

**MASTER FIBER LEASE AGREEMENT**  
**Orlando Telephone Company, Inc. and City of Leesburg, Florida**

THIS MASTER FIBER LEASE AGREEMENT (this "Agreement") is made and entered into as of May 18, 2012, by and between Orlando Telephone Company, Inc., a Florida Corporation, with offices at 4558 SW 35th St Orlando, Florida 32811 (the "Provider"), and the City of Leesburg, Florida, a Florida municipal corporation with offices at 501 W. Meadow Street, Leesburg, FL 34748 (the "Customer"). The signatories to this Agreement shall be referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the Provider anticipates constructing a fiber optic communications system in Central Florida (the "System"); and

WHEREAS, the Customer desires to lease certain fiber optic filaments within the System from the Provider;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants of the Parties set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Provider and the Customer agree as follows:

**1. FIBER LEASE**

The Provider hereby leases to the Customer and the Customer hereby leases from the Provider certain fiber optic filaments (the "Leased Fibers") as described in Exhibit A attached hereto and incorporated herein. The Leased Fibers shall comply with all applicable building, construction and safety codes, performance specifications as set forth in Exhibit B (the "Specifications") attached hereto and incorporated herein. The Customer acknowledges that the lease granted hereunder does include the right to enter the property upon which the Leased Fibers are located, as specifically permitted in this Agreement.

**2. TERM**

2.1 The term (the "Initial Term") of this Agreement shall be two hundred and forty (240) months and will commence on the commencement date (the "Commencement Date") as described in Exhibit C.

2.2 Each Exhibit A (Service Order) will have the term posted if different than Initial Term.

2.3 Unless this Agreement has been otherwise terminated in accordance with the terms of this Agreement, at the end of the Initial Term and any Renewal Term Customer may renew the term of this Agreement for a further two-hundred, forty (240) months ("Renewal Term") by providing sixty (60) days written notice to Provider. Customer shall pay a one-time, one (1) dollar renewal fee to Provider. Customer shall continue to pay Provider any monthly charge(s) then in effect under this Agreement for operations and maintenance. All other terms and conditions of this Agreement then in effect shall continue in effect during any Renewal Term.

**3. CONSIDERATION**

3.1 Consideration Amount. For use of the Leased Fibers the Customer shall pay the Provider the one time installation fee and the monthly rate for operations and maintenance as provided in Exhibit A, (the "Lease Rate"). The Lease Rate does not include any applicable taxes, and Provider acknowledges that Customer is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.

3.2 One Time Installation Fee. Customer shall pay Provider the one time installation fee per the

following schedule:

\$25,000 of the one time installation fee upon execution of this Agreement;

\$50,000 of one time installation fee upon completion of 50 percent of the fiber cable installation;

The remaining balance of the one time installation fee upon Customer's final acceptance of Leased Fibers.

### 3.3 Monthly Rate for Operations and Maintenance.

3.3.1 Provider shall issue an invoice to Customer each month stating: (i) a unique invoice reference number or descriptor; (ii) the invoice issue date; (iii) the amount(s) due; (iv) the item(s) for which payment is due; (v) the date by which payment must be made; and (vi) the address to which payment must be sent. In no event shall the date by which payment must be made be less than twenty (20) days after the invoice issue date.

3.3.2 The monthly rate for operations and maintenance may be increased upon each anniversary of the Commencement Date by an amount not in excess of the one-year rate of increase in the most recent Gross Domestic Product Implicit Price Deflator Index published by the U.S. Department of Commerce's Bureau of Economic Analysis.

3.4 Emergency Maintenance and Requested Maintenance. Upon completion of any emergency maintenance as noted in 4.1(a) below or any requested maintenance as noted in 4.1(c) below, Provider shall issue an invoice to Customer stating: (i) a unique invoice reference number or descriptor; (ii) the invoice issue date; (iii) the amount(s) due; (iv) the item(s) for which payment is due; (v) the date by which payment must be made; and (vi) the address to which payment must be sent. In no event shall the date by which payment must be made be less than twenty (20) days after the invoice issue date.

