

FIBER AND CONDUIT USE AGREEMENT
BETWEEN
THE ANN ARBOR AREA TRANSPORTATION AUTHORITY
AND
THE CITY OF ANN ARBOR

This Fiber and Conduit Sharing Agreement (“Agreement”) is made and entered into this ___ day of _____, 2017, by and between the City of Ann Arbor, a Michigan municipal corporation having its offices at 301 East Huron Street, Ann Arbor, Michigan 48104 (“Grantor”) and the Ann Arbor Area Transportation Authority, a Michigan <type of government entity> whose address is <ADDRESS, Ann Arbor, Michigan Zip> (“Grantee”).

RECITALS

- A. Grantor has constructed or acquired a fiber optic network (FON) that contains fiber optic cables, conduit, and related equipment for its own use (“the Grantor FON”).
- B. Grantor has available fiber optic cable in the Grantor FON that is currently not in use and is available for use by Grantee. Pursuant to this Agreement, Grantor provides capacity in the Grantor FON to Grantee.
- C. Grantor enters into this Agreement in recognition of the public purposes to be served by Grantee’s use of the Grantor FON, in consideration of Grantee’s agreement to compensate Grantor for use and maintenance of the portion of the Grantor FON committed to Grantee’s use, and in consideration of the other terms and conditions agreed to between the parties in this Agreement.
- D. Grantor owns the Grantor FON and will own any additions thereto, whether funded by Grantor or by a Grantee. Only Grantor will perform maintenance of the Grantor FON, either directly or through a contractor, and Grantor must approve all capital builds, additions to, moves of, and changes to the Grantor FON. The Grantor FON terminates in the patch panel(s) located in the Grantee location(s) identified in Exhibit A to this Agreement. Grantee has or will have ownership of all fiber and equipment beyond the termination patch panel(s), and Grantee will be responsible for maintenance of all fiber and equipment beyond each termination patch panel. Grantee will be solely responsible for providing and for maintenance of all electronic, optronic and other equipment, materials and facilities used by Grantee in connection with the operation of Grantee Fiber, none of which is or will be part of the Grantor FON, and none of which is included in the maintenance services provided by Grantor under this Agreement.
- E. The maintenance to be provided by Grantor is described in detail in Exhibit E to this Agreement.
- F. The additions or extensions to the Grantor FON that will be constructed to make the Grantor FON available to Grantee, including the funding and other responsibilities of Grantor and of Grantee relative to those additions or extensions, are stated in detail in Exhibit C to this Agreement. Exhibit C may from time to time be modified to add

additions or extensions to the Grantor FON that will be constructed, including the related responsibilities of Grantor and of Grantee.

ARTICLE 1.
DEFINITIONS

- 1.01 “Additional Maintenance Work” means maintenance work respecting the Grantor FON or Grantee Fiber that is not Scheduled or Unscheduled Maintenance otherwise provided for in this Agreement, but is requested by Grantee.
- 1.02 “Capital Costs” means all Costs to build a new section or to modify a section of the Grantor FON at the request of Grantee, or to provide connection between the Grantor FON and a Grantee location.
- 1.03 “Capital Project” means a capital project to build a new section or modify a section of the Grantor FON to provide connection between the Grantor FON and a Grantee location.
- 1.04 “Costs” means the actual direct costs paid or payable in accordance with the established accounting procedures generally used by Grantor and which Grantor utilizes in billing third parties for reimbursable projects. These costs include the following: (i) internal labor costs, including wages, salaries, benefits, and overhead (provided that overhead shall be as calculated by standard City practices and that all of such costs will be charged based on the hourly rates of the employees on the project), and (ii) other direct costs including costs billed to and paid by Grantor by a third party performing work for and under the supervision of Grantor, and including materials and other out of pocket expenses on a direct pass-through basis.
- 1.05 “Dark Fiber” means optical fiber currently in place but not being utilized, and through which no light pulses are being sent.
- 1.06 "Deposit Drawdown Account" means an account established by Grantor into which Grantee will deposit the estimated Capital Cost amounts for which it is responsible for a Capital Project, and from which Grantor may draw down funds to cover the costs of the Capital Project.
- 1.07 “Effective Date” has the meaning set forth in Section 6.01.
- 1.08 “Fiber Route” has the meaning set forth in Article 2.
- 1.09 “Force Majeure Event” has the meaning set forth in Article Section 12.03.
- 1.10 “Governmental Authority” means any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.

