

FRANCHISE AGREEMENT

This Franchise Agreement is entered into on this the ____ day of _____, 2025, by and between the City of Madison, Alabama (hereinafter referred to as the “City”) and Fiber Utility Network, Inc. (d/b/a Alabama Fiber Network) (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, inside the City of Madison, Alabama, and to require the City’s consent before using such highways, streets, alleys, and public places;

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

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

WHEREAS the City and the Franchisee desire to outline the terms of the franchise.

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

W I T N E S S E T H :

The City and the Franchisee do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

- (a) “City” means the City of Madison, Alabama, a municipal corporation.
- (b) “City Council” means the City Council of the City of Madison, Alabama.

(c) “Gross Receipts” means all revenues (exclusive of sales tax) received by the Franchisee from (a) the operation of the System within the corporate limits of the City, and (b) any related services provided by the Franchisee within the corporate limits of the City, including but not limited to: (i) all revenues from installation charges for customers within the City, (ii) all revenues from connection or disconnection fees from customers within the City, (iii) all revenues from penalties or charges to customers in the City for checks returned from banks, net of costs paid, and penalties, interest or charges for late payment, (iv) all revenues from equipment sold or rented to customer upon customer premises within the City, (v) all revenues from authorized rental of conduit space within the City’s Rights-of-way, (vi) all revenues from authorized rentals of any portion of the Franchisee’s System, (vii) all other revenues collected by the Franchisee from business pursued within the City, recoveries of bad debts previously written off and revenues from

the sale or assignment of bad debts, and (viii) the value of any free services provided by the Franchisee to customers within the City. Revenue of any affiliate or subsidiary of the Franchisee shall be included in Gross Receipts to the extent that the treatment of the revenue as that of the affiliate or subsidiary would have the effect of evading the payment of fees required by this Agreement.

(d) “Mayor” means the Mayor of the City of Madison, Alabama, and his/her designee(s) (which may include representatives from one or more of the departments of the City).

(e) “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

(f) “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, or other public rights-of-way to the extent that the same would entitle the City and the Franchisee to use the same for the purpose of installing, operating, repairing and maintaining the System. The term shall not include any state or federal rights-of-way or any property owned or controlled by any person other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such governmental entity or person. The term shall also not include property owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of public utility facilities, such as City parks and/or City public works facilities.

(g) “System” shall mean the Franchisee’s fiber-based telecommunications system, including its fiber-optic transmission lines, as well as the system of conduit, pipes, transmission lines, handholes, manholes, repeaters, meters, equipment and all other facilities reasonably associated with and related to the operation of such telecommunications system, operated by the Franchisee within the corporate limits of the City in accordance with the terms and conditions contained in this Agreement.

(h) “Telecommunications” means the transmission, between or among points specified by the user, or information of the user’s choosing (e.g., data, video, and voice), without change in the form or content of the information as sent and received.

(i) “Telecommunication Service(s)” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

(j) “Franchise Fee” means the fee paid by the Franchisee to the City in exchange for the rights granted to the Franchisee under this Agreement.

(k) “City Engineer” means the head of the Engineering Department of the City of Madison, Alabama, and his/her designee(s).

SECTION 2. Grant of Franchise.

(a) The City hereby grants to the Franchisee the non-exclusive and limited right, consent, and franchise to construct, maintain, and operate the System within and along the Rights-of-way in the City of Madison, as set forth in more detail and subject to the limitations expressed herein.

(b) The Franchisee's non-exclusive right, consent, and franchise granted herein is expressly limited such that it shall be granted only along the Rights-of-way in the manner, scope and locations as approved by the Mayor (or his/her designee).

- i. Attached as **Exhibit 1** is the proposed initial location of the System that the Franchisee intends to submit to the Mayor for consideration. The Franchisee shall obtain the approval of the Mayor and City Engineer of the locations of all and any part of the System before constructing, expanding, or extending the System within the City pursuant to this Agreement.
- ii. Prior to construction or installation of the System, Franchisee shall submit to the City a properly completed Permit Application for Construction within City of Madison Right of Way (**Exhibit 3**), as well as an Application for Road or Lane Closure (**Exhibit 4**), as applicable.

