

**CITY OF BURLINGTON
FIBER LICENSE AND
OPERATING
AGREEMENT**

THIS FIBER LICENSE AND OPERATING AGREEMENT (the "Agreement") is made and entered into this 9th day of August 2018, by and between the **CITY OF BURLINGTON WA** ("City"), and **ALLIXO TECHNOLOGIES LLC**, a Washington corporation ("Licensee").

WHEREAS, the City of Burlington has installed fiber optic cabling infrastructure called the "Burlington Fiber System"; and

WHEREAS, the Burlington Fiber System is currently utilized by government entities in Skagit County as an institutional network. Excess capacity exists on the Burlington Fiber System, such that the City desires to make such capacity available to other entities to satisfy the growing demand in Skagit County for access to a high speed network; and

WHEREAS, the Burlington Fiber System will provide selected Demark access points throughout the city in terminated NEMA panels or splice points; and

WHEREAS, the City desires to utilize the unique talents and abilities of entities in the private sector to use such excess capacity; and

WHEREAS, Licensee has a POP (point of presence) or a NOC (network operations center) in the city of Burlington and is in the business of operating high bandwidth telecommunications and data systems, including wireless communications and voice services; and

WHEREAS, Licensee represents that it has demonstrated expertise in operating high bandwidth fiber telecommunications and fiber data systems; and

WHEREAS, Licensee will have technical support coverage seven (7) days per week, twenty-four (24) hours per day and therefore can support the Fiber System at a minimal cost; and

WHEREAS, the City and Licensee desire to maximize and deploy the use of the Fiber Telecommunication Systems to new and existing customers in Burlington, and to deploy Fiber Telecommunications systems in the North and South Burlington Business parks; and east and west of the i5 corridor and train tracks; and

WHEREAS, the City has established a Fiber fee rate structure for the Licensee to utilize City Fiber and City IT resources; and

WHEREAS, the Parties desire that the ISP implement their own PON equipment centralized at the City fiber hub to best utilize City fiber; and

WHEREAS, the Parties desire that the ISP utilize dark fiber strands for their PON system, which may be allocated to the ISP at the City's discretion and availability;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions.

1.1 "Bad Debt Expense" means amounts lawfully billed to a Customer and owed by the Customer for Telecommunications services and accrued as revenues on the books of the Licensee, but not collected after reasonable efforts have been made to collect the charges.

1.2 "City Facilities" means all facilities, including but not limited to fiber optic cables, equipment and all associated hardware, owned, controlled, and/or utilized by the City.

1.3 "CLEC Services" means Telecommunications services provided by a Competitive Local Exchange Carrier. As of the date of this License, all Competitive Local Exchange Carriers must file a tariff with the state Utilities and Transportation Commission.

1.4 "Commercial Licensee" means a person, partnership, Private Corporation, association, trustee, trustee in bankruptcy, or receiver granted authority and privilege by the City of Burlington to provide Telecommunications services utilizing the Burlington Fiber System. The term shall not include public corporations, municipalities, or any governmental entity.

1.5 "Customer" means any natural or artificial person who enters into an agreement with the Licensee to utilize the Fiber System for any purpose.

1.6 "Surplus Fiber Capacity" means those optical fiber cable strands of the Burlington Fiber system surplus to the needs of the City where the Licensee is responsible for providing and attaching the telecommunications equipment and laser to transmit the light to carry data via the fiber.

1.7 "Demarcation Point" or "Demark" means a point at which ownership of telecommunications facilities and maintenance responsibilities changes from the

City to the Licensee. For the purposes of this Agreement, the demarcation point shall be the interface point between the Licensee or customer owned premises equipment, and Burlington Fiber System which, interface point between Licensee and Burlington Fiber System is identified in Exhibit "A" attached hereto.

1.8 "Fiber" means an optical fiber cable strand used to transmit light to carry data.

It is anticipated by this License that the Fiber System as described in Exhibit "A" shall constitute a backbone from which Telecommunications services shall be provided by the Licensee, and that Exhibit "A" shall be modified from time-to-time as the Burlington Fiber System is expanded or upgraded. As such, Exhibit "A" may therefore be amended with the written acknowledgment of the City and the Licensee.

1.9 "Fiber System Infrastructure" shall include, but not be limited to, any combination of fiber, cabinets, equipment racks, equipment, handholds, lines, poles, telephone lines, splice boxes, surface location markers, vaults, NOCs and any other appurtenances or tangible property owned, leased, operated, used, licensed or controlled by the City, located at any time and from time to time in the Public Right-of-Way or within City-Owned facilities. The term does not include, however, any of the foregoing infrastructure that is provided for the City's use pursuant to a cable television, OVS, or similar license that has been or will be granted by the City. The term "Fiber System Infrastructure" does not include any ducts, conduits, manholes, or tunnels unless specifically identified in Exhibit "A"

1.10 "Gross Margin" means the sum remaining after subtracting direct costs necessary to provide services from Gross Revenue.

1.11 "Gross Revenue" means revenue which is received, by the Licensee, in connection with the distribution of Telecommunications services on the Fiber System without any deductions on account of property sold, the cost of materials used, labor costs, interest paid, or any expense not otherwise set forth in this Agreement. Gross Revenues include fees charged Customers for Telecommunications services, less any credits provided to Customers by reason of service failures or similar interruptions in the provision of Telecommunications services. However, Gross Revenues shall be adjusted by subtracting Bad Debt Expenses and credits for service interruptions.

1.12 "ILEC" means the Incumbent Local Exchange Carrier. As of the date of this Agreement, the ILEC for Burlington is Frontier.

1.13 "Interconnect" or "Interconnection" means the linking of the Fiber System with another telecommunications system, including technical, engineering,

physical, financial, and other necessary components to accomplish, complete, and adequately maintain such linking.

1.14 "License" means the rights granted by this Agreement and conditioned as set forth in the Burlington Municipal Code.

1.15 "Licensee Facilities" means all facilities, including but not limited to fiber optic cables, equipment necessary to connect to the Burlington Fiber System, including modems, computer hardware and software, and long distance or local telephone service, and equipment and all associated hardware, owned by the Licensee that occupy and use the identified portion of the Burlington Fiber System. "Licensee Facilities" shall not include any of Licensee's facilities that are not connected to the City's Fiber System.

It is anticipated by this Agreement that the Fiber System as described in Exhibit "A" shall constitute a backbone from which Telecommunications services shall be provided by the Licensee, and that Exhibit "A" shall be modified from time-to-time as the Burlington Fiber System is expanded or upgraded. As such, Exhibit "A" may therefore be amended with the written acknowledgment of the City and the Licensee.

1.16 "Burlington Fiber System" means Fiber System Infrastructure installed by, and under the ownership of, the City of Burlington, together with a network of GPON OLT and ONT equipment, CWDM/DWDM, splitters, bank conduit, access vaults, Network Operations Centers (NOCs), and fiber optic cable which services various parts of the greater Burlington area, whether such infrastructure currently exists or is anticipated to be installed at a future date for such purposes.

1.17 "NOC" or "Network Operations Center" means a physical location from which the Fiber System is supervised, monitored, and maintained.

1.18 "Port" means any place at which a Customer connects to the City of Burlington Fiber system with dark fiber which shall be subject to City discretion and availability.

1.19 "Technical Support" means assistance and coordination provided to Customers to resolve issues pertaining to Telecommunications services.

1.20 "Telecommunications" shall mean the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

1.21 "Telephony" means the translation of sound into electrical or optical

signals, the transmission of such symbols, and then converting them back to sound.

