

RESOLUTION NO. 2019-08-38R

A RESOLUTION AUTHORIZING AMERICAN FORK CITY TO EXECUTE THE COMMUNICATIONS SERVICE CONTRACT WITH LIGHTHUB COMMUNICATIONS AGENCY.

WHEREAS, American Fork City (the "City") wants to enter into a Communications Service Contract (the "Contract") with LIGHTHUB Communications Agency ("LIGHTHUB"), a separate legal entity, as permitted under the Utah Interlocal Cooperation Act, Sections 11-13-101, *et seq.*, Utah Code Annotated 1953, as amended ("UCA"); for connection services for the City; and

WHEREAS, the City Council of the City does hereby determine that it is in the best interests of the health, safety, and welfare of the residents and businesses of the City to enter into the Contract.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of American Fork, Utah, that the Contract, is hereby approved, and that the Mayor is hereby authorized to execute said Contract for and in behalf of the City, by signing the signature page of the Contract.

APPROVED AND ADOPTED this 24th day of September 2019.

City of American Fork:

(SEAL)



Mayor: Bradley J. Frost

ATTEST:



City Recorder: Terilyn Lurker



COMMUNICATIONS SERVICE CONTRACT

Dated as of _____, 2019

among

LIGHTHUB COMMUNICATIONS AGENCY

and

AMERICAN FORK CITY, UTAH

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COMMUNICATIONS SERVICE CONTRACT

This Communications Service Contract (the “Service Contract”) is entered into this _____ day of _____, 2019, by and among the Lighthub Communications Agency (“LIGHTHUB”), an interlocal cooperative and separate legal entity, body politic and corporate and a political subdivision of the State of Utah, organized under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, and American Fork City, Utah (the “City”), a municipal corporation and a political subdivision of the State of Utah (LIGHTHUB and the City are sometimes referred to individually as a “Party” and collectively as “Parties” herein).

RECITALS

1. Pursuant to Section 10-8-14, Utah Code Annotated 1953, as amended, the City may construct, maintain, and operate telecommunication lines and cable television lines.

2. Pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”), the City may exercise and enjoy jointly with other city any power, privileges or authority exercised or capable of exercising by a city.

3. The Interlocal Act permits cities to make the most efficient use of their power by enabling them to cooperate with other cities on the basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs of development of local communities and will provide the benefit of economy of scale, economic development and utilization of natural resources for the overall promotion of the general welfare of the State of Utah.

4. Pursuant to the Interlocal Act, the City joined LIGHTHUB to provide for the acquisition, construction, and installation of the telecommunications lines and cable television lines together with related improvements and facilities (the “Improvements”) for the purpose of connecting properties within the City to the Network (as herein defined), all of which shall directly or indirectly benefit the City.

5. LIGHTHUB is a separate legal entity, body politic and corporate and a political subdivision of the State of Utah regularly created, established, organized and existing under and by virtue of the provisions of the Interlocal Act and of the Constitution of the State of Utah.

6. Through LIGHTHUB, the City desires to work together cooperatively to provide their residents with the opportunity to connect to the Network and have determined that private enterprise is not willing or able to provide the Connection Services (as herein defined). Based on the Feasibility Report (as herein defined), the City anticipates that the Service Fees charged by the City to the end users through their Communications Enterprises will be sufficient to satisfy their obligations hereunder.

7. Section 11-13-215 of the Interlocal Act provides that the City may share their taxes or other revenue with one another for the purpose of accomplishing their objectives as set forth in an interlocal agreement, provided that each City complies with the requirements of Section 11-13-202.5 of the Interlocal Act.

8. In order to assure that the City meets its obligations hereunder to LIGHTHUB, the City desires to pledge its Tax Revenues to the limited extent provided herein in Exhibit D, to accomplish the City's objective of providing Connection Services (as herein defined).

9. It is the intention of Parties that the Improvements to provide the Connection Services be operated and managed for the mutual benefit of the Parties and that the City will pay Service Fees (as herein defined) to LIGHTHUB calculated in accordance with Section 3.2 of this Service Contract. The amounts paid by the City hereunder to LIGHTHUB do not acquire any City owned assets or facilities, and are made solely in consideration for the Connections Services provided by LIGHTHUB to the City.

10. The Connections Services provided under this Service Contract are not Cable Television Services or Public Telecommunications Services as defined in the Municipal Cable Television or Public Telecommunications Services Act, Title 10, Chapter 18, Utah Code Annotated 1953, as amended (the "Telecommunications Act").

AGREEMENT

In consideration of the Connection Services herein provided, the benefit the City shall receive in connecting end users within the City to the Network and the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms, whether in the singular or in the plural, when used herein and in the exhibits hereto, shall have the meanings set forth below:

“Annual Budget” means the budget adopted by LIGHTHUB.