(c) Unless otherwise approved by the City Engineer or as permitted by **Section 2(d)**, the Franchisee's System shall be placed below the surface (except for such markers as may be required or permitted by the City to demonstrate the location of the Franchisee's System, or to facilitate the connection of the same to any aerial poles pursuant to **Section 2(d)**), upon such conditions and pursuant to such rules and regulations as may be required by the Engineering Department of the City of Madison, Alabama and the City's Public Works Department.

(d) The Franchisee's System may be placed above the surface where it is located on or upon the poles of the electric utility board of the City of Huntsville ("Huntsville Utilities"), under such terms and conditions as may be agreed to by and between the Franchisee, the City, and Huntsville Utilities in a separate pole attachment agreement. However, this Agreement shall not be construed so as to extend to the Franchisee any right, consent, franchise, authorization, or permission to place any cables, wires, associated appliances, or other items of any kind upon the poles of the Huntsville Utilities, and any such authorization must be the subject of a separate pole attachment agreement. In the event of any irreconcilable conflict between such pole attachment agreement and this Agreement, as it relates to an issue concerning the poles of the Huntsville Utilities, the terms of any such pole attachment agreement shall govern.

(e) The right, consent, and franchise granted by this Agreement is for the sole and expressed purpose of operating a system for providing telecommunication or information services, including leasing of portions of Franchisee's System, to Franchisee's customer and community hub locations within the corporate limits of the City as may be authorized by the Alabama Public Service Commission or federal law. This Agreement shall not be construed so as to extend to the Franchisee any right, consent, franchise, authorization, or permission to operate a "cable system" within the City as defined under federal law, and as such this Agreement shall not be governed by

the restrictions and regulations governing franchises of “cable systems” found in Title 47, Chapter 5, Subchapter V-A, Part III of the *United States Code*.

(f) The City makes this Agreement without reducing its police powers and expressly reserves the right to adopt and enforce, now and hereafter, in addition to the provisions in this Agreement and all other existing laws, such additional laws, ordinances, and regulations as it may find necessary in the exercise of its police power to provide for the health, safety, or welfare of the City.

(h) The Franchisee’s use of the Rights-of-way authorized hereunder shall be subordinate in all matters to the City’s use and rights of the Rights-of-way.

(i) This Agreement does not convey any title, legal or equitable, to the Franchisee with respect to the Rights-of-way.

(j) This Agreement does not give the Franchisee any vested right in any part of the System’s particular location, and the Franchisee acknowledges and accepts at its own risk that the City may make use in the future of the Rights-of-way in which the Franchisee is located in a manner inconsistent with Franchisee’s use of the Rights-of-way, and that in such event the Franchisee will not be entitled to any compensation from the City.

SECTION 3. Compensation.

(a) As consideration for this Agreement, the Franchisee shall pay to the City as a Franchise Fee five percent (5%) of its Gross Receipts during each calendar year of operation under this Agreement. Such payments shall be made annually during each calendar year, within thirty (30) days of the close of each year.

(b) Each payment shall be signed by an official of Franchisee who shall certify to its accuracy, showing the basis for the computation and such other relevant facts as may be reasonably required by the City.

(c) The City shall have the right to, at its sole expense, inspect, and audit, upon reasonable written notice, at the Franchisee’s offices where such records are located, all relevant financial statements and financial records for the prior thirty-six (36) month period, in the form and manner as are reasonable prescribed by the City to verify compliance with the Franchise Fee or other payments requirements of this Agreement. At the direction of the City and in its sole discretion, the inspection and audit shall take place either at the Franchisee’s offices where such records are located or at a location within the corporate limits of the City to be designated by the City. If the City requires the records to be made available for inspection and audit at a location within the corporate limits of the City to be designated by the City, the Franchisee shall be responsible for the costs and expenses of producing the records in said location.

(d) If it is determined that the Franchisee has underpaid the Franchise Fee during any prior twelve (12) month period, then in addition to fully paying the owed sum, the Franchisee will (i) reimburse the City for all of its reasonable costs associated with such determination (including

but not limited to attorney fees and accountant fees), and (ii) pay interest on the underpayment at the rate of 10% per annum.

