

CITY OF WOOD DALE FRANCHISE AGREEMENT WITH COMPANY FOR INSTALLATION OF FIBER OPTIC CABLE IN CITY PUBLIC RIGHT-OF-WAY

This Franchise Agreement (this “Agreement”) is made as of DATE (the “Effective Date” between the City of Wood Dale, a municipality incorporated under the laws of the State of Illinois (the “City”) and COMPANY, a limited liability company (the “Licensee”) as follows:

SECTION 1. GRANT OF AUTHORITY

The Licensee is hereby granted a license (the “License”) to install, operate, maintain, and remove fiber optic cables within the City’s public right-of-way in accordance with the provisions of this Agreement and only in specific locations approved in advance by the City as specified.

SECTION 2. DEFINITIONS

Fiber Optic Cable (“Cable”): A fiber optic cable and all of the conductors and other devices, apparatus, and equipment necessary for use of the Cable.

Installation: Any installation, extension, reduction, removal, or any other element of or to a Cable of the Licensee.

City Right-Of-Way (“ROW”): City roads, streets, alleys, avenues, and other public right-of-way Required Data: Prints, plans, maps, as-built plans, and any other similar documents required by the City.

Term: The period commencing on the Effective Date and expiring on December 31, 2034.

SECTION 3. SCOPE OF AGREEMENT

- A. This Agreement authorizes Licensee to use ROW temporarily for Licensee’s Cable. Nothing in this Agreement may be construed to entitle or otherwise allow Licensee to use any other property within the control of the City except as expressly agreed to in writing. Further, nothing in this Agreement may be construed to limit, in any way, the police power and all other authority of the City, including adoption and enforce of ordinances necessary to the health, safety, and welfare of the public.

- B. Prior to an installation of Cable, the Licensee must provide, in a written statement including diagrams and data satisfactory to the City, that the installation will result in minimal disruption to the surfaces of the ROW.
- C. Neither this Agreement nor the License authorizes an installation of Cable above-ground or the installation of pole or overhead cable except as authorized by the City.
- D. Every utility that occupies right-of-way within the City shall register on January 1 of each year with the City of Wood Dale, providing the utility's name, address and regular business telephone and telecopy numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a twenty four (24) hour telephone number for each such person, and evidence of insurance as required in section 16.308 of this article, in the form of a certificate of insurance.

SECTION 4. PERMIT REQUIREMENTS; PERMIT FEES; INSTALLATIONS

A. Permit Required.

1. A City permit is required for each Installation. A City permit will be issued if the proposed Installation is consistent with the use of the ROW as provided by this Agreement.
2. The application for a City permit to commence an Installation must be submitted to the City on a written application form approved by the City. Each application must be submitted electronically unless otherwise provided by the City and accompanied by the Required Data, which must accurately show the nature and exact location of the proposed work. No work may start on an Installation until the required data have been reviewed and approved by the City, which review will be completed within a reasonable period after submittal.
3. In addition to all other City remedies provided in this Agreement, if Licensee fails to furnish maps, as-built plans, or any other required data, or submits required data that are materially incorrect, incomplete, or inaccurate, then the following provisions apply, except for any damages, claims or liabilities arising as a result of the willful or wanton misconduct of the City or its agents, employees or contractors:
 - a. The City will not be responsible or liable to Licensee if any construction or Installation are damaged in any respect whatsoever in the course of any work being done by the City; and

- b. The agreement of Licensee to indemnify and hold harmless the City as set forth in Section 7 below, will include any claims or demands of any nature whatsoever, including without limitation, direct damages, asserted by or on behalf of third persons arising out of or relating to any damages to the installations and/or interruption or impairment of service.
- c. In the event of an emergency that Licensee reasonably believes poses an immediately threat of harm to the public or to any Licensee Installation, Licensee may enter the ROW in order to ameliorate the threat without first securing a City permit, provided, however, Licensee must advise the City immediately of the emergency and furnish the City a description of the threat and the repair and seek a proper City permit within a reasonable period of time thereafter.

B. License Fees.

From and after the Effective Date and throughout the Term, Licensee must pay the City's annual fee (the "License Fee").