2. Grant of License.

2.1 Subject to the provisions of this Agreement, the City grants to the Licensee, for the purposes limited to those described herein, a non-exclusive License authorizing the use of City owned Surplus Fiber Capacity and the placement of Licensee Facilities in a portion of the Burlington Fiber System as identified and specified in Exhibit A. Licensee shall be allowed to utilize the Burlington Fiber System for Telecommunications purposes, including the provision of Telecommunications services to third parties for a fee, all in accordance with the provisions of this License. The Licensee shall be allowed access to the Fiber System Infrastructure in accordance with the provisions of this Agreement. The City shall not grant any other license, or grant permission to any third party to use the Burlington Fiber System in a manner that unreasonably interferes with Licensee's use of Licensee Facilities under this Agreement.

2.2 Use of Fiber System. Use of the Burlington Fiber System pursuant to the terms of this Agreement is for exclusive use of the Licensee and Customers of the Licensee only. The Licensee shall not sell, give, loan, lease or otherwise transfer title or possession of the fiber optic media by any person, firm, corporation or association without prior written approval of City, which shall not be unreasonably withheld. Provided that no written approval by the City shall be required to allow use of the Burlington Fiber System by Licensee's Customers, pursuant to a Customer Use Agreement between the Licensee and the Customer. The City reserves the right to reserve a certain fiber capacity for its own use or for the use of other Licensee's.

2.3 Open Access. As a condition of this Agreement, the Licensee shall promote interconnectivity, interoperability and open access so that provider networks, systems, and programs communicate with one another for a wide array of services, providing consumer choice and competitive pricing for Customers. The Fiber System shall be operated as an open access, multi-provider environment, such that Telecommunications providers meeting City standards are allowed nondiscriminatory access to the Fiber system. The City reserves the right to allow or deny use of the City fiber to a provider.

2.4 Licensee Requirements. The Licensee shall have and maintain a POP or NOC within the City of Burlington. The Licensee shall have a period of up to 180 days after the effective date of this Agreement to establish a POP or NOC in the City of Burlington. The Licensee shall maintain and within 30 days, provide the City, copies of signed contracts or agreements for Fiber ISP services that utilize City Fiber.

2.4.1 The Licensee shall use a single fiber strand distribution method at or from the City Demark points, using 'splitter' technology such as the PON's, GPON's,

or EPON's CWDM or other such method so as to not run a single point to point connection over the City fiber from the Licensee customer Demark back to any Licensee broadband equipment, located in the City of Burlington, or the City of Mount Vernon head end.

2.5 Voice Services. The Parties agree that the provision of telephony is a mutual goal of the Parties, and that the Parties agree to the terms outlined in Section 4.1.A.

2.6 Use of Racks. Licensee shall be allowed access to available space in existing or new racks located at 311 Cedar St 2nd floor, as per the City Fiber fee schedule, as requested by the Licensee and in accordance with Section 6.3 below. Supplied electrical power to the Licensee for the number of devices required to operate and maintain the Fiber System, shall not be construed as a warranty that such electrical power shall be available, nor shall this section be construed as a warranty that such power shall be uninterrupted. In choosing to locate any Licensee equipment within City facilities, the licensee acknowledges and accepts all risks, including but not limited to excessive heat or fire that may damage Licensee's equipment.

2.7 Confidentiality and Security.

A. The equipment and locations are vital infrastructure, which are critical to the operation of the City of Burlington's public safety departments. As such, the information contained in any attached Exhibits is considered to be confidential, the disclosure of which would be inimical to public health, safety, and security. The Licensee shall not disclose such information except as necessary to facilitate the proper functioning of the Fiber System. In the event the Licensee becomes aware of a request for information disclosing the location of the Fiber System Infrastructure under circumstances where such disclosure is not authorized hereunder, the Licensee shall advise the City of such request.

B. Proprietary information disclosed by either Party to the other for the purposes of this Agreement, which is clearly so identified in writing as proprietary, shall be protected by the recipient in the same manner and to the same degree that the recipient protects its own proprietary information. Absent a court order or court rule directing disclosure, such information will be disclosed only to those employees of the recipient requiring access thereto in order to perform this Agreement.

2.8 Minimum Service Requirement and Standards.

A. Licensee shall establish Level of Service, and Quality of Service standards

consistent with industry standards.

B. Licensee shall meet and conform to all Criminal Justice Information Services standards and security requirements, and each person working on the City fiber and City IT systems and infrastructure must pass a CJIS background check administered by the City and paid for by the Licensee.

C. Licensee must provide and maintain two diverse connections to its POP or NOC.

2.9 Licensee shall maintain and provide to the City within sixty (60) days, any customer and contract information, technical documentation related to the City and or Licensee Fiber and IT systems including adds, modifications, changes that affect any part of the City Fiber. In addition the City reserves the right to an annual technical review of the City Fiber System.

2.10 City's Reservation of Authority. The Parties agree that this Agreement shall not be construed as limiting or interfering with the City's right to manage, control, construct, locate, maintain and/or use: the Burlington Fiber System; City Facilities; the public right of way, and /or; any public or private property in which the Burlington Fiber System or the City's Facilities are located. The Parties intend that nothing contained in this Agreement should act as a limitation, restriction, or prohibition against the City with respect to any agreement which the City has heretofore entered into, or may in the future enter into with others regarding the Burlington Fiber System, including the identified portion of the Burlington Fiber System covered by this Agreement. Licensee acknowledges that such an agreement with a third party may make rearrangement of Licensee's Facilities necessary. Licensee agrees that in such event, Licensee will cooperate in good faith with such rearrangement work at Licensee expense; provided however, that the City shall give Licensee sixty (60) days written notification of such intent to rearrange Licensee's Facilities to avoid unreasonable interruption or interference with the rights granted to Licensee under this Agreement.

3. Operation of the Fiber System.

In addition to this Agreement, the Licensee and the City have agreed to allocate the responsibility for the operation of the Licensee Facilities as provided herein. The City and Licensee shall reasonably cooperate with each other to achieve the purposes of this Agreement.

3.1 Responsibilities of Licensee for the Operation of the Fiber System. Licensee shall operate, manage, and maintain the Licensee Facilities as set forth in this Section 3. The term "operate", as used in this Section 3, shall include:

A. Customer relations, including system installation, operations, billing and collections;

B. Maintenance and repairs to all Licensee Facilities and components other than those owned by or licensed to the City or for which the City has the maintenance and repair obligation under the terms of this Agreement;

C. Technical support coverage seven (7) days per week, twenty-four (24) hours per day. Licensee's service technicians will be reachable by pager at all times and response times shall conform to reasonable standards and industry practices with similar operations in the region;

D. Management and maintenance of Fiber System interfaces with Telecommunications providers;

All other aspects of the operation of the services provided by the Licensee including any fiber and equipment related to Customer premises as defined by customer Demarcation Point.

Licensee shall have complete discretion, subject to the terms and conditions of this Agreement, to operate their services.

3.2 Customer Information Maintenance and Repairs.

A. Licensee shall provide a technical support system which shall be the point of contact for all Customer complaints and requests for repairs. The Licensee shall investigate all Customer service complaints, and shall notify the City if the complaint is caused by a defect of the Fiber System upstream from the Customer Demarcation Point when such defect does not reside in infrastructure for which the Licensee is responsible to maintain.

B. The Licensee shall be solely responsible for maintaining any Interconnection that is established by the Licensee. The Licensee shall be responsible for ensuring that such equipment or service is compatible with City's reasonable requirements. In addition, the Licensee shall be responsible for securing and maintaining all Customer Information which shall include but not be limited to: addresses, passwords, files, network and user access, bank accounts, social security information, personal identity information, taxpayer information, medical information, and any information the Customer disseminates through the City Fiber System, including and in addition to the indemnifications provided in Section 12 of this Agreement, Licensee shall indemnify, defend, and hold harmless the City, its agents, elected officials, or employees from demands, suits, at law or equity, actions,

penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the use, storage, management, access, dissemination, or broadcasting of Customer information.

