

## CITY FIBER OPTIC SYSTEM LICENSE AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made by and between the City of Columbia, Missouri, a municipal corporation located at 701 E. Broadway, Columbia Missouri 65201 (hereinafter "CITY"), and FiberPath Technologies, L.L.C., a Missouri limited liability company, a wholly-owned subsidiary of Central Electric Power Cooperative, located at 2106 Jefferson Street, Jefferson City, Missouri 65109 (hereinafter "LICENSEE"). LICENSEE and CITY are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, CITY has constructed a single mode fiber optic cable system (hereinafter "Fiber Optic System") linking various CITY facilities and forming a geographically complete fiber optic loop; and

WHEREAS, from time to time LICENSEE needs fiber optic links between various LICENSEE facilities for networking purposes; and

WHEREAS, CITY and LICENSEE wish to enter into an agreement under which LICENSEE may request to use, and CITY may grant a license to LICENSEE to use, strands of fiber optic cable within CITY's Fiber Optic System portions of which cable may extend radially therefrom to various facilities, on specified terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the Parties agree as follows:

### 1. USE OF CITY'S FIBER OPTIC SYSTEM

CITY shall maintain the Fiber Optic System so as to form a geographically complete fiber optic loop (also referred to as a "ring"). LICENSEE may request to license and use rings on the Fiber Optic System, each consisting of two (2) dark fiber optic strands (each, a "two-strand ring"), to enable LICENSEE to communicate in two directions. LICENSEE may also request to license and use additional fiber optic strands between specified points on the CITY's Fiber Optic System and particular facilities identified by LICENSEE (each, a "radial strand") for point-to-point communication between the specified points on the Fiber Optic System and the facilities. Such requests may be granted or denied solely at the discretion of CITY. LICENSEE agrees that it will use any and all licensed 2-strand rings and radial strands only for Internet-type services and for other purposes allowed by law.

### 2. ADDITIONS, MOVES AND NEW INSTALLATIONS

LICENSEE may also, from time to time, request non-recurring additions, moves or changes to any 2-strand rings or radial strands LICENSEE licenses from CITY. Such requests may be granted or denied solely at the discretion of CITY.

Should CITY desire to grant a request, CITY will provide LICENSEE with an estimate of the labor and materials to do such work as required. Provided LICENSEE authorizes the estimate and work, upon completion of CITY's work, LICENSEE shall pay CITY the costs associated with the addition, move or change requested by LICENSEE. LICENSEE shall reimburse all expenses (including labor and materials) incurred by CITY related to the additions, moves or new installations. Non-recurring services include, but are not limited to:

- a. Installation of a new radial strand to a facility.
- b. Moving an existing radial strand.
- c. Physical reconfiguration of an existing 2-strand ring pair.

### 3. MAINTENANCE OF FIBER OPTIC CABLE

All maintenance and emergency repair functions on the Fiber Optic System shall be provided by CITY. CITY shall make reasonable efforts to repair any damage to its Fiber Optic System that disrupts LICENSEE's use of its licensed 2-strand ring(s) or radial strand(s) within twenty-four (24) hours after receiving a report, which need not be provided in writing, from LICENSEE that its use has been disrupted. CITY shall provide Fiber Optic System repair service twenty-four (24) hours per day, seven (7) days per week.

CITY and LICENSEE agree that LICENSEE's use of the Fiber Optic System is an accommodation to LICENSEE. Under no circumstance shall LICENSEE's use of the Fiber Optic System take priority over CITY's use of CITY's Fiber Optic System. In the event of an emergency which disrupts service on CITY's Fiber Optic System, CITY shall repair any damage to its Fiber Optic System that disrupts CITY's use before repairing any damage to its Fiber Optic System that disrupts LICENSEE's use of its licensed 2-strand ring(s) or radial strands.