(e) In addition to the Franchise Fee, and in consideration for the permission to use and occupy City rights-of-way as provided in this Agreement, Franchisee shall install fiber communications lines as a part of its System to certain City locations, which are described in **Exhibit 2**, at no cost to the City and pursuant to all terms and conditions of this Agreement, as applicable. Franchisee shall install said lines to City locations prior to July 1, 2026. Franchisee shall provide favorable service rates to the City in amounts less than or equal to the rates charged to other community hubs and government sector subscribers. Service to City locations shall be included in Gross Receipts for purposes of calculating and paying franchise fees described in Section 3(a).

(f) No refund of any payment or reimbursement of costs under this **Section 3** shall be made upon the termination of this Agreement.

(g) The City and the Franchisee agree that the payments to be made to the City pursuant to this Agreement are not taxes and are not in the nature of a tax, but are in addition to any and all taxes of general applicability or other fees or charges which the Franchisee shall be otherwise required to pay. The Franchisee shall not have any claim for any deduction or credit of all or any part of the amount of payments made pursuant to this Agreement on account of any taxes of general applicability or other fees or charges which the Franchisee is otherwise required to pay to the City. The payment of such compensation by the Franchisee in no way limits the right of the City to impose charges or fees with respect to any work that the Franchisee performs in connection with any construction project or other work in the City.

(h) No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the Agreement.

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

City of Madison
Attn: City Clerk
100 Hughes Road
Madison, AL 35758

Such remittances shall clearly identify or reference this Agreement.

SECTION 4. Duration and Term.

(a) The Agreement shall be for an initial term of ten (10) years (the "Initial Term"), commencing upon the later date of the date of publication of the franchise ordinance authorizing this Agreement, or the date of the execution of this Agreement by all of the parties hereto.

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event the Franchisee, at the sufferance of and without objection by the City, holds over beyond the term of this Agreement and continues to operate all or any part of the System or otherwise exercise any part of the rights granted hereunder, after the term of this Agreement, then the Franchisee shall continue to comply with and be subject to all provisions hereunder through the period of such holding over, provided that any such holding over shall not be viewed as a renewal or extension of this Agreement.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the Rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by granting this Agreement and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of the Rights-of-way by the Franchisee or any person or to charge reasonable compensation for such use, and the Franchisee, by its acceptance of this Agreement, agrees that all lawful powers and rights, regulatory power, police power, or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The City expressly reserves its right to make reasonable rules, regulations, and restrictions for the protection of persons and property related to the Rights-of-way. The Franchisee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 7. Bond.

(a) The Franchisee shall obtain and maintain, at its sole cost and expense, during the entire term of this Agreement and for one (1) year after the expiration or termination of this Agreement, a corporate surety bond(s) in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00).

(b) Said bond(s) shall be obtained and maintained to secure the faithful performance of the Franchisee of all of its obligations provided under this Agreement. This bond requirement will supersede and replace any additional bond obligations required in Exhibit 3, unless otherwise determined by the City Engineer.

(c) The Franchisee shall file such bond(s) with the City Clerk on or before the date that this Agreement is executed by all of the parties thereto and/or any renewal thereof. The failure by the Franchisee to do so shall constitute a violation of this Agreement.

(d) The bond(s) shall provide for and be subject to the following conditions:

(i) There shall be recoverable by the City, jointly and severally from the principal and surety, any and all fines, penalties, damages, charges, obligations, fees or other amounts due to the City from the Franchisee under the terms of this Agreement and any and all damages, losses, costs, and expenses suffered, including reasonable attorney fees, incurred by the City or resulting from the failure of the Franchisee to: faithfully comply with the provisions of the Agreement; comply with all applicable orders, permits and directives of the City; and/or pay any claims, liens or taxes due to the City which arise from or by reason of the construction, operation, maintenance and/or repair of the System.

(ii) The total amount of the bond(s), shall be forfeited in favor of the City in the event that (a) the Franchisee abandons the System at any time during the term of the Franchise Agreement or renewal thereof or ceases operation of the System for a period in excess of six (6) months; (b) the Franchisee does not remove the System upon the expiration or termination of the Agreement pursuant to **Section 19** of the same; and/or (c) the Franchisee assigns the franchise granted herein without the express prior written consent of the City.

