

**NON-EXCLUSIVE LICENSE AGREEMENT
BETWEEN THE MAYOR AND COUNCIL OF THE CITY OF THUNDERBOLT
AND _____
FOR THE INSTALLATION OF NETWORK FACILITIES
IN THE CITY PUBLIC RIGHT-OF-WAY**

This License Agreement (“**Agreement**”) is by and between the Mayor and Council of the City of Thunderbolt, a municipal corporation of the State of Georgia (“**City**”), and _____, a _____ and its subsidiaries, successors, or assigns (“**Licensee**”). City and Licensee may be referred to herein each as a “**Party**” and collectively as the “**Parties**”.

RECITALS

- A. City has jurisdiction over the use of the public rights-of-way in the City, which includes any public street, road, highway, alley, lane, court, boulevard, or other similar public rights-of-way, including related facilities such as medians, parkways, sidewalks, traffic signals, and signs, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of City (“**Public ROW**”).
- B. Licensee owns, maintains, operates, and controls a fiber-to-the-premises (“**FTTP**”) infrastructure network in Public ROW (“**FTTP Network**”).
- C. Licensee has taken the position that it is not a telephone company for the purposes of O.C.G.A. § 46-5-1 and therefore is not subject to due compensation contemplated by state law and Licensee continues to maintain that there is no law specifying the amount of compensation it would owe to the City for access to its Public ROW. Licensee, however, agrees to pay the City due compensation as set forth in Paragraph 5 hereinbelow.
- D. The FTTP Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wire, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”).
- E. City permits Licensee to occupy and encroach on Public ROW in order to install, operate, and maintain its FTTP Network for the purposes of offering broadband Internet service (“**Broadband Service**”) and other communications and information services, including Voice over Internet Protocol (“**VoIP**”) services to its customers (“**Services**”).

AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

1. **Permission to Encroach and Occupy.**

1.1 Permission to Encroach on and Occupy Public ROW. Upon the occurrence of the events set forth herein and subject to the conditions set forth in this Agreement, City grants Licensee permission to encroach upon and occupy the Public ROW and other property of City (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the FTTP Network and the related Network Facilities (the “**Work**”) in order to offer Services to residents and businesses in City. This Agreement and the License do not authorize Licensee to use any property other than the Public ROW and other property of City as agreed herein. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.

1.2 License Commencement Date. The License will be effective upon the date this License has been approved by the City Council (the “**License Commencement Date**”) and executed by the City Manager or his designee.

1.3 Term. The License will expire and terminate thirty (30) days after the License Commencement Date. Upon expiration, the License will automatically and continually renew for an additional thirty (30) day period unless terminated by any Party by providing notice to the other Party at least thirty (30) days in advance of the planned expiration date.

1.3.1 Notwithstanding the foregoing, after the Licensee has started to deliver Services to customer in the City, the License shall automatically terminate if Licensee fails to continuously operate the Network Facilities and/or offer Broadband Service and VoIP for a period exceeding ninety (90) consecutive days (a “Failure to Operate Period”).

1.3.2 The License will expire and terminate automatically on the twentieth (20th) anniversary of the License Commencement Date, unless earlier terminated in accordance with the provisions herein.

1.4 Subject to State and Local Law. This Agreement and the License are subject to City’s valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. Licensee shall at all times comply with the City’s Code of Ordinances (“**City Code**”), as may be amended from time-to-time.

1.5 Subject to City’s Right to Use Public ROW. This Agreement and the License are subject and subordinate to City’s prior and continuing right to use the Public ROW and other property of City, including, but not limited to, constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.

1.6 Subject to Pre-Existing Property Interests. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

1.7 No Grant of Property Interest. This License does not grant or convey any property interest.

1.8 Non-Exclusive. This License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights, if necessary, under applicable law, to any other individual, corporation, partnership, limited liability company, trust, joint stock

company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever (“**Person**”), to use Public ROW for similar or different purposes allowed Licensee under this Agreement.

2. Licensee’s Obligations.

2.1 Individual Permits Required. Licensee will obtain City’s approval of required individual encroachment, construction, and other necessary permits as required by the City Code before placing its Network Facilities in the Public ROW. Licensee will provide to City any information lawfully required by City. Licensee will pay all lawful processing, field marking, engineering, inspection fees and any other fees required by applicable law and the City Code before City issues individual permits.

2.2 Licensee’s Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.

2.3 Compliance with Laws. Licensee will comply with all applicable laws and regulations, including the City Code, when performing the Work.

2.4 Undergrounding. Licensee will install or relocate its Network Facilities underground in those areas and portions of City where all transmission and distribution facilities of the public utilities providing electric and communications services are required by City Code to be placed underground. If, however, any third-party electricity or communications transmission or distribution facilities remain above ground, Licensee may install or keep and retain its Network Facilities above ground.

