

Sponsor: Musgrove

ORDINANCE NO. _____

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE AGREEMENT TO FIBER UTILITY NETWORK, INC. D/B/A ALABAMA FIBER NETWORK, ITS SUCCESSORS OR ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF FLORENCE.

WHEREAS, Alabama Fiber Network desires to construct, operate, and maintain a telecommunications system and related infrastructure within the corporate limits of and within certain rights-of-way within and belonging to the City of Florence, Alabama (“City”); and

WHEREAS, the City has the authority to allow Alabama Fiber Network the right to construct, operate, and maintain a telecommunications system within the corporate limits of the City; and

WHEREAS, the City also has the authority to grant the right to use and occupy the public rights-of-way for such use, to manage and control the rights-of-way, and to obtain fair and reasonable compensation for such use; and

WHEREAS, the City intends to exercise the full scope of its municipal powers including both its police powers and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City, and

WHEREAS, Alabama Fiber Network agrees and recognizes that it is required to obtain consent in the form of a franchise agreement from the City in order to construct, operate, and maintain a telecommunications system or cable system within the corporate limits of the City; and

WHEREAS, the City Council wishes to accommodate the Alabama Fiber Network’s request and grant a non-exclusive franchise agreement in accordance with the terms and conditions contained herein; and

WHEREAS, Alabama Fiber Network has agreed to operate in accordance with the terms and conditions of this Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, AS FOLLOWS:

The City Council of the City does hereby grant to Alabama Fiber Network a non-exclusive franchise agreement granting the limited authority to construct, operate, and maintain a telecommunications system within the corporate limits of the City, subject to the terms and conditions set forth in the following agreement:

CONSTRUCTION, RIGHT-OF-WAY USE & FRANCHISE AGREEMENT

THIS CONSTRUCTION, RIGHT-OF-WAY USE and FRANCHISE AGREEMENT (this "Agreement") is entered into on this _____, day of 2025 (the "Effective Date"), by and between the City of Florence, Alabama (the "City"), and Alabama Fiber Network or "Franchisee". City and Alabama Fiber Network are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

1. Definitions. For the purposes of this Agreement, the following terms, phrases, words, and abbreviations shall have the following meanings:

(a) "Facilities" means all fiber optic cable, conduit, poles, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, pedestals, towers, dishes, supporting hardware, and related equipment and fixtures necessary and desirable to construct and maintain the Telecommunications System and to provide Services under this Agreement.

(b) "Other Services" means services lawfully provided by Alabama Fiber Network within the City in addition to Telecommunications Services including, without limitation, broadband services and internet access services.

(c) "Person" shall mean any person, firm, partnership, association, corporation, limited liability company, or organization of any kind.

(d) "Public Ways" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and Alabama Fiber Network to use the same for the purpose of installing, operating, repairing and maintaining the Telecommunications System.

(e) "Services" collectively refers to Other Services and Telecommunications Services.

(f) "Subscriber" means a Person who lawfully receives Services with Alabama Fiber Network's express permission within the City.

(g) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

- (h) "Telecommunications Services" 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, regardless of facilities used.
- (i) "Telecommunications System" means Alabama Fiber Network's Facilities, consisting of a set of closed transmission fiber optic paths and associated signal generation, reception, and control equipment or other communication equipment that is designed to provide Services to Subscribers.
- (j) "Gross Revenues" means any revenue derived by Alabama Fiber Network from the operation of the Telecommunications System to provide Telecommunications Services to Subscribers within the City, adjusted for non-payment. Gross Revenues shall include Telecommunications Services fees for Alabama Fiber Network's local offering. The term Gross Revenues shall not include any taxes on Services furnished by Alabama Fiber Network or franchise fees imposed by any municipality, state, or other governmental unit and collected by Alabama Fiber Network for such governmental unit and shall not include any amounts received attributed to the following: i) construction of Facilities or Telecommunications System or in recovery of capital expenses, ii) sales of Facilities, Telecommunication System, or real property, iii) judgment or settlement for a legal dispute except for recovery of Gross Revenue, iv) dividend, interest, or other income not directly related to provisioning of Telecommunication Services, v) provisioning, constructing, maintaining, operating, licensing or other activity from wireless facilities including those subject to The Code of Florence, Alabama, Chapter 19, Article V "Small Cell Facilities Regulations, vi) or derived from services that originate or terminate outside the City boundaries.