The License Fee is calculated based on the following formula:

- a. for each Installation, a base annual fee of \$5,000; and
- b. for each Installation, a fee of \$1.50 per lineal foot of fiber optic cable installed, payable immediately after completion of the Installation.

Any perceived discrepancy in lineal footage installed will be reconciled by the City and Licensee upon Licensee's submission of as-built drawings at the conclusion of the Installation or any additional installation by Licensee. To the extent that Licensee requests the City to perform, or the City is by circumstances required to perform, any additional functions with respect to any Installation, Licensee must compensate the City for its reasonable, documented expenses incurred in connection therewith.

C. Installations.

1. Except as otherwise provided herein, Licensee must notify the City within a reasonable period but not less than 72 hours prior to commencing any Installation. All construction materials and construction warning devices must conform to the following standards as published by the Illinois Department of Transportation: "Manual on Uniform Traffic Control Devices," "Standard Specifications for Road and Bridge Construction," and the "Highway Standard" manual in effect from time to time.
2. Each Installation must be undertaken under the supervision of the City.

3. Each Installation must be located so that it cannot injure any drain, sewer, catch basin, water or sewer pipe, pavement, or any other public or private improvement.
4. Each Installation must be located so that it does not interfere with travel on, or maintenance of, the ROW.
5. Licensee must obey all regulations related to the ROW in effect as of the Effective Date and thereafter.
6. In connection with any Installation, at any time or under any circumstance, Licensee agrees as follows:
 - a. In performing any work, Licensee may never materially interfere with or obstruct traffic without first having given the City notice in writing as to the date and time period during which such the obstruction will exist and the City having approved the obstruction. The City may impose reasonable terms and conditions for the obstruction.
 - b. If an alteration or change of location for any Installation becomes necessary, then Licensee must undertake and complete, after permission is granted by the City, the alteration or change of location at Licensee's expense within a reasonable time. If the alteration or change of location is requested by the City, then the City will cooperate with Licensee in the selection of an alternative location.
 - c. No Installation may be relocated or removed without the prior written consent of the City.
 - d. If any drain, sewer, catch basin, water pipe, pavement or other public or private improvement is damaged as the result of an act or negligence by Licensee or any of its agents, Licensee must promptly repair the damage or replace the damaged improvement to the satisfaction of the City. If Licensee fails to make the repair promptly, then the City may undertake, or hire a contractor to undertake, the repair and charge all costs and expenses for the repair to, and collect all costs and expenses from, Licensee.
 - e. All movement and storage of equipment and materials shall be confined to the area designated by the City.
7. The City has, and always will have, the right to enter and inspect, always, the work on an Installation. The City will have the right to repair any or all damage to areas surrounding the licensed premises, as if such damage is caused by Licensee, then the actual, reasonable and documented cost of such repair will be the responsibility of the Licensee.
8. Licensee must promptly correct any default or nonconformance with any City written installation standards. The correction must be completed within 15

workdays after notice for default or nonconformance from the City. The City may extend the time in the event of inclement weather or other conditions beyond the control of Licensee. Licensee must correct a default or nonconformance immediately if the matter poses a public health, safety, or and welfare threat, as determined by the City (an "Emergency"). If the City, in the exercise of its reasonable discretion, determines that Licensee has not diligently and continuingly worked to correct the Emergency, then Licensee must pay the City \$1,000.00 for each day and each partial day the Emergency was not fully corrected as liquidated damages.

9. If the City determines that an Installation or other Licensee property must be temporarily disconnected, relocated, or removed because of an issue related to ROW, then the City may, by written notice, require Licensee to undertake the City's request within 90 days after receipt of the notice from by the City and approval to do so by the City. Similarly, Licensee, at its expense, must protect any property of Licensee when the City issues a similar notice related to traffic conditions, public safety, street vacation, street construction, construction on streets, including street repairs, repairs or replacement of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other type of structure, including improvement by any other governmental agency. Nothing related to the Section 3 will be deemed the taking of property of Licensee.
10. Licensee has the sole responsibility for the maintenance, repair, and upkeep of all Installations.
11. All surplus excavated material, including all trees, stumps and other debris resulting from construction operations, shall be disposed of off the City's property.
12. In the event the Licensee requires installation of additional facilities, the Licensee shall make an application to the City and submit all materials required by the City's Public Works Director for evaluation. The City's Public Works Director is authorized to execute any amendments to this Franchise Agreement establishing additional fees for additional facilities in conformance with the City's Master Fee Schedule, as amended from time to time.

