

ORDINANCE NO. 2956

AN ORDINANCE GRANTING A FIBER OPTICS FRANCHISE TO LUMOS FIBER OF ALABAMA, LLC, AN ALABAMA LIMITED LIABILITY COMPANY

WHEREAS, the City has reserved the right to exercise control of the highway, streets, alleys and public places and to require the City's consent prior to using highways, streets, alleys and public places; and

WHEREAS, state law confers to the City certain rights and requirements for a franchise and permission to use the public rights-of-way; and

WHEREAS, Lumos Fiber of Alabama, LLC, an Alabama Limited Liability Company (the "Franchisee"), has requested from the City a franchise to use the streets and public ways of the City to conduct business as a telecommunications provider; and

WHEREAS, the City and the Franchisee have negotiated a Fiber Optics Franchise Agreement (the "Agreement"), a copy of which is attached hereto as Exhibit A and made a part hereof as if fully set out herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HOMEWOOD, ALABAMA, AS FOLLOWS:

1. That the City Council does by the adoption of this Ordinance grant to the Franchisee a fiber optics franchise pursuant to the terms, conditions, restrictions and requirements set out in the Fiber Optics Franchise Agreement (the "Agreement") attached hereto as Exhibit A, the terms and conditions of which Agreement are specifically incorporated into this Ordinance as if fully set out herein.

2. That, pursuant to the laws of the State of Alabama, the City grants to the Franchisee a fiber optics franchise for a period of ten (10) years, granting to the Franchisee the right, privilege and authority to construct and maintain a communication system necessary for the Franchisee to act as a telecommunications provider pursuant to the Agreement.

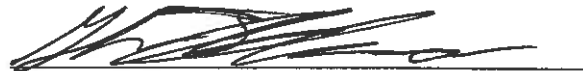
3. That the Franchisee, by accepting this fiber optics franchise, agrees that it will, upon making any excavation of streets, avenues, alleys, public ways and other public places in the City, restore the surface or paving at the point of such excavation, in substantially the same condition as before such work was done, all as promptly as may be practical and within a reasonable length of time thereafter as required by the Agreement, or as otherwise required by any state, federal or local ordinances, rules or regulations.

4. That the rights, privileges, authority, consent and franchise hereby granted may be exercised by the Franchisee, but not by any of its successors as assigns without prior approval of the City.

5. That, upon acceptance of this Ordinance by the Franchisee, it constitutes a Fiber Optics Franchise Agreement between the City and the Franchisee, which acceptance shall be acknowledge by the execution of the Agreement attached hereto as Exhibit A by the Franchisee.

PASSED and ADOPTED this the 13 day of October, 2025, by and between the City of Homewood, Alabama, a municipal corporation, whose address is 2850 19th Street South, Homewood, Alabama 35209, and Lumos Fiber of Alabama, LLC, an Alabama limited liability corporation.

CITY OF HOMEWOOD, ALABAMA



By: Glen T. Adams
Its: City Manager

ATTEST:


Bo Seagrist, City Clerk

LUMOS FIBER OF ALABAMA, LLC

By: _____
Its: _____

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority in and for said County and State, hereby certify that _____, whose name as _____ of Lumos Fiber of Alabama, LLC is signed to the foregoing document, who is known to me, and who, being first duly sworn, acknowledged before me on this day that the statements contained herein are true and correct, that he/she has full authority to execute the same, and that he/she executed the same voluntarily on the day the same bears date.

Given under my hand this the _____ day of _____, 2025.

Notary Public
My Commission Expires: _____

EXHIBIT A

FIBER OPTICS FRANCHISE AGREEMENT

THIS FIBER OPTICS FRANCHISE AGREEMENT (the "Agreement") is effective as of _____, 2025, by and between the **CITY OF HOMEWOOD, ALABAMA**, a municipal corporation (hereinafter referred to as the "City"), and **LUMOS FIBER OF ALABAMA, LLC**, an Alabama limited liability company, whose address is 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265 (hereinafter referred to as the "Franchisee").

WHEREAS, the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City's consent prior to using such highways, streets, alleys and public places; and

WHEREAS, State law confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS, the Franchisee has requested from City a franchise to use the streets and public ways of the City to conduct business as a communications services provider; and

WHEREAS, the City and the Franchisee have negotiated this Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Franchisee enter into this Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) A non-exclusive Franchise is hereby granted to Franchisee, subject to the City's receipt of the consideration described in this Agreement, to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City, Alabama, a fiber-based communications system within the City and any future additions thereto, the duration of such Franchise to be a period of ten (10) years, to commence on the last date of signature below. The grant of this non-exclusive Franchise is for the use by the Franchisee for the purpose of providing telecommunication services, communications services, and/or dark fiber within the City as a "competitive access provider" which connects customers within the City with other businesses, local area networks, a local exchange carrier and/or interexchange carriers and for such other services, including local exchange and/or enhanced services, as may be authorized by the Alabama Public Service Commission or federal law, other than cable services, as defined below. Franchisee shall not provide services directly regulated by the Alabama Public Service Commission (PSC)

unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise or video services agreement with the City.

(b) The term of this Agreement shall be renewed automatically for one (1) successive term of five (5) years on the same terms and conditions set forth herein, provided that Franchisee shall have performed according to the terms hereof, and, further provided that statutory authority shall exist for the City to renew this Franchise. Upon agreement of both parties, new terms and conditions may be warranted for renewal if the telecommunications and broadband technology and/or rights-of-way laws change after the date of this Agreement which substantially affects service types, availability, character of service, system technology or the regulatory environment. Upon agreement of both parties, new terms, provisions, or conditions may also be warranted upon renewal which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this Agreement, which may arise from any unforeseen circumstances or interpretations of this Agreement, and/or which are based on the history of performance of the Franchisee. The parties agree to negotiate new terms and conditions in good faith.

(c) When used herein, the term "facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the Franchisee's fiber-based communications system and located within the City's rights-of-way. For the purposes of this Agreement, the term "facilities" excludes "microcell" facilities, "minor facilities," "small cell facilities," and "macro cell" facilities, including towers and new base stations and other similar facilities used solely for the provision of "personal wireless services."

(d) This Agreement conveys only limited rights and interests as to those rights-of-way in which the City has an actual interest. This Agreement is not a warranty of title or interest, nor does it provide the Franchisee with any representations to any location of a City right-of-way or the nature of the City's interest in any right-of-way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a right-of-way, or upon

private property without the owner's consent, or upon any City, public or privately owned utility poles or conduits is granted herein.

(e) This Agreement shall not be construed to deprive the City of any rights or privileges which it now has or may hereafter have to regulate the use and control of the rights-of-way, and public property. If at any time the City exercises its authority to vacate all or any portion of any right-of-way, the City shall not be liable for any damages or loss to Franchisee by reason of such vacation except in the law under which the City exercises its authority. To the extent that the Franchisee has facilities within such portion of the right-of-way to be vacated, or has a permit to occupy such portion, the City will, if practicable, reserve an easement for Franchisee to continue occupying that portion of the rights-of-way so vacated. The City may, upon one hundred eighty (180) days' written notice to Franchisee, terminate this Agreement with respect to such vacated area.

(f) This Agreement does not establish any priority for the use of the rights-of-way by Franchisee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the City in the performance of its various functions, the second priority shall be to the public generally, and thereafter, as between franchisees and other permit holders, on a first come, first served basis, as reasonably determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Alabama.

(g) To the extent that any of the rights-of-way within the Franchise area are a part of the State highway system ("State Highways") and are governed by the provisions of Alabama law and applicable Alabama Department of Transportation (ALDOT) regulations, Franchisee shall, in those areas, comply with such applicable requirements in addition to local ordinances and other applicable regulations.

SECTION 2. GENERAL TERMS. Franchisee, for the duration of this Franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain facilities and to make any and all necessary excavations therefore, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City, to utilize defined existing City owned conduit within the public rights-of-way as may be specifically approved in writing by the City's Planning, Engineering and Zoning Department (PEZ), and to utilize, with permission of the affected utility companies, their facilities within public rights-of-

way for the purpose of providing a fiber-based communications system within the City , to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and Franchisee shall be subject to and shall comply with all laws and ordinances of the City and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City set forth herein. The granting of this Franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this Franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The Franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this Franchise.

SECTION 4. INDEMNIFICATION.

(a) Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively, from all losses, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature resulting from personal injury to any person, including employees of Franchisee or of any contractor or subcontractor employed by Franchisee, (including bodily injury and death) or damages to any property, including City owned property or facilities, arising out of Franchisee's use and occupancy of the City's right-of-way and Franchisee's operations conducted thereon or out of the acts or omissions of Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the other rights or privileges granted by this Agreement, and by its acceptance of the Franchise, Franchisee agrees that it will pay all damages and penalties which the City may incur or may be legally required to pay as a result of the negligent acts or omissions of Franchisee or its contractors, subcontractors, officers, agents and employees. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this Section 4. The terms and provisions of this Section 4 are intended to be for the benefit of the City and Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for

claims resulting solely from the intentional, willful, grossly negligent, malicious, or unlawful acts of the City or its employees, agents, representatives or contractors.

(b) Notwithstanding any other provisions of this Section 4, Franchisee assumes the risk of damage to its facilities located in the rights-of-way and upon City owned property from activities conducted by the City, and Franchisee further agrees that should any of its facilities installed pursuant to this Agreement be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, Franchisee shall repair or replace such facilities at its own expense and shall waive and release any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, grossly negligent or malicious damage to Franchisee property or unlawful acts by City employees. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's facilities as the result of any interruption of service due to damage or destruction of Franchisee's facilities caused by or arising out of activities conducted by the City, except to the extent any such damage or destruction is caused by or arises from the intentional, willful, grossly negligent, malicious, or unlawful acts of the City or its employees, agents, representatives or contractors.

The City will endeavor to use its best efforts to avoid damage to Franchisee's facilities. Franchisee shall participate in Alabama 811 (f/k/a Alabama Line Locators).

(c) During construction or maintenance, if Franchisee or its employees damage or break any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given immediately to the affected party and to the City.

(d) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Agreement. Said defense and indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be settled, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

(e) Franchisee's defense and indemnification obligations under this Agreement are contingent on the City providing Franchisee with written notice of any claim that the City asserts is subject to such obligations within thirty (30) business days of City's discovery of the claim.

Franchisee shall be released from its defense and indemnification obligation solely to the extent that the City's failure to provide notice thereof or all reasonably necessary cooperation in connection therewith materially impairs Franchisee's ability to investigate, settle or defend such claim.

SECTION 5. CITY TAKING PART IN LITIGATION. Franchisee shall notify the City in writing of any litigation which would affect the Franchise within ten (10) business days of determining the litigation would affect the Franchise. The City shall have the right to take part, by intervention or otherwise at its option, in any suit, action, or proceeding instituted by or against Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Franchisee to do or not to do anything which, by its Franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Franchisee's title to any facility. Franchisee shall not object to the City's exercise of such right. The Franchisee agrees to reimburse the City for all costs, including attorney fees, incurred by the City in participation of such litigation.