“Capital Costs” means all capital costs related to the Improvements incurred by LIGHTHUB in any particular Fiscal Year or period to which said term is applicable or charges made therefor during such Fiscal Year or period, including amounts set aside in reserves for the payment of Capital Costs. Capital Costs include, without duplication, (a) the payment of any obligations incurred by LIGHTHUB to finance or refinance the costs of the Improvements, (b) amounts required to be deposited from time to time into required reserves, and (c) all other capital costs (determined in accordance with generally accepted accounting principles) of the Improvements.

“City” means American Fork City, a municipal corporation and a political subdivision of the State of Utah.

“Communications Enterprise” means the enterprise established by the City pursuant to the Uniform Fiscal Procedures Act for Utah Cities, Title 10, Chapter 6, Utah Code Annotated 1953, as amended, to facilitate the providing of high speed communications services through the Network to end users within the City pursuant to this Service Contract.

“Connection Services” means the services provided by LIGHTHUB to the City pursuant to this Service Contract whereby end users within the City have access to LIGHTHUB Improvements through which they may contract with private providers to receive the Cable Television Services and Public Telecommunication Services (as those terms are defined in the Telecommunications Act) provided through the Network. The term Connection Services includes Connection Services Capacity and is more particularly described in Exhibit A attached hereto and incorporated herein.

“Connection Services Capacity” means the access rights to and capacity in the Network.

“Feasibility Report” means the feasibility report prepared by Design 9 with respect to the construction of the Improvements and the sufficiency of the Service Fees to meet annually the LIGHTHUB Revenue Requirement.

“Fiscal Year” means a period commencing on July 1 and ending on the next succeeding June 30.

“Tax Revenues” means all tax revenues received by the City as detailed in Exhibit D.

“Improvements” means those facilities, improvements, and access, lease, use and/or capacity rights acquired, constructed, and/or installed, operated and maintained by LIGHTHUB to provide Connection Services to the City pursuant to this Service Contract, as more fully described in Exhibit B attached hereto, and incorporated herein.

“Network” means the LIGHTHUB advanced communications fiber optic to the premises open access communications network.

“Operating Contingency” means an unplanned event or circumstance, a series of events or circumstances, or any restriction or condition imposed by any governmental authority which reduces and materially adversely affects access to the Improvements.

“Operation and Maintenance Expenses” means all expenses reasonably incurred by LIGHTHUB in connection with the operation and maintenance of the Improvements, whether incurred by LIGHTHUB or paid to any other entity pursuant to contract or otherwise, necessary to keep the Improvements in efficient operating condition, including cost of audits hereinafter required, payment of promotional and marketing expenses and real estate brokerage fees, payment of premiums for insurance, and, generally all expenses, exclusive of depreciation (including depreciation related expenses of any joint venture) which under generally accepted accounting practices are properly allocable to operation and maintenance; however, only such expenses as are reasonably and properly necessary to the efficient operation and maintenance of the Improvements shall be included.

“Revenues” means all Service Fees and other revenues, fees, income, rents, and receipts received or earned by LIGHTHUB under this Service Contract, together with all interest earned by and monies derived from the sale of investments in the related funds thereof.

“Service Contract” means this Communications Service Contract dated as of _____, 2019, as it may be amended from time to time in accordance with Section 5.15 herein.

“Service Fees” means all fees charged by or on behalf of the City to the end users within the boundaries of the City, including connection fees, utility fees and charges to service providers. The Service Fees of the City shall be payable to LIGHTHUB in consideration for the Connection Services provided by LIGHTHUB to the City pursuant to this Service Contract. The Service Fees shall be calculated and paid pursuant to Article III of this Service Contract. Service Fees does not include any Tax Revenues.

“LIGHTHUB” means Lighthub Communications, a separate legal entity, body, politic and corporate and a political subdivision of the State of Utah, created under the Interlocal Act. LIGHTHUB is separate from each of the Cities that created it.

“LIGHTHUB Revenue Requirement” means the sum of the Operation and Maintenance Expenses and the Capital Costs of LIGHTHUB during each Fiscal Year or other applicable period.

“Uncontrollable Forces” means any cause beyond the control of the Party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, lightening, fire, epidemic, war, riot, civil disturbances, labor disturbance, sabotage, and restraint by court or public authority.

ARTICLE II

CONNECTION SERVICES

Section 2.1 Connection Services. LIGHTHUB shall provide to the City and the City shall receive from LIGHTHUB, Connection Services, including Connection Service Capacity, sufficient to allow end users within the City to connect to the Network. In the event the City determines to provide Connection Services to more than the number of end users allocated to it as set forth in Exhibit C, it shall submit to LIGHTHUB a written proposal, requesting additional Connection Service Capacity from LIGHTHUB. Said proposal shall specify the total additional number of end users to be provided Connection Services and the date on which the City requests such capacity to be effective. LIGHTHUB shall accept or reject said proposal within fifteen (15) days from the date it received the proposal.