3.3 Technical Support. Support shall be provided to Licensee Customers seven (7) days per week, twenty-four (24) hours per day. Licensee's service technicians will be reachable by pager at all times and response times will be reasonable and commensurate with similar operations in the region;

3.4 System Interfaces. The Licensee shall manage and maintain connectivity between its Telecommunications services and its Customers, and provide necessary hardware to provide access to the Fiber System for Licensee's Customers.

3.5 Transfer. All current and new users of the Burlington Fiber System, at the option of the user, shall be customers of Licensee and subject to applicable provisions of this Agreement, upon execution of this Agreement and Licensee's service agreement and other reasonable requirements imposed by Licensee on its Customers. Governmental entities shall retain their ability to utilize the City Fiber system for institutional networking.

3.6 Installation and Maintenance of Licensee Facilities. The location of Licensee Facilities in the Burlington Fiber System will be approved by the City. Licensee's Facilities shall be installed and maintained at the sole cost to the Licensee and in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and the Washington State Electric Code each of which are incorporated by reference in this Agreement, and the rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA) and in compliance with any lawful rules or orders and design specifications now in effect or that may hereafter be issued by the City or other authority having jurisdiction. Licensee shall be solely responsible for securing any additional approvals that may be required to install Licensee's Facilities, including the approval by the owner of any infrastructure to which Licensee's Facilities may be attached. If Licensee's Facilities, or any part thereof are not maintained in accordance with conditions provided by this Agreement and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from the City, the City may at its own option correct said conditions at Licensee's expense. The City will notify Licensee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such conditions pose an immediate threat to the safety of the City's employees or results in interference with the performance of the City's service obligations to the public, or pose an immediate threat to the physical integrity of the City's Facilities, the City may perform such work and/or take such action at Licensee's

expense that it deems necessary without first giving written notice to Licensee and the City shall be indemnified by Licensee for such work. As soon as practicable thereafter and not later than seventy-two (72) hours after having taken such action, the City will advise Licensee in writing of the work performed or the action taken and make all reasonable efforts to arrange for recommendation of Licensee's Facilities so affected. Licensee shall be responsible for paying the City for all reasonable costs incurred by the City in taking action under this subsection.

3.7 Responsibilities of the City for the Burlington Fiber System.

3.7.1 Modifications/Alterations. If the City determines that it is necessary to relocate, modify or alter any component of the Burlington Fiber System including Fiber System Infrastructure, the City shall provide Licensee sixty (60) days written notification prior to making the proposed relocation, modification or alteration in order to provide Licensee a reasonable opportunity to rearrange, relocate or modify its existing Licensee Facilities. Licensee shall have no responsibility for costs and expenses relating to the relocation, modification, or alteration of the Burlington Fiber System or Fiber system Infrastructure for the purpose of meeting the City's needs or the needs of any other joint-user. The notification requirement of this section shall not apply to emergency situations. The City may require an agent of the Licensee to attend pre-construction meetings between the City and any contractor engaged by the City to modify or alter any component of the Fiber System when, in the City's sole discretion, such attendance would facilitate such alteration or modification.

3.7.2 Capital Improvements. The City may take reasonable steps to provide such capital improvements as reflected in the City's approved capital budget, provided that funding for such capital improvements are available from the sources identified in the capital budget. Any expenditure of City funds shall be purely a policy decision of the City Council under their legislative authority and at their sole discretion.

4. Revenue from the Fiber System.

Subject to the terms and conditions of this Agreement, the City shall receive from the Licensee, fees based on the City Fiber Telecommunications Fee Schedule along with a report from the preceding quarter, and the payment to the City.

4.1 Customers. The City shall receive from the Licensee the following compensation for use of the Burlington Fiber System as set forth below.

A. Telecommunications Customers. The City shall receive 15% of the Gross Revenue received by the Licensee; **Subject to a non-residential minimum of twenty five dollars (\$25.00) per month per customer;** for the

provision of data services to Burlington Customers. *This revenue is in addition to the fees described more fully in Exhibit B and attached hereto.* This category shall include any wireless customers of the Licensee for which the Fiber System is used to transmit data without regard to where the customer is located. The City shall reasonably approve the initial pricing structure and any adjustment in pricing thereafter.

B. Dark Fiber Charges. Exclusive use of fiber by a single customer ("Dark Fiber") is subject to the City's separate application and approval processes, and must be explicitly approved by the City. The City may choose to offer a combination of GPON, GPON, CWDM/DWDM with splitters to achieve "Dark Fiber" or certain spectrums referred to as "wave". The City shall receive a Fiber Port charge for each Telecommunications fiber customer connected as a sub-lease with Dark Fiber as per the City Fiber Telecommunications Fee Schedule Exhibit B. Dark Fiber connections are subject to City discretion and availability and the Licensee cannot receive more than 12 dark fibers.

4.2 Accounting by Licensee. From the effective date of this Agreement, the Licensee shall provide a report to the City on a quarterly basis setting forth the amount of Gross Revenue generated from the Fiber System for the preceding quarter, and the payment to the City. Licensee shall complete the forms reasonably acceptable to the City giving the information necessary to enable the City Clerk and the Licensee to arrive at the lawful amount of the license fee owed. The receipt by the City of any report or statement for any payment to the City shall not bind the City as to the accuracy of the statement or the payment.

4.3 Audits. Licensee shall keep books or records reflecting the amount of Gross Revenues. Representatives of the City, at the City's expense, are hereby authorized to perform periodic audits of Licensee's books or records reflecting or relating to the amount of Gross Revenues calculated by Licensee at reasonable times, and in accordance with applicable rules and regulations of the state of Washington. If federal funds are utilized by the City in the construction or expansion of the Fiber System, an annual audit report prepared in accordance with the Single Audit Act of 1094 (31 USC 7501-7) and OMB Circular A-128 for governmental entities may be required; in such event the Licensee will reasonably cooperate in the preparation of such audit. The intent of the audit will be to demonstrate compliance with federal guidelines for the use and disbursement of federal funds.

If Licensee fails to provide the report as required under Section 4.2 of this Agreement, and such failure continues after five (5) days written notice of such failure to Licensee, or if the City clerk-treasurer has reasonable grounds to believe the report is inaccurate or incomplete the City's financial officer, agent or designee may enter the premises of the Licensee at any reasonable time and may examine his

books and records, and may examine any person who has signed the report required under Section 4.2 or any employee who assisted in preparing such report, touching the matters inquired into, or the officer or agent may request from Licensee and Licensee shall provide to such officer or agent within five (5) days of such request, books, records and papers as may be reasonably requested and relating to the missing, incomplete or inaccurate report.

If it shall be determined, as a result of any audit or investigation hereunder, that there has been a deficiency in any payment due the City, then such deficiency shall become immediately due and payable with interest at the rate of twelve percent (12%) per annum from the date when said payments should have been made. If it is determined that the City received an overpayment, the City shall issue a credit for that amount or refund the overpayment to Licensee upon Licensee's request. The City's failure to perform an audit within ninety (90) days after receipt of any monthly statement shall be deemed an irrevocable waiver by the City of its right to audit or dispute the monthly statement and corresponding payment.

5. Condition of the Fiber System.

Except as noted below and the City's obligation to provide Licensee and its Customers use and access to the Fiber System, Licensee accepts the Fiber System for its use "as is," and is not relying on any representations of the City as to condition, suitability, or usability of the Fiber System, except the City's authority to enter into this Agreement.

The Fiber System is provided without any representation or warranty, express or implied, of any kind, including, but not limited to, warranties of merchantability or fitness for any particular purpose.