3.5 Other Amounts Due. Should any other amounts become due from Customer to Provider, Provider shall issue an invoice to Customer stating: (i) a unique invoice reference number or descriptor; (ii) the invoice issue date; (iii) the amount(s) due; (iv) the item(s) for which payment is due; (v) the date by which payment must be made; and (vi) the address to which payment must be sent. In no event shall the date by which payment must be made be less than twenty (20) days after the invoice issue date.

## 4. MAINTENANCE AND REPAIR OBLIGATIONS

4.1 All maintenance and repair functions on the Leased Fibers and all facilities through which the Leased Fibers pass, including, but not limited to, conduit, inner duct, poles and equipment (the "Cable Facilities"), shall be performed by or under the direction of the Provider. The Customer is prohibited from performing any maintenance or repair on the Leased Fibers or Cable Facilities; provided, however, that, if at any time, the Provider discontinues field maintenance or repair, the Customer may thereafter provide for the maintenance or repair of the Leased Fibers and Cable Facilities, at the Customer's expense. The Provider shall give the Customer at least six (6) months' written notice of any such discontinuance.

(a) **Emergency Maintenance.** The Provider shall use commercially reasonable efforts to correct as soon as commercially practicable any failure, interruption or impairment in the operation of the Leased Fibers, including, without limitation, cuts or any other event that causes the Leased Fibers to fail to operate within the Specifications ("Emergency Maintenance"). When performing Emergency Maintenance, the Provider shall use commercially reasonable efforts to minimize risk to the Leased Fibers and shall provide the Customer with immediate notice of the proposed emergency work. The Customer shall report any failure, interruption or impairment in operation of the Leased Fibers to the Provider. The Customer shall pay its pro rata share of such maintenance costs based on the number of Leased Fibers that require repair divided by the total number of fibers in the System that require repair. The Customer shall immediately report the need for Emergency Maintenance to the Provider in accordance with the procedures detailed in Exhibit E, Escalation Contacts attached hereto.

(b) **Routine Maintenance.** The Provider will perform routine maintenance and repair checks and

services, including preventative inspections, as determined necessary by the Provider ("Routine Maintenance") to maintain the Leased Fibers operating within the Specifications. The Customer's share of such routine maintenance costs is included in the monthly rate for operations and maintenance noted in section 3.1 above.

(c) **Requested Maintenance.** The Customer may also request maintenance or service by delivering to the Provider a statement of work detailing the services the Customer desires to be performed, including the time schedule for such services. Upon receipt of such a statement of work, the Provider will provide an estimate of the cost and timing of such Requested Maintenance. Following the Customer's acceptance of such estimate, the Provider will schedule and perform such Requested Maintenance, at the Customer's expense.

4.2 The Customer shall provide to the Provider or its designee, access to any facilities under the Customer's control which are used in connection with the Leased Fibers or Cable Facilities to enable the Provider to perform testing, adjustments, maintenance and/or other procedures which are necessary to maintain the Leased Fibers and Cable Facilities in accordance with the Specifications. Where feasible, the Provider will attempt to schedule such work at times convenient to the Customer and, if practical, will give the Customer at least forty-eight (48) hours' advance notice of such work. The Provider shall make commercially reasonable efforts to perform the work in a manner so as to avoid disruptions or interference with the Customer's operations. In the event the Provider requests access to facilities under the Customer's control to perform maintenance or other procedures which the Provider believes necessary to repair or maintain the Leased Fibers and the Customer denies the Provider timely access to such facilities, the Provider shall not be responsible for any damages, losses or claims arising from any failure, interruption or impairment of the Customer's use of the Leased Fibers during the time the Provider is denied such access.

## **5. REQUIRED RIGHTS**

5.1 The Provider represents that, it owns or has obtained all rights, licenses, franchises, authorizations, rights-of-way and other agreements necessary from third parties or governmental authorities for the installation, maintenance and use of the Leased Fibers and Cable Facilities (collectively, the "Required Rights"). The Provider shall cause such Required Rights to remain effective throughout the Initial Term and any applicable Renewal Term(s). It is expressly understood that the Provider's obligations under this Agreement are conditioned upon and shall in all respects be subject to the continuation or acquisition of such Required Rights.