(e) The bond(s) required herein shall be in a form that is reasonably satisfactory to the City. The corporate surety bond shall require thirty (30) days written notice of any non-renewal, alteration, or cancellation to both the City and the Franchisee. The 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 the Franchisee of any notice of cancellation. Failure to do so shall constitute a violation of this Agreement.

(f) The City may draw against the Franchisee's bond(s) for any unpaid damages, charges, obligations, fees, or other amounts owing to it as provided herein which are thirty (30) or more days past due, and upon doing so, shall provide the Franchisee with written notice of the same.

(g) The bond(s) 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 this Agreement 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 Agreement. If the bond(s) is/are drawn-down for any reason, the bond(s) shall be renewed by the Franchisee within thirty (30) days to the amounts required herein and the failure to do so by the Franchisee shall constitute a violation of this Agreement.

SECTION 8. Standards of Service.

(a) Compliance with Local Ordinances. With respect to all of its activities and operations within the corporate limits of the City, Franchisee shall comply with any and all municipal codes, standards, ordinances, and laws of the City, as they now exist or are hereafter enacted or amended, expressly including but not limited to those concerning the use of the Rights-of-way, as they now exist or may hereafter be amended.

(b) Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Franchisee pursuant to this Agreement shall be located so as to cause the least and minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way.

(c) Excavation and Installation. Prior to any excavation within the Rights-of-way (or any disturbance of any pavement, sidewalk, or other improvement of any street, avenue, alley, or other public place), the Franchisee shall obtain permission from the City Engineer pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-ways due to the Franchisee's installation, removal, relocation, maintenance, and repair of its System or facilities shall be accomplished to the satisfaction of the City.

Any opening or obstruction in the Rights of way made by the Franchisee during the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which during periods of dusk and darkness shall be clearly and visibly located. In any case where a Right-of-way is being excavated, disturbed or encumbered by Franchisee (and/or its contractors, subcontractors, vendors, and others performing services or work on the Franchisee's behalf in connection with this Agreement), the same 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.

(d) Restoration of Rights-of-way. If during the course of the Franchisee's construction, operation or maintenance of the System there occurs a disturbance of any Rights-of-way or infrastructure located therein by the Franchisee, it shall, at its expense, replace and restore such Rights-of-way and infrastructure to a condition as good as the condition of the Rights-of-way existing immediately prior to such disturbance to the reasonable satisfaction of the City Engineer. The Franchisee shall perform the work according to the standards and with the materials specified or approved by the City Engineer. Such restoration shall be accomplished within 48 hours after the completion of the Franchisee's work. Upon failure of the Franchisee to make such restoration within such time, if the restoration cannot be made within such time, or to begin the restoration within such time, or upon the Franchisee's delay of more than 24 hours in the continuation of a restoration begun, the City Engineer may serve upon the Franchisee notice of the City's intent to cause the restoration to be made in the Franchisee's stead. Unless the Franchisee begins or resumes the proper restoration within 24 hours after receipt of such notice, the City shall cause the disturbed area to be restored, including the removal of excess dirt, and the expense of the same shall be borne by the Franchisee upon the demand of the City.

(e) Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any part of the System or the Franchisee's property when required by the City (including but not limited to by reason of traffic conditions; public safety; street abandonment; freeway and street construction; change or establishment of

street grade; widening of roadways; construction or maintenance of sidewalks; construction or maintenance of public works; and installation of sewers, drains, gas or water pipes, electrical or telecommunications lines). Should the Franchisee refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the actual cost thereof shall be chargeable to the Franchisee. Notwithstanding the foregoing, in cases of emergency (as determined in the reasonable discretion of the City Engineer), the City may remove, relocate, replace, or renew any part of the System placed in the Rights-of-way, and the Franchisee shall on demand, reimburse the City for the actual expenses thereby incurred. City shall present invoices or other appropriate documentation of labor and materials used in said relocation to substantiate requests for reimbursement.

(f) Trimming of Trees and Shrubbery. Trimming of trees and shrubbery within the Rights-of-way by the Franchisee to prevent contact with the System shall be done only upon the approval of the City Engineer, and upon such standards as City Engineer may direct. The Franchisee shall compensate the City for any damages, in such amounts as determined by the City Engineer, 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 Engineer.