SECTION 6. BOND. CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the Franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety (performance) bond, certificate(s) of deposit assigned to the City or irrevocable, unconditional letter of credit in the amount of Fifty Thousand Dollars (\$50,000), both to guarantee the timely construction and full activation of Franchisee's system and to secure the faithful performance of Franchisee of all its obligations provided under the Agreement. Failure to timely obtain, file, assign and/or maintain such bond, certificate(s) of deposit or letter of credit at all times at the required amount shall constitute a substantial violation of this Agreement. If Franchisee elects to deposit and assign for the benefit of the City a certificate(s) of deposit, any interest earned on the principal sum required shall inure to the benefit of the Franchisee and any tax liability on said interest will inure to the Franchisee.

The performance bond shall provide, and certificate(s) of deposit and letter of credit shall be subject to, the following conditions:

(a) There shall be recoverable by the City, jointly and severally from the principal and surety, or from the certificate(s) of deposit or letter of credit, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting

from failure of Franchisee to: (a) faithfully comply with the provisions of the Franchise; (b) comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; and (c) pay any claims, liens or taxes due to the City which arise from or by reason of the construction, operation, maintenance or repair of the communications system.

(b) The total amount of the bond, certificate(s) of deposit or letter of credit shall be forfeited in favor of the City in the event:

- (1) Franchisee either (i) abandons its system at any time during the term of the Franchise or extension thereof or (ii) ceases operation of the system for a period in excess of six (6) months; and/or
- (2) Franchisee assigns the Franchise in violation of the terms of this Agreement.

The performance bond, certificate(s) of deposit or letter of credit required herein shall be in a form satisfactory to the City Attorney. Franchisee shall make all commercially reasonable efforts to provide thirty (30) days' written notice of any non-renewal, alteration, or cancellation of such performance bond to the City. Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of a replacement bond within thirty (30) days following the receipt by the City or Franchisee of any notice of cancellation. Failure to do so shall constitute a substantial violation of this Agreement. The performance bond, certificate(s) of deposit or letter of credit shall at all times be maintained at the amount and levels as required in this section and shall be a continuing obligation for the duration of the Franchise and thereafter until the Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the system or breach or termination of the Franchise. If the bond, certificate(s) of deposit or letter of credit is drawn-down for any reason, the bond, certificate(s) of deposit or letter of credit shall be renewed to the foregoing amount.

The City shall notify the Franchisee in writing and allow Franchisee thirty (30) days to cure, unless such time to cure is extended by the City, before calling the surety bond or drawing upon the certificate of deposit or letter of credit. The City may draw against the surety bond, certificate of deposit, or letter of credit for any unpaid damages, fees or other amounts owing to it as provided herein which are thirty (30) or more days past due.

SECTION 7. INSURANCE REQUIREMENTS. On the Effective Date of this Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the Franchise, at the expense of

Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse, underground, or property damage written by a company authorized to do business in the State of Alabama with a rating of at least B+, including the City as an additional insured as their interest may appear under this Agreement, protecting against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by Franchisee in the following amounts:

- (1) Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and for real property damage in any one occurrence.
- (2) Five Million Dollars (\$5,000,000.00) aggregate.

Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance written by a company authorized to do business in the State of Alabama with a rating of at least B+, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of One Million Dollars (\$1,000,000) for each accident for bodily injury and property damage.

Franchisee shall also maintain, and by its acceptance of any Franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the Franchise, worker's compensation in compliance with the statutory requirements of the State of Alabama and employer's liability in the minimum amount of Five Hundred Thousand Dollars (\$500,000) for each event.

All commercial general liability and commercial automobile liability insurance required pursuant to this Section shall include the City and its officers, employees, elected and appointed officials as additional insureds as their interests may appear under this Agreement and shall be kept in full force and effect by Franchisee during the existence of the Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, conductors, fixtures and other facilities installed by Franchisee incident to the maintenance and operation of the communications system as defined in this Agreement provided, however, that the fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this Agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this Agreement. Upon receipt of notice from its insurer(s), Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days' prior written notice of cancellation of any coverage required herein.

The amounts of coverage for any insurance required to be maintained by Franchisee under this Agreement may be adjusted by the City after consultation with Franchisee at the conclusion of the initial ten (10) year term of the Franchise and prior to during each extension of such term to an amount which, in the City's reasonable opinion, is commercially reasonable and is consistent with the insurance requirements for similarly situated franchises in the same geographic area.

SECTION 8. NON-ASSIGNMENT.

(a) The rights granted by this Agreement or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the Mayor and Council. A written copy of any such proposed assignment must be filed with the City. Any required consent is to be evidenced by an ordinance or resolution of the Council that fully recites the terms and conditions, if any, upon which consent is given. Notwithstanding the foregoing, Franchisee will not lease or provide any conduit space installed pursuant to this Agreement to any other unrelated communications company which Franchisee is aware does not have a franchise for the placement of any additional cable without providing prior notice to the City. No sale or transfer of the Franchise, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or assignment, accepting the terms of this Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer as applicable under this Section 8. The City shall take action on such request for approval of transfer within a reasonable period of after Franchisee and the proposed assignee have provided all information required by this Section 8. This Section shall not apply in connection with execution of secured financing agreements made by the Franchisee.

(b) In making a determination of whether to consent to an assignment, the City may consider the following factors:

- (1) Experience of the proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
- (2) Qualifications of the proposed assignee or transferee;
- (3) Legal integrity of the proposed assignee or transferee;
- (4) Financial ability and stability of the proposed assignee or transferee;
- (5) If requested by the City, submittals from the proposed assignee or transferee, regarding changes, if any, it intends to make in the operation and maintenance of the fiber optic system;

- (6) The corporate connection, if any, between the franchisee, and proposed assignee or transferee and/or between the franchisee and any holder of a like franchise within the City;
- (7) Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of the fiber optic network; and
- (8) Effect of the proposed action on competition.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed Franchisee, shall be provided to the City Attorney for review, so that the City may discover the assumption of obligations by the Franchisee and proposed Franchisee with respect to the fiber-based communications system for those assignments requiring the City's consent.

After receipt of the consent petition for proposed transfer or assignment, if applicable, the City Council may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the City Council may review Franchisee's performance under the terms and conditions of this Agreement. The Franchisee shall provide all requested assistance to the City Council in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all persons involved in such action.

Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Agreement or attempt to do so in violation of this requirement to obtain prior consent as required herein, the City may revoke the Franchise for default and the purported sale, transfer, assignment or conveyance shall be null and void. For purposes of clarity, Franchisee may assign, transfer or convey any of its rights or interest under this Agreement without consent or approval of the City if the assignment, transfer or conveyance is carried out as part of a merger, restructuring, or sale or transfer of all or substantially all of Franchisee's assets.

(c) Franchisee will not lease any part of its fiber optics system pursuant to this Agreement to any other unrelated company for providing cable television services to subscribers or customers within the City unless the lessee holds a valid cable television franchise with the City. Franchisee shall send notification to the City of any company which has requested Franchisee to provide such services and for which it is to enter a fiber lease agreement in order for the City to contact said company to determine whether said company needs to enter into a cable television franchise with the City. Franchisee shall also notify any potential lessee of the necessity of obtaining a separate cable television franchise from the City.

(d) In the event of a change in majority control of Franchisee, the system or the Franchise granted herein that occurs after the Effective Date of the Franchise, by act of Franchisee, by act of any person holding control of the Franchisee, the network or the Franchise granted herein, by operation of law, or otherwise, Franchisee shall provide reasonable notice to the City. The requirements of this Section shall also apply whenever any change in partial ownership is proposed which would result in a change of majority ownership or control of Franchisee, the system, the Franchise granted herein or of any person holding control of Franchisee or in the system or in the Franchise, and any other event which could result in a change in majority ownership or control of Franchisee, regardless of the manner in which such ownership or control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or control).

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, facilities maintained or installed by Franchisee within the City shall be so located and constructed as not to:

- (1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;
- (2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;
- (3) Interfere with access to or use of any water or fire hydrant;
- (4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;
- (5) Interfere with sight distance established by any ordinance or law;
- (6) Obscure the light from any street light;
- (7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;
- (8) Damage irrigation, landscaping or trees owned or maintained by the City;
or
- (9) Damage any communications lines owned or maintained by the City.

(b) Placement of facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require Franchisee to remove or relocate any facility located in violation of this section at Franchisee's sole expense. Such relocation or removal shall be completed with ninety (90) days of written notice from the City. In the event that ninety (90) days is not sufficient, Franchisee may, in writing, request an additional ninety (90) days to

accomplish the relocation. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City. Franchisee shall have ninety (90) days to complete permanent relocations or removals after receipt of written notice from the City. In the event that ninety (90) days is not sufficient, Franchisee may, in writing, request an additional ninety (90) days to accomplish the relocation.

(d) After underground construction is complete, Franchisee shall provide the City with accurate copies of construction records, including engineering as-built drawings, in both hard copy and electronic formats stamped and signed by a qualified surveyor or engineer in a form and content acceptable to the City Engineer or his/her designee, showing the location of its facilities within the public rights-of-way. After aerial construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall also provide such maps within thirty (30) days following a request from the City. Further, if Franchisee's actual construction deviates materially from its submitted construction plans as reasonably determined by the City, Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy of maps and as-builts provided to the City.

(e) Franchisee further shall provide to the City's GIS representative, per instructions from the City, its fiber optics location data in conformance with data definition standards defined by the City GIS staff. The fiber optics location data layer shall be incorporated into the GIS data dictionary and any appropriate Franchisee documentation. The City shall provide GIS data to serve as the base for the fiber optics location data. The City shall provide to the Franchisee existing data in a format agreed to by the City. Specific data layers that make up the base shall be defined in discussions with the Franchisee. At a minimum, the fiber optics location data layer shall represent the conduit duct banks, as well as overall size, material and configuration of the duct bank or any other underground burial and location of all aerial wiring. The fiber optics location data shall be returned to the City on the same type medium and format as previously identified.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in

effect at the time of such excavation or other work. All work authorized and required under this Agreement shall be accomplished in a safe, thorough, and workmanlike manner. All installation of facilities shall be in accordance with current engineering standards.

(b) If at any time the Franchisee intends to perform construction work in any right-of-way, the Franchisee shall obtain a right-of-way permit from the City and shall provide the City with notice before commencing any such work as required by the Right-of-Way Permit application process. The City may, consistent with applicable law, establish general requirements for advance notification to residents adjacent to the proposed construction areas to be provided by utilities or other companies operating in the public right-of-way, and Franchisee shall comply with such advance notification requirements, if any. By February 1 of each year, or such date as the City may otherwise prescribe, the City shall have the right to ask Franchisee for a conference, during which Franchisee will provide to the City a schedule of its then-proposed or then-anticipated construction activities that may affect the rights-of-way and any activities that will entail excavation or tunneling within the rights-of-way. Franchisee shall fully cooperate in any general construction planning process instituted by the City, provided that the requirements imposed pursuant to such process are applied in a reasonable and nondiscriminatory manner. By way of example, Franchisee may be requested to meet with the City and other franchise holders and users of the rights-of-way upon reasonable advance written notice to discuss planned activities in the rights-of-way. Franchisee shall use commercially reasonable efforts to coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damages.

(c) All construction and any work being performed in any right-of-way shall be performed in accordance with the City-issued permit. Franchisee shall take prompt corrective action if it or the City finds that facilities do not comply with the requirements of this Agreement or applicable law, the City Code or any permit requirements.

(d) Prior to the erection or installation by Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of a fiber optics system, Franchisee shall obtain any required permits in accordance with applicable City codes, rules and regulations.

