

**SETTLEMENT AGREEMENT BETWEEN CITY OF VENICE AND FIBERNET
DIRECT FLORIDA LLC AND MUTUAL RELEASES**

This SETTLEMENT AGREEMENT (“Settlement Agreement”), which is effective as of the last date on which all Parties have executed this Settlement Agreement below (“Effective Date”), is entered into by the City of Venice (the “City”) and Fibernet Direct Florida LLC (“Fibernet”), each individually a “Party” and collectively the “Parties”.

Recitals

WHEREAS, the City is a Florida municipality; and

WHEREAS, Fibernet is a Delaware limited liability company authorized to transact business in Florida; and

WHEREAS, on February 8, 2018, the City filed a Verified Complaint in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, seeking declaratory and injunctive relief against Fibernet relating to the City’s access to, and use of, fiber optic cable installed by Fibernet in conduit owned by the City (the “Fibers”), and this case has been assigned Case No. 2018 CA 000719SC (the “Lawsuit”); and

WHEREAS, in its Verified Complaint, the City contends that it has a right to use the Fibers, that Fibernet does not have the right to use the City’s conduit network absent assignment of a license agreement and that, based on the doctrine of sovereign immunity, the City has no liability for payment to Fibernet absent a written contract between Fibernet and the City; and

WHEREAS, Fibernet contends that it owns the Fibers, that the City converted the Fibers to the City’s own public use without Fibernet’s authorization or consent, and that Fibernet is entitled to just compensation from the City pursuant to the Fifth Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution; and

WHEREAS, on February 9, 2018 the Court issued, on an *ex parte* basis, an Order Granting City of Venice's Emergency Motion for Temporary Injunction; and

WHEREAS, on March 26, 2018, the Court entered an Order Dissolving Temporary Injunction and Entering Stipulated Preliminary Injunction (the "Stipulated Preliminary Injunction");

WHEREAS, by Order entered on September 28, 2018, the Court extended the Stipulated Preliminary Injunction to January 19, 2019, and stated that, absent an extraordinary reason, the Court would not further extend the Stipulated Preliminary Injunction; and

WHEREAS, the City and Fibernet voluntarily agreed to participate in mediation which occurred on June 8, 2018; and

WHEREAS, following mediation, the Parties have continued to engage in settlement discussions in an attempt to resolve their disputes relating to the Fibers and the Lawsuit by mutual agreement; and

WHEREAS, the Parties now desire to avoid the expense, inconvenience, and uncertainty of continued litigation, and instead desire to resolve, settle and release all claims and disputes among them arising out of, or in any way related to, the Fibers or the Lawsuit.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, agreements, recitals, definitions, payments, and premises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals.

The Parties incorporate by reference the recitals set forth above, and those recitals are made a part of this Settlement Agreement.

2. Payment by the City.

The City will pay Fibernet the settlement amount of \$40,000.00 (Forty Thousand and 00/100 Dollars) ("Settlement Payment") for the City's use of the Fibers until such time as the Fibers are returned to Fibernet pursuant to Paragraph 5 of this Settlement Agreement. This Settlement Payment shall be non-refundable, and shall be made in two equal installments. The first payment of \$20,000.00 (Twenty Thousand and 00/100 Dollars) shall be made within five (5) days of the date that the City executes this Settlement Agreement. The second payment of \$20,000.00 (Twenty Thousand and 00/100 Dollars) shall be made no later than six months from the Effective Date. Each installment of the Settlement Payment shall be made by wire transfer/ACH to Fibernet pursuant to the instructions provided by Fibernet to the City.

3. Dismissal of Verified Complaint With Prejudice.

Within five (5) business days of the Effective Date, the City shall file with the Court a notice of dismissal of Fibernet as a party defendant, with prejudice. This notice shall not affect the Verified Complaint as to any claim that the City has against Birch Communications, Inc. ("Birch") provided that any remaining claim that the City has against Birch is not inconsistent with this Settlement Agreement including, but not limited to, the provisions in Paragraphs 5 and 6 of this Settlement Agreement relating to Fibernet's ownership and use of the Fibers.

4. City Installation of Additional Fibers or Wireless Equipment.

The City shall install, at its sole expense and its sole determination and discretion, additional fiber optic cable, wireless equipment or other alternative devices or services for the exclusive use and ownership by the City as needed to serve the City's communications and information technology needs. The City shall be responsible for any and all loss or damage to the Fibers or the City's conduit in which the Fibers are located which loss or damage results

from the City's installation of additional fiber optic cable, wireless equipment or other alternative devices or services, and the City shall repair or replace any damaged Fibers, and shall repair all damage to the City's conduit, at the City's sole expense. No later than 10 (ten) days prior to the commencement of the installation of the additional fiber optic cable, wireless equipment or other alternative devices or services in the City's conduit where the Fibers are located, the City shall notify Fibernet in writing of the equipment to be installed, the specific plan for the installation, the date on which the installation will commence, and the anticipated completion date. Further, the City shall notify Fibernet in writing immediately upon completion of the installation of the additional fiber optic cable, wireless equipment or other alternative devices or services.

5. Return of Fibers to Fibernet.

Upon receipt by Fibernet of the City's notice of completion of installation described in Paragraph 4 above or the one year anniversary of the Effective Date, whichever occurs first, Fibernet shall be entitled to exclusive use and ownership of all of the Fibers including, but not limited to, those Fibers that were being used by the City at the time the City initiated the Lawsuit. Fibernet will arrange and pay for splicing any of the Fibers used by the City at the time of initiation of the Lawsuit to reunite such Fibers with all of the other Fibers installed by Fibernet in the City's conduit.

