

## IRREVOCABLE LICENSE AGREEMENT

This Irrevocable License Agreement ("License") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2025, ("Effective Date") by and between the CITY OF KINGSPORT, ("Licensor"), and LMK Communications, LLC d/b/a SEGRA, ("Licensee").

### RECITALS:

WHEREAS, Licensor has undertaken a major public works project which in part includes the installation of a utility duct bank for the relocation of utilities along and in the area of Main Street, located in downtown Kingsport, Tennessee; and

WHEREAS, Licensee desires to extend its service offerings through the City of Kingsport which necessitates the installation of its fiber optic telecommunications infrastructure within Licensee's utility duct bank ("Duct Bank"); and

WHEREAS, as Licensor is currently in the process of relocating utilities within a utility duct bank, Licensor is in the best position to arrange for the installation of conduit necessary for the location of Licensee's fiber optic telecommunications infrastructure thereby avoiding the necessity of impeding its public works project or negatively impacting the ultimate aesthetic of the public works project; and

WHEREAS, Licensor and Licensee acknowledge and agree the arrangement between the parties as more fully set forth herein will be of mutual benefit to the parties and shall constitute the exchange of mutual consideration the sufficiency of which is deemed sufficient to bind the parties to the terms of this License.

NOW, THEREFORE, for valuable consideration exchanged between Licensee and Licensor, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### **Section 1. Grant of License**

Subject to the conditions and covenants of this License, Licensor grants an irrevocable license ("License") for the purposes of locating Licensee's fiber optic telecommunications infrastructure ("Licensee's Property") contained within conduit in Licensor's utility duct bank as more particularly shown in Exhibit A, attached and incorporated by this reference. No other use shall be permitted.

### **Section 2. Nonexclusive License**

Licensee's utilization of the Duct Bank shall be irrevocable and non-exclusive, though Licensee shall have exclusive use of the particular conduit within which Licensee's Property is located.

### **Section 3. Term of License and Condition Precedent**

**3.1** The term of this License shall commence on the Effective Date and shall continue for so long as Licensee is legally authorized to provide fiber optic telecommunications services.

**3.2** Should Licensee discontinue its use of Licensee's Property for a period of 12 months this License shall be deemed terminated by Licensee.

**3.3** Failure of Licensee to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this License is a default by Licensee, and if the Licensee fails to correct such

default within thirty (30) days after receipt of notice from Licensor to do so, Licensor may at its option cure the breach and invoice Licensee for its costs or pursue any legal remedies available to Licensor.

**3.4** In the event of termination pursuant to sections 3.2 or 3.3 herein Licensee shall, at its own cost and within thirty (30) days after the date of the date the License is deemed terminated, remove all of Licensee's Property from the Duct Bank restoring the same to suitable condition for further use. If Licensee fails to remove Licensee's Property and restore the Duct Bank as required herein, Licensor may remove the equipment and restore the Duct Bank for further use at the expense of Licensee, and Licensee agrees to pay to Licensor for such upon demand. Licensee's indemnity obligations set forth in Section 6 and Section 7 shall survive termination of the License.

#### **Section 4. Performing the Work, Repair and Maintenance**

**4.1** Licensor shall arrange for the installation of conduit, 4" in diameter within the Duct Bank as well as necessary pull boxes within the area and in accordance with the plans attached as Exhibit A to suit Licensee's needs. Licensee shall provide the necessary pull boxes and shall reimburse City for all costs associated with the installation described in this paragraph 4.1 for which Licensor shall submit to Licensee invoices reflecting the costs incurred by Licensor for installation of the same. Licensee shall remit payment reflected on the invoices within 30 days of its receipt thereof.

**4.2** The Parties acknowledge and agree the conduit and pull boxes will be installed by Licensor's contractor and that Licensor is providing the same without warranty, guarantee, or assurance the installation will meet the particular needs of Licensee.