(e) Franchisee shall not excavate or do other work in any public right-of-way unless Franchisee has applied for and received a written permit entitled "Excavation Permit", "Street Cut Permit" or the equivalent thereof from the City granting permission for such excavation or other

work, including the installation of aerial facilities. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions. If directional boring, missile boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way. If the installation utilizes facilities of another entity, Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, Franchisee shall, five (5) working days prior to said closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(f) Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable Franchisee to economically install or repair its facilities; nor shall Franchisee permit any public right-of-way to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(g) Immediately upon completion of repairs or installation of any facility, Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, Franchisee shall restore or replace any pavement, sidewalk, pedestrian lighting, curbs, gutters, grass, landscaping material or other materials or structure damaged in the course of its work to its preexisting condition in accordance with City standards at Franchisee's sole expense, in accordance with applicable City codes. In the event excavation or disturbance of special sidewalk pavement areas is necessary, Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards and codes. Failures within an area which has been disturbed, excavated or encumbered by Franchisee which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of Franchisee pursuant to this provision. If Franchisee fails, neglects, or refuses to make restorations as required under this Section, then the City may (but is not required to), following reasonable notice to Franchisee, do such work or cause it to be done, and Franchisee

shall pay the cost thereof to the City within thirty (30) days of the City providing an itemized list of the costs and expenses incurred in performing such work. The City may, at its option, recover such amount from the performance bond, certificate of deposit, letter of credit or insurance required herein or in City ordinances or regulations. Franchisee shall warrant any restoration work performed under this Agreement, including the maintenance of any landscaping or vegetation installed as part of the restoration work, for a period of twelve (12) months. This restoration requirement shall survive the expiration, revocation and termination of this Agreement.

(h) Franchisee shall maintain all above ground improvements that it places on City rights-of-way pursuant to this Agreement. In order to avoid interference with the City's ability to maintain the right-of-way, Franchisee shall, if practicable, provide a clear zone of five (5) feet on all sides of such improvements.

(i) In any dispute over the adequacy of restoration or maintenance under this Section, the City shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

(j) The City reserves the right to inspect, upon seven days written notice to Franchisee, the installation and maintenance of the fiber optic cable and related equipment. The City shall have the right to inspect all work performed by Franchisee in, on or above City rights-of-way, whether during the performance of such work or after completion as long as such inspection does not disrupt Franchisee's system operation. To the extent that the City is required to perform any inspections, maintenance or repairs to City streets, right-of-way, or other City property due to Franchisee's use thereof, the City shall be entitled to recover the reasonable and verifiable costs and expenses incurred therefore from Franchisee. In the event that the City incurs any costs or expenses for designing, installing, repairing, or altering any City facilities that would not have occurred but for Franchisee's exercise of the rights granted under this Agreement, the City may bill Franchisee for reimbursement of such costs and expenses and such shall be immediately due and payable to the City. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee.

(k) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified by a City ordinance or regulation or herein, the City may do all or any part of the work that remains undone at the cost or expense of Franchisee.

Failure of Franchisee to reimburse the City within thirty (30) days of the City's presentation of a bill for the costs shall result in denial of any permit request made by Franchisee until payment is made. The City may, at its option, recover such amount from the performance bond, certificate of deposit, letter of credit or insurance required herein.

(l) In any case where a public right-of-way is being excavated, disturbed or encumbered by Franchisee, Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this subsection (k) shall alter or waive any rights enjoyed by Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code Title 37, Section 37-15-1, *et seq.*) and Franchisee agrees to comply with all applicable notice provisions of the aforementioned statutes.

(m) Any construction project authorized by a specific permit shall be completed within the time period specified in the permit or, if no time period is specified, within one hundred eighty (180) days from the date that the PEZ issues any necessary permits, provided that the City Engineer may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City Engineer justifies an extension of the project target completion date. If construction is not completed within the applicable time period, Franchisee may file a written request for an extension of the project target completion date with the City Engineer specifying the reasons for such justification.

(n) If in the sole but reasonable opinion of the City Engineer, damage to the public right-of-way resulting from damage or disturbance during the construction, operation or maintenance of the Franchisee's facilities requires immediate repair, the City may perform such repairs, at the cost of the Franchisee. In such event, the City will endeavor to notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the City's reasonable and verifiable costs, including administrative costs related to such repairs within thirty (30) days of the date of written notice of the costs to the Franchisee.

(o) Franchisee shall not remove any underground facilities which requires trenching or other opening of the streets along the facilities to be removed, except as hereinafter provided. Franchisee may remove any underground facilities from the streets which have been installed in

such a manner that it can be removed without trenching or other opening of the streets. Subject to applicable law, Franchisee shall remove, at its sole cost and expense, any underground facilities by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Usable underground cable and conduit in the streets that is not removed as required in this subsection shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.

(p) Franchisee shall, at all times, employ reasonable standards of care and shall install and maintain and use commonly accepted methods for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its facilities. By way of illustration and not limitation, Franchisee shall also comply with the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards.

(q) If an unsafe condition is found to exist, the City agrees to give Franchisee notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified by the City, then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs, including administrative costs, incurred as a result of circumstances herein within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee.

(r) In the event of any emergency in which any of Franchisee's facilities break, are in need of emergency repair or are damaged, or if the Franchisee's construction area is otherwise in such a condition to immediately endanger the property, life, health, or safety of any person, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous condition, without first applying for and obtaining City permits otherwise

required for said work; provided, that the Franchisee shall immediately notify the City of said condition and of the emergency work, and shall obtain all necessary permits as promptly as possible after the emergency work is performed, and in any event no later than the second business day following the discovery of the condition requiring the emergency work.

SECTION 11. USE OF STREETS.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the City, Franchisee shall likewise place its services underground without additional cost to the City. Where not otherwise required to be placed underground by this Agreement, Franchisee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities.

(b) Franchisee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
- (5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(c) Franchisee shall coordinate with City to evaluate planned construction prior to commencement of work in order to ensure that facilities, including the installation, construction, repairs, replacement and maintenance of such facilities, will not unduly burden the present or future use of the City's rights-of-way.

(d) The closing of any part of a publicly maintained street or right-of-way must be approved by the PEZ, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be by the PEZ and Traffic Engineering is to be notified as soon as possible. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(e) No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City PEZ.

(f) Franchisee agrees that it shall remove any of its abandoned facilities installed in the right-of-way covered by this Agreement or relinquish and transfer all title, rights and interest to the City, at the option of the City.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

(a) The City reserves the right, upon reasonable notice, to require Franchisee at its expense to protect, support, temporarily disconnect, relocate or remove from the City's streets any property of Franchisee by reason of traffic conditions, public safety, street construction or excavations, change or establishment of street grade, or installation of public structures or improvements by governmental agencies, including, but not limited to, sewers, drains, water pipes, and power or communications lines. Reasonable notice for this provision shall be construed to mean at least ninety (90) days except in the case of emergencies where no specific notice period shall be required. The City shall endeavor to notify and seek comment from Franchisee, with respect to minimizing disruption to the installed facilities, where public works projects may affect Franchisee's facilities. The parties agree that for permanent disconnection, relocation, or removal of Franchisee's property, the City shall provide ninety (90) days' written notice.

(b) Nothing in this Agreement is intended to eliminate or waive any right Franchisee may have to reimbursement from any third-party under applicable law or the terms of any public funding grant for a project.

(c) If Franchisee believes it will be unable to complete the relocation within the foregoing timeline after receipt of notice from the City, Franchisee shall explain the reasons for its inability in detail and the City and Franchisee shall attempt to agree on an alternate schedule, subject, however, it is the City's right to finally determine the schedule, as long as its decision is not unreasonable.

SECTION 14. TREES. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

SECTION 15. CONSTRUCTION STAFFING. During the Franchise term, Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of subcontractors. Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. SERVICE TO THE CITY. In addition to any franchise fee collected pursuant to Section 19 of this Agreement, the Franchisee shall provide the fiber and facilities to the governmental and institutional facilities as follows; provided however that: (i) the City must, within sixty (60) days of the Effective Date, notify Franchisee in writing of the specific locations where it would request fiber and facilities so that Franchisee can include that information in its pre-construction engineering work, and (ii) the City waives any right to make further requests after

that deadline unless Franchisee in the future notifies the City that it is reengineering portions of its deployment in the City:

(a) Franchisee shall provide the City without charge solely for the City's noncommercial telecommunications purposes, two (2) dark fiber pairs (four (4) fibers) in all City Right-of-Way where Franchisee deploys at least 288 fiber strands (backbone network), whether underground or aerial (the "City Fibers") in up to a maximum of 10 miles of Franchisee's network.

(b) Franchisee shall create a maximum of six (6) splice points at the request of the City among existing Franchisee access points. City shall reimburse Franchisee for Franchisee's costs for any splice points requested by the City beyond six (6). Franchisee shall perform all splicing of City lateral cables to the City Fibers. City shall reimburse Franchisee for Franchisee's costs of any splicing (beyond the first six (6) splice points).

(c) Franchisee agrees that any routine maintenance of City Fibers shall be borne by Franchisee. The City shall pay only actual incremental labor costs to Franchisee to repair the City's share of dark fibers within any cable that is damaged as the result of any natural disaster. Nothing in this subsection (c) shall supersede the provisions of this Agreement relating to the relocation of equipment at Franchisee's expense in the event of a City project.

(d) Franchisee acknowledges that the City has the right to connect its own equipment to the dark fibers to be provided hereunder for internal non-commercial municipal purposes, and to make full use at no cost or expense to the City of the fibers to be dedicated to the use of the City hereunder.

(e) The City recognizes that Franchisee's agreements, if any, to occupy rights-of-way or for pole attachments may be subject to the control of third parties who may require Franchisee to relocate its cable. In the event of such required relocation by Franchisee, Franchisee shall provide notice thereof to the City as soon as reasonably possible. Franchisee shall provide replacement dark fibers to the City in any Franchisee replacement cable as soon as reasonably possible.

SECTION 18. IN-KIND CONSIDERATION. At any time during the term of the Franchise, the parties may mutually-agree for Franchisee to provide an in-kind exchange consisting of one or more Franchisee services (such as intelligent traffic, video, lighting, telematics, or other Smart-City solutions) in-lieu of part or all of any consideration otherwise due

by Franchisee under the agreement. Such services shall be provided under a separately-negotiated agreement between the parties.

SECTION 19. FRANCHISEE FEE: CONDITIONS.

(a) As consideration for this Agreement, which provides for the use by the Franchisee of the rights-of-way and other public places within the boundaries of the City, which are valuable public properties acquired and maintained by the City at great expense to its taxpayers and citizens, and that the grant to Franchisee of the use of said rights-of-way and other public places is a valuable property right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, as compensation for the rights and privileges conferred herein, the Franchisee shall pay to the City an amount equal to three percent (3%) of the gross revenue, as defined herein, collected by Franchisee for the first two (2) years from the Effective Date of this Agreement. Thereafter; for the next two (2) year term Franchisee shall pay to the City an amount equal to four percent (4%) of the gross revenue collected by Franchisee. For the remaining term of this Agreement, Franchisee shall pay to the City an amount equal to five percent (5%) of the gross revenue collected by Franchisee.

(b) The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under law.

