

R-23- 153

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A LICENSE AGREEMENT WITH HYPERFIBER LLC; AND FOR OTHER PURPOSES.

WHEREAS, Hyperfiber LLC, wishes to construct, operate and maintain a portion of its fiber optic cable telecommunications network underneath North Little Rock streets and rights-of-way and attached to existing poles owned and maintained by the City; and

WHEREAS, the City Council finds that reasonable compensation to the City of North Little Rock for use of the City's streets and poles is \$20.00 per year per pole.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into a License Agreement (substantially similar to Exhibit A attached hereto) granting a license to Hyperfiber LLC to construct, operate and maintain its fiber optic cable telecommunications systems underneath North Little Rock streets and rights-of-ways and attached to City-owned and maintained poles.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

ATTEST:

Terry C. Hartwick
Mayor Terry C. Hartwick *by AT*

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED	<u>10:20</u>	A.M.	_____	P.M.
By	<u>Amy Fields CA</u>			
DATE	<u>8/9/23</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	_____			



LICENSE AGREEMENT

THIS AGREEMENT by and between the City of North Little Rock, hereinafter referred to as "Licensor," and Hyperfiber, LLC, hereinafter referred to "Licensee," is effective on the date signed by the Licensor (the "Effective Date").

W I T N E S S E T H:

WHEREAS, Licensee wishes to construct, operate and maintain fiber optic cable telecommunications facilities underneath Licensor streets and rights-of-way and attached to existing poles owned and maintained by the Licensor on and around property owned by Licensee in the City of North Little Rock; and

WHEREAS, Licensee and the Licensor agree that \$20.00 per year per pole is reasonable compensation to the Licensor for use of the Licensor's streets and poles, subject to an annual adjustment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties hereto agree as follows:

1. That the Licensor hereby grants to Licensee a license to construct, operate and maintain its fiber optic cable telecommunications facilities underneath city streets and rights-of-way and attached to Licensor's poles in rights-of-way on and around property owned by Licensor.

2. Licensee hereby agrees to perform the installation of the network at its own expense

3. Licensee hereby agrees to abide at all times by the National Electric Safety Code (NESC)

4. Licensee agrees to reimburse the North Little Rock Electric Department, and other companies, if any that own facilities attached as of the date of this Agreement to the Licensor's poles, for all costs incurred in making any adjustments required to accommodate attachment of Licensee's facilities to Licensor's poles.

5. Licensee agrees to pay the sum of Twenty & 00/100 Dollars (\$20.00) per pole per year, payable in advance, for the use of Licensor streets, rights-of-way and poles.

6. This Agreement shall become effective upon its approval by the North Little Rock City Council and its execution by the Licensor and shall continue in effect from year to year until terminated by Licensee or Licensor. Licensee or Licensor may terminate this Agreement for convenience upon 90 days' notice to other party. In the event this Agreement is terminated, and no new Agreement is reached, Licensee shall remove within thirty (30) days, or transfer to a third party, acceptable to Licensee and Licensor, its attachment and facilities under this Agreement at Licensee's sole cost and expense without any liability thereof.

7. During the Term of this Agreement, Licensee shall procure and maintain, at Licensee's sole cost and expense, commercial general liability insurance with coverage amounts of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage; workers' compensation insurance per Arkansas law and employers' liability insurance with coverage amounts not less than (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee. The Certificates of Insurance required including, without limitation, all renewals, shall include Licensor as an additional insured, and provide for at least thirty (30) days advance notice to Licensor by the insurer prior to any non-renewal or cancellation. Licensee shall provide Licensor with a copy of certificates of insurance stating that the coverage as required herein is in full force and effect no later than the seven days prior to this Agreement being presented to the North Little Rock City Council for approval.

8. If Licensee does not have a current business license in North Little Rock or another city in Arkansas, Contractor must obtain a North Little Rock Business License from the North Little Rock City Clerk prior to executing this Agreement. If Contractor does have a current business license from another city in Arkansas, Contractor shall provide a copy of such license at the time Contractor submits the executed Agreement.

9. Licensee shall indemnify and save the Licensor harmless against any loss that may result to the equipment or any property owned or used by the Licensor and against any and all claims and demands for payments attributable to injury or death to persons (including payments made under any Workers' Compensation Law or under any plan for employer's liability and benefits) arising out of or in connection with the erection, construction, maintenance, repair, use or removal of Licensee's network hereunder, except to the extent that any such loss or claim is caused by the negligence or willful misconduct of the Licensor or any person acting on behalf of the Licensor.

10. Licensee may at any time remove its attachments from any pole or poles of the Licensor, and in connection therewith, shall give notice immediately of such removal to the Licensor. No refund of any rental shall be due on account of such removal.

11. Licensee's excavation and repair of Licensor's streets and poles thereon shall comply with the Licensor's rules and standards and specifications, with all municipal, state, and federal laws and regulations and with the National Electric Safety Code and be made and maintained in such a manner as will not conflict with the use of said facilities.

12. The Licensor may use, change, operate, and maintain its poles in facilities in connection with its business as it sees fits and in such a manner as will best enable it to fill its own service requirements and shall not be liable to Licensee for any damage to or interference with the operation of facilities and appurtenances of Licensee, excepting acts of gross negligence or willful misconduct.

13. Nothing herein contained shall be construed to confer upon Licensee any right of property in the poles, streets and rights-of-way of Licensor or to require Licensor to maintain

To Licensee: Michael Whitaker, Chief Government Officer
400 Chesterfield Center
Suite 600
Chesterfield, MO 63017

IN WITNESS WHEREOF, the parties hereto have set their hands, and is effective on date first above written.

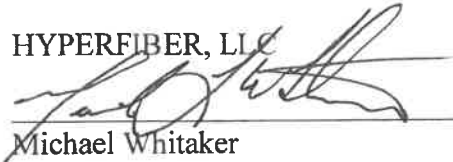
CITY OF NORTH LITTLE ROCK
BY: _____
Terry C. Hartwick, Mayor

Date

ATTEST:

Diane Whitbey, City Clerk

Date

HYPERFIBER, LLC
BY: 
Michael Whitaker
Chief Government Officer

8-1-2023
Date

ATTEST:

Kyle Graham
Arkansas Market Manager
kgraham@hyperfiber.com

Date