**4.3** Licensee shall be responsible for the installation of Licensee's Property within the conduit

**4.4** Licensee shall be responsible for all maintenance and upkeep of Licensee's Property as well as the conduit within which Licensee's Property is contained. Licensee shall fully pay for all materials joined or affixed to the Property, and shall pay in full all persons who perform labor on Property. As Licensor is a public entity, its Property is not subject to mechanics' or materialmen's liens, and nothing in this License shall be construed to make the Property subject to such liens. In the event any such liens are filed, Licensee shall immediately remove them at Licensee's own expense, and shall pay any judgment which may be entered. Should Licensee fail, neglect, or refuse to do so, after forty-eight (48) hours prior notice to Licensor, Licensor shall have the right to pay any amount required to release any such liens, or to defend any action brought, and to pay any judgment entered. Licensee shall be liable to Licensor for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment.

**4.5** Licensee agrees to provide Licensor ten (10) calendar days of written notice prior to commencement of any maintenance work, except for emergency repairs, in which event Licensee shall notify Licensor's day to day contact in Section 8.2 by telephone. Licensee agrees to keep Licensee's Property in good and safe condition, free from waste, so far as affected by Licensee's operations, to the reasonable satisfaction of Licensor.

**4.6** In the event Licensor has to make repairs or replace any portion of the Duct Bank due to damage resulting from the use by Licensee or Licensee's operations Licensee shall reimburse Licensor for costs associated therewith promptly upon demand.

#### **Section 5. Assumption of Risk**

Licensee shall assume all risk of damage to Licensee's Property and its use of the Duct Bank and to any other property of Licensee, or any property under the control or custody of Licensee in conjunction

with its use of the Duct Bank. Provided, however, such assumption by Licensee shall not include any damage caused by the sole negligence and/or willful misconduct of Licensor, its agents or employees. Licensee releases Licensor from any liability, including claims for damages or extra compensation, arising from construction delays due to Licensor's operations.

## **Section 6. Indemnity and Insurance**

**6.1** Licensee shall release, defend and indemnify Licensor, its successors and assigns and their directors, officers, employees, and agents (collectively, "Indemnitees") from and against all liability, cost, and expense for loss of, or damage to, property and for injuries to, or death of, any person when arising or resulting from the use of the Duct Bank by Licensee, its agents, employees, contractors, or subcontractors; or Licensee's breach of the provisions of this License. It is the express intent of the parties under this Section 6 that Licensee shall, to the maximum extent permitted by Tennessee law, indemnify and hold harmless the Indemnitees from any and all claims, suits, or actions arising from any cause whatsoever as set forth above, other than the sole negligence, willful misconduct, or criminal acts of the Indemnitees. Licensee waives any and all rights to any type of express or implied indemnity against the Indemnitees arising out of Licensee's use of or activities within the Duct Bank. This indemnity shall survive termination of this License. In the event any part or term of this Section 6 is found to be void or unenforceable, it is the intent of the parties that the remainder of the provision and this section shall remain in full force and effect.

**6.2** Prior to the performance of any maintenance, Licensee shall provide Licensor with satisfactory evidence, in the form of a Certificate of Insurance, that Licensee, its contractors or subcontractors, have in effect a policy(ies) of contractual and commercial general liability insurance, including public liability and broad form property damage, for not less than a Combined Single Limit for Bodily Injury (including death), Property Damage, and Personal Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such policy or policies shall name Licensor as an additional insured thereunder. All of such insurance shall insure the performance by Licensee of this indemnity agreement as to liability for injury to or death of persons and injury or damage to property. All of such insurance shall be primary and noncontributing with any insurance which may be carried by Licensor and shall contain a provision that Licensor, named or not named as an insured, shall nevertheless be entitled to recover under said policy for any loss, injury or damage to Licensor, its agents and employees or the property of such persons, by reason, in whole or in part, of the negligence of Licensee. Such policy(ies) shall waive any right of subrogation against Licensor. Such policy(ies) shall expressly provide that such policy(ies) shall not be canceled or altered without thirty (30) days prior written notice to Licensor. Licensor shall be named as an additional insured on all such policies.

**6.3** Licensee also shall provide Licensor with a certificate of insurance for each policy required under this License showing that the coverages required hereunder are in force with premiums paid and that such policies are non-cancellable and may not be materially modified except upon thirty (30) days prior notice to Licensor or, if such thirty (30) day period of notice is not obtainable on a commercially reasonable basis, upon such notice as is commercially reasonable.