(c) Commencing the month following the month this Agreement becomes effective, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such fee shall be for revenues received by the Franchisee for the preceding quarter. Franchisee shall furnish to the City with each payment of compensation required by this Section a written statement, showing the amount of gross revenue of Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

(e) As used in this Section, "gross revenue" shall mean all revenues (exclusive of sales tax) collected by Franchisee from the provision of telecommunications services pursuant to this Agreement within the corporate limits of the City, including, but not limited to:

- (1) All telecommunications service revenues charged on a flat rate basis,
- (2) All telecommunications services charged on a time, usage sensitive or mileage basis,
- (3) All revenues from installation service charges,
- (4) All revenues from connection or disconnection fees,
- (5) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment,
- (6) All revenues from equipment sold or rented to customer upon customer premises,
- (7) All revenues from local service,
- (8) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenue,
- (9) The value of any free services provided by Franchisee except (1) those free services required under this Agreement; (2) services provided as a credit against non-recurring charges imposed on Franchisee's customers by a local exchange carrier for converting circuits to Franchisee,
- (10) All revenues from authorized rental of conduit space located within the corporate limits of the City, and
- (11) All revenues from authorized rentals of any portion of Franchisee's network, including plant, facilities, or capacity leased to others.

Notwithstanding the foregoing, gross receipts *does not include*: (i) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee to the City; (ii) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (iii) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate which will pay a franchise fee to the City.

(f) Payment of money under this section shall in no way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise. Nothing in this Section 19 is intended to alter, amend modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Agreement under applicable law. Except as provided

elsewhere in this Agreement, all payments made by franchisee to the City pursuant to this Agreement shall be made to the City Clerk. Nothing in this Agreement shall be construed to prevent Franchisee from passing through some or all of the franchise fee to its customers.

(g) Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by Franchisee are prohibited and may constitute a default of this Agreement.

(h) If, as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees for any twelve (12) month period, the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. If, as a result of such audit or any other review, the City determines that the Franchisee has underpaid its fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants. The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

SECTION 20. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS.

(a) Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's network, Franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by Franchisee of all revenues and uncollectibles.

(b) Franchisee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles, subject to approval by the City.

(c) Franchisee shall file annually with the City Clerk for his review no later than one hundred twenty (120) days after the end of the Franchisee's fiscal year, certified financial statements covering the operations of the Franchise within the corporate limits of the City. These statements shall include a fiscal year-end balance sheet, an income statement covering the results of operations for the fiscal year and sharing gross receipts, a statement of retained earnings for the year, and a statement of cash flows. There shall be submitted along with them such other

reasonable information as the City shall reasonably request with respect to the Franchisee's properties and expenses related to its network operations within the City. Such financial statements shall be accorded confidential treatment.

(d) Franchisee shall report to the City such other information relating to Franchisee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(e) Franchisee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Franchisee pertaining to this Agreement. Franchisee shall fully cooperate in making available its records and otherwise assisting in these activities.

(f) The City may, at any time, make inquiries pertaining to Franchisee's operation of its network within the City. Franchisee shall respond to such inquiries on a timely basis.

SECTION 21. NATURE OF FRANCHISE FEE PAYMENTS.

(a) Nothing in this Section is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on Franchisee's business activities under this Agreement pursuant to applicable law.

(b) The payment of a franchise fee by the Franchisee in no way limits the right of the City to charge fees for any permits the Franchisee is required to obtain for any construction project.

(c) The City and the Franchisee agree that the compensation and other payments to be made pursuant to this Agreement are in addition to any and all taxes of general applicability or other fees or charges which the Franchisee shall be required to pay to the City or to any other governmental authority, and the Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments made pursuant to this Agreement or from or against any taxes of general applicability or fees or damages which the Franchisee is required to pay.

SECTION 22. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this Agreement and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

- (1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
- (2) A failure to begin construction of the fiber optics system within twelve (12) months of the Effective Date of this Agreement;
- (3) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
- (4) A failure to pay the required franchise fee or provide to the City as required herein;
- (5) Permitting the use of its fiber optics system or facilities in any manner that would avoid or seek to avoid the need for a franchise with the City for the business of another person; or
- (6) A failure to operate the fiber optics system for a period of six (6) months.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees. The foregoing notwithstanding, Franchisee may in its sole discretion terminate this Franchise Agreement upon one hundred and eighty (180) days' written notice to the City. Should Franchisee elect to terminate this Franchise Agreement for its convenience, the Franchisee may, within one hundred and eighty (180) days of providing notice to the City, remove from or abandon the Facilities in the right of way unless otherwise mutually agreed.

(c) In the event that the City believes that the Franchisee has not complied with any terms of this Agreement, the City, at its sole election may informally discuss the matter with Franchisee. If discussions do not lead to resolution of the problem or if the City elects not to informally discuss the matter with the Franchisee, the City shall issue a written Notice of Violation to the Franchisee, stating with particularity the alleged breach, violation or other non-compliance.

(d) The Franchisee shall have thirty (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the asserted breach, violation or non-compliance; (ii) cure such default; (iii) request a lesser sanction or remedy; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the estimated date that they will be completed.

(e) If the Franchisee has not done any of the foregoing, the City may consider the Franchisee in default and pursue remedies as provided in this Agreement or as allowed in law or equity. In addition to any other remedy at law or equity or provided for in this Agreement, the

City may revoke the Franchise pursuant to lawful process. Said revocation shall be effective immediately after the delivery of a written notice of revocation approved by the City Council stating the grounds of the breach, violation, or non-compliance with the Franchise. If the remedy elected by the City is to forfeit and terminate this Agreement, the Franchisee may request an appeal of such decision to the Council of the City which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The Council shall set a public hearing on such appeal within thirty (30) days after notice of appeal is received.

(f) If the Franchise has been terminated, revoked, canceled, or has expired, and Franchisee has not exercised its rights, if any, to contest the termination, revocation, cancellation or nonrenewal, the City may give Franchisee written notice to remove its facilities from the City's rights-of-way or it may, in the City's sole discretion, allow Franchisee to abandon the system in place consistent with the requirements of Section 22(h). Any plan for abandonment or removal of the facilities must be first approved by the City Engineer, and all necessary permits must be obtained prior to such work. Work shall be completely done one hundred-eighty (180) days from notice to complete such work, provided that the City Engineer may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City Engineer justifies an extension of the completion date.

(g) If the Franchisee fails to remove any of its facilities as provided herein, the City may elect to cause such removal and may recover its reasonable costs and expenses from Franchisee, including its reasonable attorney's fees and costs incurred in recovering such costs and expenses, unless the City has consented to Franchisee abandoning its facilities as more particularly described in subsection (h) below.

(h) The City may allow Franchisee to abandon the facilities in place upon the express written consent of the City. Upon permanent abandonment in place of the facilities, the facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, approved by the City Attorney, transferring to the City the ownership of the facilities, free and clear of any lien or encumbrance.

(i) The provisions of this Section 22 shall survive the expiration, revocation, or termination of this Agreement.

SECTION 23. REMEDIES AND PENALTIES NOT EXCLUSIVE.

(a) All remedies and penalties under this Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

(b) Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

(c) For any period of performance or cure under this Agreement, the time period within which Franchisee is to perform or cure, as the case may be, shall be extended, without liability to Franchisee, for at least as long as Franchisee's ability to perform or cure is delayed for reasons beyond Franchisee's control provided that Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

(d) The terms and conditions of this Agreement may be superseded by the terms and conditions of any subsequent ordinance(s) enacted by the City which applies to the facilities installed by the Franchisee pursuant to this Agreement and to similar facilities installed by all other current or future providers of telecommunications services, subject to reservation of any and all right by Franchisee to contest the legal validity of any such ordinance. The City reserves all rights and powers under its police powers and powers conferred by federal, state or local law. In

particular, the City reserves the right to alter, amend, or repeal its municipal code if it determines it shall be conducive to the health, safety, and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, Franchisee has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

(e) Both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this Franchise.

SECTION 24. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the network after the terms of this Agreement expire or are terminated, and before any renewal of the Franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement.

SECTION 25. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the Franchisee's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 26. CONFIDENTIALITY.

To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Agreement, or other information clearly identified as "Confidential" pertaining to services provided to its customers. Confidential, proprietary information disclosed by Franchisee to the City shall be regarded as confidential, proprietary as to third parties. If the City receives a request to disclose

such information, the City shall notify Franchisee of such request and allow Franchisee a reasonable opportunity to defend its information from disclosure.

SECTION 27. CAPTIONS. The captions given to various provisions of this Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 28. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. Franchisee shall, at all times during the term of its Franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 29. ALABAMA LAW GOVERNS. In any controversy or dispute under this Agreement, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 30. NOTICE. Franchisee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Franchisee to the City may be made by telephone to the City Engineer. Any other notice required or permitted under this Agreement shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, in either case, addressed as follows:

To the City:

City of Homewood
ATTN: City Clerk
2850 19th Street South
Homewood, Alabama 35209

With a copy to:

City Attorney
2323 2nd Avenue North
Birmingham, Alabama 35203

To the Franchisee:

Lumos Fiber of Alabama, LLC
Attention: Josh Many, SVP - OSP
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC 27265

Josh.Many@lumosfiber.com

With copies to (except for invoices):

A.J. Brown, Chief Legal Officer
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC
aj.brown@lumosfiber.com

or such other address as may be designated in the future in writing by either party.

SECTION 31. EFFECTIVE DATE AND PUBLICATION. The ordinance approving this Franchise shall be published as required by law, and this Agreement shall not take effect until the date of such publication (the “Effective Date”).

SECTION 32. MODIFICATION. This Agreement, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 33. SEVERABILITY. Should any part, term or provision of this Agreement be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this Agreement.

SECTION 34. NO COERCION. The Franchisee enters into this Agreement willingly and without coercion, undue influence or duress. The Franchisee has reviewed each and every obligation, term and condition of this Agreement and hereby certifies that none of the obligations, terms or conditions imposed upon it by this Agreement are commercially impracticable on their face.

SECTION 35. NONDISCRIMINATION. During the performance of this Agreement, Franchisee agrees as follows:

(a) Franchisee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Franchisee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Franchisee agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) In the event of Franchisee's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and Franchisee may be declared ineligible for further municipal contracts.

SECTION 36. IMMIGRATION LAW COMPLIANCE.

(a) Franchisee represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act").

(b) Franchisee represents and warrants that, to the extent it has employees, it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Franchisee is enrolled in the E-Verify program. During the performance of this Agreement, Franchisee shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

(c) By signing this Agreement, Franchisee affirms, for the duration of the Agreement, that it will not violate federal immigration law by knowingly employing, hiring for employment, or continuing to employ an unauthorized alien within the State of Alabama.

(d) Furthermore if Franchisee is found to be in violation of this provision, it shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

SECTION 37. SUBSEQUENT ORDINANCE; EFFECT ON COMPETITION. The parties understand and acknowledge that terms in this Agreement, including the definition of gross revenue, are based on existing franchise arrangements between the City and other similar providers. The parties further understand and acknowledge that the City intends to update and modernize its franchise requirements in light of changes in the industry or in right-of-way compensation practices. Upon such time as the City has enacted a new ordinance of general applicability that contains a definition of gross revenue or other lawful formula, including fees based on linear feet of right-of-way occupied, for calculating franchise fee or other rental obligation for use of the right-of-way to provide telecommunications or other communications services provided by means of fiber-optic cables in the rights of way, but not including cable

operator, cable system, or cable service as defined in 47 USC § 522, and such ordinance is effective and enforceable, the terms of Section 19 of this Agreement may be deemed modified to conform to such new franchise fee formula by agreement of both parties, provided that the terms of the ordinance must be effective and enforceable against other such providers or their affiliates for the ordinance to alter the terms and conditions of Section 19 of this Agreement and provided further that if the City has elected to receive an in-kind exchange under Section 18, above, then it shall continue to receive such services in accordance with the terms therewith, and the provisions of such new ordinance shall not go into effect until the end of the initial 10-year term of the Agreement. Each party shall cooperate with the other in executing an amendment or other instrument reflecting such implementation, as either party desires.