Section 2.2 Availability. LIGHTHUB shall provide continuous Connection Services barring only emergency or scheduled downtime, curtailments, and Operating Contingencies.

ARTICLE III

PAYMENT FOR CONNECTION SERVICES

Section 3.1 Payment. Beginning on April 15, 2022, the City shall pay to LIGHTHUB Service Fees for Connection Services as determined pursuant to Section 3.2 herein.

Section 3.2 Determination of Payment. In consideration for the receipt of Connection Services, the City shall pay from its Service Fees amounts that are sufficient to pay the LIGHTHUB Revenue Requirement. The City shall charge all end users through its Communications Enterprise on a monthly basis.

Section 3.3 Obligation is Absolute. Subject to the provisions of Section 3.4 hereof limiting the sources of payment hereunder, the City's obligations to pay Service Fees to LIGHTHUB for Connection Services pursuant to this Article III shall be irrevocable, absolute and unconditional and shall not be subject to any reduction, whether by defense, recoupment, counterclaim or offset or otherwise, and shall not be conditioned upon the construction, performance or non-performance of the Improvements or LIGHTHUB, the remedy for non-performance being limited to mandamus, specific performance or other legal or equitable remedy. Notwithstanding the foregoing, it is not intended that the City by this Service Contract assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any obligations incurred by LIGHTHUB with respect to the Improvements.

Section 3.4 Special Limited Obligation. The City agrees to pay the Service Fees due to LIGHTHUB for Connection Services in monthly installments. Subject to Section 3.6 herein, the City's obligations to make monthly payments pursuant to this Section 3.4 shall constitute an obligation payable from Service Fees and in the event such Service Fees are insufficient, from Tax Revenues. In no event shall the obligations of the City hereunder be construed as a general obligation or indebtedness of that City within the meaning of any constitutional or statutory limitation or provision or payable from ad valorem property taxes of that City. The Parties acknowledge and agree that such payments shall be made out of the enterprise fund established with respect to the City's Broadband Enterprise Fund. Each monthly installment shall be due and payable by the City to LIGHTHUB not later than the fifteenth day of the next succeeding month. A final accounting of all transactions between LIGHTHUB and the City in each Fiscal Year shall be rendered to the City by LIGHTHUB on or before the 90th day of the succeeding Fiscal Year. The final accounting shall specify the amount, if any, which City must pay to LIGHTHUB to reconcile total monthly payments with actual amounts due LIGHTHUB with Service Fees indicated by an underpayment or overpayment to be made by the City or LIGHTHUB respectively, which amount shall be payable to LIGHTHUB or the City no later than 30 days after the receipt of the final accounting.

Section 3.5 Default in Payment. If the City's Service Fees are not paid in full on or before the close of business on the fifteenth day of the month in which said Fees are due, an interest charge will be made at the rate of ten percent (10%) per annum or the

maximum rate of interest legally chargeable, whichever is less. If all or a portion of the Service Fees remain unpaid subsequent to the fifteenth day of the month in which the Fees are due, LIGHTHUB may, upon giving fifteen (15) days' advance written notice to the applicable City, discontinue Connection Services to said City unless, and may refuse to resume said Services to said City until, the delinquent installment has been paid. From and after the effective date of such notice, LIGHTHUB shall not provide Connection Services to said City unless the parties mutually agree otherwise.

Section 3.6 Use of Tax Revenues.

(a) The City estimates the Revenues are expected to equal not less than _____ times the LIGHTHUB Revenue Requirement. However, in the event and to the extent there shall be a shortfall in such Revenues (the "Shortfall"), such that LIGHTHUB shall not have sufficient monies to pay the LIGHTHUB Revenue Requirement when due, the City hereby pledges and agrees to lend its Tax Revenues in the maximum annual principal amount allocated to the City as set forth in Exhibit D attached hereto and incorporated herein. On or prior to each January 15 and July 15 commencing January 15, 2022 LIGHTHUB shall determine:

(i) the LIGHTHUB Revenue Requirement due on the next succeeding April 15 or October 15 as appropriate and

(ii) the amount of the Revenues LIGHTHUB reasonably believes will be available for payment of the LIGHTHUB Revenue Requirement on said April 15. In addition, LIGHTHUB shall, on or prior to each February 15 and August 15, submit a request to the City for Tax Revenues equal to that City's percentage of the Shortfall set forth in Exhibit D attached hereto and incorporated herein, but in no event more than the maximum principal amount set forth in Exhibit D. The City agrees to pay its percentage of the Shortfall to LIGHTHUB no less than ten (10) days prior to the next succeeding April 15 and October 15 of each year. LIGHTHUB covenants to take such other action as it lawfully may take to assure that the City remits to LIGHTHUB from Tax Revenues its share of said Shortfall pursuant to this Service Contract.