## **6. THE CUSTOMER'S LOCATIONS AND ACCESS**

Unless specified to the contrary elsewhere in this Agreement, the Customer shall provide, obtain and maintain in full force and effect during the Initial Term and any applicable Renewal Terms all necessary approvals, licenses or leases for facilities and equipment through which the Leased Fibers may pass into the Customer's locations, all at no cost to the Provider and shall provide the Provider with access to such facilities and equipment on a twenty-four (24) hour per day, seven (7) day per week basis. The Customer shall be responsible for any damage or loss to any of the Leased Fibers and/or Cable Facilities, which are in the Customer's location, unless such damage or loss is caused by negligence or willful misconduct on the part of the Provider.

## **7. THE CUSTOMER'S USE OF THE LEASED FIBERS**

7.1 Notwithstanding any other provision of this Agreement to the contrary, if the Leased Fibers are damaged as a result of the Customer's misuse, abuse or use in a manner other than for which they are intended, the Customer shall be responsible for the cost of repair or replacement of the Leased Fibers.

## **8. REPRESENTATIONS AND WARRANTIES.**

The Parties warrant and represent the following:

8.1 The Provider and the Customer each warrant and represent that they are duly organized and validly existing, have the authority to execute this Agreement and have taken all requisite corporate action to approve the execution, delivery and performance of this Agreement.

8.2 The Provider warrants and represents to the Customer that it has the authority to grant the fiber lease rights it is leasing to the Customer herein and that it will maintain such authorization for the Initial Term of this Agreement and any renewals or extensions thereof.

8.3 Each Party warrants and represents that the execution of this Agreement will not violate the terms of any other agreement to which it is a party.

8.4 The Customer warrants and represents that it has and will maintain for the Initial Term and any renewals or extensions thereof all authorizations required by federal, state and local law or regulation or that of any other public or private agency or entity which has jurisdiction over the Customer or its operation and use of the Leased Fibers. .

8.5 Each Party warrants and represents that it will not cause or permit the Leased Fibers to become subject to any mechanic's lien, material man's lien, vendor's lien or any similar lien whether by operation of law or otherwise.

OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROVIDER MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, OR THE LEASED FIBERS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## **9. INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE**

9.1 To the extent permitted by law, the Customer and the Provider will defend, indemnify and hold harmless the other, and its respective officers, agents and employees from and against all liabilities, claims, damages, losses and expenses, including costs and reasonable attorneys' fees, arising out of or resulting in whole or in part from the act or omissions of itself, its officers, agents and employees, made in connection with this Agreement. Nothing contained herein, however, shall constitute a waiver by the Customer of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9.2 In claiming any indemnification hereunder, the indemnified Party shall provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing indemnification obligations. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim, and further provided that any settlement imposing liability or obligation on the indemnified Party shall not be final without such Party's written consent

9.3 IN NO EVENT SHALL THE PROVIDER BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, THOSE BASED ON LOSS OF REVENUES, PROFITS OR BUSINESS OPPORTUNITIES, EVEN IF THE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.4 **Insurance.** Commencing on the date set forth in the Preamble of this Agreement and for the remainder of the Initial Term, and any renewals or extensions thereof, each Party shall obtain and maintain, at its sole cost and expense, not less than the following insurance: Commercial General Liability Insurance, including coverage for sudden and accidental pollution legal liability, with a combined single limit of \$1,000,000 on an

occurrence basis for bodily injury and property damage per occurrence and in the aggregate.

Workers' Compensation Insurance in amounts required by applicable law and Employer's Liability Insurance with limits not less than \$1,000,000 for each accident.

Automobile Liability Insurance with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence, including coverage for all owned, non-owned and hired vehicles.