SECTION 38. ANNIVERSARY REVIEW. In addition to the planning reviews contemplated under Section 10(b), above, the parties agree to meet annually contemporaneously with the anniversary of this Agreement, at the request of either party, review the terms of this Agreement, and any concerns or issues raised in respect thereof, and negotiate in good faith any modifications as the parties may determine, in good faith, are necessary to address such concerns or issues.

SECTION 39. ENTIRE AGREEMENT. This Agreement, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this Agreement and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of _____, 2025.

CITY OF HOMEWOOD, ALABAMA

By: Alex Wyatt, Mayor

ATTEST

Bo Seagrist, City Clerk

LUMOS FIBER OF ALABAMA, LLC

By: _____
Its: _____

ATTEST

Witness

EXHIBIT 1

(Build-Out Plan)

The Franchise's plan is to serve every residence and business in the City of Homewood, subject to build-out constraints.

FIBER OPTICS FRANCHISE AGREEMENT

THIS FIBER OPTICS FRANCHISE AGREEMENT (the "Agreement") is effective as of _____, 2025, by and between the **CITY OF HOMEWOOD, ALABAMA**, a municipal corporation (hereinafter referred to as the "City"), and **LUMOS FIBER OF ALABAMA, LLC**, an Alabama limited liability company, whose address is 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265 (hereinafter referred to as the "Franchisee").

WHEREAS, the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City's consent prior to using such highways, streets, alleys and public places; and

WHEREAS, State law confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS, the Franchisee has requested from City a franchise to use the streets and public ways of the City to conduct business as a communications services provider; and

WHEREAS, the City and the Franchisee have negotiated this Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Franchisee enter into this Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) A non-exclusive Franchise is hereby granted to Franchisee, subject to the City's receipt of the consideration described in this Agreement, to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City, Alabama, a fiber-based communications system within the City and any future additions thereto, the duration of such Franchise to be a period of ten (10) years, to commence on the last date of signature below. The grant of this non-exclusive Franchise is for the use by the Franchisee for the purpose of providing telecommunication services, communications services, and/or dark fiber within the City as a "competitive access provider" which connects customers within the City with other businesses, local area networks, a local exchange carrier and/or interexchange carriers and for such other services, including local exchange and/or enhanced services, as may be authorized by the Alabama Public Service Commission or federal law, other than cable services, as defined below. Franchisee shall not provide services directly regulated by the Alabama Public Service Commission (PSC)

unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise or video services agreement with the City.

(b) The term of this Agreement shall be renewed automatically for one (1) successive term of five (5) years on the same terms and conditions set forth herein, provided that Franchisee shall have performed according to the terms hereof, and, further provided that statutory authority shall exist for the City to renew this Franchise. Upon agreement of both parties, new terms and conditions may be warranted for renewal if the telecommunications and broadband technology and/or rights-of-way laws change after the date of this Agreement which substantially affects service types, availability, character of service, system technology or the regulatory environment. Upon agreement of both parties, new terms, provisions, or conditions may also be warranted upon renewal which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this Agreement, which may arise from any unforeseen circumstances or interpretations of this Agreement, and/or which are based on the history of performance of the Franchisee. The parties agree to negotiate new terms and conditions in good faith.

(c) When used herein, the term "facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the Franchisee's fiber-based communications system and located within the City's rights-of-way. For the purposes of this Agreement, the term "facilities" excludes "microcell" facilities, "minor facilities," "small cell facilities," and "macro cell" facilities, including towers and new base stations and other similar facilities used solely for the provision of "personal wireless services."

(d) This Agreement conveys only limited rights and interests as to those rights-of-way in which the City has an actual interest. This Agreement is not a warranty of title or interest, nor does it provide the Franchisee with any representations to any location of a City right-of-way or the nature of the City's interest in any right-of-way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a right-of-way, or upon

private property without the owner's consent, or upon any City, public or privately owned utility poles or conduits is granted herein.

(e) This Agreement shall not be construed to deprive the City of any rights or privileges which it now has or may hereafter have to regulate the use and control of the rights-of-way, and public property. If at any time the City exercises its authority to vacate all or any portion of any right-of-way, the City shall not be liable for any damages or loss to Franchisee by reason of such vacation except in the law under which the City exercises its authority. To the extent that the Franchisee has facilities within such portion of the right-of-way to be vacated, or has a permit to occupy such portion, the City will, if practicable, reserve an easement for Franchisee to continue occupying that portion of the rights-of-way so vacated. The City may, upon one hundred eighty (180) days' written notice to Franchisee, terminate this Agreement with respect to such vacated area.

(f) This Agreement does not establish any priority for the use of the rights-of-way by Franchisee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the City in the performance of its various functions, the second priority shall be to the public generally, and thereafter, as between franchisees and other permit holders, on a first come, first served basis, as reasonably determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Alabama.

(g) To the extent that any of the rights-of-way within the Franchise area are a part of the State highway system ("State Highways") and are governed by the provisions of Alabama law and applicable Alabama Department of Transportation (ALDOT) regulations, Franchisee shall, in those areas, comply with such applicable requirements in addition to local ordinances and other applicable regulations.

SECTION 2. GENERAL TERMS. Franchisee, for the duration of this Franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain facilities and to make any and all necessary excavations therefore, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City, to utilize defined existing City owned conduit within the public rights-of-way as may be specifically approved in writing by the City's Planning, Engineering and Zoning Department (PEZ), and to utilize, with permission of the affected utility companies, their facilities within public rights-of-

way for the purpose of providing a fiber-based communications system within the City , to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and Franchisee shall be subject to and shall comply with all laws and ordinances of the City and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City set forth herein. The granting of this Franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this Franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The Franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this Franchise.

SECTION 4. INDEMNIFICATION.

(a) Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively, from all losses, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature resulting from personal injury to any person, including employees of Franchisee or of any contractor or subcontractor employed by Franchisee, (including bodily injury and death) or damages to any property, including City owned property or facilities, arising out of Franchisee's use and occupancy of the City's right-of-way and Franchisee's operations conducted thereon or out of the acts or omissions of Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the other rights or privileges granted by this Agreement, and by its acceptance of the Franchise, Franchisee agrees that it will pay all damages and penalties which the City may incur or may be legally required to pay as a result of the negligent acts or omissions of Franchisee or its contractors, subcontractors, officers, agents and employees. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this Section 4. The terms and provisions of this Section 4 are intended to be for the benefit of the City and Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for

claims resulting solely from the intentional, willful, grossly negligent, malicious, or unlawful acts of the City or its employees, agents, representatives or contractors.

(b) Notwithstanding any other provisions of this Section 4, Franchisee assumes the risk of damage to its facilities located in the rights-of-way and upon City owned property from activities conducted by the City, and Franchisee further agrees that should any of its facilities installed pursuant to this Agreement be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, Franchisee shall repair or replace such facilities at its own expense and shall waive and release any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, grossly negligent or malicious damage to Franchisee property or unlawful acts by City employees. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's facilities as the result of any interruption of service due to damage or destruction of Franchisee's facilities caused by or arising out of activities conducted by the City, except to the extent any such damage or destruction is caused by or arises from the intentional, willful, grossly negligent, malicious, or unlawful acts of the City or its employees, agents, representatives or contractors.

The City will endeavor to use its best efforts to avoid damage to Franchisee's facilities. Franchisee shall participate in Alabama 811 (f/k/a Alabama Line Locators).

(c) During construction or maintenance, if Franchisee or its employees damage or break any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given immediately to the affected party and to the City.

(d) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Agreement. Said defense and indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be settled, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

(e) Franchisee's defense and indemnification obligations under this Agreement are contingent on the City providing Franchisee with written notice of any claim that the City asserts is subject to such obligations within thirty (30) business days of City's discovery of the claim.

Franchisee shall be released from its defense and indemnification obligation solely to the extent that the City's failure to provide notice thereof or all reasonably necessary cooperation in connection therewith materially impairs Franchisee's ability to investigate, settle or defend such claim.

SECTION 5. CITY TAKING PART IN LITIGATION. Franchisee shall notify the City in writing of any litigation which would affect the Franchise within ten (10) business days of determining the litigation would affect the Franchise. The City shall have the right to take part, by intervention or otherwise at its option, in any suit, action, or proceeding instituted by or against Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Franchisee to do or not to do anything which, by its Franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Franchisee's title to any facility. Franchisee shall not object to the City's exercise of such right. The Franchisee agrees to reimburse the City for all costs, including attorney fees, incurred by the City in participation of such litigation.

SECTION 6. BOND, CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the Franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety (performance) bond, certificate(s) of deposit assigned to the City or irrevocable, unconditional letter of credit in the amount of Fifty Thousand Dollars (\$50,000), both to guarantee the timely construction and full activation of Franchisee's system and to secure the faithful performance of Franchisee of all its obligations provided under the Agreement. Failure to timely obtain, file, assign and/or maintain such bond, certificate(s) of deposit or letter of credit at all times at the required amount shall constitute a substantial violation of this Agreement. If Franchisee elects to deposit and assign for the benefit of the City a certificate(s) of deposit, any interest earned on the principal sum required shall inure to the benefit of the Franchisee and any tax liability on said interest will inure to the Franchisee.

The performance bond shall provide, and certificate(s) of deposit and letter of credit shall be subject to, the following conditions:

(a) There shall be recoverable by the City, jointly and severally from the principal and surety, or from the certificate(s) of deposit or letter of credit, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting

from failure of Franchisee to: (a) faithfully comply with the provisions of the Franchise; (b) comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; and (c) pay any claims, liens or taxes due to the City which arise from or by reason of the construction, operation, maintenance or repair of the communications system.

(b) The total amount of the bond, certificate(s) of deposit or letter of credit shall be forfeited in favor of the City in the event:

- (1) Franchisee either (i) abandons its system at any time during the term of the Franchise or extension thereof or (ii) ceases operation of the system for a period in excess of six (6) months; and/or
- (2) Franchisee assigns the Franchise in violation of the terms of this Agreement.

The performance bond, certificate(s) of deposit or letter of credit required herein shall be in a form satisfactory to the City Attorney. Franchisee shall make all commercially reasonable efforts to provide thirty (30) days' written notice of any non-renewal, alteration, or cancellation of such performance bond to the City. Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of a replacement bond within thirty (30) days following the receipt by the City or Franchisee of any notice of cancellation. Failure to do so shall constitute a substantial violation of this Agreement. The performance bond, certificate(s) of deposit or letter of credit shall at all times be maintained at the amount and levels as required in this section and shall be a continuing obligation for the duration of the Franchise and thereafter until the Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the system or breach or termination of the Franchise. If the bond, certificate(s) of deposit or letter of credit is drawn-down for any reason, the bond, certificate(s) of deposit or letter of credit shall be renewed to the foregoing amount.