2. Grant. City grants Alabama Fiber Network the non-exclusive right and license to construct and operate a Telecommunications System in the Public Ways and a non-exclusive franchise to provide Services to Subscribers located within the City. Subject to the terms of this Agreement and applicable law, Alabama Fiber Network may erect, install, construct, operate, maintain, repair, replace, expand, and reconstruct its Telecommunications System in any Public Ways.

3. Term. The franchise granted under this Agreement shall be for a term of ten (10) years from the Effective Date, unless otherwise lawfully terminated (the "Term").

4. Installation of Facilities. Alabama Fiber Network shall not install any new Facilities in any Public Way without having received a permit from the City. Alabama Fiber Network agrees to the following conditions, limitations, and restrictions related to the installation of its Facilities in, on or through any portion of the Public Ways:

(a) Alabama Fiber Network agrees to supply the City with digital drawings of construction plans prior to construction and digital as-built drawings within six (6) months of the completion of any construction. Final drawings will be supplied in Autocad 2018 using NAD 83 coordinates, GIS format, or such other digital formats as are reasonably acceptable to the Parties. All drawings provided by Alabama Fiber Network will contain adequate information to reflect the construction plans of Alabama Fiber Network. No drawings provided by Alabama Fiber Network will be certified or stamped by a Professional Engineer. Alabama Fiber Network is under no obligation to include any utility information on its drawings, unless the utility is owned by the City. The Office of the City Engineer will process permit requests within twenty (20) working days of receiving application. Construction shall not begin until after permit is approved.

(b) Prior to beginning any construction, Alabama Fiber Network shall notify the property owners of the start date of construction, the scope of the project, and the estimated duration of the work. Additionally, at all times during construction, Alabama Fiber Network shall provide property owners with a point of contact in the event issues arise during construction that need immediate attention. Alabama Fiber Network shall provide each property owner with the name, telephone number, and email address of a point of contact at least 48 hours prior to beginning work in the vicinity of the property owner's address.

(c) Alabama Fiber Network agrees to "white-line" its proposed cable location as part of the construction process and for a distance that is expected to be completed for at least that same day.

(d) Alabama Fiber Network lines shall have at least a 12" separation vertically and 24" separation horizontally from all underground City utility lines, including gas lines, water lines and sewer lines. If not possible, Alabama Fiber Network shall notify and seek permission from the City prior to construction.

(e) Alabama Fiber Network agrees to stay three (3) feet away, measured horizontally, from power poles unless it is utilizing such poles pursuant to a pole attachment arrangement.

(f) Alabama Fiber Network or Alabama Fiber Network's contractor may request locates Monday through Friday from 7:00 a.m. to 5:00 p.m., and City shall provide locates of its facilities as required by Alabama's 811 law and regulations. In addition, Alabama Fiber Network may only request locates for a maximum of 5000 linear feet per day. Alabama Fiber Network will depend solely on 811 locates, as required by Alabama 811 law, completed by the City, its contractors or agents, or completed by any other utility company, its contractors or agents, for all construction activities. Alabama Fiber Network will not mark other utilities on permit or construction drawings based on such

and complete clean-up for each section within 2-3 workdays after placement of conduit, weather permitting.

(g) Alabama Fiber Network shall clear the streets of any mud, debris and other obstructions that accumulate as a result of Alabama Fiber Network's construction activities and will not permit its activities to unreasonably create a hazard to any persons or property. In the event that any such mud, debris or other obstruction caused by Alabama Fiber Network's activities encroaches upon the street, Alabama Fiber Network shall take immediate corrective action to remove the same.

(h) If streets and other Public Ways are damaged by Alabama Fiber Network, its employees, agents or contractors in installation or subsequent maintenance and repair of its Facilities, Alabama Fiber Network, upon written notice from the City and at Alabama Fiber Network's sole expense, shall promptly and reasonably repair and restore such streets or public ways to the same or better condition than such streets or public ways were in prior to such damage, and to the reasonable satisfaction of the City.

(i) Alabama Fiber Network shall contact affected property owners to discuss any repairs, dress-up or clean-up of such owners' property necessitated by the installation of Alabama Fiber Network's fiber optic cable, and shall perform any necessary repair, dress-up or clean-up to reasonably restore such affected property to the same or better condition it was in prior to installation of the Facilities at Alabama Fiber Network's sole expense. Repair should be done within five (5) business days unless extraordinary circumstances cause delay.

(j) At all times during and after the installation of fiber optic lines, Alabama Fiber Network shall respond to all emergency locates to locate its fiber optic lines as required by Alabama's 811 law and regulations.

