

1 Introduced January 12, 2021, by Councilman
2 Tamborella, seconded by Councilwoman
3 Denham, (by request of Administration)

4 **Item No. 21-01-3354**

5
6 **ORDINANCE NO. 4015**

7
8 An ordinance authorizing the City of Slidell, acting through its Mayor, to enter
9 into a Rights-of-Way and Facility Space Use Agreement with Camellia City Fiber, LLC to
10 facilitate Camellia's access to and use of the City's public rights-of-way for installation,
11 modification, relocation, repair, operation, and maintenance of its fiber-optic infrastructure
and for its use of limited space at the City's 1010 Gause Blvd. facility.

12 WHEREAS, Camellia City Fiber, LLC is a telecommunications company that
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14 desires to expand its fiber-optic infrastructure to areas within the municipal boundaries of
15
16 the City of Slidell; and

17 WHEREAS, Camellia City Fiber, LLC desires to access and utilize the
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19 City's public rights-of-way to accomplish said expansion by way of the installation,
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21 modification, relocation, repair, operation, and maintenance of its fiber-optic infrastructure
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23 within said rights-of-way, and to house certain related infrastructure at the City's 1010
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25 Gause Blvd. facility, and the City is agreeable to same under the general terms set forth in
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the attached Exhibit A; and

27 WHEREAS, Article VII, Section 14(C) of the Constitution of the State of
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29 Louisiana provides that "[f]or a public purpose, the state and its political subdivisions . . .
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31 may engage in cooperative endeavors . . . with any public or private association,
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corporation, or individual"; and

33 WHEREAS, under La. R.S. 33:4712, and other applicable law, the City is
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35 authorized to lease space not needed by the City for a public municipal purpose to third
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37 parties, and the relevant space at City's 1010 Gause Blvd. facility meets such criteria; and
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1 **ORDINANCE NO. 4015**
2 **ITEM NO. 20-01-3354**
3 **PAGE 2**

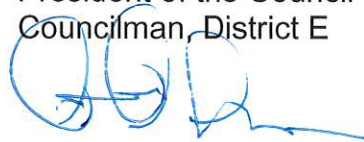
4 WHEREAS, the parties agree that the expansion of Camellia City Fiber,
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6 LLC's fiber-optic infrastructure to areas within the municipal boundaries of the City will
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8 provide a public benefit and assist in the economic development of the area, including by
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10 way of allowing the City itself the opportunity to connect to Camellia City Fiber's
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12 infrastructure, and the parties have a reasonable expectation of receiving benefits which
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14 are commensurate to the benefits respectively conferred.

15 NOW THEREFORE BE IT ORDAINED by the Slidell City Council that it does
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17 hereby authorize the City of Slidell, acting through its Mayor, to enter into a Rights-of-Way
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19 and Facility Space Use Agreement with Camellia City Fiber, LLC, under terms and
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21 conditions substantially similar to those set forth in of the attached Exhibit A.

22 **ADOPTED** this 9th day of February, 2021.

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24 Kenny Tamborella
25 President of the Council
26 Councilman, District E

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28 Greg Cromer
29 Mayor

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32 Thomas P. Reeves
33 Council Administrator

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DELIVERED	2/10/21
3:45 pm	to the Mayor
RECEIVED	2/18/21
10:00 am	from the Mayor

RIGHTS-OF-WAY AND FACILITY SPACE USE AGREEMENT

This **RIGHTS-OF-WAY AND FACILITY SPACE USE AGREEMENT** (this "Agreement") is made and entered into effective this 19th day of February, 2021 (the "Effective Date") by and between:

The **CITY OF SLIDELL, LOUISIANA**, a municipality and political subdivision of the State of Louisiana, whose mailing address, is P.O. Box 828, Slidell, LA 70459, appearing herein through its duly authorized Mayor, George G. Cromer, and hereinafter referred to as "**Grantor**";

AND

CAMELLIA CITY FIBER, LLC, a Louisiana limited liability company, whose mailing address is 573 Johnny F. Smith Avenue, Slidell, LA 70460, appearing herein through its duly authorized representative, Shawn Torres, and hereinafter referred to as "**Grantee**".