The City shall notify the Franchisee in writing and allow Franchisee thirty (30) days to cure, unless such time to cure is extended by the City, before calling the surety bond or drawing upon the certificate of deposit or letter of credit. The City may draw against the surety bond, certificate of deposit, or letter of credit for any unpaid damages, fees or other amounts owing to it as provided herein which are thirty (30) or more days past due.

SECTION 7. INSURANCE REQUIREMENTS. On the Effective Date of this Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the Franchise, at the expense of

Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse, underground, or property damage written by a company authorized to do business in the State of Alabama with a rating of at least B+, including the City as an additional insured as their interest may appear under this Agreement, protecting against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by Franchisee in the following amounts:

- (1) Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and for real property damage in any one occurrence.
- (2) Five Million Dollars (\$5,000,000.00) aggregate.

Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance written by a company authorized to do business in the State of Alabama with a rating of at least B+, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of One Million Dollars (\$1,000,000) for each accident for bodily injury and property damage.

Franchisee shall also maintain, and by its acceptance of any Franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the Franchise, worker's compensation in compliance with the statutory requirements of the State of Alabama and employer's liability in the minimum amount of Five Hundred Thousand Dollars (\$500,000) for each event.

All commercial general liability and commercial automobile liability insurance required pursuant to this Section shall include the City and its officers, employees, elected and appointed officials as additional insureds as their interests may appear under this Agreement and shall be kept in full force and effect by Franchisee during the existence of the Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, conductors, fixtures and other facilities installed by Franchisee incident to the maintenance and operation of the communications system as defined in this Agreement provided, however, that the fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this Agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this Agreement. Upon receipt of notice from its insurer(s), Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days' prior written notice of cancellation of any coverage required herein.

The amounts of coverage for any insurance required to be maintained by Franchisee under this Agreement may be adjusted by the City after consultation with Franchisee at the conclusion of the initial ten (10) year term of the Franchise and prior to during each extension of such term to an amount which, in the City's reasonable opinion, is commercially reasonable and is consistent with the insurance requirements for similarly situated franchises in the same geographic area.

SECTION 8. NON-ASSIGNMENT.

(a) The rights granted by this Agreement or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the Mayor and Council. A written copy of any such proposed assignment must be filed with the City. Any required consent is to be evidenced by an ordinance or resolution of the Council that fully recites the terms and conditions, if any, upon which consent is given. Notwithstanding the foregoing, Franchisee will not lease or provide any conduit space installed pursuant to this Agreement to any other unrelated communications company which Franchisee is aware does not have a franchise for the placement of any additional cable without providing prior notice to the City. No sale or transfer of the Franchise, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or assignment, accepting the terms of this Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer as applicable under this Section 8. The City shall take action on such request for approval of transfer within a reasonable period of after Franchisee and the proposed assignee have provided all information required by this Section 8. This Section shall not apply in connection with execution of secured financing agreements made by the Franchisee.

(b) In making a determination of whether to consent to an assignment, the City may consider the following factors:

- (1) Experience of the proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
- (2) Qualifications of the proposed assignee or transferee;
- (3) Legal integrity of the proposed assignee or transferee;
- (4) Financial ability and stability of the proposed assignee or transferee;
- (5) If requested by the City, submittals from the proposed assignee or transferee, regarding changes, if any, it intends to make in the operation and maintenance of the fiber optic system;

- (6) The corporate connection, if any, between the franchisee, and proposed assignee or transferee and/or between the franchisee and any holder of a like franchise within the City;
- (7) Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of the fiber optic network; and
- (8) Effect of the proposed action on competition.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed Franchisee, shall be provided to the City Attorney for review, so that the City may discover the assumption of obligations by the Franchisee and proposed Franchisee with respect to the fiber-based communications system for those assignments requiring the City's consent.

After receipt of the consent petition for proposed transfer or assignment, if applicable, the City Council may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the City Council may review Franchisee's performance under the terms and conditions of this Agreement. The Franchisee shall provide all requested assistance to the City Council in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all persons involved in such action.

Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Agreement or attempt to do so in violation of this requirement to obtain prior consent as required herein, the City may revoke the Franchise for default and the purported sale, transfer, assignment or conveyance shall be null and void. For purposes of clarity, Franchisee may assign, transfer or convey any of its rights or interest under this Agreement without consent or approval of the City if the assignment, transfer or conveyance is carried out as part of a merger, restructuring, or sale or transfer of all or substantially all of Franchisee's assets.

(c) Franchisee will not lease any part of its fiber optics system pursuant to this Agreement to any other unrelated company for providing cable television services to subscribers or customers within the City unless the lessee holds a valid cable television franchise with the City. Franchisee shall send notification to the City of any company which has requested Franchisee to provide such services and for which it is to enter a fiber lease agreement in order for the City to contact said company to determine whether said company needs to enter into a cable television franchise with the City. Franchisee shall also notify any potential lessee of the necessity of obtaining a separate cable television franchise from the City.

(d) In the event of a change in majority control of Franchisee, the system or the Franchise granted herein that occurs after the Effective Date of the Franchise, by act of Franchisee, by act of any person holding control of the Franchisee, the network or the Franchise granted herein, by operation of law, or otherwise, Franchisee shall provide reasonable notice to the City. The requirements of this Section shall also apply whenever any change in partial ownership is proposed which would result in a change of majority ownership or control of Franchisee, the system, the Franchise granted herein or of any person holding control of Franchisee or in the system or in the Franchise, and any other event which could result in a change in majority ownership or control of Franchisee, regardless of the manner in which such ownership or control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or control).

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, facilities maintained or installed by Franchisee within the City shall be so located and constructed as not to:

- (1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;
- (2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;
- (3) Interfere with access to or use of any water or fire hydrant;
- (4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;
- (5) Interfere with sight distance established by any ordinance or law;
- (6) Obscure the light from any street light;
- (7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;
- (8) Damage irrigation, landscaping or trees owned or maintained by the City;
or
- (9) Damage any communications lines owned or maintained by the City.

(b) Placement of facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require Franchisee to remove or relocate any facility located in violation of this section at Franchisee's sole expense. Such relocation or removal shall be completed with ninety (90) days of written notice from the City. In the event that ninety (90) days is not sufficient, Franchisee may, in writing, request an additional ninety (90) days to

accomplish the relocation. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City. Franchisee shall have ninety (90) days to complete permanent relocations or removals after receipt of written notice from the City. In the event that ninety (90) days is not sufficient, Franchisee may, in writing, request an additional ninety (90) days to accomplish the relocation.

(d) After underground construction is complete, Franchisee shall provide the City with accurate copies of construction records, including engineering as-built drawings, in both hard copy and electronic formats stamped and signed by a qualified surveyor or engineer in a form and content acceptable to the City Engineer or his/her designee, showing the location of its facilities within the public rights-of-way. After aerial construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall also provide such maps within thirty (30) days following a request from the City. Further, if Franchisee's actual construction deviates materially from its submitted construction plans as reasonably determined by the City, Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy of maps and as-builts provided to the City.

(e) Franchisee further shall provide to the City's GIS representative, per instructions from the City, its fiber optics location data in conformance with data definition standards defined by the City GIS staff. The fiber optics location data layer shall be incorporated into the GIS data dictionary and any appropriate Franchisee documentation. The City shall provide GIS data to serve as the base for the fiber optics location data. The City shall provide to the Franchisee existing data in a format agreed to by the City. Specific data layers that make up the base shall be defined in discussions with the Franchisee. At a minimum, the fiber optics location data layer shall represent the conduit duct banks, as well as overall size, material and configuration of the duct bank or any other underground burial and location of all aerial wiring. The fiber optics location data shall be returned to the City on the same type medium and format as previously identified.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in

effect at the time of such excavation or other work. All work authorized and required under this Agreement shall be accomplished in a safe, thorough, and workmanlike manner. All installation of facilities shall be in accordance with current engineering standards.

(b) If at any time the Franchisee intends to perform construction work in any right-of-way, the Franchisee shall obtain a right-of-way permit from the City and shall provide the City with notice before commencing any such work as required by the Right-of-Way Permit application process. The City may, consistent with applicable law, establish general requirements for advance notification to residents adjacent to the proposed construction areas to be provided by utilities or other companies operating in the public right-of-way, and Franchisee shall comply with such advance notification requirements, if any. By February 1 of each year, or such date as the City may otherwise prescribe, the City shall have the right to ask Franchisee for a conference, during which Franchisee will provide to the City a schedule of its then-proposed or then-anticipated construction activities that may affect the rights-of-way and any activities that will entail excavation or tunneling within the rights-of-way. Franchisee shall fully cooperate in any general construction planning process instituted by the City, provided that the requirements imposed pursuant to such process are applied in a reasonable and nondiscriminatory manner. By way of example, Franchisee may be requested to meet with the City and other franchise holders and users of the rights-of-way upon reasonable advance written notice to discuss planned activities in the rights-of-way. Franchisee shall use commercially reasonable efforts to coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damages.

(c) All construction and any work being performed in any right-of-way shall be performed in accordance with the City-issued permit. Franchisee shall take prompt corrective action if it or the City finds that facilities do not comply with the requirements of this Agreement or applicable law, the City Code or any permit requirements.

(d) Prior to the erection or installation by Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of a fiber optics system, Franchisee shall obtain any required permits in accordance with applicable City codes, rules and regulations.

(e) Franchisee shall not excavate or do other work in any public right-of-way unless Franchisee has applied for and received a written permit entitled "Excavation Permit", "Street Cut Permit" or the equivalent thereof from the City granting permission for such excavation or other

work, including the installation of aerial facilities. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions. If directional boring, missile boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way. If the installation utilizes facilities of another entity, Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, Franchisee shall, five (5) working days prior to said closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(f) Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable Franchisee to economically install or repair its facilities; nor shall Franchisee permit any public right-of-way to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(g) Immediately upon completion of repairs or installation of any facility, Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, Franchisee shall restore or replace any pavement, sidewalk, pedestrian lighting, curbs, gutters, grass, landscaping material or other materials or structure damaged in the course of its work to its preexisting condition in accordance with City standards at Franchisee's sole expense, in accordance with applicable City codes. In the event excavation or disturbance of special sidewalk pavement areas is necessary, Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards and codes. Failures within an area which has been disturbed, excavated or encumbered by Franchisee which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of Franchisee pursuant to this provision. If Franchisee fails, neglects, or refuses to make restorations as required under this Section, then the City may (but is not required to), following reasonable notice to Franchisee, do such work or cause it to be done, and Franchisee

shall pay the cost thereof to the City within thirty (30) days of the City providing an itemized list of the costs and expenses incurred in performing such work. The City may, at its option, recover such amount from the performance bond, certificate of deposit, letter of credit or insurance required herein or in City ordinances or regulations. Franchisee shall warrant any restoration work performed under this Agreement, including the maintenance of any landscaping or vegetation installed as part of the restoration work, for a period of twelve (12) months. This restoration requirement shall survive the expiration, revocation and termination of this Agreement.

(h) Franchisee shall maintain all above ground improvements that it places on City rights-of-way pursuant to this Agreement. In order to avoid interference with the City's ability to maintain the right-of-way, Franchisee shall, if practicable, provide a clear zone of five (5) feet on all sides of such improvements.