The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

**9.5 Policy Requirements.** Each Party shall obtain and maintain the insurance policies required above with companies rated A-or better by Best's Key Rating Guide or with a similar rating by another generally recognized rating agency. Each Party shall name the other Party as additional insured except on the Workers' Compensation Insurance policy. Each Party shall provide the other Party with an insurance certificate confirming compliance with the insurance requirements of this Section. The insurance certificate shall indicate that the other Party will be notified by the insurer not less than thirty (30) calendar days prior to any cancellation or any material reduction in coverage (or ten (10) calendar days in the case -of cancellation for nonpayment of premiums).

**9.6 Waiver of Subrogation.** The Parties shall each obtain from the insurance companies providing the coverages under the Commercial General Liability policy a waiver of all rights of subrogation or recovery in favor of the other Party.

**9.7 Blanket Policies.** Nothing in this Agreement prevents either Party from satisfying its insurance obligations pursuant to this Agreement under a blanket or excess (or umbrella) policy or policies of insurance that meet or exceed the requirements of this Section 9.

**9.8 Contractors.** Provider shall require its contractors and/or subcontractors (to the extent such contractors and/or subcontractors are permitted under this Agreement) 'to carry and/or maintain the following minimum insurance:

Commercial General Liability Insurance (written on an occurrence policy form) or substantially similar coverage, including Excess (or Umbrella) Liability Insurance with a combined single limit of \$1,000,000 on an occurrence basis for bodily injury and property damage;

Workers' Compensation Insurance in amounts required by applicable law and Employer's Liability Insurance with limits not less than \$1,000,000 per accident. Such insurance shall provide coverage in the location(s) in which the work is performed and the location in which the parties are domiciled;

Automobile Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage, including coverage for all owned, non-owned and hired vehicles; and ::

Excess (or Umbrella) Liability Insurance (written on an occurrence policy form) or substantially similar coverage with a combined single limit of \$2,000,000 each occurrence for bodily injury and property damage, such insurance providing excess or umbrella liability coverage above primary liability limits set forth herein.

Contractors and/or subcontractors shall obtain and maintain the insurance policies required above with companies rated A-or better by Best's Key Rating Guide or with a similar rating by another generally recognized rating agency. Contractors and/or subcontractors shall name the Parties as additional insureds, except on the Workers' Compensation Insurance. Contractor and/or subcontractor shall provide the Parties with an insurance certificate confirming compliance with the insurance requirements of this Section. The insurance certificate shall indicate that the Parties will be notified by the insurer not less than thirty (30) calendar days prior to any cancellation or material change in coverage (or ten (10) calendar days in the case of cancellation for nonpayment of premiums).

## 10. FEES AND LIENS

10.1 The Customer shall use reasonable efforts to keep the Leased Fibers free from all liens, including, but not limited to, mechanics liens, and encumbrances by reason of the use of the Leased Fibers by the Customer.

10.2 Should fees other than taxes from which Customer is exempt, regardless of form, be levied and/or assessed against the Provider and or its property due to the action or inaction of the Customer, unless otherwise contemplated or reasonably construed to be contemplated under this Agreement, then the Provider shall notify the Customer as soon as is reasonably practical. The Provider shall also provide the Customer with copies of any and all notices, bills, and other pertinent documentation. The Customer shall, by the later of forty-five (45) days of receipt of such written notification(s) or ten (10) business days prior to the specified due date for payment of the fees, pay to the Provider the amount(s) of any fees.

## 11. NOTICES

11.1 Except as otherwise expressly provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and shall be addressed to:

**The Provider:**

Orlando Telephone Company, Inc.  
Attn: President  
4558 SW 35th St  
Suite 100  
Orlando, Florida 32811  
Phone: 407-996-8900  
Email: president@summit-broadband.com

**The Customer:**

City of Leesburg, Florida  
Attn: Communications Manager  
Post Office Box 490630  
Leesburg, Florida 34749-0630

501 West Meadow Street  
Leesburg, Florida 34748-5153  
Email: Communications.Manager@LeesburgFlorida.gov  
Phone: 352-728-9899

11.2 Unless otherwise provided for in this Agreement, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service, or by facsimile and shall be deemed delivered: if sent by U.S. Mail, twenty (20) days after deposit; if sent by facsimile, upon verification of receipt; or, if sent by commercial overnight delivery service, upon verification of receipt; provided, however, that upon receipt of a returned notice marked "unclaimed" the sending Party shall make reasonable effort to contact and notify the other Party by telephone.