- 1.11 “Grantee Fiber” means the fiber strands that are part of a Grantor Cable, and that run between and/or connect to each of Grantee’s location(s).
- 1.12 “Grantor Cable” means fiber optic cables owned by Grantor that are located in and are part of the Grantor FON.
- 1.13 “Grantor FON” means Grantor fiber cable, hand holes, splice enclosures, patch panels, and any other equipment utilized to facilitate a connected fiber ring, including laterals connected to the ring.
- 1.14 Indefeasible Rights of Use (IRU)” means the right to utilize the Grantor FON as defined in, and pursuant to the terms and conditions of, this Agreement.
- 1.15 “Prime Rate” means, as of any relevant date, the interest rate most recently published in the Money Rates Section of the Wall Street Journal as the prime rate.
- 1.16 “Annual Usage Fee” has the meaning set forth in Article 5.
- 1.17 “Reasonable Effort” means efforts that are reasonable in the circumstances.
- 1.18 “Relocating Authority” has the meaning set forth in Section 3.10.
- 1.19 “Required Rights” has the meaning set forth in Article 7.
- 1.20 “Scheduled Maintenance” means all routine work done to maintain the operation and availability of the Grantor FON. The Grantor FON will be maintained exclusively by Grantor’s Information Technology Department, or by a contractor under Grantor’s control.
- 1.21 “Term” has the meaning set forth in Article 6.
- 1.22 “Unscheduled Maintenance” means all maintenance and repair work associated with unanticipated issues or problems affecting the operation and availability of the Grantor FON.

ARTICLE 2.
FIBER ROUTE

2.01 The “Fiber Route” is that portion of the Grantor FON and Grantor Cable needed by Grantee to connect the locations identified in Exhibit A. Grantor and Grantee may from time to time agree in writing to modify Exhibit A to add or remove locations. The City Administrator of the City of Ann Arbor is authorized to act on behalf of Grantor to modify Exhibit A to add or remove locations. Based on the number of Grantee locations added or removed, and their geographic locations, the calculations of Grantee’s share of costs for maintenance, and all other compensation paid by Grantee to Grantor shall be adjusted.

2.02 Grantor reserves the right to change at any time the routes within the Grantor FON and to move Grantee Fiber to lie within the changed route or substitute other fiber optic cable strands to

serve as Grantee Fiber within the changed route so long as such change does not affect Grantee's use of Grantee fiber. Grantor will notify Grantee of any route changes, subject to the confidentiality provisions of Article 15 and reserves the right to change the routes within the Grantor FON used to connect those locations.

ARTICLE 3.
CAPITAL BUILDS AND RELOCATION COSTS

3.01 Grantor will be responsible for the construction of all of the Grantor FON, including any additions to or modifications necessary to allow connection of the Grantor FON to Grantee's locations.

3.02 Unless otherwise provided in writing and by agreement between Grantee and Grantor for a particular capital construction project, Grantee will be responsible for all Capital Costs for any addition to or modification of the Grantor FON that is necessary to allow connection of the Grantor FON to each Grantee location. The Capital Projects to allow connection to one or more Grantee locations, including the Capital Costs for each that are Grantee's responsibility, are listed in Exhibit C. The list of capital projects in Exhibit C may from time to time be modified to add capital construction projects and the Capital Costs for each. Grantor will contract for and oversee all capital construction projects for additions to or modifications of the Grantor FON and will retain sole ownership of additions to or modifications of the Grantor FON.

3.03 Notwithstanding Grantee's funding of Capital Projects, Grantee and Grantor agree that Grantor is responsible management and oversight of the design and construction of all Capital Projects. Unless otherwise agreed between Grantor and Grantee for a specific Capital Project, Grantor and/or its contractors will perform all the work on all Capital Projects. Grantee will fund all the Capital Costs of each Capital Project, including all costs incurred by Grantor for work on each Capital Project, including management and oversight. The components of Capital Costs for Capital Projects are set out in more detail in Exhibit B.

3.04 Grantor will establish a Deposit Drawdown Account into which Grantee will deposit funds that can be drawn on by Grantor to cover the Capital Project costs. Before each Capital Project is undertaken by Grantor, Grantee agrees to deposit into the Deposit Drawdown Account the estimated amount of Capital Costs for the Capital Project.

3.05 Before the design work for a Capital Project is begun, Grantee agrees to deposit into the Deposit Drawdown Account the estimated amount for engineering design costs for the Capital Project., as set forth in Exhibit C. After design is completed and the remainder of the Capital Costs are known or estimated, before any other work is done, Grantee agrees to deposit into the Deposit Drawdown Account the estimated amount for the Capital Costs for the Capital Project, including the contingency amount, as set forth in Exhibit C. Grantor shall notify Grantee of the due date for payments to be deposited into the account. If Grantee fails to deposit any required amount(s), Grantor reserves the right to stop work on the Capital Project, and Grantee agrees that it will be responsible for any claims for additional costs due to the work stoppage.

3.06 As Grantor incurs and pays Capital Costs on a Capital Project, including costs for design, construction, and related services, including Grantor's oversight and management costs, Grantor

will withdraw funds from the Deposit Drawdown Account. Grantor will report to Grantee each month the dollar amounts withdrawn and identify the Capital Costs for which those funds were used. Should actual Capital Costs exceed the estimated total cost set forth in Exhibit C, Grantor will give notice to Grantee of the additional dollar amount(s) Grantor must deposit into the Deposit Drawdown Account to cover the actual Capital Costs. The Capital Costs for each Capital Project is an estimated amount, and not guaranteed. When a Capital Project is finished and final Capital Costs have been determined and paid, Grantor will return to Grantee any balance that remains in the Deposit Drawdown Account for that Capital Project.