(b) The City may create or incur additional debt on a parity with any outstanding debt secured by a priority lien pledge of the City's Tax Revenues or on parity with the pledge created pursuant to this Section 3.6 so long as the pledged Tax Revenues received by that City during the Fiscal Year immediately preceding the Fiscal Year in which the additional priority or parity debt is to be issued is not less than 130% of the maximum annual debt service on the sum of (i) the additional priority or parity debt plus (ii) any debt previously issued and outstanding plus (iii) the total maximum annual amount pledged by the City hereunder, tested for the period of such additional priority or parity debt.

(c) All Tax Revenues paid by the City to LIGHTHUB or its designee pursuant to this Section 3.6 shall constitute a loan by the City to LIGHTHUB which

shall be paid by LIGHTHUB at the time and in the manner as provided in the form of promissory note attached hereto as Exhibit E from future LIGHTHUB revenues. The City shall be entitled to charge interest on each loan advance from the date said advance is made by the City to LIGHTHUB or its designee, provided that in no event shall the interest rate exceed six percent (6%) per annum. The City acknowledges that the loan obligation incurred by LIGHTHUB herein shall be subordinate and junior to LIGHTHUB's bond payment obligation but senior to any other payment obligations.

Section 3.7 Succession Proceedings. LIGHTHUB or its designee shall have the right from time to time to begin and maintain successive proceedings against the City for the recovery of all Service Fees required to be made under this Service Contract by the City and to recover the same upon the liability of the City herein provided. Nothing herein contained shall be deemed to require LIGHTHUB to defer commencement of any such proceeding until the end of the term of this Service Contract.

Section 3.8 Discontinuance; Termination. No discontinuance of any or all of the rights of the City to the Connection Services shall be construed as an election on the part of LIGHTHUB or its designee to terminate the interest of the City under this Service Contract unless a notice of intention be given to the City or unless such termination be decreed at the instance of LIGHTHUB or its designee by a court of competent jurisdiction.

Section 3.9 Remedies. LIGHTHUB or its designee may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable by the City hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the City under the provisions of this Service Contract. The City may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of LIGHTHUB under the provisions of this Service Contract.

Section 3.10 No Exclusive Remedy. No right or remedy herein conferred upon or reserved to LIGHTHUB or its designee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the failure of the City to make the payments provided for hereunder. The failure of LIGHTHUB or its designee to insist at any time upon the strict observance or performance by the City of any of the provisions of this Service Contract, or to exercise any right or remedy provided for in this Service Contract, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by LIGHTHUB or its designee of any Service Fees required to be made under this Service Contract with knowledge of the breach of any provisions of this Service Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Service Contract, LIGHTHUB or its designee shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Service Contract, or to a decree concerning performance of any of the provisions of this Service Contract, or to any other remedy legally allowed to LIGHTHUB or its designee. If any proceeding shall be brought for the enforcement of any right or remedy

provided for in this Service Contract in which it shall be determined that the City shall have failed and continued to fail to make a payment of Service Fees due under this Service Contract at the time of commencement thereof, the City shall pay LIGHTHUB or its designee all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and expenses. In like manner, if it should become necessary for the City to bring legal proceedings against LIGHTHUB or its designee to enforce any right given it hereunder, the City shall have the right, if it is successful in such proceedings, to the payment by LIGHTHUB of all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees, and expenses.

Section 3.11 Right of Designee to LIGHTHUB to Exercise Remedies. At any time LIGHTHUB or its designee is entitled to enforce any of the rights or remedies provided for in this Service Contract, and the designee may proceed, either in its own name and as trustee of any express trust or otherwise, to protect and enforce its rights and those of LIGHTHUB under this Service Contract, whether or not LIGHTHUB shall have complied with any of the provisions hereof or proceeded to take any action authorized or permitted under applicable law. Such rights and remedies as are given LIGHTHUB hereunder shall also extend to its designee and the designee shall be entitled to the benefit of all covenants and agreements in this Service Contract contained.

Section 3.12 City not Obligated for LIGHTHUB Debt. All obligations of LIGHTHUB are payable solely by LIGHTHUB and, in accordance with the provisions of the Act, are not a debt or other obligation of the City.

ARTICLE IV

APPROVAL AND PUBLICATION REQUIREMENTS

Section 4.1 Submission to Authorized Attorney. This Service Contract shall constitute an agreement for joint and cooperative action pursuant to the Interlocal Act. In accordance with the requirements of Section 11-13-202.5 of the Interlocal Act as amended, this Service Contract shall be submitted for approval to the governing bodies of LIGHTHUB and the City and to an authorized attorney for LIGHTHUB and for the City who shall approve this Service Contract if such attorney determines that it is in proper form and compatible with the laws of the State of Utah.