2.5 Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.

2.6 Non-Interference. Licensee will place its Network Facilities in conformance with the permits, plans, and drawings approved by City. Licensee will not place its Network Facilities where they will interfere with gas, electric, communications, water, sewer, or other utility facilities.

2.7 No Nuisance. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.

2.8 Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee’s Work and no other Person is responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by state law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage.

2.9 Identification of Network Facilities. Licensee will identify its Network Facilities using an identification method mutually agreed upon by the parties, or as established by standard industry practices and reasonably directed by City if the parties cannot mutually agree on an identification method. For underground facilities, the identification will be detectable without opening the street or sidewalk.

2.10 Cooperation in Joint Trench Opportunities. Licensee will cooperate with City in identifying ways to minimize the amount of construction in the Public ROW through joint trenching,

sharing duct banks, and cost sharing with City and third parties undertaking similar construction projects involving the installation of underground communications facilities. Licensee's cooperation obligation is subject to any such proposed joint trenching, duct sharing, and cost sharing opportunities being sufficiently compatible with Licensee's plans, as reasonably determined by the Licensee. Without limiting the foregoing, (i) the cooperation opportunity would not be deemed sufficiently compatible with Licensee's plan where the opportunity involves different areas of the Public ROW than Licensee has permission to occupy under this Agreement, or would unreasonably delay or otherwise hinder Licensee's construction plans, and (ii) Licensee is not obligated to cooperate if Licensee enters into a commercial cooperation agreement reasonably satisfactory to the Licensee with respect to such joint trenching or other cooperation with City or the third-party, as applicable. Licensee will make good faith efforts to enter into any such commercial cooperation agreement in connection with fulfilling the foregoing cooperation obligation.

2.11 As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them to City upon reasonable request and on a mutually agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete).

3. City's Obligations.

3.1 Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City under this section will be separate from Licensee's obligation to pay the License Fee (as defined below).

3.2 Removal of Abandoned Network Facilities. If Licensee abandons any portions of its Network Facilities ("**Abandoned Network Facilities**"), Licensee will notify City and will either remove the facilities at its own expense within a commercially reasonable period of time, or may abandon some or all of the Abandoned Network Facilities in place. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.

3.3 Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction of a new water or sewer line or the relocation of a public road, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its FTTP Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City may not require

Licensee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice.

3.4 Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with City's planned use of the Public ROW or City property for a non-governmental (e.g., commercial) purpose, or with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless City or the third party enters into an agreement with Licensee under which City or the third party would, at a minimum: (a) identify and arrange for a new location for Licensee's Network Facilities that is acceptable to Licensee, (b) agree to a commercially reasonable period of time for the relocation, which in no event will be less than one hundred eighty (180) days; and (c) agree to reimburse all of Licensee's reasonable direct and indirect costs, expenses, and losses associated with the requested relocation.

3.5 Non-Discrimination. City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent holders of local or state franchise authority offering facilities-based broadband Internet access services.

3.6 Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost (except to the extent subject to reimbursement pursuant to Section 3.4 hereof), repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City. Before proceeding with removal or relocation work, Licensee will obtain, and City will issue, a street encroachment permit.

4. Contractors and Subcontractors.

4.1 Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf. Such contractors and subcontractors shall at all times comply with the term of this Agreement and the City Code.

4.2 Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.

4.3 Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A ("Authorized Individuals")**. City will accept permit applications under this Agreement submitted and signed by Authorized Individuals and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. License Fee. Licensee will pay City a fee ("**License Fee**") which will compensate City for Licensee's use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee's use and occupancy of Public ROW and other City property as authorized. The License Fee will begin accruing on the License Commencement Date and Licensee will pay City due compensation at the rate of 5¢ (five cents) per linear foot of in-ground and constructed fiber annually so long as Licensee provides broadband services to any location within the boundaries of the City. If Licensee does not provide broadband services to any location within the boundaries of the City: (i) within twelve (12) months after the License Commencement Date or (ii) for the

duration of a Failure to Operate Period, payment at the rate of 5¢ (five cents) per linear foot of in-ground and constructed fiber annually shall be considered the payment of due compensation. The payment will begin on the Commencement Date and shall occur on each anniversary of the Commencement Date until this Agreement is terminated, and will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. The parties agree that the License Fee may be unilaterally amended by the City in its sole discretion, upon ninety (90) days advance written notice to Licensee, should state law permit the City to impose a higher License Fee or additional or alternative fee on other similarly situated users of the City's Public ROW that provide broadband services to locations within the City.

5.1 Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any subscriber whose Broadband Services are provided by Network Facilities located at least in part in Public ROW, that subscriber's pro rata amount of the License Fee.