(g) Safety and Permit Requirements. Construction, installation, repair, and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in compliance with applicable federal, state, and local laws, rules, and regulations, including all permit requirements, licensing requirements, and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

(h) Minimum Standards. All of the construction by the Franchisee shall conform, at a minimum, to the minimum standards of the Franchisee and City. In the event there is a conflict between the standards adopted by the Franchisee and any applicable federal, state, or local standards, including ordinances, forms, or applications of the City, the stricter standard shall apply.

(i) Obstructions of Rights-of-Way. Except in the case of an emergency or with the approval of the City Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when weather conditions are unreasonable for such work. The Franchisee shall not so obstruct the Rights-of-way so as to interfere with the natural, free, and clear passage of water through the gutters, drains, ditches or other waterways.

(j) Safety Requirements.

(i) The Franchisee shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(ii) The Franchisee shall install and maintain the System in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

(iii) All of the Franchisee's structures and all lines, equipment, and connections in, over, under and upon the Rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

(iv) The Franchisee shall maintain a force of employees at all times sufficient to provide safe, adequate, and prompt service for the System.

(k) Least Disruptive Technology. The Franchisee is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the Rights-of-way. The Franchisee will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Engineer. The City Engineer may reasonably require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Franchisee may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

(l) Payment of Costs. The Franchisee shall be responsible for all costs associated with the installation, repair, and maintenance of the System and all associated equipment including, but not limited to (i) the reasonable costs to repair the Rights-of-way due to the installation, repair and maintenance of the System, and (ii) the reasonable costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

(m) Responsibility for Damages. The Franchisee shall exercise precautions to avoid damage to any and all other facilities of the City and others located in the Rights-of-way, and hereby assumes all responsibility for any and all loss for such damages caused by the Franchisee (and/or its contractors, subcontractors, vendors, and others performing services or work on the Franchisee's behalf in connection with this Agreement). The Franchisee shall make an immediate report to the City Engineer of the occurrence of any damages and hereby agrees to reimburse the City (and such others) for any and all reasonable expenses incurred in making repairs.

(n) Reports. Franchisee shall cooperate with the City with respect to the administration of this Agreement. Franchisee shall furnish or make available to the City upon request, at no cost of the City, such records, information, and reports as may be reasonably necessary, as determined by the City, for the City's administration of this Agreement.

(o) Others Performing Work for Franchisee. The requirements set forth in this Agreement concerning the work performed by the Franchisee in connection with this Agreement equally apply to any and all of Franchisee's contractors, subcontractors, vendors, and others performing services or work on the Franchisee's behalf. The Franchisee shall be fully responsible for all such activities performed by its contractors, subcontractors, vendors, and others performing services or work on the Franchisee's behalf in connection with this Agreement, and the Franchisee must ensure that all of the same abide by and adhere to the same provisions of this Agreement that

would otherwise apply to Franchisee if Franchisee was performing the services or work. Any failure to do so will constitute a breach/violation of the terms of this Agreement to the same extent and as if Franchisee had directly caused such breach itself.

SECTION 9. Enforcement and Termination of Agreement.

(a) Notice of Violation. In the event the Franchisee has not complied with any of the terms of this Agreement, the City shall notify the Franchisee in writing of the nature of the alleged breach.

(b) Right to Cure or Respond. The Franchisee shall have 30 days from receipt of the notice described in **Section 9(a)**: (a) to respond to the City by contesting the assertion of breach, (b) to cure such breach, or (c) in the event that, by the nature of breach, such breach cannot, for reasons beyond the control of the Franchisee, be cured within the 30-day period, initiate reasonable steps to remedy such breach and notify the City of the steps being taken and the projected date that they will be completed.

(c) Enforcement. Should the City find, in its reasonable discretion, that the Franchisee has failed to appropriately cure or remedy its breach with the terms of this Agreement, then the City may hold the Franchisee in material default of this Agreement and (i) terminate the Agreement and/or (ii) pursue remedies as the City deems appropriate, including but not limited to, any of the following remedies:

- (i) Seek specific performance of any provision which reasonably lends itself to such a remedy;
- (ii) Make a claim against any surety or performance bond which may be required to be posted;
- (iii) Restrain by injunction the default or reasonably anticipated default by the Franchisee of any provision of this Agreement; and/or
- (iv) Seek any other available remedy permitted by law or in equity.