SECTION 5. RESTORATION OF CITY PROPERTY

Licensee, after undertaking any work, must, at its sole cost and expense and as soon as practically possible, repair and restore the work site including without limit sidewalks, utilities, pavements, plantings, and parkways materially to the condition that existed prior to the commencement of the work, or nearly as practicable as determined by the City.

All excavations in lawns or grassy parkways must be backfilled, tamped, and then restored within a short time thereafter to the original condition with sod or hydroseed as determined by the City, in accordance with the applicable provisions of this Agreement. If any sidewalk, utility, pavement, plantings, parkway, lawn, or grassy area becomes uneven or unsettled, dies, or otherwise requires repairing within one year after the restoration, because of the disturbance by Licensee, then Licensee, as soon as climatic conditions permit, must promptly, upon receipt of notice from the City, must cause all necessary restoration to be undertaken promptly to the condition in which it existed before the disturbance by Licensee. The restoration must be completed within five workdays after the commencement of restoration work.

If Licensee fails to commence and complete the restoration work in the manner and within the time periods prescribed in this Section 5, then the City may perform the required work and recover from Licensee all costs and expenses the City incurs. If any public way or improvement cannot be properly repaired, replaced, or restored, then Licensee must compensate the City for all costs and expenses, direct or indirect. Licensee must keep all work, work sites Installations, and other Licensee facilities in safe condition at all times. Licensee also must maintain all safety barriers and damage signals during construction, repair, or renewal work performed under this Agreement as necessary to avoid danger to life, limb, or and property.

SECTION 6. INSURANCE

Licensee, at its own expense, must maintain the following insurance in companies licensed to do business in the State of Illinois and approved by the City:

A. Commercial General Liability Insurance - \$2,000,000.00 for bodily injury or death to any one person and \$5,000,000.00 for bodily injury or death resulting from any one occurrence. \$2,000,000.00 for property damage, including damage to City property resulting from any one occurrence.

B. \$500,000.00 for Employer's Liability.

C. Statutory limits for Workers' Compensation.

D. \$1,000,000.00 for Comprehensive Automobile Insurance for bodily injury or death resulting from any one occurrence. The City and its officers, officials, employees, and agents must be listed and endorsed as additional insureds under the Commercial General and Automobile Liability policies of insurance; certificates evidencing each policy must be furnished to the City; and each policy must provide: (i) that it will not be cancelled or materially modified without 30 days' prior written notice to the City and (ii) that the coverage is primary and non-contributory as to the City and its officers, officials, employees, and agents.

SECTION 7. DEFENSE, INDEMNIFICATION OF CITY

Licensee must, and shall, at its own expense, defend with competent legal counsel, all suits that may be brought against the City on account of or in connection with the violation by Licensee of any obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb, or property connected with its failure to meet its obligation hereunder or any and all Installations and all other facilities constructed or maintained by it under or by virtue of this Agreement, and hold and save the City harmless from any and all liability and expense as herein defined unless the liability or expense is caused by the willful or wanton misconduct of the City or its agents, contractors, or employees. As used in this Section 7, liability and expenses include, but are not limited to, judgments, costs, attorneys' fees, claims, damages, or penalties for or associated with any provisions of this Agreement, and the construction, installation, removal, relocation, alteration, repair, maintenance and restoration of the Installations, and for any and all damages hereto and on account of the location, construction, alteration, repair or maintenance of any ROW. As used in this Agreement, "costs" and "expenses" include without limitation attorneys' fees, professional or witness fees, and all costs and expenses incurred in defending against any claim, demand or action. Licensee, at its own expense, must, and shall, hold harmless the City and its officers, officials, agents and employees, from liability, arising out of all judgments or settlements, including reasonable attorneys' fees, whether for personal injury, bodily injury, property damage or loss or interruption of utility service arising out of the construction, installation, reconstruction, maintenance or other operations of Licensee, unless said damage or loss is caused by the willful or wanton misconduct of the City, its agents, contractors, or employees. In addition to all of the provision above in this Section 7, Licensee must, and shall, at its own cost and expense, defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any and all claims, damages, liability, expenses, judgments, attorneys' fees, penalties and any other costs and expenses arising out of, resulting from or in any way relating to the granting of the License to Licensee. The City will promptly provide Licensee written notice of any claim, demand, action, or proceeding for which indemnification will be sought under this provision of the Agreement. Licensee will have the right at its cost and expense to assume the defense of such claim, demand, action, or proceeding, using counsel acceptable to the City. The City will have the right to participate, at its own cost and expense, with respect to any such claim, demand, action, or proceeding that Licensee defends. In connection with such a claim, demand, action, or proceeding, Licensee and the City shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such claim, demand, action, or proceeding may be settled without the prior written consent of the City, which consent will not be unreasonably withheld or delayed.