3.07 Grantor will maintain Capital Project records for a minimum of three (3) years after Capital Project completion. With reasonable advance notice, Grantor will provide Grantee with access to such records to inspect and make copies as required. If Grantee receives, a grant to cover the Capital Costs for which it is responsible, Grantee will notify Grantor of the requirements the grant imposes relative to the Capital Project with which Grantor and/or its contractors must comply.

3.08 Whenever Exhibit A is modified to add a Grantee location, Exhibit C will be modified to add the corresponding Capital Project and Capital Costs for connection to that added Grantee location.

3.09 If relocation of any portion of the Grantor FON as provided in Section 3.10 is required for any Grantee location, those will be added to the listed Capital Projects in Exhibit C and the Capital Costs for those projects will be treated like the Capital Costs for a Capital Project to add to or modify the Grantor FON for connection to a Grantee location.

3.10 Relocation. If Grantor is required (i) by any Governmental Authority under the power of eminent domain or otherwise, (ii) by Grantor or the provider of any Required Right, (iii) by any other person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event, to relocate any Grantor Cable containing Grantee Fiber, Grantor shall have the right to proceed with such relocation, including, but not limited to, the right to reasonably determine the extent and timing of, and methods to be used for, such relocation. Grantor shall give Grantee notice of the required relocation. Grantor will keep Grantee informed regarding the relocation. If possible the relocation will incorporate the same or the equivalent of the Grantee Fiber that was there before the relocation. Grantor will perform any relocation in a manner that should reasonably minimize the disruption of Grantee's use of its Grantee Fiber. Unless the relocation is solely the result of acts or omissions of Grantor or a contractor of Grantor, Grantee shall reimburse Grantor for its proportionate share of the Costs, as defined in Section 1.04, related to such relocation allocated to Grantee in proportionate shares with the other Grantees in the affected portion of the Grantor FON where Grantee Fiber is located. The relocation Costs to be reimbursed shall not include any amounts for which Grantor has been reimbursed by the Relocating Authority)

ARTICLE 4.
ONE-TIME FEE

4.01 Grantee agrees to pay a One-Time Fee, as provided in Exhibit D. This One-Time Fee is for Grantee to buy-in to the costs Grantor has already incurred for constructing the Grantor FON, including the Grantee Fiber.

4.02 In consideration of (i) the public services provided by Grantee in its capacity as a governmental entity, and (ii) that the Grantee is funded primarily with local tax revenues, Grantee is not required to pay the One-Time Fee.

ARTICLE 5.
USAGE FEE, MAINTENANCE, OTHER CHARGES,
AND TECHNICAL SUPPORT

5.01 Annual Usage Fee. In consideration of Grantor's responsibilities under this Agreement, subject to the adjustments described in Section 5.02, Grantee shall pay to Grantor an Annual Usage Fee, commencing with the Effective Date and continuing thereafter for each Grantor fiscal year (July 1 through June 30) until the expiration of the Term of this Agreement. The Annual Usage Charge is based on the number of fiber pairs within the Grantee Fiber as a share of the Grantor FON, as provided in Exhibit D. Except as otherwise explicitly provided, the Annual Usage Fee covers Grantee's right to use the Grantee Fiber within the Grantor FON, Scheduled and Unscheduled Maintenance as provided in Exhibit E, and the technical support described in this Article 5 and Exhibit E.

5.02 The Annual Usage Fee may be adjusted annually, effective July 1, based on any increase to Grantor's contract costs for Scheduled and Unscheduled Maintenance, as provided in Exhibit D.

5.03 Except as otherwise explicitly provided in this Agreement for a particular payment, the Annual Usage Fee shall be due and payable on or before July 1 of each year. Any sums not paid by Grantee within thirty (30) days of the due date shall bear interest at the Prime Rate plus two percent (2%). In the event the Effective Date occurs other than on the July 1, the Annual Charge shall be prorated for the first quarter of the Term of the Agreement (July 1 through September 30) to reflect the actual number of days during the quarter service is provided under this Agreement. Payment of the first Annual Usage Fee, whether with or without proration, is due within thirty (30) days after the Effective Date.

5.04 Maintenance. Grantor or its contractor(s) shall perform all Scheduled and Unscheduled Maintenance as provided in Exhibit E.

5.05 Additional Maintenance Work shall be undertaken solely by Grantor or by a contractor of Grantor, shall be undertaken in Grantor's sole discretion at Grantee's request, and shall be performed on a Reasonable Effort basis. Grantee shall reimburse Grantor for all Costs incurred in connection with such Additional Maintenance Work. Grantee agrees to pay Grantor within thirty (30) days after Grantor sends Grantee an invoice for the Costs. Any sums not paid by Grantee when due shall bear interest at the Prime Rate plus two percent (2%).

5.06 Technical Support. All incidents, problems, issues, or questions related to the Grantor FON that affect operation of Grantee Fiber must be directed to the City of Ann Arbor Help Desk at 734-794-6550 or helpdesk@a2gov.org. A Help Desk ticket will be created and assigned to the appropriate resource based on the reported issue. All matters not resolved to the satisfaction of Grantee should be directed to the head of the City of Ann Arbor IT Department as provided in Exhibit E.