(d) Impossibility of Performance. The Franchisee shall not be held in breach with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

(e) Attorney Fees. Unless prohibited by applicable law, the City shall be entitled to enforce this Agreement through all remedies lawfully available, and Franchisee shall pay the City's costs of enforcement, including reasonable attorney fees, in the event that Franchisee is determined judicially to have violated the provisions of this Agreement.

(f) Remaining Obligations After Termination. Upon termination or expiration of this Agreement, all rights and obligations between the parties created by this Agreement shall cease,

except for (i) the obligation to pay outstanding fees and other amounts to the City; (ii) the obligation to maintain security until released by the City or otherwise in accordance with this Agreement and **Section 7** hereof; (iii) the defense, release, and indemnification obligations as set forth in this Agreement; (iv) the provisions regarding the removal of the System in **Section 19** hereof; and (v) such other provisions in this Agreement which expressly provide for survival beyond the term of this Agreement.

SECTION 10. Default. A breach of this Agreement by the Franchisee shall include, but not be limited to the following:

- (1) The occurrence of any event relating to the financial status of the Franchisee which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Franchisee;
- (2) The condemnation by a public authority, other than the City, or sale, or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (3) If (a) the Franchisee shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Franchisee's property or assets; (c) any creditor of the Franchisee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Franchisee or for any material parts of the property or assets of the Franchisee under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.
- (4) A failure to construct and begin operation of the System on or before **July 1, 2026**.
- (5) A failure to operate the System for a period of six (6) months.

(6) The Franchisee assigns the franchise granted herein without the express prior written consent of the City.

SECTION 11. Insurance. The Franchisee shall maintain in full force and effect, at its own cost and expense, the insurance set forth in **Exhibit 5**, attached hereto and incorporated herein. The Franchisee shall provide the City with certificates of insurance showing compliance with these requirements (including the required designation of additional insureds, where required).

SECTION 12. Indemnity and Hold Harmless. The Franchisee agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which (i) arise from or are related to the alleged acts or omissions of the Franchisee, its employees, agents, or subcontractors, or (ii) arise from or are related to the construction, operation, maintenance, upgrade, repair or removal of the System, or (iii) arise from or relate to this Agreement. The City does not and shall not waive any rights against the Franchisee which it may have by reason of this indemnification, or because of the acceptance by, or the Franchisee's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Franchisee shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

The City shall not be liable to the Franchisee for any interruption to service of the Franchisee or for any interference, however caused, with the operation of the Franchisee's System, arising in any manner out of the Franchisee's use of the Rights-of-way in the City, including but not limited to any effects undesirable to the Franchisee which the presence, breakdown, operation, maintenance, alteration of, or additions to, the lines, pipes, and/or other facilities of the City may have upon the attachments or the transmission of the Franchisee, even if the cause of such effects may be attributable to negligence (including, without being limited to, the City's contributory negligence, concurring negligence, active negligence and passive negligence) on the part of the City or its agents.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular easement or right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee. 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 its streets.

SECTION 14. Warranties and Representations. The Franchisee hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Franchisee further agrees, represents and warrants that this Agreement is legal, valid and binding.

SECTION 15. Other Obligations. Obtaining this Agreement does not relieve the Franchisee of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the

Franchisee is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 16. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-way by the Franchisee or any present or future franchisees or 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 public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 17. Notice. Every notice or response required by this Agreement to be served upon the City or the Franchisee shall be in writing and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed to all of the following:

City of Madison
Attn: Mayor
100 Hughes Road
Madison, AL 35758

City of Madison
Attn: City Clerk
100 Hughes Road
Madison, AL 35758

City of Madison
Attn: City Engineer
100 Hughes Road
Madison, AL 35758

City of Madison
Attn: City Attorney
100 Hughes Road
Madison, AL 35758

The notices or responses to the Franchisee shall be addressed as follows:

Alabama Fiber Network
103 Jesse Samuel Hunt Blvd., Suite 203
Prattville, Alabama 36066

The City and the Franchisee may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 18. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas hereafter annexed by the City.