5.2 Audit. City may examine the business records of Licensee as permitted under state or local law, but in any event only during reasonable times and following no less than thirty (30) days' prior written notice, and only to the extent reasonably necessary to ensure compliance with this Section 5. Licensee will keep all business records reflecting its License Fee for at least three (3) years. City may, in the event of a dispute concerning compensation under this Section 5, bring an action in a court of competent jurisdiction.

5.3 Interest on Late Payments. The due date for License Fee payments shall be each anniversary of the Commencement Date unless another due date is directed by the City. Any payments that are due and payable under this Agreement that are not received within sixty (60) days from the specified due date will be assessed interest at a rate of one percent (1%) per month.

5.4 Change in Law.

5.4.1 Notwithstanding anything to the contrary herein, in the event of a change in local, state, or federal law that (i) prohibits collection by any franchising authority of any franchise fee from any provider of video programming or communications services, including Broadband Services, or (ii) reduces the percentage of revenue on which the franchise fee paid by any provider of video programming or communications services is based to a percentage that is lower than the revenue percentage, then Licensee will have no obligation to pay the Licensee Fee or to pay a Licensee Fee based on the revenue percentage, as the case may be. In the case of a reduction in the percentage of revenue on which a franchisee fee may be based, the revenue percentage will be commensurately reduced.

6. Indemnification.

6.1 Obligations. Licensee will defend, hold harmless, and indemnify City, its officers, elected representatives, and employees from any claims and liabilities (including reasonable attorneys' fees and court costs) related to any third-party claim for property damage, personal injury, or death to the extent caused by gross negligence, recklessness, or intentional wrongful conduct of Licensee or its contractors arising from this Agreement or the License ("**Claims**"); provided, however, that indemnification relating to personal injury of employees will not apply to any Claims made by City's employees that are covered under applicable workers' compensation laws.

6.2 **Notice of Claims.** City will give prompt written notice to Licensee of any Claim or threatened Claim no later than thirty (30) calendar days after City receives written notice of the action, suit, or proceeding. City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent, that Licensee is materially prejudiced by such failure.

6.3 **Defense.** Licensee will have the right at any time, by notice to City, to participate in or assume control of the defense of the Claim with counsel of its choice, which counsel must be reasonably acceptable to City. City agrees to cooperate fully with Licensee and City will have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any Claim, Licensee will be bound by the results obtained by City with respect to the Claim. If Licensee assumes the defense of a Claim, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any Claim without Licensee's prior written consent.

7. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.

8. **Performance Bond.** If Licensee has not previously provided City with a performance bond under any prior agreement, Licensee will, promptly after the License Commencement Date, provide City with a performance bond in the amount of zero dollars (\$0.00) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the term of this Agreement.

9. **Insurance.**

9.1 Licensee will carry and maintain the following insurance:

9.1.1 Commercial General Liability (CGL), with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage, and \$5,000,000 umbrella coverage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, and officers as additional insureds.

9.1.2 Workers' Compensation with policy limits not less than the City's requirements.

9.2 All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to City's Risk Management Director at the following address:

10. **Termination.**

10.1 Default of Licensee. City may terminate this License if Licensee is in material breach of condition or obligation stated herein, provided that City must first provide Licensee written notice of the breach and an opportunity to cure the default. No termination under this paragraph will be effective until ninety (90) days' after Licensee's receipt of notice from City of any material breach. In addition to termination, the City may exercise any and all rights available by law in the event of a default by Licensee.

11. Assignment. Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

11.1 Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:

11.1.1 to any affiliate (as defined below) of Licensee;

11.1.2 to any successor in interest of Licensee's business operations in City connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

11.1.3 to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

11.2 Following any assignment of this Agreement to an affiliate, Licensee will remain responsible for such affiliate's performance under the terms of this Agreement. For purposes of this section "affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" will mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

12. Notice. All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Licensee's e-mail address for notice is _____, with a copy to _____.

13. General Provisions. This Agreement is governed by the laws of the State of Georgia. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties

relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

[Signature page follows]

Signed by authorized representatives of the parties on the dates written below.

LICENSEE:

(Authorized Signature)

(Name)

(Title)

Address:

Date: _____

CITY:

**THE MAYOR AND COUNCIL OF THE CITY OF
THUNDERBOLT**

(Authorized Signature)

(Name)

(Title)

Address:

Date: _____

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

City of [Placeholder]

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section ___ of the License Agreement dated _____ between the City of _____ and _____ (“_____”), _____ hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of _____. *[If applicable: This letter amends and supersedes the Letter of Authorization dated _____.]*

{Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.}

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective twenty-four (24) hours after receipt by the City.

Kind regards,

[Name]

Manager, _____