5.07 Service Level. Response to all Help Desk tickets will be addressed on a Reasonable Effort basis and at the discretion of the Help Desk dispatcher, Help Desk Manager or Information Technology Director.

ARTICLE 6. TERM

6.01 This Agreement shall become effective on October 1, 2017 (the “Effective Date”). Except as otherwise provided, the Term shall commence on the Effective Date, and shall continue until June 30, 2027, unless abandoned by Grantee in accordance with Section 6.05 below or terminated in accordance with Article 12.

6.02 At the end of the Term, upon termination in accordance with Article 12, or upon abandonment pursuant to this Article 6, all rights to the use of Grantee Fiber, or any portion of Grantee Fiber that is abandoned, shall revert to Grantor without reimbursement of any of the fees, sums, costs, fees or expenses previously made with respect thereto, and from and after such time Grantee shall have no further rights hereunder with respect thereto.

6.03 The expiration or termination of this Agreement shall not affect the rights or obligations of any party hereto with respect to any payment for maintenance or other services rendered prior to the date of expiration or termination.

6.04 This Agreement shall become effective on the date hereof and shall terminate upon expiration of the Term pursuant to Section 6.01, on the date of a termination pursuant to Article 12, or upon proper abandonment in accordance with Section 6.05, except that those provisions of this Agreement that are expressly provided herein to survive such termination shall remain binding on the parties hereto.

6.05 If at any time during the Term Grantee determines it does not wish to continue its use of all or any portion of the Grantee Fiber covered by this Agreement, Grantee shall have the right to abandon all or a portion of Grantee Fiber covered by this Agreement with a minimum of ninety (90) days written notice to Grantor. Upon such abandonment, all rights of Grantee to use Grantee Fiber or portion of Grantee Fiber it has abandoned shall cease, and all rights to the use of that fiber shall return to Grantor at no cost to Grantor. In the event of such abandonment, except for provisions that extend past termination, this Agreement shall terminate as to Grantee Fiber abandoned by Grantee, and Grantee shall not be entitled to a refund of any fees or other costs paid.

6.06 At the end of the Term, upon termination for abandonment as provided in Section 5.06, or upon termination pursuant to Article 12, Grantor will be responsible for disconnecting the

Grantee Fiber subject to the termination, Grantee agrees that Grantor has the right to perform the disconnection, and Grantee will not interfere with Grantor or its contractor's efforts and ability to perform the disconnection.

ARTICLE 7.
REQUIRED RIGHTS

7.01 Grantor represents and warrants that it will obtain and maintain in full force during the Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements that are necessary for Grantor to install and maintain the Grantor FON, including Grantee Fiber, and permit the fiber use by Grantee contemplated by this Agreement (collectively, the "Required Rights"). Grantee represents and warrants that it will obtain, prior to the commencement of the Term, and maintain in full force and effect during the Term all rights, licenses, permits, easements, authorizations, franchises and other approvals that are necessary for Grantee to enter into this agreement with Grantor, for Grantee to use Grantor Fiber, and for Grantee to assume the financial and other obligations required of Grantee by this Agreement.

7.02 Grantor represents that it is not in default under any of the Required Rights that would permit Grantor of a Required Right to terminate such right prior to its stated expiration date, or would otherwise materially, adversely impair or affect Grantee's ability to use the Grantee Fiber or exercise its rights with respect thereto, as provided and permitted hereunder, and to the best of its knowledge, no grantor of Required Rights is in default under an existing Required Rights document. Grantor further represents and warrants that to the best of its knowledge, no language or requirement in any Required Rights imposes material requirements, restrictions and/or limitations upon Grantee's right to use Grantee Fiber.

7.03 If the stated term of any Required Right expires, in accordance with its ordinary terms, on a date earlier than the last day of the Term of this Agreement, Grantor shall, at its sole cost, exercise any renewal rights there under or otherwise acquire extensions, additions and/or replacements as may be necessary for the Required Right to be continued until a date that is not earlier than the last day of the Term of this Agreement.

ARTICLE 8.
TAXES

8.01 Grantor and Grantee acknowledge and agree that Grantee shall be treated for accounting, and for all applicable federal, state, and local tax purposes as the exclusive beneficial owner of its Grantee Fiber. Neither Grantor nor Grantee shall take any positions inconsistent therewith in any tax filing or otherwise.

8.02 In the event that applicable laws or regulations require Grantor to file returns for and pay ad valorem property taxes imposed on or assessed against Grantee Fiber, Grantor shall do so. Grantee will reimburse Grantor for the taxes paid by Grantor within thirty (30) days after Grantor sends Grantee an invoice for the taxes. Any sums not paid by Grantee when due shall bear interest at the Prime Rate plus two percent (2%).