Section 4.2 Publication. In accordance with the requirements of Section 11-13-219 of the Interlocal Act, as amended, the governing body of LIGHTHUB shall provide for the publication of the resolution adopted by it pursuant to the requirements of Section 11-13-202 of the Interlocal Act, as amended, in the official newspaper or the newspaper published within its boundaries, or if no newspaper is so published, then in a newspaper having general circulation therein.

Section 4.3 Improvements Owned by LIGHTHUB. In accordance with the requirements of the Interlocal Act, as amended, it is agreed and understood that all real and personal property constituting the Improvements shall be acquired, owned, held, and disposed of by LIGHTHUB.

ARTICLE V

GENERAL PROVISIONS

Section 5.1 Acquisition and Construction of the Improvements. LIGHTHUB represents that it will acquire or cause to be acquired all permits, licenses, rights and privileges, structures, equipment, and facilities with respect to the acquisition and construction of the Improvements necessary for the performance by LIGHTHUB of this Service Contract. LIGHTHUB shall maintain and defend such permits, licenses, and rights and privileges and shall not voluntarily permit any change therein that would result in impairment of the performance by LIGHTHUB of its obligation under this Service Contract.

Section 5.2 Risk of Loss. Each Party is solely responsible for the risk of loss of, or damage to, equipment of that Party (regardless of where located), unless the loss or damage results from the negligence or fault of the other Party.

Section 5.3 Several Obligations. Except where specifically stated in this Service Contract to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Service Contract shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Service Contract, and shall not be liable for any obligation of the other City hereunder.

Section 5.4 Liability Dedication. Nothing in this Service Contract shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Service Contract.

Section 5.5 Books and Records. LIGHTHUB agrees that it shall maintain separate books and records relating to the Improvements and that proper and equitable allocations of revenues and expenses will be made with respect to the operations of the Improvements. LIGHTHUB shall submit to the City such supporting data with respect to all Annual Budgets and yearly accounting reconciliations as are reasonably necessary to enable the City to effect proper accounting therefor. All books of account and accounting records of LIGHTHUB shall be available for inspection and utilization by a duly authorized officer or designee of the City at all reasonable times. LIGHTHUB shall cause such books of account of the Improvements to be audited annually by independent public accountants experienced in utility accounting. A copy of each such annual audit, including any recommendations of the accountants with respect thereto, shall be promptly made available by LIGHTHUB to the City.

Section 5.6 Relationship to Other Instruments. It is recognized that LIGHTHUB must comply with all licenses, permits and regulatory approvals necessary for the ownership, acquisition, construction and operation of the Improvements, and it is, therefore, agreed that this Service Contract is made subject to the terms and provisions of such licenses, permits and regulatory approvals, except that the City shall not be bound by

any term or provision of any license, permit, or regulatory approval, which may contradict or vary the terms hereof unless it expressly consents in writing to be so bound. The City agrees that it will not revise or amend its Service Fees charged to end users under its Communications Enterprise in any manner that would adversely affect the priority of or the security for the payments to be made thereunder to LIGHTHUB without obtaining the prior written consent of LIGHTHUB.

Section 5.7 Liabilities. The City, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the ownership, acquisition, construction and operation by LIGHTHUB of the Improvements or arising out of any obligations of the other City hereunder. LIGHTHUB, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the performance by the City under this Service Contract.

Section 5.8 Assignment. Except for security purposes in connection with any obligations incurred by LIGHTHUB, neither this Service Contract nor any part thereof shall be assigned by any Party without prior written consent of the others.

Section 5.9 Furnishing Service to Others. LIGHTHUB, by entering into this Service Contract, does not hold itself out to provide the Improvements or similar service to any other person or entity.

Section 5.10 Uncontrollable Forces. No Party shall be considered to be in default in respect to any obligation hereunder, other than under Article III, if prevented from fulfilling such obligation by reason or an Uncontrollable Force. If a Party is rendered unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such inability with all reasonable dispatch and shall keep the other Parties fully informed of changes and conditions as far in advance as possible.

Section 5.11 Communications Enterprise. The City will operate and maintain its Communications Enterprise in good operating order and will fix, charge, and collect rates, fees, and charges in accordance with Section 5.12 herein. The City will annually in each of its Fiscal Years during the term hereof appropriate and transfer to LIGHTHUB all Service Fees required to be made in each Fiscal Year hereunder until all payments hereunder have been paid in full.

Section 5.12 City to Charge and Collect City Revenues. The City hereby agrees to create a Communications Enterprise and to charge all end users within the City through its Communications Enterprise monthly fees in the amount adopted in the City's Consolidated Fee Schedule, which may be amended as needed by resolution of the City Council for each connection to the Network in consideration for the Connection Service provided by the City. The City shall establish such enforcement procedures as may be necessary to collect such fees. Said fees, when collected, shall be used by the City to pay its Service Fees under this Service Contract.