**6.4** The endorsements and certificate(s) of insurance shall stipulate:

(a) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Licensee is liable for under this Section 6, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Licensor.

(b) The inclusion of the Licensor as an additional insured shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Licensee. Such policy(ies) shall protect Licensee and the Licensor in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's

liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

**6.5** All insurance provided for in this Section 6, and all renewals thereof, shall be issued by responsible insurance companies authorized to do business in the State of Tennessee. If any insurer which has issued a policy of insurance required pursuant to this License becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding, Licensee shall, in each instance, obtain a like policy issued by another insurer, which insurer and policy meet the requirements of this License.

### **Section 7. Compliance with Laws**

Licensee shall comply, at Licensee's expense, with all applicable laws, regulations, rules, and orders with respect to the use of the Duct Bank, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, hazardous materials, waste disposal, and water and air quality. Licensee shall furnish satisfactory evidence of such compliance upon request of Licensor.

### **Section 8. Notices**

**8.1** All notices required or permitted to be given under this License shall be in writing and sent either by U. S. mail postage prepaid, by personal delivery, by overnight courier, or by email to the appropriate address indicated below or at such other place or places as either Licensor or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served upon personal delivery or receipt by email that the email transmission has been received, such an automatic "read receipt", or four (4) days after the date of mailing, or one (1) day after delivery to an overnight courier.

To Licensee: LMK Communications, LLC d/b/a Segra  
120 W 12<sup>th</sup> Street, 11<sup>th</sup> Floor  
Kansas City, MO 64105  
Attn: Legal Department

To: Licensor:  
City of Kingsport  
Public Works Director  
415 Broad Street  
Kingsport, Tennessee 37660

With a copy to City of Kingsport, Tennessee  
Office of the City Attorney  
415 Broad Street  
Kingsport, Tennessee 37660

**8.2** Day-to-day communications to Licensor regarding this License should be directed to the Public Works Director or designee.

### **Section 9. Successors and Assigns**

The license granted herein may only be assigned to a corporate successor of Licensee. It may not be sold or sublet under any other circumstances without first obtaining the written consent of Licensor. Licensor may withhold its consent for any reason.

## **Section 10. No Waiver**

No waiver of any default or breach of any covenant of this License by either party shall be implied from any omission by either party to take action on account of such default, if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

## **Section 11. Partial Invalidity and Severability**

In the event that any provision or portion of this License is found to be invalid or unenforceable, then such provision or portion thereof will be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any of this License will not affect the validity or enforceability of any other provision or portion of the License.

## **Section 12. Governing Law**

The rights and liability of the parties under this License shall be interpreted in accordance with the laws of the State of Tennessee, excepting any conflict of law provisions which would serve to defeat application of State of Tennessee substantive law.

## **Section 13. Entire Agreement**

This License constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this License. Any modification of, or addition to, this License must be in a writing signed by both parties.

## **Section 14. Jurisdiction, Waiver of Jury Trial, Venue.**

**14.1** If a dispute arises between the parties concerning any aspect of this License, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts with jurisdiction in Kingsport, Sullivan County, Tennessee the jurisdiction and venue of the parties consent to waiving any and all objections.

**14.2** The parties waive their right to a jury trial.

## **Section 15. Construction of Agreement**

**15.1** The provisions in this License shall be construed and given effect in a manner that avoids any violation of statute, regulation, or law. Licensor and Licensee agree that in the event any provision in this License is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this License.

**15.2** Licensee and Licensor acknowledge that they have each contributed to the making of this License and that, in the event of a dispute over the interpretation of this License; the language of the License will not be construed against one party in favor of the other. This Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous

draft hereof.

**Section 16. Relationship**

The parties intend by this License to establish the relationship of licensor and licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee.

**Section 17. Captions**

The captions in this License are for convenience only and are not a part of this License. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.

IN WITNESS WHEREOF, the parties have executed this License by their duly authorized representatives.

**LMK Communications, LLC d/b/a Segra**

**City of Kingsport, Tennessee**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Paul W. Montgomery, Mayor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

**Attest:**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Angela Marshall, Deputy City Recorder**

**Approved as to form:**

\_\_\_\_\_  
**Rodney B. Rowlett, III, City Attorney**