6. Fibernet's Use of Fibers Not Being Used by the City

Immediately upon the Effective Date, Fibernet shall have the exclusive use and ownership of any Fibers that were not being used by the City at the time the City initiated the Lawsuit.

7. License Agreement.

Simultaneously with execution of this Settlement Agreement, the Parties shall execute the License Agreement attached hereto as Exhibit "A" pursuant to which the City shall grant Fibernet a license to use the City's conduit where the Fibers are located for a period of 10 (ten) years with the option to renew the license for an additional 10 (ten) year period.

8. Releases.

A. Except with respect to any action necessary to enforce Fibernet's obligations under this Settlement Agreement and the License Agreement, on the Effective Date, the City, for itself and its predecessors, successors, parents, subsidiaries, affiliates, agents, directors, officers and/or representatives, hereby waives, acquits, discharges, and forever releases Fibernet and its predecessors, successors, parents, subsidiaries, affiliates, agents, directors, officers and/or representatives, as to any and all actions, claims, suits, debts, damages, judgments, causes of action, liabilities, and demands of any kind or nature whatsoever, whether matured or unmatured, whether at law or in equity, and whether not known or unknown, liquidated or unliquidated, that the City now has or may have had, on behalf of itself, or any other person or entity, related in any way to the Fibers or to the Lawsuit.

B. The City is not releasing any claims, rights, actions, entitlements, defenses, that the City may have against Birch except that the City may not pursue any claim, right, action, entitlement or defense that the City has against Birch that is inconsistent with this Settlement Agreement including, but not limited to, the provisions in Paragraphs 5 and 6 of this Settlement Agreement relating to Fibernet's ownership and use of the Fibers.

C. Except with respect to any action necessary to enforce the City's obligations under this Settlement Agreement and the License Agreement, on the effective date of this

Settlement Agreement, Fibernet for itself and its predecessors, successors, parents, subsidiaries, affiliates, agents, directors, officers and/or representatives, hereby waives, acquits, discharges, and forever releases the City and its predecessors, successors, parents, subsidiaries, affiliates, agents, directors, officers and/or representatives as to any and all actions, suits, debts, damages, judgments, causes of action, liabilities, and demands of any kind of nature whatsoever, whether matured or unmatured, whether at law or in equity, and whether now known or unknown, liquidated or unliquidated, that Fibernet now has or may have had, on behalf of itself, or any other person or entity, related in any way to the Fibers or to the Lawsuit.

9. No Right to Attorneys' Fees.

Except with respect to any action necessary to enforce a Party's obligations under this Settlement Agreement, the Parties mutually agree to waive, discharge and release any claim for attorneys' fees or costs in the Lawsuit. The Parties will each bear their own attorneys' fees and costs arising from the Lawsuit.

10. Other Terms and Conditions.

A. This Settlement Agreement constitutes a valid and legally binding obligation of the Parties. In the event that any Party breaches this Settlement Agreement, the Parties acknowledge and agree that a non-breaching Party may suffer irreparable harm and that a proper remedy for any such breach resulting in irreparable harm is injunctive relief.

B. This Settlement Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Settlement Agreement. In the event that any signature or counterpart is delivered by facsimile, e-mail or other electronic transmission, such signature or counterpart shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) the same with

the same force and effect as if such facsimile, e-mail or other electronically transmitted signature page were an original thereof, and shall be admissible in any proceeding to the same extent as an original.

C. This Settlement Agreement may be modified only by a written document signed by all of the Parties. No waiver of this Settlement Agreement or of any of its promises, obligations, terms, or conditions shall be valid unless it is written and signed by the party against whom the waiver is to be enforced.

D. This Settlement Agreement shall be binding upon the Parties, their predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, and officers. Each of the signatories to this Settlement Agreement represents and warrants that he or she is authorized to execute this Settlement Agreement and to bind the Party on whose behalf he or she is signing.

E. If any part of the provision of this Settlement Agreement shall be finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part of provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Settlement Agreement.

F. The Parties acknowledge that they have had the opportunity to consult with legal counsel of their choosing prior to entering into this Settlement Agreement and that they enter into this Settlement Agreement knowingly and voluntarily.

G. The Parties cooperated in the drafting of this Settlement Agreement, and in the event that it is determined that any provision of the Settlement Agreement is ambiguous, that provision shall not be presumptively construed against a Party.

H. In the event any Party breaches any term of this Settlement Agreement and the other Party employs counsel to enforce its rights under this Settlement Agreement, the prevailing Party shall recover its reasonable attorneys' fees and costs in connection with any action to enforce rights under this Settlement Agreement.

I. This Settlement Agreement shall be governed, in all respects, under the laws of the State of Florida, irrespective of any choice of law rules.

J. The execution of this Settlement Agreement shall not be construed as an admission by any Party as to the validity or invalidity of any other Party's position with reference to the issues resolved in this Settlement Agreement.

K. Any notice required hereunder shall be made by email as follows:

To Fibernet: Fibernet Direct Florida LLC
 Attn: Ricardo Perkins, VP Operations and Engineering
 9250 West Flagler Street
 Miami, Florida 33174

With a copy to: Crown Castle Legal Department
 Attn: John B. Meyer, Associate General Counsel
 1500 Corporate Drive
 Canonsburg, Pennsylvania 15317

To City: Edward F. Lavallee, City Manager
 City of Venice, Florida
 401 W. Venice Avenue
 Venice, FL 34285

With a copy to: Kelly Fernandez, Esq.
 Persson, Cohen & Mooney, P.A.
 236 Pedro St.
 Venice, FL 34285

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement and Mutual Release.

CITY OF VENICE

By: _____

Date: _____

Its: _____

FIBERNET DIRECT FLORIDA LLC

By: _____

Date: _____

Its: _____