Licensee hereby releases the City and shall hold the City harmless nor have any claim against the City for the interruption of Licensee's business (including without limitation, any lost profits, business interruption, loss of information or programs or other data on an information handling system, or loss of good will) that are related to any temporary inability or interference to use the Licensee's Facilities. Licensee acknowledges that it has been advised of the possibility of damage to the system and system interruption.

Including and in addition to the indemnifications provided in Section 12 of this Agreement, Licensee shall indemnify, defend, and hold harmless the City, its agents, officials, or employees from demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to Licensee's Customers for the provision of access and use the Burlington Fiber System including without limitation

violations of right to privacy, any lost profits, business interruption, loss of information or programs or other data on an information handling system, loss of good will that are related to any temporary inability or interference with the use the Burlington Fiber System

5.1 Inspection. Licensee acknowledges that it has performed a due diligence review of the Burlington Fiber System. Licensee shall be solely responsible for his its own analysis of the merits and risks of the use of the Burlington Fiber System to which this license shall grant, and for the analysis of the fairness and desirability of the terms of this license. Licensee has received all materials requested from the City relevant to this license agreement and accepts the Burlington Fiber System on an AS-IS, WHERE- IS basis. Licensee is not relying upon any statements or representation by City or any other person or entity with respect to the fiber system which would give rise to a claim by Licensee against the City at any time or for termination of this Agreement.

6. Maintenance Responsibilities.

6.1. City Responsibility. The City shall be responsible for, in a timely manner, all repairs to the conduit, and access vaults of the Burlington Fiber System. In addition, the City shall be responsible for the maintenance of all fiber and distribution panels between termination points. The City shall remain financially responsible for making repairs to the fiber optic cable upstream from the demarcation point, provided that repair is not required to be made to infrastructure for which the Licensee is responsible to maintain including Licensee Facilities. The City shall select a contractor, who shall be under contract to the City to respond to repair the Burlington Fiber system in the event of a service interruption. For defects that are the City's responsibility to repair, the Licensee shall notify the contractor. It is the intent of this License that the Licensee shall only be authorized to notify the contractor; nothing herein shall authorize the Licensee to direct the contractor to make such repairs, or otherwise approve work to be performed by the contractor.

6.2. Licensee Responsibility. The Licensee shall be responsible for maintaining all fiber patch cables purchased and used for use with its equipment, as well as all of its equipment installed on the Fiber System.

6.3 Access for Maintenance and Repairs. The City shall reasonably cooperate with Licensee to allow access to areas of City property necessary for such maintenance or repairs. All of Licensee's agents or employees shall cooperate with the City's performance of a criminal background check before being allowed access to the City's secured facilities. The City shall not allow unescorted access to the City's secure facilities by Licensee's agents or employees that have been charged or

convicted of a crime within the last ten (10) years. Access to and use of any City facilities shall be in conformance with all codes, regulations and requirements established by the City.

6.4 Standard of Maintenance and Repair. The City and the Licensee shall act reasonably and prudently to perform the required maintenance and repair functions as soon as possible. Each Party will promptly notify the other of any required maintenance or repair.

6.5 Emergency Repairs to City Infrastructure. The City shall establish a contractual arrangement with a contractor(s) able to perform emergency repairs to the City's fiber infrastructure. In the event of an outage during non-business hours, the Licensee is hereby authorized to contact the City's contractor in order to re-establish the functionality of the fiber system, provided that the expected costs of the repairs as estimated by the City's contractor is not estimated to exceed ten thousand dollars (\$10,000.00). The City hereby appoints the Licensee as the City's agent to authorize such emergency repairs to commence immediately. In the event the Licensee authorizes such repairs, restoration of telecommunications used for emergency services and traffic control shall be given the highest priority.

7. Improvements.

The Licensee may make reasonable improvements and additions (such as wireless communication equipment) to the Burlington Fiber System, subject to prior approval of the City. In addition, the City may make, at its sole election and in consultation with the Licensee, reasonable capital improvements in the software and hardware to the Burlington Fiber System in conformity with the capital budget.

7.1. Licensee fiber installed for the Licensee Customer. The City of Burlington shall retain the right of ownership and right of usage of any Licensee fiber installation paid for or made by the Licensee or contractor, for the purposes of providing Licensee customer ISP services. Specifically the fiber from the City of Burlington fiber system to the customer Demark, the fiber installation charges identified as the customer NRC installation fee, or other installation fee after the Licensee Customer agreement ends, or the NRC installation fee is paid for, whichever occurs first.

Licensee forfeits any claims to the physical fiber run from the customer demark to the City of Burlington fiber, including any over capacity or unused fiber strands, not to exceed ¼ of the fiber bundle capacity but not including any Licensee equipment, splitters etc.

7.2 Disposition of Improvements at Termination of Agreement. Upon termination of this Agreement, the City shall retain all improvements to the

Burlington Fiber System Infrastructure by the Licensee, which does not include Licensee's Facilities.

8. Compliance with Public Works Statutes.

In all work conducted on the Fiber System, Licensee shall not knowingly violate any statute or rule relating to public works contracting, if applicable. Licensee shall not conduct any construction or major non-emergency work on the City Fiber System without first providing reasonable notice to the City of the scope of such anticipated work, the anticipated date of the start of construction, and such additional information as may be reasonably required by the City to determine if the proposed work is subject to any public works contracting requirements. In the event such work is reasonably determined by the City to be a "public work", as that term is defined by applicable statutes, then in that event the Licensee shall take such steps as may be necessary to comply with statutory requirements.

9. Term.

9.1 The term of this Agreement shall extend for a period of five (5) years from **xxx, 2018** to **xxx, 2023**, subject to the Agreement's termination provisions. Unless earlier terminated, the Agreement shall renew for one additional five (5) year term unless either Party gives the other Party notice of its intent not to renew at least ninety (90) days prior to the expiration of the initial five (5) year term. Either Party may request that this Agreement be reopened provided that: There shall be an 'opener' during the period of **xxx, 2018 to xxx 2018** for both Parties to review and negotiate the terms of this Agreement. The intent of which is to identify terms and conditions to enhance the Burlington Fiber system and the efficiency of co-operative efforts between the Parties.

Either Party may reopen this Agreement for further negotiations one additional time by making such request in writing provided that sections 2.1 and 4.1(A) shall not be subject to renegotiation. Re-opener negotiations shall commence upon request, and the Parties agree to meet and negotiate within two (2) weeks following a request for such negotiations. If negotiations reach an impasse, the impasse will be resolved utilizing the dispute resolution procedures set out in Section 37.

The Parties acknowledge that there may be changes in state or federal laws affecting a Party's ability to perform this Agreement, and the Parties agree to utilize the reopener provisions set out above in the event a change in law renders a Party's ability to perform its obligations under this Agreement impossible or illegal, provided that the Party requesting the Agreement be reopened shall identify the change in law causing the Agreement to be reopened.

9.2 Customer Conversion. Upon notification of termination, the City and Licensee shall cooperate to allow Customers to transfer to a Telecommunications Service Provider of the Customer's choosing, subject to the terms and conditions of the Customers' agreement with Licensee.

Both Parties shall negotiate in good faith to allow Licensee Facilities to remain in place for a reasonable period of time after termination in order to ensure customer satisfaction and continuity of service if the Customer so chooses.

10. Inspection of Licensee Facilities

10.1 The City reserves the right to make periodic inspections at any time of any part of Licensee's Facilities occupying the Burlington Fiber System for the limited purpose of determining whether Licensee's Facilities are in compliance with the terms of this Agreement; provided that such inspections must be non-invasive and non-disruptive.

A. The City will give Licensee reasonable advance written notice of such inspections, and Licensee shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been forwarded to Licensee.

10.2. Such inspections shall be conducted at the City's expense.

10.3 Licensee agrees that the making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind whatsoever or relieve licensee of any responsibility, obligations, or liability whether assumed under this Agreement or otherwise existing.