SECTION 19. Removal of System Upon Termination. Upon the expiration or termination of this Agreement, the Franchisee shall remove such portions of the System, at its own expense, pursuant to the same restrictions and provisions herein that governed their installation. If not so removed within one-hundred eighty (180) days of such termination, the System shall be deemed to be worthless and to be abandoned/forfeited to the City, in which case it may be removed or otherwise disposed of by the City, at the expense of the Franchisee, and the City shall be free from any liability for removing or disposing of the same.

SECTION 20. Waiver. Failure to enforce or insist upon compliance with any of the terms of conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

SECTION 21. Publication. The ordinance approving this Agreement shall be published in accordance with the applicable provision of Ala. Code § 11-45-8 (1975). Such publication shall be done by the City Clerk of the City, and the expense of such publication shall be paid by the Franchisee.

SECTION 22. Assignment.

(a) The Franchisee's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the approval and written consent of the City, which said consent shall not be unreasonably withheld.

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

SECTION 23. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 24. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule

of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 25. Governing Law / Venue. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. For any action concerning this Agreement, venue in Alabama state courts shall be in Madison County, Alabama, and in Alabama federal courts, shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

SECTION 26. Severability Clause. If any part, section or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

SECTION 27. Entire Agreement. This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

SECTION 28. Relationship of the Parties. It is understood and agreed that the relationship of the parties hereto shall not be construed as a joint venture or partnership. Franchisee is not and shall not be deemed to be an agent or a representative of the City. The City is not and shall not be deemed to be an agent or representative of Franchisee.

SECTION 29. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement. Copies shall have the same effect as the original execution(s).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the dates hereafter set forth but effective as of _____, 2025.

FRANCHISEE

FIBER UTILITY NETWORK, INC. (D/B/A ALABAMA FIBER NETWORK)

BY: _____

Its: _____

Date: _____

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ whose name as _____ of Fiber Utility Network, Inc. (d/b/a Alabama Fiber Network), an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this _____ day of _____, 2025.

Notary Public

My Commission Expires: _____

CITY
CITY OF MADISON, ALABAMA

BY: _____
Its Mayor

ATTEST:

CITY CLERK-TREASURER

STATE OF ALABAMA	§
	§
COUNTY OF MADISON	§

I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer of the City of Madison, Alabama, respectively, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation, on the day the same bears date.

Given under my hand and official seal this _____ day of _____ 2025.

