundrika Edwards, City Clerk
City of Huntsville, Alabama

STATE OF ALABAMA §
§
COUNTY OF MADISON §

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville is signed to the foregoing instrument, and Shaundrika Edwards, whose name as City Clerk of the City of Huntsville is signed to the foregoing instrument, both of whom being known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their respective capacities as Mayor of the City of Huntsville and City Clerk of the City of Huntsville, executed the same voluntarily for and as the act of the City of Huntsville, Alabama, a municipal corporation, as of the day the same bears date.

Given under my hand this the _____ day of _____, 202_.

NOTARY PUBLIC

EXHIBIT A FIBER FACILITIES

EXHIBIT A

Alabama Fiber Network serves commercial and community anchor institutions such as police, fire, municipal sites, hospitals, educational institutions, public safety radio towers. AFN does not serve residential customers; therefore, the AFN owned and constructed public ROW infrastructure is limited to a few components:

- **Conduit:** Two (2) 2.0” HDPE conduits per route. First conduit is primary to contain active fiber cable; second conduit is spare for future use.
- **Fiber cable:** 144-count fiber optic cable placed underground in conduit
- **Splice enclosure:** Weather-tight fiber optic splice enclosure to house fiber optic fusion splices
- **Vaults:** 30”x48”x36” vaults placed underground to function as meet locations for conduits, fiber cables, and to house splice enclosures

Alabama Fiber Network also leases fiber optic cables where available to minimize construction and ROW disruption. In the City of Huntsville, AFN leases low strand count fiber cables from 3 external companies through IRU lease agreements. The leased fiber is used for connectivity between other in-state AFN owned fiber infrastructure and for long-haul connectivity extending to Nashville and Atlanta. AFN has IRU lease agreements in place with (1) Lumen Technologies Group, (2) Uniti Dark Fiber, and (3) North Alabama Electric Cooperative.

EXHIBIT B MAP OF ROUTE