11. Unauthorized Occupancy.

If any of Licensee's Facilities are found occupying any portion of any of the Burlington Fiber System other than as set forth in Exhibit A the City may, without prejudice to its other rights or remedies under this Agreement, require Licensee to remove the unauthorized occupancy within ten (10) days of receipt of written notice from the City regarding Licensee's unauthorized use and the City may assess an unauthorized occupancy fee at the rate of five hundred dollars (\$500.00) per day for each day of the unauthorized occupancy after expiration of such ten (10) day notice. In addition, if at the end of such ten (10) day period, Licensee has not removed the unauthorized occupancy, the City may, at its sole option, remove Licensee's Facilities at Licensee's expense and the City shall be indemnified by Licensee for such work; provided however that if such unauthorized occupancy results in a threat to the public's safety health or welfare or imminent threat of interruption of fiber services the City may

remove Licensee's Facilities without notice.. No act or failure to act by the City with regard to said unlicensed use shall be deemed as ratification of the unlicensed use.

12. Licensee will Obtain Permits.

Licensee agrees to obtain and comply with all necessary permits for any improvement it makes to the Fiber System. If Licensee fails to obtain and comply with such permits, then Licensee accepts full responsibility for any and all costs incurred by the City, including reasonable attorneys' fees. In this way, Licensee agrees to be solely responsible for all damages, costs, and expenses incurred as a result of Licensee's failure to fully comply with any necessary permit process and requirements. Further, all repairs, maintenance and improvements, and any alterations thereto shall be accomplished in a good and workmanlike manner and in material compliance with all applicable laws, including, without limitation, required permits, licenses, and authorizations of governmental authorities.

13. Liens.

Licensee agrees to keep the Fiber System described herein free and clear of all liens and charges whatsoever. Licensee shall not allow any materialman's, mechanics, or other liens to be placed upon the City's property. If such a lien is placed or recorded, Licensee shall cause it to be discharged off record, at its own expense, within ten (10) days of the City's demand. Failure to comply with the City's demand within ten (10) days shall be a default under the terms of this Agreement.

14. Indemnification and Hold Harmless – General Liability.

Licensee agrees that it will defend, hold harmless and indemnify the City, its, elected officers, employees and agents from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, operation of the City fiber system, or other occurrences on the City's property, occasioned by either the negligent or willful conduct of Licensee or its agents. Should there be any legal action brought about against the City, the contract between the City and the Licensee immediately becomes null and void upon receipt of legal action against the City.

The City shall exercise reasonable precaution to avoid damaging the facilities of Licensee and shall make an immediate report to Licensee of the occurrence of any such damage caused by its elected officers, employees, agents or contractors. The City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by City, however, the City shall not be liable to Licensee for any interruption of Licensee's service or

for interference with the operation of Licensee's Facilities except if caused by willful or intentional misconduct, or the City or Licensee shall not be liable for any special, indirect, or consequential damages arising in any manner whatsoever out of Licensee's use of the Burlington Fiber System or the City's actions or omissions in regards thereto, including, but not limited to, as a result of the City's negligence, and Licensee shall indemnify and hold harmless the City, its employees, agents and contractors from and against any and all claims, demands, causes of action, costs, and attorneys' fees of whatever kind resulting in any manner whatsoever out of Licensee's use of the Burlington Fiber System. The foregoing shall not limit the City's liability for willful or intentional misconduct.

14.1 The Licensee specifically assumes potential liability for the negligent or willful conduct of Licensee or its agents in any action brought by the Licensee's own employees against the City and, solely for the purpose of this indemnification and defense, the Licensee specifically waives any immunity under the State Industrial Insurance Law, RCW 51; provided, Licensee's waiver of immunity by the provisions of this paragraph shall extend only to claims against Licensee by the City and shall not include or extend to any claims by Licensee's employees directly against Licensee. THE LICENSEE RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.

14.2 These indemnifications shall survive the termination of this Agreement.

14.3 Indemnification and Hold Harmless - Environmental. Licensee shall indemnify and hold the City harmless from any and all claims, demands, judgments, orders, or damages resulting from hazardous substances on the City's property caused in whole or in part by the Licensee's activities or its agent's activities. It is the intent of the Parties that Licensee shall be responsible and shall hold the City harmless from any hazardous substances brought onto the City's property by the Licensee or its agents. The term "hazardous substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33U.S.C. Sec. 1257 et seq.; the Clean Air Act, 42 U.S.C. Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D all as amended, and subject to all regulations promulgated thereunder.

14.4 Indemnification and Hold Harmless - Fiber System. Licensee shall indemnify and hold the City and its licensors harmless from any and all claims, demands, judgments, orders, or damages arising from the operation and maintenance of the Fiber System by Licensee. Should there be any legal action

brought about against the City, the contract between the City and the Licensee immediately becomes null and void upon receipt of legal action against the City.

14.5 In the event that any demand or claim is asserted against the City and the City will seek indemnification for such demand or claim from Licensee, the City shall send written notice to Licensee regarding such claim prior to seeking indemnification from the Licensee and prior to the City making any settlement offer to the claimant.

14.6 In the event that any demand or claim is asserted against the Licensee and the Licensee will seek indemnification for such demand or claim from the City, the Licensee shall send written notice to the City regarding such claim prior to seeking indemnification from the Licensee and prior to the Licensee making any settlement offer to the claimant. Failure by the Licensee to notify the City in writing prior to making a settlement offer to the claimant shall constitute a waiver of any right to indemnification under this Agreement as to such demand or claim.

14.7 The Parties agree that each Party shall be represented by separate counsel whenever both Parties become involved in any action described in this section and whenever the City or Licensee seeks indemnification under the terms of this Agreement and proper notice is given pursuant to Sections 12.5 or 12.6. Each Party shall bear its own legal costs, including attorneys' fees, in any such action. Notwithstanding the foregoing, the Parties to this Agreement have concluded that they may have certain common interests in connection with defending against any lawsuit alleging damages resulting from the negligent acts or omissions of the Parties, or a failure to comply with local, State, or federal law. The Parties have concluded that, in such event, their mutual interests may be best served by having their respective counsel share documents, oral representations, factual material, mental impressions, memoranda, witness statements, interview reports, and other information, including the confidences of the Parties (hereinafter "joint defense materials"), on the understanding and agreement that: (a) joint defense materials transmitted among counsel may contain confidential and privileged attorney-client communications; (b) joint defense materials transmitted among counsel may contain attorney work product similarly privileged; and (c) joint defense materials transmitted among counsel may contain materials protected by otherwise applicable privileges and rules of confidentiality.

15. Casualty Loss of Licensee.

The Parties hereto agree that the City and Licensee shall not be responsible to one another for any property loss or damage done to the other's property, whether real, personal or mixed, and/or the Fiber System occasioned by reason of any fire, storm or other casualty whatsoever, provided that both Parties do not waive their right to bring an action against the other Party to recover losses of

whatsoever kind or nature occasioned by the other Party's negligent or intentional acts or omissions, or the acts or omissions of the other Party's agents or representatives.

16. Insurance.

Licensee shall procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and/or property damage (including all real and personal property located on the City's property) arising out of the operation or maintenance of the Fiber System. The limits of liability shall not be less than one million dollars (\$1,000,000) for each occurrence and two million (\$2,000,000) in the aggregate, unless Licensee requests, and the City approves in writing, a lesser liability limit. The City shall be listed as an additional insured in the Licensee's Certificate of Insurance along with the Endorsement of the Licensee's Insurance Policy. Certificate of Insurance/Endorsement will accompany this Agreement and remain in effect during the term of this Agreement.

16.1 Failure to Maintain Insurance. If Licensee fails to procure and maintain the insurance described above, the City shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Licensee shall pay to the City, upon demand, the full amount paid by the City. Failure to procure and maintain insurance as described above shall constitute a material breach of this Agreement.