ARTICLE 9.
USE OF THE GRANTOR FIBER OPTIC NETWORK (FON)

9.01 Grantee represents and warrants that it will use Grantee Fiber hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

9.02 Subject to the provisions of this Agreement, Grantee may use Grantee Fiber for any lawful purpose within Grantee's authority. Grantee acknowledges and agrees that it has no right to use any fiber in the Grantor FON other than Grantee Fiber and that it shall use Reasonable Efforts to keep all of the Grantor FON, including but not limited to Grantee Fiber, free from any liens, rights, or claims of any third party attributable to Grantee.

9.03 Grantor agrees and acknowledges that it has no right to use the Grantee Fiber during the Term of this Agreement, and agrees it shall use Reasonable Efforts to keep the Grantee Fiber, including Grantee Fiber additions, free from any liens, rights, or claims of any third party attributable to Grantor.

9.04 Grantee and Grantor agree to cooperate with each other to comply with any requirements of any Governmental Authority applicable to their respective rights and obligations under this Agreement.

ARTICLE 10.
LIMITATION OF LIABILITY

10.01 Neither party shall be liable to the other party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the party's failure to perform its obligations under this Agreement, all claims for which damages are hereby specifically waived, regardless of the type of claim, and regardless of the acts, omissions, or circumstances that give rise to those damages.

10.02 Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party; provided, however, that neither party shall make any claim for indirect, special or consequential damages against any third party who has a right of indemnification or other right of recovery against a party to this Agreement.

10.03 Grantee and Grantor each reserves their right to assert governmental immunity on behalf of themselves, their officials and employees, and no provision in this Agreement shall, or shall be construed to, waive or limit the governmental immunity of either Grantor or Grantee, or their respective officials and employees.

ARTICLE 11.
INSURANCE

11.01 During the term of this Agreement Grantee shall obtain and maintain the following insurance: (i) Commercial General Liability including coverage for (a) personal injury, and (b) contractual liability, with combined single limit of not less than \$2,000,000.00 each occurrence or its equivalent, and with a waiver of all rights of subrogation; and (ii) any other insurance required under or pursuant to the Required Rights. Grantor shall be covered as an additional insured on Grantee's Commercial General Liability policy.

11.02 Unless otherwise agreed in writing, all insurance policies shall be obtained and maintained with companies admitted and authorized to do business in the State of Michigan and rated A or better by Best's Key Rating Guide, and each party shall, upon request, provide the other party with an insurance certificate confirming compliance with the requirements of this Article 11. Grantee may satisfy its insurance obligations in whole or in part through an approved self-insurance program.

ARTICLE 12.
DEFAULT AND TERMINATION

12.01 If (i) Grantee makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantee is filed and not dismissed with 120 days; or (iii) Grantee fails to observe and perform any of its material obligations under the terms and provisions of this Agreement and such failure continues without cure for a period of thirty (30) days after written notice from Grantor (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantor may, subject to Article 16, take any or all of the following actions: If the default consists of a failure of Grantee to pay fees under this Agreement, Grantor may terminate this Agreement and the Term, in which event Grantor shall have no further duties or obligations hereunder; In the event of any other default hereunder, Grantor may, subject to Article 10, pursue any legal remedies it may have under applicable law or principles of equity relating to such default.

12.02 If Grantor materially fails to observe and perform any of its obligations under the terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from Grantee (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantee may, subject to Article 16, (A) terminate this Agreement, and (B) subject to Article 10, pursue any legal remedies it may have under applicable law or principles of equity relating to such default. If Grantee terminates pursuant to this Section 12.02, Grantee shall have no further duties or obligations hereunder except for obligations that either accrued prior to termination or extend beyond termination as provided in tis Agreement.

12.03 Neither party shall be in default under this Agreement, and such party's performance of an obligation shall be excused and extended, if and to the extent and during the period that any failure or delay in such party's performance of one or more of its obligations hereunder is proximately caused by any of the following conditions, each of which shall be deemed a "Force Majeure Event": Any act of God; shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; failure of a third party to provide or to recognize a Required Right (provided Grantor is not in default thereunder and has made timely and reasonable efforts to obtain the same); any other cause beyond the reasonable control of such party.

12.04 If the Grantee Fiber remains "dark" with no light pulses or a period of more than 365 days, Grantor reserves the right to terminate this Agreement and the Term. If any portion of the Grantee Fiber remains "dark" with no light pulses for a period of more than 365 days, that portion of the Grantee Fiber shall be deemed abandoned by Grantee and Grantor reserves the right to terminate this Agreement and the Terms as to that portion of the Grantee Fiber in accordance with Section 6.05.

ARTICLE 13. ASSIGNMENT

13.01 Grantor may assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other person at any time; provided Grantor shall not be released from its obligations to Grantee hereunder unless those obligations are included in the assignment, and provided that Grantor shall provide Grantee with notice of such assignment. Grantor may also sell, transfer, lease, license, grant indefeasible rights of use and enter into similar agreements or arrangements with other persons respecting any fibers, cable and conduit constituting a part of the Grantor FON.

13.02 Grantee may not assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other person without the prior written consent of Grantor. Any assignee or other transferee shall use the Grantee Fiber only for lawful public purposes, as provided in Section 9.02, and shall be subject to all of the terms and conditions of this Agreement.

