

# **Right of Way Access Agreement**

Between the City of Mangum

and

*Dobson Technologies, Inc.*

THIS IS AN AGREEMENT, made as of the date of the last signature of the parties, between the CITY of Mangum, a Municipal Corporation in the State of Oklahoma (hereinafter called CITY), and Dobson Technologies, Inc. dba Dobson Fiber (hereinafter called DOBSON). CITY agrees to permit DOBSON to have non-exclusive access to public right of way over and under certain streets, alleys, easements, and public rights-of-way within the corporate limits of the CITY.

The CITY and DOBSON, in consideration of their mutual covenants herein, agree to the following:

**SECTION 1: Right of Way Access Requirements**

**1.1 Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by DOBSON pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. DOBSON shall comply with all right-of-way and easement management ordinances and/or regulations enacted by CITY, including such ordinances and/or regulations enacted after the effective date of this Agreement. It is expressly understood that this Agreement conveys no property interest of any kind in or to any public land, rights-of-way, or easements to DOBSON.

**1.2 Restoration of Public Ways.** If, during the course of DOBSON's construction, operation, or maintenance of the Cable System, there occurs a disturbance of any Public Way by DOBSON, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

**1.3 Relocation at Request of the CITY.** Upon its receipt of reasonable advance notice, DOBSON shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of DOBSON when lawfully required by CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by CITY; but DOBSON shall, in all cases, have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to DOBSON.

**1.4 Relocation at Request of Third Party.** DOBSON shall, at the request of any Person holding a building or other structure moving permit issued by CITY, temporarily raise or lower its wires to permit the moving of such building or other structure, provided: (a) the expense of such temporary raising or lowering of wires is paid by such Person, including, if required by DOBSON, making such payment in advance; and (b) DOBSON is given not fewer than ten (10) business days' advance written notice to arrange for such temporary wire changes.

**1.5 Trimming of Trees and Shrubbery.** DOBSON shall have the authority to trim trees or other natural growth overhanging any of its fiber internet system in the service area so as to prevent branches from coming in contact with DOBSON wires, cables, or other equipment.

**1.6 Safety Requirements.** Construction, installation, and maintenance of the fiber internet

system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Fiber Internet System shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

**1.7 Aerial and Underground Construction.** In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, DOBSON likewise shall construct, operate, and maintain all of its Fiber Internet facilities underground, provided that such facilities are actually capable of receiving DOBSON's Fiber Internet and other equipment without technical degradation. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, DOBSON shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Subsection 1.7 shall require DOBSON to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Subsection 1.7, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Agreement, DOBSON shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

**1.8 Pole Attachments.** Utility poles owned by CITY or an affiliated entity shall be available for use by DOBSON. DOBSON shall obtain permission from CITY for the use of poles owned by CITY or its affiliate. Additionally, CITY owned property may be available, including parks, water towers, and CITY owned poles.

**1.9 Notice of Construction.** DOBSON shall provide written notice to the CITY Engineer and Public Utilities Department and the CITY Planning Department not less than twenty (20) days prior to commencement of any routine construction, installation, or maintenance operation conducted in the public land, rights-of-way, or easements. If such routine construction, installation, or maintenance operation will interrupt, impede or restrict vehicular traffic, DOBSON shall provide advance public notice of same and shall provide on-site safeguard and traffic warnings. In emergency situations arising at other than regular business hours, notice of the work undertaken shall be given by DOBSON to the CITY Engineer and Public Utilities Department and the CITY Planning Department the following business day.

**1.10 Methods of Construction.**

The method of construction of said Fiber Internet facilities shall be subject to the approval of the CITY Engineer.

The Fiber Internet cable shall be constructed, repaired, renewed, and maintained by DOBSON at DOBSON's own cost and expense in a safe, proper, and workmanlike manner and at such times and in such a manner as not to prevent or interfere with the safe, proper, and convenient movement of traffic.

DOBSON shall backfill all trenches, fill all holes caused by shrinkage, remove all excess dirt, and leave the premises in a solid and safe condition. DOBSON shall restore all sodded areas to its original condition by placing slab sod on all disturbed areas and subject to the inspection and approval of the CITY Engineer. If DOBSON shall fail to make any repairs or do any work required of DOBSON by the provisions of this Agreement within ten (10) working days after receipt of written notice from the CITY calling attention thereto and requesting such repairs or work to be done, then the CITY shall have the right to make such repairs or do such work at the expense of DOBSON and DOBSON shall reimburse the CITY for cost and expense of such repairs or work promptly upon receipt of a bill thereof by the CITY to DOBSON.

All Fiber Internet cables installed which cross from one side of the public right-of-way to the other shall require permission from CITY to bore under the street. When openings are made adjacent to any street, alley, public way or easement, DOBSON shall, at its expense, furnish barricades, fences, lights, and danger signals and shall take all precautionary measures for the protection of the public.