16.2 Amount of Insurance. Licensee believes and states that the insurance obligation herein does not exceed that which Licensee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

17. Laws and Regulations.

Licensee and the City agree to not knowingly violate any lawful State and federal statute, local ordinance, or any applicable rule, code, law, regulation or City policy in connection with its use, operation and maintenance of the Fiber System and the construction of improvements and operation of the Party's business thereon and not to knowingly permit the Fiber System to be used in violation of any lawful State and federal statutes, local ordinances, and any applicable rule, code, law, regulation, City policy, or other authority.

17.1 Fines and Penalties - Environmental. Both Parties' obligations herein shall include, but in no way be limited to, the obligation to comply with all State and federal environmental laws and regulations. Licensee and the City covenant and agree that they will indemnify and hold harmless one another from any fine, penalty, or damage which may be imposed by any lawful authority, which may arise as a

result of their failure to comply with the obligations of this paragraph.

17.2 Fines and Penalties – State and Federal. Licensee and the City's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and federal workplace safety laws and regulations. Licensee and the City covenant and agree that they will indemnify and hold harmless one another from any fine, penalty, or damage which may be imposed by any lawful authority, which may arise as a result of their failure to comply with the obligations of this paragraph.

17.3 City's Legal Authority. Licensee understands that the City owns the Fiber System under the authority of State law. The City and Licensee shall not knowingly use or operate the Fiber System in such a manner as to cause the City to be in violation of State law as it now exists or is hereinafter created or amended. This License, granted by this Agreement, is subject, in all respects, to the City's legal authority as it now exists or is hereinafter created or amended. It is the intent of this paragraph to reserve unto the City the greatest authority as now exists, or may hereafter be granted, to operate and maintain a telecommunications system, and this paragraph shall in no way be construed so as to curtail or otherwise impair the obligation of contracts as set forth in the Washington Constitution.

18. Relation to Other Provisions of Law.

This Agreement and all rights and privileges granted under it are subject to, and the Licensee must exercise all rights granted to it, in accordance with applicable law over the License term. However, this Agreement is subject to the City's exercise of its police and other regulatory powers and applicable law. In the case of any conflict between the express terms of this Agreement and the express terms of any amendments to applicable law (other than amendments adopted pursuant to the City's police power and other regulatory powers), this Agreement shall govern. Nothing herein prevents the Licensee from challenging a particular amendment that it believes represents an unlawful exercise of the City's police or other regulatory powers. Notwithstanding the foregoing, if any amendment to applicable law by the City and other regulatory powers and applicable laws including State and federal regulatory agencies or applicable laws substantially defeats the purpose of this Agreement, either Party may terminate this Agreement without liability.

19. License Non-exclusive.

This License shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City to any person to use the City Fiber System for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit. The City may at any time grant authorization to use the City Fiber System for any purpose not incompatible with

Licensee's authority under this License. The City guarantees Licensee use of a minimum of one (1) fiber strand to any core location, and use of a minimum of two (2) fiber strands to Customer premise drops during the term of this Agreement and any extension hereof; provided that this paragraph shall not be construed so as to require the City to install additional infrastructure except as may be required by other provisions of this Agreement.

20. Termination.

The City and Licensee may terminate this Agreement and revoke or cancel, and all rights and privileges pertaining thereto without liability in the following circumstances:

20.1 Licensee or the City remains in material breach of this Agreement's terms after the other Party provides notice and an opportunity to cure as set forth herein.

20.2 Licensee or the City fails, except in the event of an emergency, to obtain and maintain any permit required by any federal or State regulatory body or by the City, relating to the construction, maintenance and operation of the Fiber System, or to comply with any lawful order or regulation of the City after the other Party provides notice and opportunity to cure.

20.3 At any time during the term of the Agreement, Licensee or the City fails to provide and maintain the insurance required under this License, or fails to satisfy the indemnity set out in this License, provided that before the License is revoked, the other Party provides notice and opportunity to cure; or

20.3.1 Licensee or the City is found to have engaged in any actual or attempted fraud or deceit upon the other Party.

20.3.2 The City is unable to provide Licensee with use of and access to the Burlington Fiber System for the purposes set forth in this Agreement.

20.3.3 Licensee fails to remit payments on a quarterly basis according to Section 4 of this Agreement or fails to follow the terms for audit or submission of proper reports after the City provides notice and opportunity to cure as set forth herein.

The City and Licensee must provide the other Party with written notice specifying any alleged contractual breach, and giving the other Party at least thirty (30) days to cure the alleged default, except in instances of defect(s) deemed to immediately threaten the public health and safety in which event the other Party shall commence repairs within forty-eight (48) hours of receiving such notice taking all reasonable

steps to commence (and, if reasonable, complete) permanent or temporary repairs so as to eliminate threats to public safety. For the purpose of this paragraph, the phrase "defect(s) deemed to immediately threaten the public health and safety" shall include such defects as may limit the ability of the City to provide services to: (1) the Skagit County 911 system; (2) any law enforcement agency utilizing the City Fiber System; or (3) and fire department utilizing the City Fiber System, together with such physical defects as may pose a physical threat to any person. In illustration of the foregoing, and not in limitation thereof, infrastructure defectively installed by the Licensee such that the infrastructure poses a hazard of electrical shock shall be deemed to be a physical defect posing a physical threat. If the Licensee or City fails to cure the default within the thirty (30) day period, or in the case of a default that cannot be cured within thirty (30) days, fails to diligently work toward a cure, the other Party may terminate this Agreement without liability by sending written notice to the other Party.

20.4 Either Party may also terminate this Agreement and its obligations hereunder without liability to the City by providing the City with at least one-hundred twenty (120) days written notification. Pursuant to current State Law, it is unlikely that the City of Burlington may currently provide for-profit ISP services, especially to non-City entities. The Parties acknowledge that, among other interests, the Licensee is in the business of providing for-profit ISP services and is investing resources in order to provide ISP services on the City's network. Notwithstanding the other terms of this agreement, if a change in the law should allow the City to provide for-profit ISP services in the future, the Parties hereby agree that the City shall not intentionally take action to exclude the Licensee from the City's Fiber System, solely for the purpose of providing the City's own for-profit ISP services. If the Agreement is terminated in this manner, Licensee shall take all reasonable steps to insure a continuity of services to its Customers.

21. Work of Contractors and Subcontractors.

Work by Licensee's or the City's contractors and subcontractors shall be subject to the same restrictions, limitations, and conditions as if the work were performed by Licensee or the City, including the provisions of Section 8, above. Licensee and the City shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it. Licensee and the City shall ensure that all such work is performed in compliance with this Agreement, and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Licensee and the City's responsibility to ensure that contractors, subcontractors, or other persons performing work on Licensee's behalf are familiar with the requirements of the License and other applicable laws governing the work performed by them.

22. Waste and Refuse.

Licensee and the City agree not to allow conditions of waste and refuse to exist with regard to the Fiber System.

23. Independent Contractor.

The relationship between the City and Licensee shall, at all times, be construed as an arm's length business transaction. The arrangement is not a joint venture or any other form of combined business enterprise.

23.1 The Licensee acknowledges that it is responsible for the payment of all charges and non-exempt taxes applicable to the services performed under this Agreement, and the Licensee agrees to comply with all applicable laws regarding the reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the Licensee's status as an independent contractor. If the City is assessed, liable, or responsible in any manner for those charges or taxes, the Licensee agrees to hold the City harmless from those costs, including attorney's fees.

23.2 Except as explicitly set forth herein, the Licensee shall provide, at its sole expense, all materials, and other necessities to perform its duties under this Agreement.