## 12. CONFIDENTIALITY

12.1 The Provider and the Customer each acknowledge that they will have access to certain confidential information concerning the other Party's business, plans, technology, products, and other information held in confidence by such Party ("Confidential Information"). Confidential Information includes all information in tangible or intangible form that is marked or designated as confidential and that falls within an exception to Florida's public records laws. Confidential Information also includes, without limitation, a Party's trade secrets,

business processes, business and marketing plans, pricing, computer operations, systems, software, networks and other information of a technical nature, the Customer lists and the terms and conditions of this Agreement. To the extent permitted by law, neither the Provider nor the Customer may use the other Party's Confidential Information except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor shall either Party disclose such Confidential Information to any third party, except as required by law, or to its officers, directors, employees, consultants, attorneys, accountants, agents or other representatives (collectively, "Representatives") who have a need to know such Confidential Information in connection with the performance of its obligations hereunder, and provided that each Party shall: (i) cause its Representatives to comply with this Agreement; and (ii) assume full responsibility for any breach of this Agreement caused by its Representatives. To the extent permitted by law, each Party shall protect the other's Confidential Information from unauthorized disclosure using at least the same efforts as are employed to protect its own Confidential Information, but in no event less than reasonable care.

12.2 Confidential Information shall not include information that: (i) is in the public domain at the time of its use or disclosure through no breach hereof by the Party receiving Confidential Information (the "Receiving Party") or its Representatives; (ii) was lawfully in the possession of or demonstrably known by the Receiving Party prior to its receipt from the Party disclosing Confidential Information (the "Disclosing Party"); (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (iv) becomes known by the Receiving Party from a third party and, to the Receiving Party's knowledge, is not subject to an obligation of confidentiality to the Disclosing Party. If the Receiving Party is requested or required to disclose any of the Disclosing Party's Confidential Information pursuant to a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "Legal Requirement"), the Receiving Party shall, to the extent permitted by law, provide prompt notice of such Legal Requirement to the Disclosing Party so the Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. All costs of seeking a protective order or other remedy to prevent or limit the disclosure of Confidential Information (including all attorney's fees, costs and expenses) shall be borne and paid solely by the Disclosing Party. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, the Receiving Party shall furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

12.3 Each Party acknowledges that a breach of its obligations under this Section may, as determined by a court of competent jurisdiction, result in irreparable and continuing damage to the other Party for which monetary damages will not be sufficient, and agrees that the other Party shall be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive and or other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

12.4 Provider acknowledges that Customer is governed by the "Florida Public Records Law" (Chapter 119, Florida Statutes) and any act of the Customer required to comply with the "Florida Public Records Law" shall not be deemed a breach of this article or Agreement. Provider explicitly acknowledges that because most written communications to or from government officials in the State of Florida regarding government business are public records available to the public and media upon request, any information that Provider may disclose to Customer may become public records available to the public and media upon request unless the information falls within a recognized exception to the public disclosure requirements.

### **13. DEFAULT AND TERMINATION**

13.1 Neither Party shall be in default under this Agreement or in breach of any provisions hereof unless and until it has been given written notice of such default by the other Party and shall have failed to cure such default within thirty (30) calendar days after receipt of such notice, except for default in any payment by the

Customer, which default shall be cured within ten (10) business days after notice from the Provider. Where a default, other than for payment, cannot reasonably be cured within thirty (30) calendar days, if the defaulting Party shall proceed promptly to cure the same (within the thirty (30) day window for curing defaults) and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time, not to exceed an additional thirty (30) days, as may be necessary to complete such cure. Upon the failure to cure any such default within the above time frames, the Party giving notice of the default may thereupon terminate this Agreement without further notice and shall have the right to pursue any or all remedies available at law and/or equity.