(k) At all times, Alabama Fiber Network shall be responsible for safety at, about and around its work and shall, at its sole expense, provide safe and adequate traffic control when necessary and at its own expense provide full and complete warnings to safeguard the public and to prevent injury or damage, including, but not limited to, any and all signage, cones, markings, and lighting. Alabama Fiber Network shall assume all liability for any injury or damage in any way related directly or indirectly to the provision or non-provision or inadequate provision of such controls, warnings, etc., and shall, at its sole expense, defend the City in any and all actions in any way related to any injury or damage claimed to be the result of inadequacies in traffic control, warnings, or otherwise, except to the extent any injury or damage was caused by any intentional misconduct or negligent act or omission by the City, its officers, agents, employees, contractors, or by any persons otherwise at the direction of or on behalf of City.

(l) Alabama Fiber Network shall have the authority to trim trees and natural

Service Area to prevent interference with Alabama Fiber Network's Facilities in accordance with City rules and regulations.

(m) Alabama Fiber Network shall, on the request of any Person holding a permit to move a building, temporarily raise or lower its aerial Facilities, if any, to facilitate the moving of such building. The expense of such temporary removal or raising or lowering of such aerial Facilities shall be paid by the Person requesting the same, and Alabama Fiber Network shall have the authority to require such payment in advance. Alabama Fiber Network shall be given at least thirty (30) days' advance notice to arrange such temporary aerial Facility alterations.

(n) The decision of when and where to construct its Facilities is solely within the discretion of Alabama Fiber Network as is the determination of what Services to provide and where to provide them within the City during the Term.

(o) In the event that any of Alabama Fiber Network's infrastructure within the Public Ways needs maintenance or repair work, prior to any work being done, Franchisee shall notify the Office of the City Engineer by either e-mail or by telephone. City shall not require drawings, permits, or authorizations for routine maintenance, repairs, or upgrades that are substantially similar or the same size or smaller to its existing Facilities or Telecommunication System that do not involve street cut or vehicular and pedestrian lane closures.

Throughout the Term of this Agreement, provided Alabama Fiber Network complies with the foregoing requirements, Alabama Fiber Network shall be entitled to expand and upgrade its Telecommunications System as it deems reasonably necessary.

5. Relocation of Facilities. Whenever the City shall grade, regrade, or change the line of any Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order Alabama Fiber Network to relocate or protect its Facilities located in said Public Way, Alabama Fiber Network shall relocate or protect its Facilities at its own expense; provided, however, if the City compensates any Person for similar work then Alabama Fiber Network shall be similarly compensated. Further, where the City has determined, in a competitively neutral and nondiscriminatory manner, that the location of Alabama Fiber Network's Facilities is unsafe, interferes with traffic control devices, or otherwise may be harmful to the public health, safety, and welfare as determined in the reasonable judgment of the City, Alabama Fiber Network shall move such Facilities to an alternate location as directed by the City. City shall use its best efforts to accommodate Alabama Fiber Network's preferences and requests in determining an alternate location. The City shall give Alabama Fiber Network reasonable notice of plans to grade or change the line of any Public Way or to construct or reconstruct any sewer or water system therein or of any demand that the Facilities be relocated for the reasons set forth herein. Alabama Fiber Network may also be required to relocate its

under applicable law. Any such movement shall be at the expense of the third party. With respect to location of its existing public utility lines, the City agrees that during the period of Alabama Fiber Network's installation of fiber optic lines pursuant to this Agreement, the City will locate all City public utility lines as required by Alabama's 811 laws. It shall be the duty of Alabama Fiber Network or its contractor(s) to request the City to locate the public utility lines.

6. Damage to Existing Utilities. Alabama Fiber Network hereby agrees that (a) during the installation process, and (b) at any time after such installation, Alabama Fiber Network will immediately notify the appropriate utility provider and users in the event that Alabama Fiber Network, or any of its related entities, employees, agents or contractors damages a utility line, including private service lines. Provided that the party owning the line has complied with Alabama's 811 law and regulations, then any repairs to such utility lines and private service lines must be made immediately, and at Alabama Fiber Network's sole expense, and shall only be made by appropriately licensed and bonded contractors.

7. Compliance with Codes. All construction, installation, maintenance, and operation of the Telecommunications System or of any Facilities employed in connection therewith shall comply with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, and local zoning regulations. Alabama Fiber Network shall comply with ordinances, rules, and regulations established by the City pursuant to the lawful exercise of its police powers and generally applicable to all users of the Public Ways. To the extent that local ordinances, rules, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. City reserves the right to lawfully exercise its police powers.