13.03 This Agreement and each party's respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

ARTICLE 14. REPRESENTATIONS AND WARRANTIES

14.01 In addition to Grantor's representations in Article 7, each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors'

rights and general equitable principles; and (iv) its execution of and performance under this Agreement does not and will not violate any applicable local, state or federal regulations, rules, statutes, regulatory decisions, or court orders.

14.02 EXCEPT AS SET FORTH IN THE FOREGOING SECTION 14.01, OR IN SECTIONS 7.01 AND 7.02, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO GRANTEE FIBER, OR THE GRANTOR FON, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 15.
CONFIDENTIALITY AND NON-DISCLOSURE

15.01 Grantor and Grantee agree that if Grantee at any time needs to see information belonging to Grantor that is or may be classified as exempt or restricted information under the Michigan Freedom of Information Act, and federal bioterrorism and homeland security laws (collectively referred to as “Confidential Information”) for purposes of implementation of the terms of this Agreement, and if Grantor in its sole discretion is willing to allow Grantee to see any part or all of the Confidential Information, then Grantee agrees it shall first enter into a Non-Disclosure Agreement satisfactory to Grantor. Grantee understands and agrees that Grantor will not disclose to Grantee the Confidential Information until Grantee and all necessary employees have executed the required Non-Disclosure Agreement.

15.02 The provisions of this Article 15 and of any Non-Disclosure Agreement shall survive the termination of this Agreement.

ARTICLE 16.
DISPUTE RESOLUTION

16.01 If the parties are unable to resolve any dispute arising under or relating to this Agreement, the parties shall resolve such disagreement or dispute as follows:

16.02 Either party may refer the matter to management-level representatives of the parties by written notice to the other party (the “Dispute Notice”). Within fifteen (15) days after delivery of the Dispute Notice such representatives of both parties shall meet at a mutually acceptable time and place to exchange all relevant information in an attempt to resolve the dispute. Each party shall exercise its discretion to select the appropriate management level representative.

16.03 If the matter has not been resolved within thirty (30) days after delivery of the Dispute Notice, or if management-level representatives of the parties fail to meet within fifteen (15) days after delivery of such Dispute Notice, the parties shall initiate mediation in accordance with the procedures set forth in 15.04 below. All negotiations conducted by such management-level representatives shall be confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.

16.04 If the management level representatives of the parties are unable to resolve the dispute or have failed to meet, the parties agree to participate in a non-binding mediation procedure if either

party initiates the procedure as follows: A mediator will be selected by agreement between the parties. Representatives of each of the parties will meet with the mediator at a time and place determined by the mediator, but not more than sixty (60) days after delivery of the Dispute Notice unless a later date is agreed to among the parties and the mediator. The parties shall decide whether to include legal counsel at the mediation. The fees of the mediator and other costs of the mediation will be shared equally by the parties. Either party may abandon the mediation procedure before a resolution is reached, but must participate in the mediation in good faith.

ARTICLE 17.
NOTICES

All notices or other communications that are required or permitted herein shall be in writing and sufficient if delivered personally, sent by either facsimile transmission or electronic mail transmission followed by another form of written notification that is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO GRANTOR:

Information Technology Director
City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104

with copies to:

Financial and Administrative Services Area Administrator
City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104

IF TO GRANTEE:

<Title>
Ann Arbor Area Transportation Authority
<Address>
Ann Arbor, MI <ZIP>

Or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 18.
ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

ARTICLE 19.
RELATIONSHIP OF THE PARTIES

The relationship between Grantor and Grantee shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.

ARTICLE 20.
COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 21.
CONSTRUCTION AND INTERPRETATION OF AGREEMENT

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

ARTICLE 22.
SEVERABILITY

If any term or provision of this Agreement, the deletion of which would not materially adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this

Agreement that is illegal, invalid or unenforceable, Grantor and Grantee shall negotiate in good faith an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

ARTICLE 23.
GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan without reference to its choice of law principles.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

GRANTOR:

CITY OF ANN ARBOR
a Michigan municipal corporation

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Howard S. Lazarus, City Administrator

Tom Crawford, Administrative and Financial
Services Area Administrator

Approved as to Form and Content:

Stephen K. Postema, City Attorney

GRANTEE:

Ann Arbor Area Transportation Authority, a
Michigan <government entity>

By _____
Printed Name: _____
Title: _____

Exhibit A
Grantee Lateral Locations, Route, and Contact Information

All lateral FON locations will traverse the entire main fiber ring and pass through each city data center. Each strand provided below is Dark Fiber, is the responsibility of Grantee to light. The Grantor FON cable will terminate in the patch panel of each of the locations below. Grantee shall notify Grantor in writing of any changes to the contact name(s), email(s) or telephone number(s).