WHEREAS, Grantee is a telecommunications company that desires to expand its fiber-optic infrastructure to areas within the municipal boundaries of Grantor; and

WHEREAS, Grantee desires to access and utilize Grantor's public rights-of-way to accomplish said expansion by way of the installation, modification, relocation, repair, operation, and maintenance of its fiber-optic infrastructure within said rights-of-way, and to house certain related infrastructure in Grantor's 1010 Gause Blvd. facility, and Grantor is agreeable to same under the terms and conditions set forth below; and

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that "[f]or a public purpose, the state and its political subdivisions . . . may engage in cooperative endeavors . . . with any public or private association, corporation, or individual"; and

WHEREAS, under La. R.S. 33:4712, and other applicable law, Grantor is authorized to lease space not needed by Grantor for a public municipal purpose; and

WHEREAS, the parties agree that the expansion of Grantee's fiber-optic infrastructure to areas within the municipal boundaries of Grantor will provide a public benefit and assist in the economic development of the area, including by way of allowing Grantor itself the opportunity to connect to Grantee's infrastructure, and the parties have a reasonable expectation of receiving benefits which are commensurate to the benefits respectively conferred; and

WHEREAS, the fiber-optic infrastructure contemplated by this Agreement is intended for the transmission of broadband internet access services, including voice over internet protocol, and not, initially, for cable services or video services, as those latter terms are defined and used in La. R.S. 45:1361, *et seq.*

NOW THEREFORE, premises considered, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and for cause, the parties agree as follows:

- I. **TERM.** The initial term for this Agreement shall run for ten (10) years from its Effective Date (the "Initial Term"). This Agreement shall automatically renew thereafter for up to two (2) consecutive five (5) year terms (each a "Renewal Term") unless one party provides written notice of termination to the other at least ninety (90) days prior to the end of the then current term, in which case the Agreement shall terminate at the end of the then current term.

- II. **TERMINATION.** In addition to any other grounds for termination provided for in this Agreement, this Agreement may be terminated:
 - a. by Grantor, if Grantee fails to timely make any payment due hereunder within thirty (30) days of written demand for same;
 - b. by Grantor, if Grantee fails to fulfill any additional obligation required of it under this Agreement, and has failed to become compliant with such obligation within thirty (30) days after written notice by Grantor of default;
 - c. by Grantor, if Grantee accesses and/or utilizes Grantor's public rights-of-way or Grantor's 1010 Gause Blvd. facility in a manner inconsistent with the permissions granted in this Agreement and Grantee fails to cease such operations within thirty (30) days after written notice by Grantor of default;
 - d. by Grantor or Grantee, if Grantee obtains a valid Louisiana franchise agreement (or similarly valid franchise) that otherwise authorizes Grantee's use of Grantor's public rights-of-way for Grantee's telecommunications infrastructure without respect to this Agreement.

In the event of termination of this Agreement, including by way of expiration, payment due shall be made on a pro rata basis to the date of termination.

III. OBLIGATIONS OF THE PARTIES.

- a. Grantor shall
 - i. allow Grantee a non-exclusive right to access and utilize Grantor's public rights-of-way for the installation, modification, relocation, repair, operation, and maintenance of Grantee's fiber-optic infrastructure, subject to advance permitting approval by Grantor's engineer for all new installations in accord with section III.b.ii below, which approval shall not be unreasonably withheld. For purposes of this Agreement, the term "public rights-of-way" shall mean the area on, below, or above a Grantor-owned public roadway, sidewalk, alley, or waterway within the municipal boundaries of Grantor. The term shall not include any right-of-way within

the municipal boundaries of Grantor that is owned by the State of Louisiana, another political subdivision, or a private party, or the use of any infrastructure of any third party on, below, or above Grantor's public rights-of-way; and

- ii. allow Grantee access to and use of the following described space at Grantor's 1010 Gause Blvd. facility to house Grantee's networking hardware racks: shared server storage space in the basement floor of 1010 Gause Boulevard, Slidell, LA 70458 consisting of approximately 256 square feet, of which Grantee's equipment shall occupy approximately 8-12 square feet. Grantor shall be responsible for the payment of all electricity costs related to Grantee's use of the aforementioned space and shall maintain standard electrical utilities. Grantor shall use its best efforts to give at least three (3) days prior notice (email or verbal) to Grantee of any power cycling to occur at the facility.

b. Grantee shall

- i. , within forty-five (45) days from the end of each calendar quarter, pay to Grantor an amount equal to five (5%) percent of the gross revenues (excluded taxes, government surcharges, interest, returned check fees and late fees) received during that preceding calendar quarter as a result of Grantee's provision of services through the fiber-optic infrastructure contemplated in this Agreement to any customer of Grantee's located within the municipal boundaries of Grantor; or Two Thousand and No/100 Dollars (\$2,000.00), whichever is more. To this end, Grantee shall provide Grantor with a reasonable accounting of its gross revenues in this respect and access to reasonable financial statements in order to verify the accuracy thereof. To the extent allowed by law, Grantee's confidential financial statements shall not be considered public record;
- ii. obtain permitting approval from Grantor's engineer (which shall be at no additional charge to Grantee) prior to any new installations within Grantor's public rights-of-way, and provide to Grantor's engineer all relevant information concerning such proposed installations in conjunction therewith, including but not limited to:
 - 1. updated contact information for Grantee, including the contact information for a representative who can be contacted in the event of an emergency;
 - 2. a description of the proposed installation;
 - 3. a map drawn to scale showing the location of placement of the proposed installation;

4. an inventory of all equipment, structures, and facilities to be contained in the proposed installation;
5. a description of all anticipated maintenance for the proposed installation; and
6. the name and appropriate contact information for any contractor who shall perform the proposed installation on behalf of Grantee.

