CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF JOSHUA, TEXAS, AND PATHWAY COM-TEL, INC.

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF JOSHUA, TEXAS, AND PATHWAY COM-TEL, INC. ("Agreement"), is entered into as of this *14th* day of *March*, 2023, by and between the **CITY OF JOSHUA, TEXAS**, a home-rule municipality of the State of Texas ("the City"), and **PATHWAY COM-TEL, INC.**, a Texas company ("the Company"). Collectively, the City and the Company may be referred to as "Parties" and individually as a "Party," acting by and through their respective authorized officers.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City of Joshua; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City may enter into an agreement with any entity for administration of an economic development program; and

WHEREAS, the City agrees and acknowledges that the provision of fiber and broadband services to its residents serves an economic development purpose under both state and federal law, and is in the public interest and the Company acknowledges same; and

WHEREAS, the Company wishes to construct and install fiber in the Mountain Valley subdivision in the City (the "Project"), thereby allowing Mountain Valley residents reliable Internet access and services not currently available; and

WHEREAS, the Company will construct, install and pay for all costs associated with the Project, and in exchange, the City will provide a one-time Grant to the Company in the amount of $125,000.00 ("Grant"), subject to the terms of this Agreement; and

WHEREAS, for and in consideration of the City's approval and Grant, the Company, and its successors and assigns, will commence and diligently pursue the completion of the Project, beginning construction no later than *April 17th 2023*.

NOW, THEREFORE, for and in consideration of the terms, conditions and covenants set forth herein, the Parties agree as follows:

1. Scope of Project.

(a) In consideration for the Grant from the City, the Company agrees to construct and install Internet fiber in the Mountain Valley subdivision in the City, at the locations generally reflected on Exhibit A, attached hereto and incorporated by reference.

(b)   Construction of the Project shall begin no later than _Apr. 17ᵗʰ 2023_ and such construction plans shall be subject to City approval.

(c)   The failure of the Company to commence construction by the date above shall constitute a default under this Agreement.

2.   **Obligation of the City.** Upon execution of this Agreement by the Parties, the City shall pay the Company the Grant of $125,000.00 for the Project.

3.   **Default.** Each of the following shall constitute an Event of Default under this Agreement:

(a).   The Company fails to commence the Project by _May 17ᵗʰ 2023_.

(b).   The Company ceases operations in the City at any time during the Project prior to its completion of the Project.

(c)   Any warranty, representation or statement made or furnished to the City by or on behalf of the Company under this Agreement or any document(s) related hereto is/are false or misleading in any material respect, either now or at the time made or furnished, and the Company fails to cure same within ninety (90) days after written notice from the City describing the violation, or if such violation cannot be cured within such 90-day period in the exercise of all due diligence, then if the Company fails to commence such cure within such 90-day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the Company learns that any such warranty, representation or statement has become false or misleading at the time that it was made, and the Company fails to provide written notice to the City of the false and misleading nature of such warranty, representation or statement within ten (10) days after the Company learns of its false or misleading nature.

(d)   Prior to the completion of the Project, the dissolution or termination of the Company's existence as a going business, the Company's insolvency, appointment of a receiver for the Company, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, any type of creditor workout for the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

4.   **Effect of Default by the Company**. If any Event of Default by the Company shall occur, and after the Company fails to cure same in accordance herewith, the Grant described herein shall be due and owing to the City. If an Event of Default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

5.   **Construction of Agreement; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of

the parties created hereunder are performable in Johnson County, Texas. Venue for any action arising under this Agreement shall lie in Johnson County, Texas.

6. **Notices**. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City:	City of Joshua, Texas 101 S. Main Street Joshua, Texas 76058 Att'n: City Manager's Office
If to the Company:	Pathway Com-Tel, Inc. P.O. Box 1298 Joshua, Texas 76058 Att'n: Ray Bussell, General Manager

7. **Attorney's Fees to Prevailing Party**. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

8. **Entire Agreement; Binding Effect of Agreement**. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

9. **Invalidation**. Invalidation of any one of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

10. **Facsimile**. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

11. **Severability**. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

12. **Authority to Execute Agreement**. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company

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warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind the Company to same.

13. **Non-Binding Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

14. **Sovereign Immunity.** The Parties agree that the City has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

15. **Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

16. **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

17. **Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party.

18. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

19. **Compliance with Chapter 2264, Texas Government Code.** The Company certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Company, or its successors, heirs, assigns, grantees, trustees, representatives, and all others holding any interest in the Property now or in the future, is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the City notifies the Company of the violation.

20. Filing of Form 1295 Certificate. The Company agrees to comply with Texas Government Code Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

21. Non-Boycott of Israel Provision. In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless the Company is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of the Company verifies that the Company does not boycott Israel and will not boycott Israel during the Term of this Agreement.

22. Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that the Company is not on a list maintained by the State Comptroller's Office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

23. Report Agreement to Texas Comptroller's Office. The City covenants and agrees to report this Agreement to the Texas Comptroller's Office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

24. Verification Against Discrimination of Firearm or Ammunition Industries. Pursuant to Texas Government Code Chapter 2274 (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Company represents that (1) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Company will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

25. Verification Against Discrimination and Non-Boycott of Energy Companies. Pursuant to Texas Government Code Chapter 2274 (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless

otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not boycott energy companies; and (2) the Company will not boycott energy companies during the Term of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

THE CITY OF JOSHUA, TEXAS

_____

Scott Kimble, Mayor

ATTEST:

_____

Alice Holloway, City Secretary

PATHWAY COM-TEL, INC.

_____

Ray Bussell, General Manager

Exhibit A

(Fiber Installation Locations)