No materials or equipment used in the construction of the work shall be placed so as to endanger the work or prevent free access to all water valves, gas valves, manholes, electric, and telephone in the vicinity. The CITY reserves the right to remedy any neglect, on the part of DOBSON as regards the protection of the work, at DOBSON's expense.

DOBSON shall place standard identification markers at points where the Fiber Internet cable intersects the CITY's right-of-way boundary. Said marker shall extend a minimum of thirty-six inches (36") above right-of-way surface.

DOBSON shall provide the CITY Engineer and Public Utilities Department and the CITY Planning Department with a set of record drawings of the cable facility which shall be reviewed for compliance with this Agreement and the CITY Code.

DOBSON will place no additional structures, encroachments, or improvements in or upon property without approval of the CITY Engineer.

DOBSON will restore grounds to their preexisting condition and restore infrastructure to CITY Code standards following excavation.

Once construction is completed, DOBSON will provide CITY with "as-built" plans documenting the work done and locations accessed.

**1.11 Termination of Fiber Internet Cable Usage.** DOBSON shall notify the CITY in writing upon the termination of said Fiber Internet cable(s) and the right-of-way shall be returned to substantially the same condition existing prior to the installation.

**1.12 Compliance with City Ordinances.** DOBSON agrees to comply with all ordinances now in force or hereafter enacted by CITY.

## **SECTION 2: Right of Way Access Fee, Rates and Charges, Conditions of Sale or Transfer**

**2.1 Right of Way Access Fee.** During the term of this Agreement, DOBSON shall pay to CITY a fee equal to five percent (5%) of the gross revenues that DOBSON and its affiliates collect from each Subscriber/customer to DOBSON's Fiber Internet services, including existing business and commercial Subscribers/customers. ("Right of Way Access Fee"). The Fee may be identified and

passed through on any Subscriber/customer bill by DOBSON, and all such fees collected will be forwarded to CITY quarterly and shall be due forty-five (45) days after the end of each calendar quarter.

- A. For purposes of this Agreement, gross revenues are limited to the following:
  - 1. recurring charges for Fiber Internet Services;
  - 2. service charges related to the provision of Fiber Internet Services, including, but not limited to, activation, installation, and repair;
  - 3. administrative charges related to the provision of Fiber Internet Services, including, but not limited to, service order and service termination charges; and
  - 4. amounts billed to Fiber Internet Service Subscribers/customers to recover the Right of Way Access Fee authorized by this section.
  
- B. For purposes of this Agreement, gross revenues do not include:
  - 1. uncollectible fees, provided that all or part of uncollectible fees which are written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
  - 2. late payment fees;
  - 3. revenues from contracts for in-home maintenance service, unless they relate solely to maintenance on equipment used only for the provisioning of Fiber Internet Services and not for the provisioning of any other service provided by DOBSON or its affiliates;
  - 4. amounts billed to Fiber Internet Services Subscribers/customers to recover taxes, fees, or surcharges imposed upon Fiber Internet Services Subscribers/customers in connection with the provision of Fiber Internet Services, other than the Fee authorized by this section;
  - 5. revenue from the sale of capital assets or surplus equipment; or
  - 6. charges, other than those described in subsection (A), that are aggregated or bundled with amounts billed to Fiber Internet Service Subscribers.
  
- C. Bundling discounts shall be apportioned fairly among internet and other services. DOBSON shall not apportion revenue in such a manner as to avoid the Right of Way Access Fee.
  
- D. DOBSON and CITY agree that the Right of Way Access Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, other permit fees, taxes, or assessments except sales taxes, personal or real property taxes, and act valorem taxes.
  
- E. The five percent (5%) of the gross revenues fee referenced above shall decrease to any lower rate that CITY agrees to charge any similarly situated telecom providers that are providing similar products to what DOBSON offers its customers.

**2.2 Rates and Charges.** CITY may not regulate the rates for the provision of Fiber Internet Service or other service, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as may be authorized pursuant to federal and state law. From time to time, and at any time, DOBSON has the right to modify its rates and charges, at its discretion and without consent of CITY, including, but not limited to, the implementation of additional charges and rates; provided, however, that DOBSON shall give notice to CITY of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

**2.3 Conditions of Sale.** DOBSON and CITY agree that in the case of a lawful termination of this Agreement, DOBSON shall be given a reasonable opportunity to effectuate a transfer of its fiber internet system to a qualified third party. CITY further agrees that during such period of time, it shall authorize DOBSON to continue to operate pursuant to the terms of this Agreement; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such termination. If, at the end of that time, DOBSON is unsuccessful in procuring a qualified transferee or assignee of its fiber internet system which is reasonably acceptable to CITY, DOBSON and CITY may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that DOBSON's continued operation of its fiber internet system during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either CITY or DOBSON. Notwithstanding anything to the contrary set forth in this Subsection 3.3, neither CITY nor DOBSON shall be required to violate federal or state law.