Grantee understands and agrees that reasonable changes to its plans may be required by Grantor's engineer for permitting approval and that certain plans may be rejected if inconsistent with Grantor's current or contemplated operations or the operations of third parties validly utilizing the Grantor's public rights-of-way. Grantee shall further provide Grantor with a copy of all "as-built" plans upon substantial completion of new installations within Grantor's public rights-of-way;

- iii. within ten (10) months from the Effective Date, run its fiber-optic infrastructure in a manner so as to provide direct access by Grantor to such infrastructure at all of Grantor's facilities within Grantor's municipal boundaries, including but not limited to: (1) the Olde Towne administrative/council offices of Grantor; (2) Grantor's airport facility; (3) Grantor's 1010 Gause Blvd. facility; (4) Grantor's Front Street "Train Station" facility; (5) Grantor's public operations/water/wastewater facilities; (6) the Slidell Police Department offices; and (7) Grantor's major parks;
- iv. obtain, at its cost, all third party approvals necessary for the installation, modification, relocation, repair, operation, and maintenance of Grantee's fiber-optic infrastructure within Grantor's public rights-of-way, including by way of any required pole attachment agreements, and at Grantor's 1010 Gause Blvd. facility;
- v. conduct its operations on Grantor's public rights-of-way in a business reasonable manner so as to cause minimum interference to public passage and existing infrastructure. By way of example only, Grantee shall not generally be permitted to conduct any operations which require substantial disruption to Grantor's existing roads or sidewalks or the traffic thereon;
- vi. provide necessary and appropriate safety and traffic personnel in conjunction with all installation and repair operations affecting Grantor's rights-of-way and coordinate with Grantor, as appropriate, regarding same;
- vii. except as otherwise expressly provided for in this Agreement, be responsible, to the exclusion of Grantor, for all costs associated with Grantee's installation, modification, relocation, repair, operation, and

maintenance of Grantee's fiber-optic infrastructure in Grantor's public rights-of-way and at Grantor's 1010 Gause Blvd. facility, and for any recordation costs associated with this Agreement;

- viii. be responsible for the timely repair and restoration and, when required, replacement of any property of Grantor or any third party which is disrupted, damaged, or destroyed as a result of Grantee's activities in connection with this Agreement;
- ix. conduct its operations on Grantor's public rights-of-way and at Grantor's 1010 Gause Blvd. facility in accord with applicable law, including environmental laws, "call before you dig" requirements, and Grantor's Code of Ordinances. Grantee shall further abide by all policies of Grantor regarding access and use of the 1010 Gause Blvd. facility, which facility has shared use spaces;
- x. , unless otherwise maintaining a valid authorization to maintain its infrastructure in Grantor's public rights-of-way and Grantor's 1010 Gause Blvd. facility, respectively, upon termination of this Agreement, including by way of expiration, remove, at Grantor's request and within the timeframe required by it, Grantee's installations, equipment, and improvements from Grantor's public rights-of-way and from Grantor's 1010 Gause Blvd. facility, as the case may be, failing which, at Grantor's option, (i) such installations, equipment, and improvements shall become the property of Grantor, without any compensation therefore; or (ii) Grantor may remove such installations, equipment, and improvements on its own and pursue Grantee for the costs and expenses incurred in connection therewith; and
- xi. obtain and maintain an occurrence policy of commercial general liability insurance, in an amount of at least 1 million per occurrence/3 million annual aggregate, covering its operations during the term of this Agreement which lists Grantor as an additional insured, evidence of which shall be provided to Grantor at its request, and which insurance shall be considered primary to any insurance Grantor maintains for any covered claim.

IV. OWNERSHIP AND PLACEMENT. Except as may be otherwise set forth in this Agreement, Grantee shall maintain ownership of all infrastructure it places in Grantor's public rights-of-way and at Grantor's 1010 Gause Blvd. facility and Grantor shall have no rights therein. In the event future development or repair within Grantor's municipal boundaries requires or counsels in favor of relocation of Grantee's infrastructure, the parties agree to meet in good faith to discuss a plan for same in an effort to minimize inconvenience and costs and to discuss any possible alternatives. Grantee shall abide by the final decision of Grantor with respect to same and shall relocate its infrastructure as Grantor requires. Required relocations must occur within a business reasonable time based on the project. Any relocations required by Grantor shall be at Grantee's sole cost. Grantee understands and agrees that Grantor assumes no risk of failure, damage,

or loss to Grantee's installations, equipment, and improvements under this Agreement caused by any power surge, Force Majeure, or the acts or omissions of any third party.