8. Indemnity to City and Alabama Fiber Network. Except to the extent such claims, suits, damages, liabilities, losses and expenses are caused by the intentional misconduct or negligent acts or omissions of the City or its officers, agents, employees, contractors, or by any persons otherwise at the direction of or on behalf of the City, at all times both during and after installation, so long as Alabama Fiber Network's Telecommunications System is located upon any portion of the Public Ways, Alabama Fiber Network covenants, warrants and agrees to indemnify and hold harmless the City, its officers, employees, and agents, from any and all suits, damages, claims, liabilities, losses and expenses, including reasonable attorney's fees, directly or indirectly arising from or related to: (a) the installation, operation, repair or maintenance by any Person of Alabama Fiber Network's Telecommunications System within the City; (b) provided that the City has complied with Alabama's 811 law and regulations, any injury, loss or damage to the City's utility lines arising from or related to the installation, operation, repair or maintenance of Alabama Fiber Network's Telecommunications System; and (c) provided that the private service line owner has complied with Alabama's 811 law and regulations, any injury, loss or damage to private service lines arising from or related to the installation, operation, repair or

misconduct or negligent acts or omissions of the City, its officers, agents, employees, contractors, or by any persons otherwise at the direction of or on behalf of the City, it is agreed that Alabama Fiber Network shall indemnify and hold harmless the City, its officers, officials, employees and agents from any and all claims for personal injury, wrongful death, property damage, or otherwise alleged to be directly or indirectly attributable, in whole or in part, to the acts or omissions of Alabama Fiber Network or its officers, employees, agents, or contractors in connection with the subject of this Agreement, which indemnity shall be at the sole expense of Alabama Fiber Network, including the obligation to pay any and all sums required, including any settlement, judgment, attorney fees, court costs, or otherwise. In the event City believes it has a claim subject to indemnification, it must promptly give Alabama Fiber Network written notice of such claim. Within sixty (60) days of its receipt of written notice of the City's claim, Alabama Fiber Network shall notify City in writing whether it will defend such claim. If Alabama Fiber Network assumes the defense of such claim it shall be entitled to defend the claim in any manner it sees fit including settlement, provided no settlement imposes liability on City without City's prior written consent.

9. Franchise Fee.

(a) Franchise Fee. When and if Alabama Fiber Network provides local Telecommunications Services to Subscribers within the City, Alabama Fiber Network shall pay the City a franchise fee equal to (i) five percent (5%) of the Gross Revenue from sales of local Telecommunications Services to Subscribers located within the City. The payment of the Franchise Fee shall be made on a quarterly basis and shall be due and payable no later than thirty days (30) days after the last day of each March, June, September and December throughout the Term of this Agreement. Each Franchise Fee payment shall be accompanied by a certified report from a representative of Alabama Fiber Network, which shows the basis for the computation of all monthly Gross Revenues received by Alabama Fiber Network from sale of Telecommunications Services to Subscribers located within the City limits during the period for which such Franchise Fee payment is made. If the Franchise Fee payment is not actually received by the City on or before the applicable due date set forth in this Section, interest shall accrue on the outstanding amount at the lesser of one percent (1%) per month or the highest rate allowed under Alabama law for the period of delinquency.

(b.) Audit. During the Term of this Agreement and subject to Alabama Fiber Network's confidentiality policy and requirements, once every twelve (12) months and upon reasonable prior written notice, during normal business hours, the City shall have the right to inspect Alabama Fiber Network's financial records used to calculate the City's Franchise Fee, and the right to audit and to re-compute any amounts determined to be payable under this Section at City's expense; provided, however, that any such audit shall take place within two (2) years from the date City received such payment, after which period any such payment shall be considered final. If City believes it is owed any additional compensation from

payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the City may have for further or additional sums payable under this Agreement. The Parties shall work together in good faith to resolve the matter. Any additional amounts due to either Party shall be promptly paid within thirty (30) days following resolution of the payment dispute or other mutually acceptable timeframe.

If, as a result of an audit or any other review, the City determines that Alabama Fiber Network has underpaid franchise fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Alabama Fiber Network shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants. The City shall provide Alabama Fiber Network with a written notice of audit results and a copy of the final report presented to the City. Alabama Fiber Network shall remit any undisputed amounts owed to the City as the result of the audit within forty-five (45) days, or other mutually acceptable timeframe, after the date of an executed settlement and release agreement.