Section 5.13 Cable Television Services and Public Telecommunications Services. The Parties hereto acknowledge and represent that neither party, by entering into this Service Contract, shall provide or be required to provide Cable Television Services or Public Telecommunications Services as defined in the Telecommunications Act. Furthermore, the Parties hereby acknowledge and represent that to the best of their knowledge, the City is paying for the full cost of providing the Connection Services received by it pursuant to this Service Contract.

Section 5.14 Entire Agreement. This Service Contract constitutes the entire agreement among the Parties with respect to the subject matter hereof. No change, variation, termination, or attempted waiver of any of the provisions of this Service Contract shall be binding on the Parties unless executed in writing by the other Party. This Service Contract shall not be modified, supplemented, or otherwise affected by course of dealing.

Section 5.15 Amendments. This Service Contract shall not be amended, modified, or otherwise altered in any manner without the consent of the parties hereto, which consent shall not be unreasonably withheld.

Section 5.16 Effective Date and Original Term. This Service Contract shall be effective as of the date hereof and shall continue in effect until December 31, 2052, or such later time as any obligation incurred by LIGHTHUB to finance or refinance the Improvement are retired, defeased or paid in full.

Section 5.17 Notice. Any notice, demand, or request provided for in this Service Contract shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

LIGHTHUB:

CITY:

The Parties may, at any time, by notice to the other designate different or additional persons or different addresses for the giving of notice hereunder.

Section 5.18 Governing Law. This contract shall be interpreted, governed by, and construed under the laws of the State of Utah.

Section 5.19 Execution in Counterparts. This Service Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.20 Severability. If any provision of this Service Contract shall be held or be deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatsoever.

IN WITNESS WHEREOF, the Parties hereto have executed this contract the day and year herein first above written.

LIGHTHUB Communications Agency

(SEAL)

By: _____
Chair

ATTEST AND COUNTERSIGN:

By: _____
Secretary

American Fork City, Utah

(SEAL)

By: _____
Mayor

ATTEST AND COUNTERSIGN:

By: _____
City Recorder

Pursuant to Section 11-13-202.5 of the Utah Code Annotated 1953, as amended, the foregoing Service Contract is hereby approved.

Attorney for LIGHTHUB Communications Agency

Attorney for American Fork City

EXHIBIT A

CONNECTION SERVICES

Strategic Partner Management

Recruit and manage strategic partnerships, which will include but not be limited to Business and Residential Service Providers and Services Providers. Attract new technologies to the network to facilitate new service offerings on the network and leverage the City's existing network and its communities.

The City may authorize LIGHTHUB to negotiate the parameters of service established by the city council which the connection service contract will require of service providers to make available to the end users within the City's geographical boundaries. LIGHTHUB will enforce and maintain contractual obligations with service providers, including but not limited to amendments, enforcement of contracts with Providers and ensuring Service Level Agreements are met according to business and contractual obligations.

Product Management

Recommend, develop wholesale pricing model along with the City and strategic partners. This will include new wholesale pricing for newly developed products brought by LIGHTHUB and its Strategic Partners.

Present developed model and any changes the City and strategic partners for rollout on the Network. Maintain, modifying and bring to end-of-life wholesale products on the network.

Planning, Design and Implementation

LIGHTHUB will provide planning, design and implementation of the City's network as requested. A full outside plant design, network design and operational impact review will be provided along with a project implementation plan timeline, along with associated budget for the plan. The plan will include:

- Creation/Import of city records into GIS system
- Estimated cost for the outside plant build requested area
- Estimated cost for the network engineering build
- Project Engineer to interact and answer questions about the proposals and presentations
- Support for submittal of change orders for any changes on the design plan
- Supporting production map(s) and documentation for proposed build areas
- Extract of information in supported format provided by LIGHTHUB

Marketing/Advocate Awareness Program

LIGHTHUB will instigate and oversee any marketing and communications efforts that are necessary to the network's success. This could include campaigns within city governments, residential markets, multi-dwelling unit markets, business markets, or with community and national thought leaders, policy makers and other audiences. In particular, LIGHTHUB will seek opportunities to develop and educate about future quality-of-life, public safety, and economic development opportunities on the network, working to build the network's reputation as necessary public infrastructure.

LIGHTHUB will recruit and manage personnel and/or contractors to assist in promoting the network and growing the subscriber base. The City may assist with the promotion activities as long as it receives the prior written approval from LIGHTHUB to do so.

GIS Services

Upon implementation of new network designs LIGHTHUB will create, manage and maintain a Geo-spatial database to track the build of the City's network. LIGHTHUB will provide a conversion method to import engineering documentation (CAD Conversion) and modify the geo-spatial database to include AS-Built updates as reported.