13.2 Upon expiration of the Initial Term or the then effective Renewal Term, as applicable, or upon termination in accordance with Section 14.1 and Section 14.3, the Customer's lease of the Leased Fibers shall immediately terminate and all rights of the Customer to use the Leased Fibers and the Cable Facilities, or any part thereof, shall cease and the Provider may thereafter disconnect, terminate, remove or continue to use the Leased Fibers for any purpose without any liability or obligation to the Customer.

#### **14. FORCE MAJEURE**

Neither Party shall be in default under this Agreement if its failure to perform is caused by any of the following conditions: act of God; fire; flood; power outages; material shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations, orders, approvals, restrictions, directions or actions of governmental authorities having jurisdiction over the subject matter of this Agreement or any civil or military authority; national emergency, malicious activity, terrorist activity, insurrection, war or civil disorder; labor unrest or strike; failure of a third party to grant a required right-of-way permit, easement, or other required authorization for use of the intended Required Rights; or any other cause beyond the commercially reasonable control of the affected Party. The Party claiming relief under this Section shall promptly notify the other in writing of the existence of the event relied upon and the cessation or termination of that event. For the duration of any valid force majeure event as defined by this Section 14, the performance of the affected Party shall be excused.

#### **15. ASSIGNMENT**

Neither Party may assign this Agreement without the express-written consent of the other Party which consent shall not be unreasonably withheld, conditioned, or delayed, except that each Party shall have the right to assign this Agreement pursuant to a merger, consolidation or other governmental reorganization, without the consent of the other Party; except that in the case of such merger, consolidation or other reorganization, the reorganizing Party shall give the other Party no less than sixty (60) days prior notice of the effectiveness of a proposed merger, consolidation or other governmental reorganization and the assignee of any such assignment shall take on all obligations of the assigning Party under this Agreement, without amendment, so that the non-assigning Party is entirely held harmless as to all effects of such merger, consolidation or other governmental reorganization. Any assignees shall be subject to and the Customer shall remain liable for all terms and conditions of this Agreement after assignment. Any assignment of this Agreement shall be subject to the other Party's rights under this Agreement and any assignee shall continue to perform the assignor's obligations to the other Party under the terms and conditions of this Agreement, and such assignee shall agree in writing to be bound and abide by this Agreement. No assignment of this Agreement shall relieve a Party of its obligations under this Agreement.

## 16. GENERAL PROVISIONS

16.1 **Payment Terms.** Unless otherwise specified herein, any fees, charges, costs or expenses payable in accordance with the terms of this Agreement shall be due and payable within thirty (30) calendar days of invoice receipt.

16.2 **Late Payments.** To the extent permitted by law, any fees, charges, costs or expenses not paid by the Customer within thirty (30) calendar days after issuance of the invoice will be subject to a late payment charge, calculated by multiplying the past due amount (exclusive of late payment charges) by one percent (1.5%) per month or the highest rate allowed by law, whichever is lower.

16.3 **Proprietary Rights.** The Leased Fibers shall at all times remain the property of the Provider. The Customer shall not represent to any third party that any party other than the Provider is the owner of the Leased Fibers.

16.4 **Waiver.** The failure of either Party to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment.

16.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without reference to any provision, which may cause the law of another jurisdiction to apply.

16.6 **Headings.** The title page, captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that are singular will be interpreted as plural, and words which are plural will be interpreted as singular, as the identity of the Parties or objects referred to may require.

16.7 **Relationship of the Parties.** The relationship of the Parties hereunder shall always and only be that of independent contractors.

16.8 **Validity.** If any term, covenant or condition contained herein shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, so long as such invalidity does not materially impair the benefit of this Agreement to either Party, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

16.10 **Binding Effect.** This Agreement and each of the Parties' 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 successors and permitted assigns.

16.11 **Complete Agreement.** This Agreement, including ALL Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or

contemporaneous agreements whether written or oral. This Agreement cannot be modified except in writing signed by both Parties.