- V. **INDEMNITY.** Grantee shall indemnify, defend, and hold harmless Grantor, and Grantor's officers, agents, and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury, including accidental death, to the extent proximately caused by the Grantee's installation, modification, relocation, repair, operation, or maintenance of infrastructure within any of Grantor's public rights-of-way or at Grantor's 1010 Gause Blvd. facility, including Grantee's operations incident thereto. This provision shall survive termination of this Agreement, including by way of expiration.

VI. **GENERAL PROVISIONS.**

- a. **Notice.** Except as otherwise provide for in this Agreement, all notices required under this Agreement shall be in writing and deemed properly given or made upon receipt if delivered by nationally recognized overnight courier, or registered or certified mail, postage prepaid to the addresses listed below:

To Grantee:

Camellia City Fiber, LLC
Attn: Christopher Jean
61155 Hwy 11
Slidell, LA 70458

With a copy to:

Jeff Schoen, Esq.
1001 Service Road East, Hwy 190
Suite 301
Covington, LA 70433

To Grantor:

City of Slidell
Attn: Mayor
P.O. Box 828
Slidell, LA 70459

With a copy to:

City of Slidell
Attn: City Attorney
P.O. Box 828
Slidell, LA 70459

or such other address as either party may designate in writing from time to time.

- b. **Legal Provisions.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be amended to make such insertion or correction. The parties agree not to discriminate in their respective employment and services practices, and shall fulfill their obligations under this Agreement without regard to race, color, age, religion, sex, national origin, veteran status, genetic information, political affiliation, or disability.
- c. **Independent Contractors.** The relationship between the parties hereto shall be that of independent contractors.
- d. **Third Party Beneficiaries.** Except as may be expressly stated in this Agreement, nothing herein shall be construed or interpreted to give any person other than Grantor and Grantee any legal or equitable right, remedy, claim, or defense under or in respect of this Agreement. There are no intended third party beneficiaries of this Agreement, except as may be expressly stated in this Agreement.
- e. **Waiver.** A waiver by either party of a default by the other party and/or the performance of the other party's obligations contained in this Agreement shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Agreement.
- f. **Entire Understanding.** This Agreement embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and replaces and supersedes any and all other agreements, whether in writing or otherwise, governing the subject matter herein. This Agreement may be amended or modified only by written documents duly authorized, executed, and delivered by Grantor and Grantee.
- g. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. A scanned or electronically reproduced copy of this fully executed

Agreement shall have the same legal effect as an original signed version of this Agreement.

- h. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by any of the parties without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.
- i. **Force Majeure:** Any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, public health emergencies, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to payments by Grantee to Grantor hereunder (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Agreement, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.
- j. **Governing Law; Venue.** This Agreement shall be governed and interpreted by the laws of the State of Louisiana, without regard to conflicts of law principles. The obligations and undertakings of both parties hereto shall be performed in the City of Slidell, Louisiana. In the event that any legal proceeding is brought to enforce the terms of this Agreement, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for St. Tammany Parish, Louisiana.
- k. **Authority.** Each person signing this Agreement represents and warrants that he/she has full authority to do so and hereby bind the entity on whose behalf he/she is signing.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.
SIGNATURES ON NEXT PAGE]**

**RIGHTS-OF-WAY AND FACILITY SPACE USE AGREEMENT
[SIGNATURE PAGE]**

Thus done and signed by the authorized representative of Camellia City Fiber, LLC in front of me, notary public, and the undersigned competent witnesses, on the 23 day of FEBRUARY, 2021, effective as of the Effective Date.

WITNESSES

[Signature]
[Signature]
[Signature]
Notary Public
La. Bar/Notary Number: 149845
My Commission For Life

CAMELLIA CITY FIBER, LLC

By: [Signature]
Shawn Torres
Member



Thus done and signed by the authorized representative of the City of Slidell, Louisiana in front of me, notary public, and the undersigned competent witnesses, on the 19th day of February, 2021, effective as of the Effective Date.

WITNESSES

[Signature]
JOHN G. WELBOAN
[Signature]
Mokey Dubousson
[Signature]
Notary Public
La. Bar/Notary Number: _____
My Commission _____

CITY OF SLIDELL, LOUISIANA

By: [Signature]
George G. Cromer
Mayor

Thomas S. Schneidau
Notary Public
State of Louisiana
Roll No. 33359/Notary ID No. 91626
My Commission is for life.