Continued support will be offered by taking GPS data collection for key OSP elements, recording that information into the database, providing and tracking fiber assignments made for provisioning services and when requested, provide an extract of the database for the Cities in an available format

Outside Plant Services

During construction LIGHTHUB will appoint a Project Manager to oversee all approved construction for the specific project. They will manage the RFP process using LIGHTHUB standard policies to award construction bids and select qualified contractors. They will provide management over employees and contractors during the construction process by assigned construction work packages and ensuring industry best practices and consistent engineering specifications are met.

The Project Manager will ensure:

- Budget tracking and reporting is available for the City
- Obtain necessary field permits and obligations
- Issues are tracked and brought to resolution for the City or its residents
- RMA process is followed
- Inventory is managed and accounted for
- Maintaining necessary levels of inventory to complete work packages
- Ensure construction work through Quality Assurance procedures

Field Services

LIGHTHUB will provide field crews and/or contractors to be deployed in the field to manage the physical plant which is constructed for the City. LIGHTHUB will maintain physical huts and cabinets on the network. During the event of an issue the Field Services Group will respond to any actual damage to physical plant and manage and execute the repair needed for restoring the physical plant as deemed necessary by LIGHTHUB.

Network Engineering Services

LIGHTHUB will provide network engineers and/or contractors to evaluate, recommend the needed electronics to provide wholesale services on the network. These Network engineers will:

- Test and certify network electronics for deployment
- Create, maintain physical and logical topology of the Network
- Configure and install the necessary devices in the network as needed
- Resolve any issues with these devices and replace parts or device as needed
- RMA through standard processes
- Research and Development of new technologies along with strategic partners
- Capacity planning of the network

Operations Management

LIGHTHUB will provide management oversight of operational support of the network. This will include:

Integration: Integration of strategic partners onto the network, establishing standard interfaces and operational methods and procedures with these partners. LIGHTHUB will assist strategic partners in understanding integration points of products and services on the network.

Operational Methods and Procedures: Develop supporting methods and procedures to coordinate delivery of services to customers.

Network Operations Center (NOC): 24x7 NOC to monitor health of devices and services on the network. Respond to Strategic Partner requests, manage to resolution reported issues on the network.

Network Repair and Maintenance: Detect, record (through a LIGHTHUB a trouble ticketing solution) and respond to network maintenance and issues. Record and dispatch appropriate teams into the field for issue resolution.

Order Management System: Provide systems to allow the ordering and activation of wholesale services on the network, track customer acquisition and produce invoices, as needed, of wholesale services for cities so that they may invoice residents and LIGHTHUB may invoice Service Providers.

Reporting: Provide reporting of customers on the network.

Invoicing: Provide information to the City to allow the invoicing of applicable wholesale services on the network, if the City handles its own invoicing.

EXHIBIT B

DESCRIPTION OF IMPROVEMENTS

Physical Improvements

Fiber Optic Communication lines will be deployed throughout the City. These lines will be constructed both overhead and underground in each of the city's "rights of way" following all local, state and federal regulations using industry best practices to deploy the most efficient and cost-effective infrastructure.

Elements of the infrastructure include 3 separate categories: Backbone or middle mile construction, access level or last mile construction and drop level construction.

Backbone or Middle Mile Construction

Consists of both overhead and underground paths, communication shelters to house distribution switches, fiber optic patch panels, uninterruptable power supplies (UPS) and generators. The communication shelters will serve as distribution points within the City and will be connected diversely with ring architecture. Other elements include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. The testing and certification of the improvements will be in accordance with national industry standards and LIGHTHUB's Engineering Standards document.

Access Level or Last Mile Construction

Consists of both overhead and underground paths to every subscribed address within the build area. Elements of this type of build include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. This infrastructure will facilitate and serve as network access points for subscribers to LIGHTHUB.

Drop Level Construction

Consist of drop fiber and/or conduit being placed from a network access point to the demarcation point within the subscriber's premise where a network interface device will be placed. Elements of this type of build include three quarter inch drop conduit, drop fiber, aerial attachment hardware, network interface device (NJD), UPS, fiber pigtail, optical transceiver/receiver, power cord and all other items necessary to construct and operate the network. In some instances, LIGHTHUB will also be responsible for installing cat5 cable within the homes or business to provide a connection for the services ordered.

EXHIBIT C

NUMBER OF END USERS ALLOCATED TO THE CITY

661 Businesses

8600 Residences

EXHIBIT D

TAX REVENUES

Not to exceed \$910,000 per year from franchise fees and \$910,000 per year from sales tax revenues.

EXHIBIT E

FORM OF PROMISSORY NOTE

\$ _____

(date)

FOR VALUE RECEIVED, the undersigned, [_____] (“Borrower”), promises to pay to the order of [_____] City, Utah (“Lender”), the principal sum of _____ (\$_____) together with all subsequent loan advances made, expenditures authorized and additional payments provided for in this Promissory Note and pursuant to the [Fiber Communications Service and Acquisition Contract] dated as of [_____] , 20__, between Borrower and Lender (the “Contract”).