(i) In any dispute over the adequacy of restoration or maintenance under this Section, the City shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

(j) The City reserves the right to inspect, upon seven days written notice to Franchisee, the installation and maintenance of the fiber optic cable and related equipment. The City shall have the right to inspect all work performed by Franchisee in, on or above City rights-of-way, whether during the performance of such work or after completion as long as such inspection does not disrupt Franchisee's system operation. To the extent that the City is required to perform any inspections, maintenance or repairs to City streets, right-of-way, or other City property due to Franchisee's use thereof, the City shall be entitled to recover the reasonable and verifiable costs and expenses incurred therefore from Franchisee. In the event that the City incurs any costs or expenses for designing, installing, repairing, or altering any City facilities that would not have occurred but for Franchisee's exercise of the rights granted under this Agreement, the City may bill Franchisee for reimbursement of such costs and expenses and such shall be immediately due and payable to the City. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee.

(k) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified by a City ordinance or regulation or herein, the City may do all or any part of the work that remains undone at the cost or expense of Franchisee.

Failure of Franchisee to reimburse the City within thirty (30) days of the City's presentation of a bill for the costs shall result in denial of any permit request made by Franchisee until payment is made. The City may, at its option, recover such amount from the performance bond, certificate of deposit, letter of credit or insurance required herein.

(l) In any case where a public right-of-way is being excavated, disturbed or encumbered by Franchisee, Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this subsection (k) shall alter or waive any rights enjoyed by Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code Title 37, Section 37-15-1, *et seq.*) and Franchisee agrees to comply with all applicable notice provisions of the aforementioned statutes.

(m) Any construction project authorized by a specific permit shall be completed within the time period specified in the permit or, if no time period is specified, within one hundred eighty (180) days from the date that the PEZ issues any necessary permits, provided that the City Engineer may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City Engineer justifies an extension of the project target completion date. If construction is not completed within the applicable time period, Franchisee may file a written request for an extension of the project target completion date with the City Engineer specifying the reasons for such justification.

(n) If in the sole but reasonable opinion of the City Engineer, damage to the public right-of-way resulting from damage or disturbance during the construction, operation or maintenance of the Franchisee's facilities requires immediate repair, the City may perform such repairs, at the cost of the Franchisee. In such event, the City will endeavor to notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the City's reasonable and verifiable costs, including administrative costs related to such repairs within thirty (30) days of the date of written notice of the costs to the Franchisee.

(o) Franchisee shall not remove any underground facilities which requires trenching or other opening of the streets along the facilities to be removed, except as hereinafter provided. Franchisee may remove any underground facilities from the streets which have been installed in

such a manner that it can be removed without trenching or other opening of the streets. Subject to applicable law, Franchisee shall remove, at its sole cost and expense, any underground facilities by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Usable underground cable and conduit in the streets that is not removed as required in this subsection shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.

(p) Franchisee shall, at all times, employ reasonable standards of care and shall install and maintain and use commonly accepted methods for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its facilities. By way of illustration and not limitation, Franchisee shall also comply with the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards.

(q) If an unsafe condition is found to exist, the City agrees to give Franchisee notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified by the City, then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs, including administrative costs, incurred as a result of circumstances herein within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee.

(r) In the event of any emergency in which any of Franchisee's facilities break, are in need of emergency repair or are damaged, or if the Franchisee's construction area is otherwise in such a condition to immediately endanger the property, life, health, or safety of any person, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous condition, without first applying for and obtaining City permits otherwise

required for said work; provided, that the Franchisee shall immediately notify the City of said condition and of the emergency work, and shall obtain all necessary permits as promptly as possible after the emergency work is performed, and in any event no later than the second business day following the discovery of the condition requiring the emergency work.

SECTION 11. USE OF STREETS.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the City, Franchisee shall likewise place its services underground without additional cost to the City. Where not otherwise required to be placed underground by this Agreement, Franchisee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities.

(b) Franchisee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
- (5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(c) Franchisee shall coordinate with City to evaluate planned construction prior to commencement of work in order to ensure that facilities, including the installation, construction, repairs, replacement and maintenance of such facilities, will not unduly burden the present or future use of the City's rights-of-way.

(d) The closing of any part of a publicly maintained street or right-of-way must be approved by the PEZ, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be by the PEZ and Traffic Engineering is to be notified as soon as possible. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(e) No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City PEZ.

(f) Franchisee agrees that it shall remove any of its abandoned facilities installed in the right-of-way covered by this Agreement or relinquish and transfer all title, rights and interest to the City, at the option of the City.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

(a) The City reserves the right, upon reasonable notice, to require Franchisee at its expense to protect, support, temporarily disconnect, relocate or remove from the City's streets any property of Franchisee by reason of traffic conditions, public safety, street construction or excavations, change or establishment of street grade, or installation of public structures or improvements by governmental agencies, including, but not limited to, sewers, drains, water pipes, and power or communications lines. Reasonable notice for this provision shall be construed to mean at least ninety (90) days except in the case of emergencies where no specific notice period shall be required. The City shall endeavor to notify and seek comment from Franchisee, with respect to minimizing disruption to the installed facilities, where public works projects may affect Franchisee's facilities. The parties agree that for permanent disconnection, relocation, or removal of Franchisee's property, the City shall provide ninety (90) days' written notice.

(b) Nothing in this Agreement is intended to eliminate or waive any right Franchisee may have to reimbursement from any third-party under applicable law or the terms of any public funding grant for a project.

(c) If Franchisee believes it will be unable to complete the relocation within the foregoing timeline after receipt of notice from the City, Franchisee shall explain the reasons for its inability in detail and the City and Franchisee shall attempt to agree on an alternate schedule, subject, however, it is the City's right to finally determine the schedule, as long as its decision is not unreasonable.

SECTION 14. TREES. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

SECTION 15. CONSTRUCTION STAFFING. During the Franchise term, Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of subcontractors. Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. SERVICE TO THE CITY. In addition to any franchise fee collected pursuant to Section 19 of this Agreement, the Franchisee shall provide the fiber and facilities to the governmental and institutional facilities as follows; provided however that: (i) the City must, within sixty (60) days of the Effective Date, notify Franchisee in writing of the specific locations where it would request fiber and facilities so that Franchisee can include that information in its pre-construction engineering work, and (ii) the City waives any right to make further requests after

that deadline unless Franchisee in the future notifies the City that it is reengineering portions of its deployment in the City:

(a) Franchisee shall provide the City without charge solely for the City's noncommercial telecommunications purposes, two (2) dark fiber pairs (four (4) fibers) in all City Right-of-Way where Franchisee deploys at least 288 fiber strands (backbone network), whether underground or aerial (the "City Fibers") in up to a maximum of 10 miles of Franchisee's network.

(b) Franchisee shall create a maximum of six (6) splice points at the request of the City among existing Franchisee access points. City shall reimburse Franchisee for Franchisee's costs for any splice points requested by the City beyond six (6). Franchisee shall perform all splicing of City lateral cables to the City Fibers. City shall reimburse Franchisee for Franchisee's costs of any splicing (beyond the first six (6) splice points).

(c) Franchisee agrees that any routine maintenance of City Fibers shall be borne by Franchisee. The City shall pay only actual incremental labor costs to Franchisee to repair the City's share of dark fibers within any cable that is damaged as the result of any natural disaster. Nothing in this subsection (c) shall supersede the provisions of this Agreement relating to the relocation of equipment at Franchisee's expense in the event of a City project.

(d) Franchisee acknowledges that the City has the right to connect its own equipment to the dark fibers to be provided hereunder for internal non-commercial municipal purposes, and to make full use at no cost or expense to the City of the fibers to be dedicated to the use of the City hereunder.

(e) The City recognizes that Franchisee's agreements, if any, to occupy rights-of-way or for pole attachments may be subject to the control of third parties who may require Franchisee to relocate its cable. In the event of such required relocation by Franchisee, Franchisee shall provide notice thereof to the City as soon as reasonably possible. Franchisee shall provide replacement dark fibers to the City in any Franchisee replacement cable as soon as reasonably possible.

SECTION 18. IN-KIND CONSIDERATION. At any time during the term of the Franchise, the parties may mutually-agree for Franchisee to provide an in-kind exchange consisting of one or more Franchisee services (such as intelligent traffic, video, lighting, telematics, or other Smart-City solutions) in-lieu of part or all of any consideration otherwise due

by Franchisee under the agreement. Such services shall be provided under a separately-negotiated agreement between the parties.

SECTION 19. FRANCHISEE FEE: CONDITIONS.

(a) As consideration for this Agreement, which provides for the use by the Franchisee of the rights-of-way and other public places within the boundaries of the City, which are valuable public properties acquired and maintained by the City at great expense to its taxpayers and citizens, and that the grant to Franchisee of the use of said rights-of-way and other public places is a valuable property right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, as compensation for the rights and privileges conferred herein, the Franchisee shall pay to the City an amount equal to three percent (3%) of the gross revenue, as defined herein, collected by Franchisee for the first two (2) years from the Effective Date of this Agreement. Thereafter; for the next two (2) year term Franchisee shall pay to the City an amount equal to four percent (4%) of the gross revenue collected by Franchisee. For the remaining term of this Agreement, Franchisee shall pay to the City an amount equal to five percent (5%) of the gross revenue collected by Franchisee.

(b) The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under law.

(c) Commencing the month following the month this Agreement becomes effective, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such fee shall be for revenues received by the Franchisee for the preceding quarter. Franchisee shall furnish to the City with each payment of compensation required by this Section a written statement, showing the amount of gross revenue of Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

(e) As used in this Section, “gross revenue” shall mean all revenues (exclusive of sales tax) collected by Franchisee from the provision of telecommunications services pursuant to this Agreement within the corporate limits of the City, including, but not limited to:

- (1) All telecommunications service revenues charged on a flat rate basis,
- (2) All telecommunications services charged on a time, usage sensitive or mileage basis,
- (3) All revenues from installation service charges,
- (4) All revenues from connection or disconnection fees,
- (5) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment,
- (6) All revenues from equipment sold or rented to customer upon customer premises,
- (7) All revenues from local service,
- (8) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenue,
- (9) The value of any free services provided by Franchisee except (1) those free services required under this Agreement; (2) services provided as a credit against non-recurring charges imposed on Franchisee's customers by a local exchange carrier for converting circuits to Franchisee,
- (10) All revenues from authorized rental of conduit space located within the corporate limits of the City, and
- (11) All revenues from authorized rentals of any portion of Franchisee's network, including plant, facilities, or capacity leased to others.

Notwithstanding the foregoing, gross receipts *does not include*: (i) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee to the City; (ii) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (iii) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate which will pay a franchise fee to the City.

(f) Payment of money under this section shall in no way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise. Nothing in this Section 19 is intended to alter, amend modify or expand the taxes and fees that may lawfully be assessed on Franchisee’s business activities under this Agreement under applicable law. Except as provided

elsewhere in this Agreement, all payments made by franchisee to the City pursuant to this Agreement shall be made to the City Clerk. Nothing in this Agreement shall be construed to prevent Franchisee from passing through some or all of the franchise fee to its customers.

(g) Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by Franchisee are prohibited and may constitute a default of this Agreement.

(h) If, as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees for any twelve (12) month period, the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. If, as a result of such audit or any other review, the City determines that the Franchisee has underpaid its fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants. The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

SECTION 20. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS.

(a) Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's network, Franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by Franchisee of all revenues and uncollectibles.

(b) Franchisee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles, subject to approval by the City.