SECTION 8. PERFORMANCE BOND OR LETTER OF CREDIT

Licensee must secure and maintain, throughout the Term and any extension of the Term, a performance bond in a form approved by the City, with a good and sufficient surety approved by the City, in an amount of \$20,000, on the condition that Licensee well and truly observes, fulfills, and performs in connection with each provision, term, and condition of this Agreement and that, in case of any breach, damage, casualty, loss, obstacle, or impediments (a "Failure") of Licensee, the City will be entitled to recover from the principal and sureties in the full amount of all costs, expenses, and attorneys' fees, resulting from the Failure.

SECTION 9. LICENSEE EMERGENCIES

In an emergency related to an element of work, an Installation, or any other Licensee-related issue, requiring work by Licensee that affects (i) ROW or any other City facility or (ii) that causes the City to may {00121525.2} 6 alter, remove, relocate, or otherwise deal with ROW, Licensee's Installation, and any other City response or work, Licensee must reimburse the City for all costs of emergency work of any kind. "Emergency" as used herein means: any unforeseen situation that creates a present danger to persons or public health, safety or an essential service and where delay may result in injury to persons or an unsafe environment.

SECTION 10. DEFAULT TERMINATION

- A. If Licensee fails or neglects to comply with a material provision of this Agreement and fails to cure the failure or neglect within 10 working days after written notice from the City of the failure or neglect, or if Licensee advises the City in writing that Licensee no longer requires the use of any or all Installations, then the City may terminate this Agreement and rescind the License immediately. In that case, Licensee forfeits all rights created in this Agreement.
- B. If this Agreement is terminated, then the City may require Licensee to remove all Cable and Installations from all ROW and to restore all ROW and other premises affected by Licensee's Cable and Installations to a condition reasonably satisfactory to the City. If Licensee fails or refuses to remove all Cable and Installations or fails or refuses to restore all ROW and other premises, then the City, after 30 days' prior written notice to Licensee, may (i) claim the Cable and Installations as the property of the City at no cost to the City or (ii) remove all Cable and Installations and restore all ROW and other premises at the sole cost and expense of Licensee. Licensee has no claim, and hereby disavows any claims whatsoever, for damages against the City or any of its officers, officials, employees, or agents, on account of the matters stated in this Section 10 or elsewhere in this Agreement.