1. Definitions. As used in this Note, the following terms shall have the meanings set forth below:

“Effective Date” means the date the terms of this Note, including the accruing rate of interest and the payment obligations described herein, become effective, which date shall be the date the proceeds of the Loan are disbursed to or for the benefit of Borrower.

“Event of Default” means failure by Borrower to pay timely any installment of principal or interest on this Note.

“Loan” means the loan advanced by Lender to Borrower under the terms and upon the conditions contained in the Contract in the principal amount of _____ (\$_____).

“Maturity Date” means _____.

“Month” means a calendar month.

“Note” means this Promissory Note and any extensions, renewals or modifications thereof.

“Payment Date” means the _____ day of each Month on which Borrower shall pay to Lender accrued interest, or principal and accrued interest, on the outstanding principal of this Note, as required by the terms of this Note.

“Principal Indebtedness” means at any time and from time to time during the term of this Note all advances, disbursements, expenditures, and payments made by Lender after the date of this Note pursuant to the terms of this Note or the Contract.

2. Security. Security for this Note and repayment by Borrower will be limited exclusively to the Revenues, as defined in the Contract, that are generated under the Contract. Borrower’s obligation to repay the Note is contingent upon the availability of

Revenues generated under the Contract in excess of the [Revenue Requirement], as defined in the Contract. Borrower is not obligated to utilize any other funds to repay this Note.

3. Interest Accruals. The unpaid principal balance will bear interest at the rate set forth in [Section 3.5(e)] of the Contract.

4. Interest Calculation Basis. All interest accruing under this Note shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

5. Payments of Principal and Accrued Interest.

(a) Beginning on _____, Borrower shall make monthly installment payments to Lender of principal and accrued interest on the unpaid Principal Indebtedness in the amount of _____ (\$_____) each.

(b) The entire unpaid Principal Indebtedness, together with all accrued and unpaid interest thereon, if not sooner paid, shall be due and payable in full on the Maturity Date.

6. Place of Payment. All payments under this Note shall be made in lawful money of the United States of America at Lender's offices at _____ Utah, or at such other place as Lender may from time to time designate. All payments on this Note shall, at the option of Lender, be applied first to the payment of accrued interest and after all such interest has been paid, any remainder shall be applied toward the reduction of the Principal Indebtedness.

7. Default Rate of Interest. During any period of time which an Event of Default has occurred and is continuing, interest shall accrue against the outstanding Principal Indebtedness evidenced hereby at a rate equal to the otherwise effective rate of interest under this Note plus five percent (5.0%) per annum, calculated on the basis of a 360-day year for the actual number of days elapsed.

8. Prepayment. Borrower may prepay all or a portion of the amount owed earlier than it is due.

9. Late Fee Charges. If any payment required by this Note not received by Lender within ten (10) days after such payment is due, a late fee charge equal to five percent (5.0%) of such late payment shall be due and payable.

10. Incorporation of Contract. The terms, conditions, covenants, provisions, stipulations and agreements of the Contract are hereby made a part of this Note by reference to such document in the same manner and with the same effect as if the Contract were fully set forth herein. Borrower hereby covenants and promises to abide by and comply with each and every covenant and condition set forth in this Note and the Contract.

11. Application of Payments. All payments on this Note shall, at the option of Lender, be applied first to the payment of accrued interest and after all such interest has been paid, any remainder shall be applied toward repayment of any additional advances

Lender has made hereunder which have not already been added to the Principal Indebtedness then outstanding, and the balance, if any, toward the reduction of the Principal Indebtedness.

12. Waivers, Substitution of Security. Borrower waives presentment for payment, notice of dishonor and protest, and consents to any extension of time with respect to any payment due under this Note, to any substitution or release of collateral, and to the addition or release of any party. No waiver of any payment under this Note shall operate as a waiver of any other payment. No delay or failure of Lender in the exercise of any right or remedy provided for under this Note shall be deemed a waiver of such right by Lender, and no exercise of any right or remedy shall be deemed a waiver of any other right or remedy which Lender may have.

13. Governing Law. This Note is to be construed in accordance with the laws of the State of Utah, without giving effect to principles of conflicts of laws.

14. General. Time is of the essence hereof. Upon the occurrence and continuance of an Event of Default, Lender shall have, in addition to all rights and remedies available to Lender at law or in equity, all rights and remedies allowed under Utah law.

DATED effective as of the date first above written.

BORROWER:

[_____] AGENCY

By: _____
Chair

LENDER:

[_____] CITY, UTAH

(SEAL)

By: _____
Mayor

ATTEST AND COUNTERSIGN:

By: _____
City Recorder