**17. FIBER BUY-BACK OPTION**

17.1 Provider may buy back a portion of the Leased Fibers at any time during the Initial Term or any Renewal Term.

17.2 Customer shall at all times have the right to continue leasing at least one pair of fibers.

17.3 Provider may exercise its option to buy back a portion of the Leased Fibers by providing no less than sixty (60) days written notice to Customer. Such notice shall state the date upon which Provider will buy back the fiber pair(s) (the "Buy Back Date") and the number of fiber pairs that Provider will buy back.

17.4 For each pair of fibers that Provider buys back from Customer during the Initial Term, Provider shall pay Customer a one-time fee calculated as follows:

$$\text{Payment} = (\text{DR} / 7305) \times (\text{CIF} / 36)$$

Where:

DR is the number of days remaining in Initial Term from the Buy Back Date; and

CIF is the Customer's original one-time installation fee referenced in Section 3.1 of this Agreement and stated in Exhibit A to this Agreement.

17.5 For each pair of fibers that Provider buys back from Customer during any Renewal Term, Provider shall pay Customer a one-time fee of one-thousand and five hundred (\$1,500) dollars. The fee will not exceed \$10,000 per Fiber Buy-Back transaction. For example, if Provider buys back 1 pair of fibers the fee will be the one-time fee of \$1,500. If Provider buys back 7 pairs of fiber or more on a single transaction the fee will not exceed \$10,000.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first written above.

**ORLANDO TELEPHONE COMPANY, INC.**

By: 

Name: ANDREW KISSELBERTH

Title: VICE PRESIDENT AND GENERAL MANAGER

Date: 4/30/12

**CITY OF LEESBURG, FLORIDA**

By: \_\_\_\_\_

Name: SANNA HENDERSON

Title: MAYOR

Date: \_\_\_\_\_

Attested: \_\_\_\_\_

Name: BETTY M. RICHARDSON

Title: CITY CLERK

APPROVED AS TO FORM AND CONTENT:

Approved: \_\_\_\_\_

Name: FRED A. MORRISON

Title: CITY ATTORNEY

**EXHIBIT A**  
**SAMPLE LEASED FIBERS SERVICE ORDER**

EXHIBIT A DARK FIBER SERVICE ORDER FORM				
Customer Name				
Customer Information				
<b>Initiator Contact</b>			<b>Technical Contact</b>	
Street Address			Street Address	
City, State, Zip			City, State, Zip	
Telephone			Telephone	
Fax			Fax	
Email			Email	
<b>Turn-up Contact</b>			<b>Maintenance Contact</b>	
Street Address			Street Address	
City, State, Zip			City, State, Zip	
Telephone			Telephone	
Fax			Fax	
Email			Email	
Billing Information				
Customer Name				
Billing Contact			Telephone	
Fax			Email	
Street Address			City, State, Zip Code	
Site Comments				
Pricing				
Service [ Dark Fiber]: Location information below	Monthly Recurring	One Time Charge	Total One Time Charges	Total Monthly Recurring Charges
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Location Information				
<b>Location A</b>		<b>Location B</b>		
Site Name		Site Name		
Street Address		Street Address		
City, State, Zip Code		City, State, Zip Code		
Site Contact: Tech on Duty	Phone	Email	Site Contact: Tech on Duty	Phone
Demarc:		Demarc:		
Notes				
<p>Customer Signature: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Summit Broadband: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Date: _____</p>				

**EXHIBIT B**  
**PERFORMANCE SPECIFICATIONS**

**I. Design Criteria**

The Provider will endeavor to keep the number of splices in a span to a minimum.

**II. Optical Fiber Specifications**

Any optical fibers comprising the System shall meet the optical specifications as detailed below: Optical Fiber Specifications - Single mode Fiber conforming to the characteristics and performances indicated by ITU-T G.652.D (11/2009). Optical attenuation measured by bidirectional OTDR testing shall not exceed 0.35 dB/km at 1310 nanometers (A1) and 0.20 dB/km at 1550 nanometers (A2).

**III. Fusion Splice Specifications**

All splices of optical fibers in the System shall be fusion splices.

No splice in the System shall demonstrate a point loss of optical power greater than 0.5 dB.