### **SECTION 3: Compliance and Monitoring**

**3. Books and Records.** DOBSON agrees that CITY may review such of DOBSON's books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the financial terms hereof. Such records include, but are not limited to, any public records required to be kept by DOBSON pursuant to the rules and regulations of the FCC, or any other governmental agency or body. Notwithstanding anything to the contrary set forth herein, DOBSON shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. CITY agrees to treat any information disclosed to it by DOBSON as confidential, to the extent not prohibited by law, and to disclose it only to employees, representatives, and agents of CITY that have a need to know, or in order to enforce the provisions hereof.

### **SECTION 4: Insurance, Indemnification, and Bonds or Other Surety**

**4.1 Insurance Requirements.** DOBSON shall maintain in full force and effect during the term of this Agreement, at its own cost and expense, a general comprehensive liability insurance policy naming, as an additional insured, the CITY, its officers, boards, commissions, agents and employees, with a company mutually acceptable by DOBSON and the CITY in a form satisfactory to the CITY protecting the CITY and all persons against liability for loss or damage for personal injury, death or property damage occasioned by the operations of DOBSON under this Agreement in the amount of:

\$500,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.

\$500,000.00 for property damage resulting from any one accident.

Workmen's compensation insurance in such coverage as may be required by the workmen's compensation insurance and safety laws of the State and amendments thereto.

**4.2 Indemnification.** DOBSON agrees to indemnify, save and hold harmless, and defend CITY, its officers, boards and employees, from and against any liability for damages and for any liability or claims, in each case resulting from property damage or bodily injury (including accidental death) which arise out of DOBSON's construction, operation or maintenance of its fiber internet system, including, but not limited to, reasonable attorneys' fees and costs.

**4.3 Bonds and Other Surety.** Except as expressly provided herein, DOBSON shall not be required to obtain or maintain bonds or other surety as a condition of this Agreement. CITY acknowledges that the legal, financial, and technical qualifications of DOBSON are sufficient to afford compliance with the terms of the Agreement and the enforcement thereof. DOBSON and CITY recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Fiber Internet Service or other service. In order to minimize such costs, CITY agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. CITY agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$100,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of this Agreement. Initially, no bond or other surety shall be required. In the event that one is required in the future, CITY agrees to give DOBSON at least sixty (60) days' prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in DOBSON's legal, financial, or technical qualifications, which would materially prohibit or impair its ability to comply with the terms of this Agreement or afford compliance therewith.

#### **SECTION 5: Law, Venue, Jurisdiction**

**5. Governing Law, Jurisdiction, and Venue.** This Agreement will be governed by the laws of the State of Oklahoma. Jurisdiction and Venue will be in the District Court of Greer County, Oklahoma, or the Federal Western District of Oklahoma.

#### **SECTION 6: Miscellaneous Provisions**

**6.1 Term.** This Agreement shall be for a term of fifteen (15) years from the date of this Agreement unless otherwise lawfully terminated in accordance with the terms of this Agreement. Prior to the end of this Agreement's term, CITY and DOBSON agree to enter into good faith negotiations regarding the renewal, modification, and/or extension of this Agreement.

**6.2 Preemption.** If any federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of this Agreement, then, to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by CITY, the jurisdiction of CITY shall cease and no longer exist.

**6.3 Employment Requirements.** DOBSON shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, sex, religion, gender, national origin, age, familial status, or disability. DOBSON shall maintain and carry out a continuing program of specific practices designed to assure equal opportunity in every aspect of its employment policies and practices.

**6.4 Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon CITY or DOBSON shall be in writing and shall be delivered by a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. If questioned, the party sending a notice shall have the burden to prove receipt or rejection. Rejected notices shall be deemed delivered. The parties may designate such other address or addresses from time to time by giving

notice to the other in the manner provided for in this section. The notice and contact information for CITY and DOBSON are as follows:

If to CITY: City Clerk  
City of Mangum  
130 N Oklahoma Ave  
Mangum, OK 73554

If to Dobson: Dobson Technologies, Inc.  
14101 Wireless Way  
Ste 300  
Oklahoma CITY, OK  
73134  
Attn: Legal Notices

**6.5 Descriptive Headings.** The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**6.6 Severability.** If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Agreement or any renewal or renewals thereof.

**6.7 Force Majeure.** DOBSON shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of DOBSON to control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain, or monitor their utility poles to which DOBSON's Fiber Internet System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

*Signature page follows*



**CITY**

Attest:

\_\_\_\_\_  
**City Clerk**

Date:\_\_\_\_\_

\_\_\_\_\_  
**Mayor**

Date:\_\_\_\_\_

Approved as to Content:

\_\_\_\_\_  
**City Manager**

Date:\_\_\_\_\_

Approved as to Form and Legality

\_\_\_\_\_  
**City Attorney**

Date:\_\_\_\_\_

**DOBSON**

\_\_\_\_\_  
**Dobson**

Date:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_