Total Fiber Pairs Serving all Locations:	1
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LOCATION A	
Site Name	Ann Arbor Area Transportation Authority, Headquarters
Street Address	2700 S. Industrial
City, St, Zip	Ann Arbor, MI 48104
Site Contact	Jan Black
Site Contact Email	jblack@theride.org
Site Contact Phone	734-973-6500
Number of fiber strands	2

LOCATION B	
Site Name	Ann Arbor Area Transportation Authority, Blake Transit Center
Street Address	328 S Fifth Ave.
City, St, Zip	Ann Arbor, MI 48104
Site Contact	Jan Black
Site Contact Email	jblack@theride.org
Site Contact Phone	734-973-6500
Number of fiber strands	2

LOCATION C	
Site Name	Ann Arbor Area Transportation Authority, Plymouth Road Park & Ride
Street Address	3700 Plymouth Rd.
City, St, Zip	Ann Arbor, MI 48105
Site Contact	Jan Black
Site Contact Email	jblack@theride.org
Site Contact Phone	734-973-6500
Number of fiber strands	2

Exhibit B

Capital Costs

Capital Costs are defined in Section 1.02 and will be the responsibility of the Grantee for each Capital Project. The scope of each Capital Project will be based on the requirements and needs of Grantee, the design and construction requirements to connect the Grantee location(s) in Exhibit A to the Grantor FON, and the pricing for the Capital Project provided by Grantor's contractor(s). Basic components of a capital build are as follows, but are not limited to:

1. Engineering Design

Cost associated with the planning, design, and documentation of the fiber cable route and needed FON components in order to secure and estimate for construction.

2. Permitting

Permits need to be acquired and paid for prior to any construction. Permits required will be determined after engineering has determined the route and may be subject to change during construction. Typical permits associated with construction, but not limited to, are:

- City of Ann Arbor Right-Of-Way permits
- Washtenaw County Road Commission
- Michigan Department of Transportation (MDOT)
- Railroad(s)
- Utility Pole Permits:
 - AT&T
 - DTE

3. Make-Ready Costs

Cost to prepare, place, or modify utility poles for placement of fiber cable.

4. Construction (Capital Build)

Following are typical components of a capital build, but not limited to, and will vary depending on the project:

- Fiber Cable placement - Aerial, underground, or both
- Conduit placement – Underground
- Duct placement – Aerial, underground or both
- Tracer wire placement
- Hand hole placement
- Building Entry
- Splicing
- Patch Panel Installation
- Testing

5. Relocation Fee

Capital Costs associated with the move of an existing route

6. City Project Management Costs

Exhibit C
Capital Project Cost Responsibilities

The following Capital Projects are necessary to connect the Grantor FON to one or more Grantee locations. Grantee’s responsibility for Capital Costs for each is as follows. Unless Grantor agrees otherwise in writing, Grantee will pay its costs in the manner provided in Article 3 of the Agreement.

LOCATION A—GRANTEE’S RESPONSIBILITY FOR PROJECT CAPITAL COSTS*

Location Name	AAATA, Headquarters
Engineering Design	
Permitting	
Make-Ready costs	
Construction (Capital Build)	\$ 2,922.21
City Project Management Costs	
Contingency Amount	
Estimated Total	\$ 2,922.21

LOCATION B—GRANTEE’S RESPONSIBILITY FOR PROJECT CAPITAL COSTS*

Location Name	AAATA, Blake Transit Center
Engineering Design	
Permitting	
Make-Ready costs	
Construction (Capital Build)	\$ 5,083.00
City Project Management Costs	
Contingency Amount	
Estimated Total	\$ 5,083.00

LOCATION C—GRANTEE’S RESPONSIBILITY FOR PROJECT CAPITAL COSTS*

Location Name	AAATA, Plymouth Park & Ride
Engineering Design	
Permitting	
Make-Ready costs	
Construction (Capital Build)	\$ 13,526.99
City Project Management Costs	
Contingency Amount	
Estimated Total	\$ 13,526.99

***All cost except Construction (Capital Build) was incurred by the City of Ann Arbor for the initial A2 I-NET build.**

Exhibit D
Fiber Optic Network Fees

Following are the pricing components for fees, usage and maintenance:

One-Time Fee

Not applicable.

Annual Usage Fee

\$300.00 per fiber pair, per mile, times total ring route miles (35 miles): \$10,500.00.

Based on Grantee's total number of 1 fiber pair listed in Exhibit A, the Annual Usage Fee for Grantee is \$10,500.00 per year.

The Annual Usage Fee may be adjusted based on the U.S. Department of Labor Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (U.S.), effective the first July 1 following the date of adjustment. No adjustment will be made prior to July 1, 2019.

If the total number of fiber pairs listed in Exhibit A changes, the Annual Usage Fee in effect at the time of the change will be adjusted based on the number of fiber pairs added to or removed from Exhibit A.

Exhibit E
Maintenance Requirements and Procedures

Grantee agrees Grantor is the sole owner of the FON and will be exclusively responsible for all maintenance repairs on a Reasonable Effort basis and Grantee will exclusively utilize Grantor for all maintenance and repairs unless otherwise agreed in writing by Grantor.