23.3 The Licensee, at its sole expense, shall obtain and keep in force any and all necessary licenses and permits. The Licensee shall obtain a business license under the City Municipal Code.

23.4 This Agreement shall be for the sole benefit of the Parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either Party hereto.

24. Signs.

No signs shall be installed without the written permission of the City.

25. Transfer of Licensee's Obligations.

25.1 This Agreement is a privilege to be held in personal trust by the Licensee. Except as provided below, neither this Agreement nor any rights or obligations of the Licensee in or pursuant to this Agreement, shall be transferred in part or as a whole, by assignment, trust, mortgage, lease sublease, pledge or other hypothecation, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise,

nor shall title, either legal or equitable, or any right or interest, pass to or vest in any person, nor shall a change in Control of this Agreement or the System occur, either by act of the Licensee, by operation of law or otherwise, in each such case without the Licensee having obtained prior written consent of the City, which shall not be unreasonably withheld. In addition, the Licensee shall not subcontract, delegate, or transfer any obligation, interest, or claim under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld. The taking of any action described above without receiving the written consent of the City shall be deemed a material breach of this Agreement.

25.2 Exceptions.

A. The consent of the City for any change in the ownership of the Licensee shall not be required unless such change involves a change in control of the Licensee. Change in control shall include the following: (1) the purchase by a third party of more than 50% of a company's stock; (2) a change in the majority of the board of directors; (3) a merger or consolidation, after which the company's prior shareholders no longer control the company; or (4) the sale of all or substantially all of the company's assets or the liquidation of the company.

B. Nothing contained herein shall be deemed to require the consent of the City of any assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation of all or any part of the stock or assets of this Agreement, or any right or interest in such stock or assets, for securing an indebtedness, provided that each such assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation shall be subject to the rights of the City pursuant to this Agreement, or applicable law, and such rights of the City shall be recognized in each such hypothecation agreement between the Licensee and any such creditor.

26. Equal Opportunity.

Licensee agrees that in its conduct of activities with regard to the Fiber System, Licensee will comply with all applicable federal and State discrimination laws.

27. Litigation.

In the event the City shall be made a party to any litigation commenced by or against Licensee as a result of Licensee's actions under this Agreement, Licensee agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges, incurred by the City in connection with such litigation. However, if the City is made a party defendant and Licensee undertakes the defense of the action on behalf of the City, then no obligation for costs and attorneys' fees will be chargeable against Licensee by the City for costs arising out of such undertaking. In the event Licensee shall be made a party to any

litigation commenced by or against the City as a result of the City's actions under this Agreement, the City agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges, incurred by Licensee in connection with such litigation. However, if Licensee is made a party defendant and the City undertakes the defense of the action on behalf of Licensee, then no obligation for costs and attorneys' fees will be chargeable against the City by Licensee for costs arising out of such undertaking.

28. Attorneys' Fees.

In any action brought to enforce any term or condition of this Agreement, the prevailing Party shall be entitled to recover its reasonable costs and attorneys' fees incurred, however the amount of attorneys' fees shall not exceed twenty five thousand dollars (\$25,000.00). Venue for any action hereunder shall exclusively be Skagit County Superior Court.

29. Non-Waiver.

Except as otherwise provided herein, neither the acceptance of payments nor any other act or omission of the City after a default by Licensee shall operate as a waiver of any past or future default by Licensee, or to deprive the City of its rights under this Agreement, or be construed to prevent the City from promptly exercising any other right or remedy it has under this Agreement. Neither the acceptance of payments nor any other act or omission of the Licensee after a default by City shall operate as a waiver of any past or future default by City, or to deprive the Licensee of its rights under this Agreement, or to be construed to prevent the Licensee from properly exercising any other right or remedy it has under this Agreement.

30. Notices.

Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be in writing addressed to the other Party at the following addresses:

**CITY:
IT Department
City of Burlington
833 S Spruce Street
Burlington, WA 98233**

Copy to:

City Attorney

**City of Burlington
833 S Spruce Street
Burlington, WA 98233**

**LICENSEE:
Allixo Technologies, LLC
PO Box 2007
Mount Vernon, WA 98273**

or such address as may have been specified by notifying the other Party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

31. Time.

It is mutually agreed and understood that time is of the essence of this Agreement and that a waiver of any default of Licensee or the City shall not be construed as a waiver of any other default.

32. Interpretation.

In any dispute between the Parties, the language of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the City or Licensee. If any provision is found to be ambiguous, the language shall not be construed against either the City or Licensee solely on the basis of which Party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one Party or the other, then such finding shall in no way affect the remaining provisions of this Agreement.

33. Survival.

All obligations of the City and/or Licensee, as provided for in this Agreement, shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.

34. Governing Law.

This Agreement and the right of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the

Parties agree that in any such action jurisdiction and venue shall lie exclusively in Skagit County, Washington.

35. Default.

If either Party fails to perform any obligation required hereunder, then the other Party must provide thirty (30) days written notice of the default as specified in Section 18 of this Agreement. If the defaulting Party fails to cure said default within the thirty (30) day period, or in the case of a default that cannot be cured, within thirty (30) days fails to diligently work towards a cure, the non-defaulting Party may terminate this Agreement by sending written notice to the defaulting Party. This remedy is in addition to all other remedies available at law or equity.

36. Entire Agreement.

This Agreement contains all of the understandings between the Parties. Each Party represents that no promises, representations, or commitments have been made by the other as a basis for this Agreement which have not been reduced to writing herein. No oral promises or representations shall be binding upon either Party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement executed with all necessary legal formalities by the City.

37. Dispute Resolution.

The Parties agree to submit any dispute arising out of this Agreement, including any dispute concerning either Party's right to terminate the Agreement, to an independent third party for binding resolution. Specifically, the Parties shall submit their dispute to a single arbitrator chosen by mutual agreement. If, however, the Parties cannot agree on a single arbitrator, each Party shall select an arbitrator and the two arbitrators so selected shall pick a third arbitrator. The three arbitrators so selected shall decide the matter by majority vote. The arbitrator shall endeavor to conduct the arbitration within forty-five (45) days following selection. Any arbitration shall be conducted under the laws of the State of Washington and the Commercial Rules of the American Arbitration Association. The location of the arbitration, unless agreed otherwise, shall be in Skagit County, Washington. Any arbitration award or decision made in this matter may be enforced in Skagit County Superior Court. The arbitrators shall have final authority to resolve all issues including the award of attorneys' fees and grant of equitable relief, if appropriate.

38. No Compensable Property Interest.

Licensee's interests under this Agreement shall not constitute an interest that would entitle Licensee to any consideration or compensation in the event that the City reconfigures, adds to or changes the use or configuration of the Burlington Fiber System so long as it does not unreasonably interfere with Licensee's use as allowed under this Agreement.

39. Effect of License.

No use of the Burlington Fiber System or payment of any fees or charges required under this Agreement shall create or vest in Licensee any easements or any other ownership or property rights of any nature in the Burlington Fiber System. Neither this Agreement, nor the license granted hereunder shall constitute an assignment of any of the City's rights to use the Burlington Fiber System or the public or private property in which the Burlington Fiber System is located. This License shall not be converted to an easement or other interest in land by implication or prescription.