(c) Franchisee shall file annually with the City Clerk for his review no later than one hundred twenty (120) days after the end of the Franchisee's fiscal year, certified financial statements covering the operations of the Franchise within the corporate limits of the City. These statements shall include a fiscal year-end balance sheet, an income statement covering the results of operations for the fiscal year and sharing gross receipts, a statement of retained earnings for the year, and a statement of cash flows. There shall be submitted along with them such other

reasonable information as the City shall reasonably request with respect to the Franchisee's properties and expenses related to its network operations within the City. Such financial statements shall be accorded confidential treatment.

(d) Franchisee shall report to the City such other information relating to Franchisee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(e) Franchisee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Franchisee pertaining to this Agreement. Franchisee shall fully cooperate in making available its records and otherwise assisting in these activities.

(f) The City may, at any time, make inquiries pertaining to Franchisee's operation of its network within the City. Franchisee shall respond to such inquiries on a timely basis.

SECTION 21. NATURE OF FRANCHISE FEE PAYMENTS.

(a) Nothing in this Section is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on Franchisee's business activities under this Agreement pursuant to applicable law.

(b) The payment of a franchise fee by the Franchisee in no way limits the right of the City to charge fees for any permits the Franchisee is required to obtain for any construction project.

(c) The City and the Franchisee agree that the compensation and other payments to be made pursuant to this Agreement are in addition to any and all taxes of general applicability or other fees or charges which the Franchisee shall be required to pay to the City or to any other governmental authority, and the Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments made pursuant to this Agreement or from or against any taxes of general applicability or fees or damages which the Franchisee is required to pay.

SECTION 22. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this Agreement and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

- (1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
- (2) A failure to begin construction of the fiber optics system within twelve (12) months of the Effective Date of this Agreement;
- (3) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
- (4) A failure to pay the required franchise fee or provide to the City as required herein;
- (5) Permitting the use of its fiber optics system or facilities in any manner that would avoid or seek to avoid the need for a franchise with the City for the business of another person; or
- (6) A failure to operate the fiber optics system for a period of six (6) months.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees. The foregoing notwithstanding, Franchisee may in its sole discretion terminate this Franchise Agreement upon one hundred and eighty (180) days' written notice to the City. Should Franchisee elect to terminate this Franchise Agreement for its convenience, the Franchisee may, within one hundred and eighty (180) days of providing notice to the City, remove from or abandon the Facilities in the right of way unless otherwise mutually agreed.

(c) In the event that the City believes that the Franchisee has not complied with any terms of this Agreement, the City, at its sole election may informally discuss the matter with Franchisee. If discussions do not lead to resolution of the problem or if the City elects not to informally discuss the matter with the Franchisee, the City shall issue a written Notice of Violation to the Franchisee, stating with particularity the alleged breach, violation or other non-compliance.

(d) The Franchisee shall have thirty (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the asserted breach, violation or non-compliance; (ii) cure such default; (iii) request a lesser sanction or remedy; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the estimated date that they will be completed.

(e) If the Franchisee has not done any of the foregoing, the City may consider the Franchisee in default and pursue remedies as provided in this Agreement or as allowed in law or equity. In addition to any other remedy at law or equity or provided for in this Agreement, the

City may revoke the Franchise pursuant to lawful process. Said revocation shall be effective immediately after the delivery of a written notice of revocation approved by the City Council stating the grounds of the breach, violation, or non-compliance with the Franchise. If the remedy elected by the City is to forfeit and terminate this Agreement, the Franchisee may request an appeal of such decision to the Council of the City which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The Council shall set a public hearing on such appeal within thirty (30) days after notice of appeal is received.

(f) If the Franchise has been terminated, revoked, canceled, or has expired, and Franchisee has not exercised its rights, if any, to contest the termination, revocation, cancellation or nonrenewal, the City may give Franchisee written notice to remove its facilities from the City's rights-of-way or it may, in the City's sole discretion, allow Franchisee to abandon the system in place consistent with the requirements of Section 22(h). Any plan for abandonment or removal of the facilities must be first approved by the City Engineer, and all necessary permits must be obtained prior to such work. Work shall be completely done one hundred-eighty (180) days from notice to complete such work, provided that the City Engineer may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City Engineer justifies an extension of the completion date.

(g) If the Franchisee fails to remove any of its facilities as provided herein, the City may elect to cause such removal and may recover its reasonable costs and expenses from Franchisee, including its reasonable attorney's fees and costs incurred in recovering such costs and expenses, unless the City has consented to Franchisee abandoning its facilities as more particularly described in subsection (h) below.

(h) The City may allow Franchisee to abandon the facilities in place upon the express written consent of the City. Upon permanent abandonment in place of the facilities, the facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, approved by the City Attorney, transferring to the City the ownership of the facilities, free and clear of any lien or encumbrance.

(i) The provisions of this Section 22 shall survive the expiration, revocation, or termination of this Agreement.

SECTION 23. REMEDIES AND PENALTIES NOT EXCLUSIVE.

(a) All remedies and penalties under this Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

(b) Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

(c) For any period of performance or cure under this Agreement, the time period within which Franchisee is to perform or cure, as the case may be, shall be extended, without liability to Franchisee, for at least as long as Franchisee's ability to perform or cure is delayed for reasons beyond Franchisee's control provided that Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

(d) The terms and conditions of this Agreement may be superseded by the terms and conditions of any subsequent ordinance(s) enacted by the City which applies to the facilities installed by the Franchisee pursuant to this Agreement and to similar facilities installed by all other current or future providers of telecommunications services, subject to reservation of any and all right by Franchisee to contest the legal validity of any such ordinance. The City reserves all rights and powers under its police powers and powers conferred by federal, state or local law. In

particular, the City reserves the right to alter, amend, or repeal its municipal code if it determines it shall be conducive to the health, safety, and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, Franchisee has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

(e) Both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this Franchise.

SECTION 24. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the network after the terms of this Agreement expire or are terminated, and before any renewal of the Franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement.

SECTION 25. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the Franchisee's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 26. CONFIDENTIALITY.

To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Agreement, or other information clearly identified as "Confidential" pertaining to services provided to its customers. Confidential, proprietary information disclosed by Franchisee to the City shall be regarded as confidential, proprietary as to third parties. If the City receives a request to disclose

such information, the City shall notify Franchisee of such request and allow Franchisee a reasonable opportunity to defend its information from disclosure.

SECTION 27. CAPTIONS. The captions given to various provisions of this Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 28. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. Franchisee shall, at all times during the term of its Franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 29. ALABAMA LAW GOVERNS. In any controversy or dispute under this Agreement, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 30. NOTICE. Franchisee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Franchisee to the City may be made by telephone to the City Engineer. Any other notice required or permitted under this Agreement shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, in either case, addressed as follows:

To the City:

City of Homewood
ATTN: City Clerk
2850 19th Street South
Homewood, Alabama 35209

With a copy to:

City Attorney
2323 2nd Avenue North
Birmingham, Alabama 35203

To the Franchisee:

Lumos Fiber of Alabama, LLC
Attention: Josh Many, SVP - OSP
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC 27265

Josh.Many@lumosfiber.com

With copies to (except for invoices):

A.J. Brown, Chief Legal Officer
4100 Mendenhall Oaks Parkway, Suite 300
High Point, NC
aj.brown@lumosfiber.com

or such other address as may be designated in the future in writing by either party.

SECTION 31. EFFECTIVE DATE AND PUBLICATION. The ordinance approving this Franchise shall be published as required by law, and this Agreement shall not take effect until the date of such publication (the “Effective Date”).

SECTION 32. MODIFICATION. This Agreement, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 33. SEVERABILITY. Should any part, term or provision of this Agreement be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this Agreement.

SECTION 34. NO COERCION. The Franchisee enters into this Agreement willingly and without coercion, undue influence or duress. The Franchisee has reviewed each and every obligation, term and condition of this Agreement and hereby certifies that none of the obligations, terms or conditions imposed upon it by this Agreement are commercially impracticable on their face.

SECTION 35. NONDISCRIMINATION. During the performance of this Agreement, Franchisee agrees as follows:

(a) Franchisee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Franchisee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Franchisee agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) In the event of Franchisee's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and Franchisee may be declared ineligible for further municipal contracts.

SECTION 36. IMMIGRATION LAW COMPLIANCE.

(a) Franchisee represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act").

(b) Franchisee represents and warrants that, to the extent it has employees, it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Franchisee is enrolled in the E-Verify program. During the performance of this Agreement, Franchisee shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

(c) By signing this Agreement, Franchisee affirms, for the duration of the Agreement, that it will not violate federal immigration law by knowingly employing, hiring for employment, or continuing to employ an unauthorized alien within the State of Alabama.

(d) Furthermore if Franchisee is found to be in violation of this provision, it shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

SECTION 37. SUBSEQUENT ORDINANCE; EFFECT ON COMPETITION. The parties understand and acknowledge that terms in this Agreement, including the definition of gross revenue, are based on existing franchise arrangements between the City and other similar providers. The parties further understand and acknowledge that the City intends to update and modernize its franchise requirements in light of changes in the industry or in right-of-way compensation practices. Upon such time as the City has enacted a new ordinance of general applicability that contains a definition of gross revenue or other lawful formula, including fees based on linear feet of right-of-way occupied, for calculating franchise fee or other rental obligation for use of the right-of-way to provide telecommunications or other communications services provided by means of fiber-optic cables in the rights of way, but not including cable

operator, cable system, or cable service as defined in 47 USC § 522, and such ordinance is effective and enforceable, the terms of Section 19 of this Agreement may be deemed modified to conform to such new franchise fee formula by agreement of both parties, provided that the terms of the ordinance must be effective and enforceable against other such providers or their affiliates for the ordinance to alter the terms and conditions of Section 19 of this Agreement and provided further that if the City has elected to receive an in-kind exchange under Section 18, above, then it shall continue to receive such services in accordance with the terms therewith, and the provisions of such new ordinance shall not go into effect until the end of the initial 10-year term of the Agreement. Each party shall cooperate with the other in executing an amendment or other instrument reflecting such implementation, as either party desires.

SECTION 38. ANNIVERSARY REVIEW. In addition to the planning reviews contemplated under Section 10(b), above, the parties agree to meet annually contemporaneously with the anniversary of this Agreement, at the request of either party, review the terms of this Agreement, and any concerns or issues raised in respect thereof, and negotiate in good faith any modifications as the parties may determine, in good faith, are necessary to address such concerns or issues.


SECTION 39. ENTIRE AGREEMENT. This Agreement, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this Agreement and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 13 day of October, 2025.

CITY OF HOMEWOOD, ALABAMA

By:  Alex Wyatt, Mayor

ATTEST


Bo Seagrist, City Clerk

LUMOS FIBER OF ALABAMA, LLC

By: _____
Its: _____

ATTEST

Witness

EXHIBIT 1

(Build-Out Plan)

The Franchise's plan is to serve every residence and business in the City of Homewood, subject to build-out constraints.

Samantha Walsh

From: Mike Kendrick
Sent: Saturday, September 20, 2025 5:07 PM
To: Samantha Walsh

Sam do resolution to authorize the city manager to enter into the Lumos fiber Franchise that we sent him the day before I left.(9/9/25). Use on of the previous resolution but make it for city manger to execute. Attached the Lumos Franchise as Exhibit A. This is agenda item 09.09.25. thanks

Sincerely,

Michael G. Kendrick
Waldrep Stewart & Kendrick, LLP
2850 19th Street South, Suite 370
Homewood, AL 35209
(205) 327-8323 – direct
(205) 547-9741 – fax
kendrick@wskllp.com

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