Notary Public

EXHIBIT 1 **Proposed Initial Location**

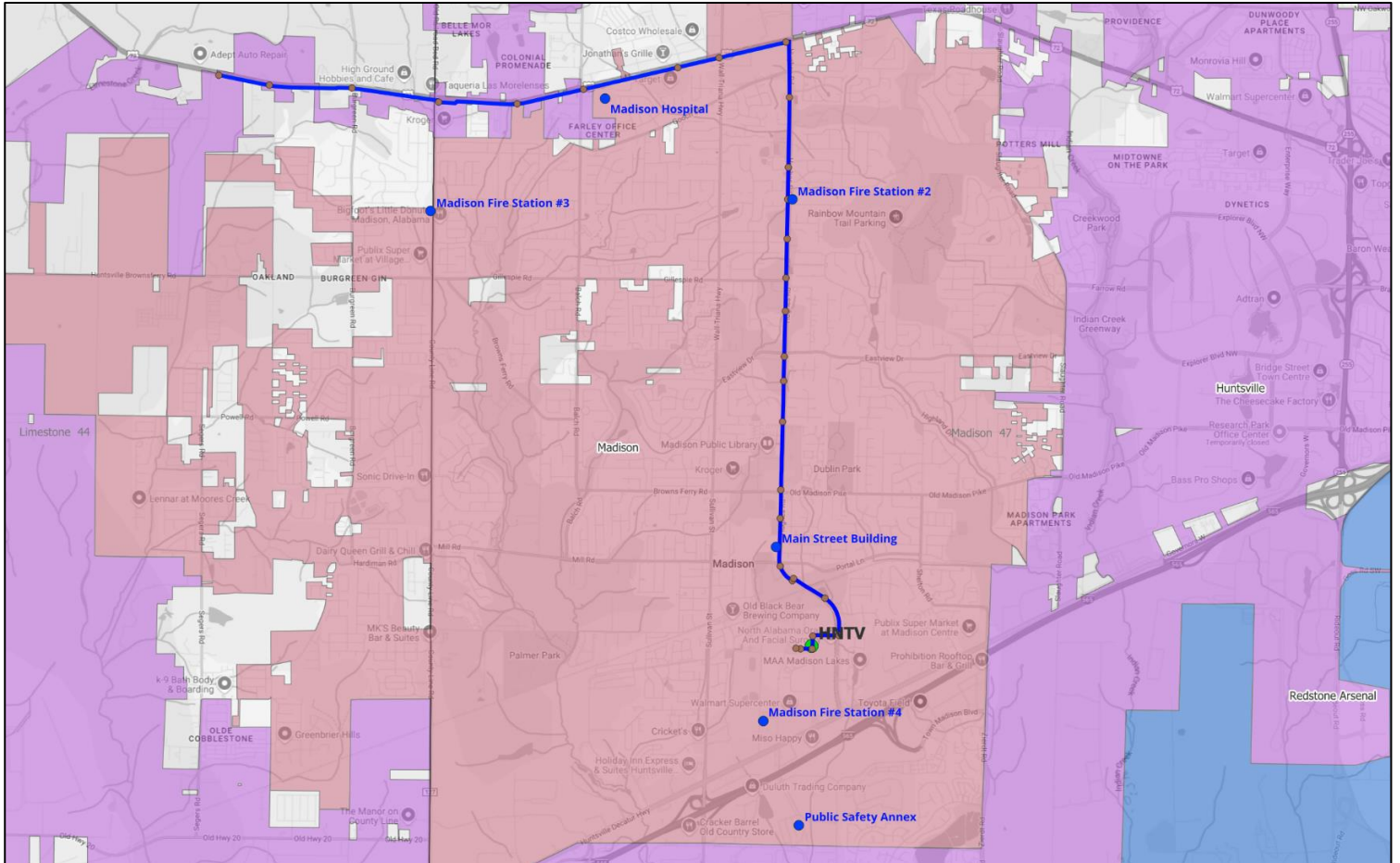


EXHIBIT 2
Madison Locations

- 1. Public Safety Annex – 230 Business Park Ave.**
- 2. Fire Station #2 – 1227 Hughes Road**
- 3. Fire Station #3 – 12266 County Line Road**
- 4. Fire Station #4 – 400 Celtic Drive**
- 5. Main Street Building – 101 Main Street**
- 6. Madison Hospital – 8375 Hwy 72 West**

EXHIBIT 3
City Right of Way Permit

[SEE SEPARATE ATTACHMENT]

EXHIBIT 4
City Road or Lane Closure Application

[SEE SEPARATE ATTACHMENT]

Exhibit 5 – Insurance Requirements

A. Franchisee shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Franchisee, or Franchisee's employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident. Coverage shall be written on Insurance Services Office (ISO) form or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$1,000,000.00 each occurrence for bodily injury and property damage and, \$2,000,000.00 general aggregate including \$2,000,000.00 products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City, as well as its officers, employees and agents, shall be included as additional insureds as their interest may appear under this Franchise under the Franchisee's Commercial General Liability insurance policy with respect to the work performed under this Franchise using ISO Additional Insured Endorsements or substitute endorsements providing equivalent coverage.

3. Professional Liability insurance with limits \$1,000,000.00 per claim and aggregate covering the negligent actions of the Franchisee in the performance of professional services under this Franchise.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Alabama and Employer's Liability with a limit of \$1,000,000.00 each accident/disease/policy limit.

B. Upon receipt of notice from its insurer(s) the Franchisee shall provide the City with thirty (30) days' prior written notice of Cancellation.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

D. Verification of Coverage. Franchisee shall furnish the City with certificate of insurance and blanket additional insured endorsements evidencing the insurance requirements of Franchisee.

E. Franchisee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.