Scheduled Maintenance

Scheduled Maintenance as defined in Section 1.20 shall be performed by or under the direction of Grantor on a Reasonable Effort basis. Scheduled Maintenance may include, but may not be limited to, the following activities:

- Patrol of the Grantor FON route on a regularly scheduled basis, at minimum annually.
- Annual visual review.
- Identification of issues in or related to the Grantor FON and identification of appropriate action(s) to address those issues.
- Response to “Miss Dig” notices and performance of all required cable locates.
- Assignment of fiber maintenance technicians to the Grantor FON.
- Tree trimming.
- Pole mounting inspection and repair.
- Pole attachment changes.
- Resolution of issues in or related to the Grantor FON.
- Minor general fiber cable repair.

Unscheduled Maintenance

“Unscheduled Maintenance” as defined in Section 1.22 shall be performed by or under the direction of Grantor on a Reasonable Effort basis. Unscheduled Maintenance shall include, but not limited to, the following:

- “Emergency Unscheduled Maintenance” in response to notification by Grantee of any failure, interruption or impairment in the operation of Grantee Fiber, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Grantee Fiber.
- “Non-Emergency Unscheduled Maintenance” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Grantee Fiber not covered by Scheduled Maintenance. Grantee shall immediately report the need for Unscheduled Maintenance to Grantor in accordance with reasonable

procedures promulgated by Grantor from time to time. Grantor will log the time of Grantee's report, verify the problem, schedule and dispatch personnel to take corrective action.

Grantor will not be responsible for outages due to Grantee neglect. All efforts to resolve problems completely will be taken, but there may be situations where the problem needs to be repaired on a temporary basis and final repairs completed at a later date/time.

Performance Expectations

Grantor shall make every effort to dispatch maintenance and repair personnel within 4 hours to address problems detected in the Grantor FON on a Reasonable Effort basis: (i) Upon notification by Grantee to Grantor, or (ii) upon notification by a third party. Grantor will not be responsible for monitoring the performance or operation of the Grantee Fiber; in the event that Grantee detects a failure in the operation of the Grantee Fiber which may indicate the need for Unscheduled Maintenance, Grantee shall report same to Grantor. Grantor shall maintain a Restoration and Priority List contained in Exhibit E and a Grantee Lateral Locations and Route Information List contained in Exhibit A that identifies the responsible personnel of Grantor and Grantee, their contact information and the priority in which sites will/can be restored.

Any major planned service outages will be communicated by Grantor to Grantee at a minimum 10 business days prior planned service outages.

Maintenance Schedules (Scheduled and Unscheduled)

Grantor's maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Grantor shall endeavor to have, but shall not guarantee that it will have, its first maintenance personnel at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time Grantor becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events.

Problem Reporting

Depending on the nature of the issue Grantee must report problems to Grantor via email at helpdesk@a2gov.org or by phone at 734-794-6550. If immediate response is required during the hours of 5:00 p.m. to 8:00 a.m. Grantee must call the phone number stated above. Grantee should make every effort to verify their on premise equipment is in good working order prior to reporting a problem to Grantor. Grantor will contact Grantee utilizing the contact information in Exhibit A.

Disconnection

Upon termination of this agreement Grantor will secure resources to disconnect the Grantee fiber. Grantee will provide access to their property and adhere to the Cooperation and Coordination section of this Exhibit.

Planned Service Work Period

Scheduled Maintenance that is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and

before 6:00 a.m. local time. The intent is to schedule maintenance to minimize down-time and high-traffic periods.

Cooperation and Coordination

In performing its services hereunder, Grantor or its contractor will take reasonable care to prevent impairment to the signal continuity and performance of the Grantee Fiber. In addition, Grantor shall reasonably cooperate with Grantee in sharing information and analyzing the disturbances regarding the Grantee Fiber. In the event that any Scheduled or Unscheduled Maintenance hereunder requires reconfiguration of the fiber route or the facilities of Grantee, then Grantee shall, at Grantor’s reasonable request, make such personnel of Grantee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Grantor in performing such maintenance as required of Grantor hereunder.

Grantor shall notify Grantee as soon as is practicable under the circumstances, but in no event less than five (10) business days prior to the date in connection with any Scheduled Maintenance on Grantee Fiber and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Grantee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Grantor’s ability to perform its obligations under the Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Grantor shall notify Grantee at Grantor’s earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

Grantor Contact List

David Harris	Network Engineer Lead		dharris@a2gov.org
Tom Shewchuk	IT Director	734-794-6551 x-45510	tshewchuk@a2gov.org
Ryan Gilbert	Help Desk Manager		rgilbert@a2gov.org
Help Desk		734-794-6550	helpdesk@a2gov.org

Escalation

Grantee can escalate any issues to the City of Ann Arbor IT Director at 734-794-6551 x-45510 or tshewchuk@a2gov.org.

Restoration and Location Priority

In the case of a failure, Grantee prefers the following locations be restored using the following priority list. If Exhibit A is modified to add a Grantee location, Grantee is responsible for notifying Grantor in writing of changes to this priority list due to the addition of the location. Grantor will honor Grantee’s priorities if possible.

Location	Priority
Location A; AAATA, Headquarters	1
LOCATION B; AAATA, Blake Transit Center	2
Location C; AAATA, Plymouth Park & Ride	3