SECTION 11. GENERAL MATTERS

- A. Licensee must comply with the Illinois Underground Utility Facilities Damage Prevention Act, as it is amended from time to time.
- B. Licensee at all times must comply with all applicable federal and State of Illinois laws, rules, and regulations and all City codes and ordinances.
- C. Any failure of Licensee to comply with any provision or condition of this Agreement will not be excused and will be grounds for the City to terminate this Agreement.
- D. Licensee acknowledges that it has carefully read the provisions and conditions of this Agreement and that it is willing to, and does, accept all risks of the meaning of the provisions and conditions of this Agreement.
- E. Licensee hereby warrants and represents to the City that: (1) it has the right, power, and authority to enter into this Agreement and to accept the License; (2) the individuals executing this Agreement on behalf of Licensee have the power and authority to bind Licensee to this Agreement; and (3) neither the signing of this Agreement nor the performance of the obligations contemplated in this Agreement will result in a breach or default under any agreement to which Licensee is a party nor will violate any restriction, court order, or agreement to which it is subject.
- F. Nothing contained in this Agreement may be construed to exempt Licensee from any tax levy or assessment which is or may be hereafter lawfully imposed.
- G. Any amendment of this Agreement must be made in writing and signed by both the City and Licensee.
- H. This Agreement cannot, and will not, be assigned or transferred, except only to a subsidiary or affiliate of Licensee after notice and consent of the City, which consent will not be unreasonable withheld.
- I. The Franchise Agreement shall be construed, governed and enforced according to the laws of the State of Illinois and any action to enforce this Franchise Agreement must be brought in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois. In the event litigation must commence to enforce a party's right hereunder, including any action for declaratory judgment, the prevailing party in any such litigation shall be entitled to recover its costs in bring such suit, to the fullest extent provided for by law, including reasonable attorney's fees.
- J. This Agreement constitutes the entire understanding between the parties.
- K. Nothing in this Agreement may be interpreted, applied, deemed, or construed to permit Licensee to provide any services to locations or businesses in, or residents of, the City. If Licensee desires to provide any services within the corporate limits of the City, then Licensee must first obtain all necessary permits, licenses, and other approvals required by the City.

SECTION 12. AGREEMENT NONEXCLUSIVE

Nothing in this Agreement may be interpreted, applied, deemed or construed to impede or prohibit the City from entering into any other agreements with any other entities regarding ROW or other City property, including without limitation agreements with entities similar to Licensee. The provisions of this Agreement and the License are not intended to, and do not, limit or modify any agreement, franchise, license, or permit previously granted by the City to any other entity regarding ROW or any other property. Therefore, Licensee acknowledges and declares that Licensee must, and will, exercise the provisions of this Agreement in a manner that will not interfere with the prior or future rights of other entities and that will not endanger or impair any facilities of other entities. The City agrees that it will require other entities to respect, in like manner, the authority given to Licensee in the provisions of this Agreement.

SECTION 13. SEVERABILITY

If any provision of this Agreement is for any reason held to be illegal or invalid, then the illegality or invalidity will not affect any other provision of this Agreement.

SECTION 14. NOTICE AND MAILING OF ADDRESSES

Except and otherwise specified in this Agreement, all notices, requests, and other communications (a "Notice") must be in writing, and will be deemed properly served (A) if the Notice is hand-delivered to the party at the following address and will be in effect upon delivery or (B) if the Notice is sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the following address:

If to City:

City of Wood Dale
Public Works Department
790 N Central Avenue
Wood Dale, IL 60191

with a copy to:

Bond, Dickson & Conway
400 Knoll Street, Suite C
Wheaton, IL 60187

If to Licensee:

Name

Address

or to another addresses a party may designate by written notice to the other party, so long as the written notice is given in accordance with this Section 13.

SECTION 15. FORCE MAJEURE

Neither the City nor Licensee will be liable for any failure to deliver or perform or for delay in delivery or performance due to a cause beyond its reasonable control, including without limit a natural disaster, an action of a governmental authority other than the City, a flood, a fire, a war or civil disturbance, a serious transportation or telecommunications problems not caused or contributed to by the other party, or any act of God. These circumstances do not apply to normal, usual, and non-catastrophic weather conditions experienced in the Metropolitan Chicago area.

SECTION 16. LICENSEE CERTIFICATIONS

As of the Effective Date, Licensee warrants to and executes the Certifications attached to this Agreement. Licensee and the City agreed that those Certifications are material to this Agreement and any change in Licensee's representations with respect to the Certifications will constitute a breach of this Agreement.

IN WITNESS WHEREOF, the City and Licensee have caused this Agreement to be signed in duplicate originals, each signed copy constituting an original, by its respective officers and attested, all as of the day and date first hereinabove set forth.

SIGNATURE PAGE

CITY OF WOOD DALE

Name, Title

Date

COMPANY

Name, Title

Date