The average of all splices on a single fiber from end-to-end in the System shall not exceed 0.3 dB. The 0.3 dB splice average will only apply to splices between optical fibers of identical physical and optical properties (i.e. core and cladding dimensions, refractive index and optical loss characteristics).

**IV. End-To-End Attenuation Acceptance Criteria**

Each optical fiber comprising the System shall be tested at both wavelengths specified for each cable type as specified below unless otherwise stated in this Agreement:

Single mode fiber -1310 nm. and 1550 nm.

The end-to-end attenuation acceptance criteria shall be based on the following formula: Maximum acceptable end-to-end attenuation = (A X L)+(0.3 X Nsp)+C

where:

A = Max. attenuation at each wavelength (A1 and A2) as specified in Section II above.

L = Installed length of the cable in kilometers (km).

Nsp = Number of fiber splices in the cable system.

C = Connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.3 dB, comprised of 1.0 db connector loss and 0.3 dB splice loss (pigtail to OSP cable splice).

Therefore, C = 1.3 dB if the span is connectorized on one end and 2.6 db if the span is connectorized on both ends.

The parameters above are guaranteed unless otherwise specified.

**In the event that the fiber measured attenuation values change after the cable is installed, and is degraded by 2 dB or greater than specified above for a single fiber measured end-to-end, the Provider will perform corrective maintenance pursuant to Section 4.4 to attempt to restore the fiber to-its original specified attenuation values.**

**EXHIBIT C  
COMMENCEMENT DATE**

Upon completion of any construction or other activities necessary to make the Leased Fibers available to Customer for Customer's commercial use, Provider shall allow no less than 72 hours for Customer to perform whatever testing Customer deems necessary to confirm that the Leased Fibers meet the requirements of Exhibit B of this Agreement

If Customer's acceptance testing confirms that the Leased Fibers meet the requirements of Exhibit B of this Agreement, Customer shall issue a written final acceptance notice to Provider no less than 72 hours after completion of Customer's acceptance testing.

If Customer's acceptance testing demonstrates that the Leased Fibers do not meet the requirements of Exhibit B of this Agreement, Customer shall provide written notice of such to Provider no later than 72 hours after completion of Customer's acceptance testing along with written results of Customer's acceptance testing. Provider shall then use commercially reasonable efforts to bring the Leased Fibers' performance into conformance with the requirements of Exhibit B of this Agreement.

Customer's written final acceptance notice shall include copies of OTDR traces from Customer's acceptance testing.

Commencement Date shall be the date upon which Customer issues its written final acceptance notice to Provider and will be within the timeline provided herein.

**EXHIBIT D**  
**ESCALATION CONTACTS**

Orlando Telephone Company, Inc. System is maintained in accordance with industry standards. Should a problem with the service arise, please call the following numbers:

**7 days per week, 24 hours per day: 407-998-4611**

The Network Operating Center (NOC) will escalate continuing troubles through Network Operations Management.

The NOC will initiate trouble into the Facility System and coordinate all restoration activity. Upon clearance, the NOC will notify the trouble-reporting location of clearance and reason for outage.

**NOC shall, within four (4) hours of notification of trouble reporting, be on site and begin investigating and correcting the reported condition.**

<b>SERVICE INTERRUPTION CONTACTS</b>			
	<b>Primary Contact</b>	<b>Secondary Contact</b>	<b>Executive Contact</b>
<b>Name:</b>	NOC	Joshua Foster	John Pietri
<b>Address:</b>	4558 SW 35 <sup>th</sup> Street Orlando, FL 32811	4558 SW 35 <sup>th</sup> Street Orlando, FL 32811	4558 SW 35 <sup>th</sup> Street Orlando, FL 32811
<b>Phone Number:</b>	<b>407-998-4611</b>	407-766-5921	407-952-0901
<b>Email Address:</b>	<a href="mailto:noc@summit-broadband.com">noc@summit-broadband.com</a>	<a href="mailto:jfoster@summit-broadband.com">jfoster@summit-broadband.com</a>	<a href="mailto:jpietri@summit-broadband.com">jpietri@summit-broadband.com</a>