(c) Company to Submit Franchise Fee Report. Alabama Fiber Network shall submit to the City, not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement, a report setting forth the basis for the computation of Gross Revenues on which the quarterly payment of franchise fees is being made, which report shall enumerate, at a minimum, the following revenue categories: telecommunication services and bad debt.

10. Liability Insurance. At all times, Alabama Fiber Network shall maintain, at its own cost and expense, a general liability policy in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate limit for bodily injury and property damage. Such policy or policies shall designate the City as an additional insured and shall provide thirty (30) days' prior written notice of cancellation to the City for any reason other than non-payment of premium in which a ten (10) day notice shall apply. The City shall be provided with a certificate of such coverage. Alabama Fiber Network also currently maintains umbrella liability policies of at least \$10,000,000 in aggregate. In addition, Alabama Fiber Network shall secure any and all other insurance as Alabama Fiber Network, in its sole discretion deems appropriate. Nothing in this paragraph is intended to be a waiver of the City's immunity under State-agent immunity.

11. Books and Records. Throughout the Term of this Agreement, Alabama Fiber Network agrees to keep such books and records regarding the operation of the Telecommunications System and the provision of Telecommunications Services in the City as are reasonably necessary to ensure Alabama Fiber Network's compliance with the terms and conditions of this Agreement. Such books and records shall include, without limitation, any

be the subject of an audit by the City, shall be retained by Alabama Fiber Network for a minimum period of three (3) years; provided it is understood that Alabama Fiber Network only retains call records for eighteen (18) months.

12. Transfer of Ownership or Control

(a) Alabama Fiber Network shall not transfer this Agreement or any of Alabama Fiber Network's rights or obligations in or regarding the Agreement without the prior written consent of the City. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of Alabama Fiber Network in the Agreement or in the Telecommunications System in order to secure indebtedness, (ii) a transfer to any Person controlling, controlled by or under the same common control as Alabama Fiber Network, or (iii) a transfer to any Person purchasing all or substantially all of the assets or common stock of Alabama Fiber Network. Nothing herein shall prevent Alabama Fiber Network from providing Telecommunications Services to its customers or Subscribers in the normal course of its business and operating its Telecommunications System.

(b) Alabama Fiber Network shall give City prior written notice of any impending transfer of Control of Alabama Fiber Network or its assets under Sections 12 (a)(ii) or(iii). Furthermore, Alabama Fiber Network shall ensure that the Person to whom control of Alabama Fiber Network or its assets is transferred is authorized by the applicable state or federal authority to occupy the Public Ways pursuant to this Agreement and assumes in writing all of the obligations of Alabama Fiber Network under this Agreement effective as of the date of the transfer of control or sale. Alabama Fiber Network shall provide City with a copy of such assignment instrument upon request. The transfer of ownership or control pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Agreement even if such issues predated the transaction, whether known or unknown to City.

(c) For purposes of this Section 13 "control" means ownership of a majority interest or the actual working control and day to day management of Alabama Fiber Network.

13. Compliance with Applicable Law. Alabama Fiber Network shall at all times comply with all laws applicable to its provision of Telecommunications Services in the City.

14. Enforcement and Termination.

(a) Breach. Subject to the terms and conditions of default or breach under this Agreement and in addition to all other rights and powers retained by the City under this Agreement or otherwise, if Alabama Fiber Network fails to cure a material breach within 30 days of receipt of written notice from City, then the City has the right to terminate this Agreement and all rights and privileges of Alabama Fiber Network hereunder.

(b) Notice of Violation. In the event the City believes Alabama Fiber Network has not complied with the provisions of this Agreement, the City shall make a written demand that Alabama Fiber Network comply with any such provision, rule, order, or determination under or pursuant to this Agreement. If the violation by Alabama Fiber Network continues for a period of thirty (30) days following Alabama Fiber Network's receipt of such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the Agreement before the City Council. The City shall cause to be served upon Alabama Fiber Network, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination, the provisions of this Agreement under which termination is sought, and the time and place of the meeting. Public notice shall be given of the meeting and issues that the Council is to consider pursuant to the requirements of Alabama law.

(c) Consideration of Breach. The City Council shall hear and consider the issue and shall hear any Person interested therein and shall determine whether or not any substantial breach by Alabama Fiber Network has occurred.