EXHIBIT A

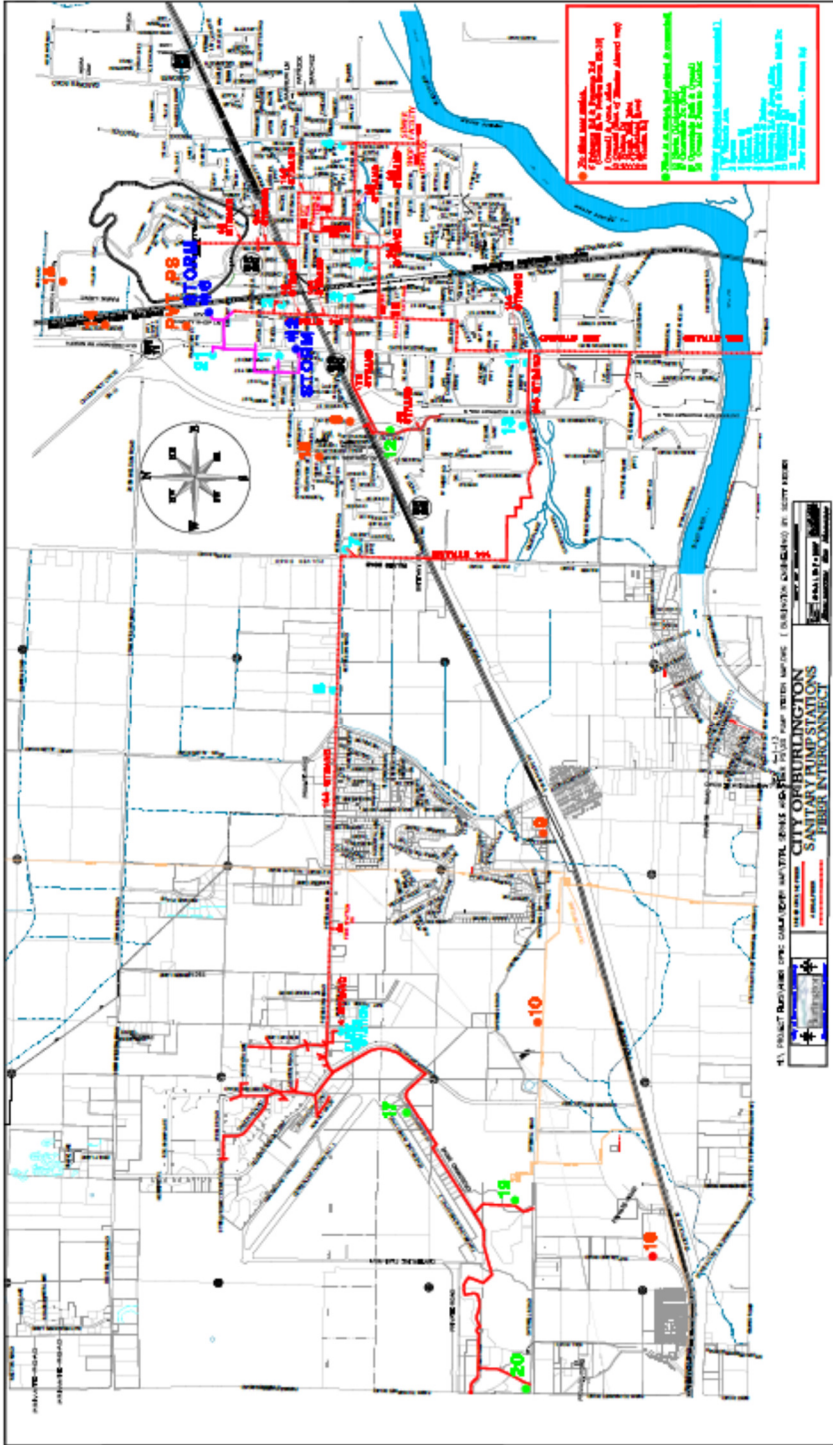


EXHIBIT B

City of Burlington, Skagit County, Washington

FIBER LICENSEE TELECOMMUNICATIONS FEE SCHEDULE

<u>Application Fee exclude ISP</u> This is a one-time billable charge to pay for application to acquire fiber or telecommunication services and to cover engineering costs. Does not include permitting fees.	\$75
<u>Inspection Fee Exclude ISP</u> This is a one-time billable charge to pay for a post installation fiber connection inspection if required.	\$125
<u>Dark Fiber CoB to MV Commercial</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2 year lease.	\$175
<u>Dark Fiber CoB to MV Local Government Agency</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2yr lease.	\$100
<u>Dark Fiber within CoB Commercial use</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Subject to City approval or availability. Minimum 2 year lease.	\$350
<u>Dark Fiber Local Government Agency</u> This is monthly billable fee per fiber, of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. This fiber is not for resale, reuse or sublease to any other organization. Subject to City approval or availability. Minimum 2 year lease.	\$200
<u>City Lit Fiber strand on a VLAN, Commercial use, Exclude ISP</u>	\$275

<p>This is billable per fiber strand, per splitter port, per wavelength channel of lit CWDM or DWDM fiber, leased from the city if an ISP contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 3 year lease, Excludes the City GPON equipment.</p>	
<p><u>City Lit Fiber strand on a VLAN, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM fiber, leased from the city. This is a monthly recurring fee. This fee includes maintenance. Minimum 4 year lease</p>	\$75
<p><u>CWDM or DWDM Fiber strand, Commercial use, Exclude ISP</u> This is billable, per fiber strand, per splitter port, per wavelength channel of commercial lit CWDM or DWDM fiber, if an ISP service contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 2 year lease, Excludes the City GPON equipment.</p>	\$125
<p><u>CWDM or DWDM Fiber strand, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM lit fiber, if an interlocal agreement does not exist. This is a monthly recurring fee. This fee includes maintenance. Excludes the City GPON equipment.</p>	\$55
<p><u>Full Cabinet Space Commercial</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	\$400
<p><u>Full Cabinet Space Local Government Agency</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2yr lease</p>	\$200
<p><u>Half-Cabinet Space Commercial</u> This includes a half 19" cabinet, restricted entry, 20 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	\$300
<p><u>Half Cabinet Space Local Agency</u> This includes a 19" cabinet, restricted entry, 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2yr lease</p>	\$150
<p><u>One-Third Cabinet Space Commercial</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	\$175

<p><u>One-Third Cabinet Space Local Agency</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	\$75
<p><u>Rack-Unit Cabinet Space Commercial</u> This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous. This is a monthly recurring fee. Or AC UPS Powered up to 100W \$100</p>	\$50
<p><u>Rack-Unit Cabinet Space Local Agency</u> This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous. This is a monthly recurring fee, or AC UPS Powered up to 100W \$35</p>	\$25
<p><u>Cabinet Setup Fee - Full</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.</p>	\$300
<p><u>Cabinet Setup Fee- 1/2</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.</p>	\$200
<p><u>Cabinet Setup Fee - 1/3</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee</p>	\$100
<p><u>Rack Unit Setup Fee- per RU (Rack Unit)</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee, does not include terminations or installs</p>	\$100
<p><u>Interconnect Fees</u> This is billable per each cable (Simplex, Duplex, CATS, or CAT6) installed between units, beyond initial setup fee. This is a per incidence fee. The District reserves the right to modify these fees on a per incidence basis, based on any special needs or circumstances.</p>	\$10
<p><u>Labor – Standard</u> This is beyond initial setup fee and is billable per hour. This requires a 1hr minimum.</p>	\$85
<p><u>Labor - Overtime</u> This is beyond initial setup fee and is billable per hour. 2hr minimum. Applies to work from 4:30 pm to 8 am on workdays and any time on weekends and holidays.</p>	\$150

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

Date: _____

CITY OF BURLINGTON WA

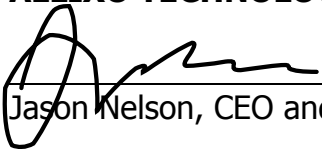
By: _____
Steve Sexton, Mayor

Attest: _____
Renee Sinclair, Finance Director

Reviewed by: _____
Geoff Hawes, IT Manager

Reviewed by: _____
Leif Johnson, City Attorney

ALLIXO TECHNOLOGIES

By:  _____
Jason Nelson, CEO and President

Date: _____
July 30, 2018