(d) Declaration of Forfeiture. If the City Council shall determine the violation by Alabama Fiber Network was the fault of Alabama Fiber Network and within its control, the Council may, by resolution in a nondiscriminatory and competitively neutral manner (i) seek specific performance of any provisions which reasonably lends itself to such remedy, as an alternative to damages; or (ii) commence an action at law for monetary damages; or (iii) declare a substantial breach and declare that this Agreement shall be terminated unless there is compliance within such period as the Council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(e) No Forfeiture of Legal Rights or Remedies. Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either Party may have concerning or arising out of this Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Agreement.

15. Miscellaneous.

(a) Applicable Law. This Agreement will be deemed to be a contract made under the laws of the State of Alabama and for all purposes will be governed by and interpreted in accordance with the laws prevailing in the State of Alabama, without regard to principles of conflict of laws.

(b) Entire Agreement. The terms and provisions of this Agreement constitute the entire agreement between the Parties, and there are no collateral agreements or ~~representations or warranties other than as expressly set forth or referred to in this~~

(c) Inurement. This Agreement shall be binding upon, and shall inure to the benefit of, the respective Parties, their successors and assigns, including any and all subsequent owners of the fiber optic lines installed pursuant to this Agreement.

(d) Fees and Costs. In the event of any disputes or controversies arising from the Agreement or its interpretation, each Party will bear its own attorneys' fees and costs incurred in connection with same.

(e) No rights to private property. Nothing in this Agreement shall be construed expressly or impliedly to grant to Alabama Fiber Network any rights with respect to any private property.

(f) Repair, inspection, etc. All of the obligations imposed by this Agreement upon Alabama Fiber Network with regard to construction shall be equally applicable in the event that Alabama Fiber Network or its agents, employees or contractors, repair, inspect, or otherwise, deal with the Public Ways. All obligations, duties and responsibilities imposed upon Alabama Fiber Network by this Agreement shall be continuing and not limited solely to the construction period.

(g) No guaranty, etc. by City. It is hereby agreed that neither the City nor any of its officers, officials, employees, agents or contractors have made any guaranty, representation, promise or assurance to Alabama Fiber Network or its officers, officials, employees or contractors, other than as expressly contained in writing in this Agreement and Alabama Fiber Network stipulates and agrees that it is not relying upon any promise, representation, guaranty or assurance, other than as is contained in writing in this Agreement.

(h) Notice. Any notice or response required under this Agreement shall be in writing and shall be deemed given upon receipt: (i) when hand delivered; (ii) when delivered by commercial courier; or (iii) after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, return receipt requested. The addresses of the Parties for notice are as follows:

If to City: City of Florence, Alabama

P.O. Box 98

Florence, AL 35631

Attn: Mayor

If to LLC:

Fiber Utility Network, Inc. d/b/a Alabama Fiber Network

Prattville, AL., 36066
Attn: President

The City and Alabama Fiber Network may designate such other address or addresses from time to time by giving notice to the other as provided in this section.

(j) Severability. If the legislature or a court or regulatory agency of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unconstitutional, all other terms of this Agreement will remain in full force and effect for the Term of the Agreement and any renewal.

(k) Change of Law. In the event that any effective legislative, regulatory, judicial, or legal action materially affects any material terms of this Agreement, or the ability of City or Alabama Fiber Network to perform any material terms of this Agreement, the Parties agree to amend this Agreement as necessary to comply with the changes in law within thirty (30) days of receipt of written notice of such change in law.

(l) Modification. Alabama Fiber Network and the City may at any time during the term of this Agreement seek a modification, amendment, or waiver of any term or condition of this Agreement. No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and Alabama Fiber Network, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution, letter of agreement, or order by the City, as required by applicable law.

(m) Duty to Act Reasonably and in Good Faith. Alabama Fiber Network and the City shall fulfill their obligations and exercise their rights under this Agreement in a reasonable manner and in good faith. Notwithstanding the omission of the words "reasonable," "good faith," or similar terms in the provisions of this Agreement, every provision of this Agreement is subject to this section.

(n) Force Majeure. Neither the City nor Alabama Fiber Network shall be responsible for any loss if the fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by revolutions, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God or by any other cause not within the control of the party whose performance is interfered with which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of causes enumerated above or not.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers effective as of the Effective Date.

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

By:

Name:

Terry Metze

Title:

Chief Executive Officer

THE CITY OF FLORENCE, ALABAMA

By:

Name:

Title: Mayor