### 4. PAYMENTS

For the use of each licensed 2-strand ring and radial strand, LICENSEE shall pay to CITY on the first business day of each month the following amounts: (1) for each full calendar month that a 2-strand ring is made available to LICENSEE, a recurring fee of three thousand eight hundred forty-seven dollars (\$3,847.00) per 2-strand ring, per month; and (2) for each calendar month that a radial strand is made available to LICENSEE, a recurring fee of two hundred fifty dollars (\$250.00) per radial strand, per month.

The above prices shall remain in effect during the initial term of this Agreement. Thereafter, CITY may, upon notice to LICENSEE given no less than six (6) months in advance of the commencement of the next annual renewal term, adjust the prices, with such adjustments to be effective upon the commencement of the next annual renewal term of the Agreement. If LICENSEE provides notice to CITY given no less than three (3) months in advance of the commencement of

the next annual renewal term, of LICENSEE's objection to the amount of any price adjustment of which it has received timely notice from CITY, then either Party may elect to terminate this Agreement effective as of the last day of the then-current term, upon notice to the other Party given no less than one (1) month prior to the commencement of the next annual renewal term to which the price adjustment would otherwise have applied.

5. TERM

This Agreement shall become effective on the date it is executed by CITY and shall remain in effect until December 31, 2024 (the "initial term"). Thereafter, the Agreement shall automatically be renewed for successive terms of one (1) year (an "annual renewal term") unless the Agreement is terminated pursuant to the provisions of this Agreement.

6. TERMINATION AND PARTIAL TERMINATION

After the initial term, except as may be provided elsewhere in this Agreement, either Party may terminate this Agreement by giving the other Party notice of termination no less than six (6) months in advance of the date of termination. In addition, if LICENSEE wishes to terminate its right to license one or more 2-strand rings or radial strands under this Agreement without terminating the entire Agreement (a "partial termination"), it may do so by giving CITY notice. Any such partial termination shall become effective on the last day of the calendar month following the calendar month in which such notice is given.

CITY may terminate this Agreement for breach of this Agreement by LICENSEE upon thirty (30) days written notice.

Except as provided elsewhere in this Agreement: either party may terminate this entire Agreement effective as of the end of the initial term, by giving the other Party notice of termination no less than six (6) months in advance of the end of the initial term; during any annual renewal term thereafter, either Party may terminate this entire Agreement by giving the other Party notice of termination no less than sixty (60) days in advance of the date of termination; and, if LICENSEE wishes to terminate its right to license one or more 2-strand rings or radial strands under this Agreement without terminating the entire Agreement (a "partial termination"), it may do so by giving CITY notice, with any such partial termination becoming effective on the last day of the calendar month following the calendar month in which such notice is given.

In the event it is determined by CITY that a Missouri municipality may not legally offer the services contemplated herein, CITY shall provide notice thereof and of termination of the Agreement to LICENSEE, neither Party shall have any claim upon the other as a result of such termination, and such termination of the Agreement shall become effective upon the sooner to occur of: the last day of the

calendar month following the calendar month in which the notice is given, or the date a court of competent jurisdiction finds that that it is not lawful for a Missouri municipality to offer the services contemplated herein.

7. SOLE BENEFIT OF PARTIES

This agreement is for the sole benefit of CITY and LICENSEE. Nothing in this Agreement is intended to confer any rights or remedies on any third party.

8. LIABILITY

In no event, whether as a result of breach of contract, tort liability or otherwise, shall either Party or its agents or employees be liable to the other Party for indirect, economic or consequential damages of any nature.

9. NOTICES

Each request, grant or denial of a request, estimate, authorization and notice that may or shall be given under this Agreement shall be given in writing and may be hand delivered, sent by U.S. Mail or faxed as follows:

**If delivered to City:**

City of Columbia, Missouri  
ATTN: Director of Utilities  
P.O. Box 6015  
Columbia, MO 65205-6015  
Fax: (573) 443-6875

**If delivered to FiberPath  
Technologies, L.L.C.:**

ATTN: \_\_\_\_\_  
2106 Jefferson Street  
Jefferson City, MO 65109

A Party may change the address to which, fax number to which or official to whom notice is to be given by giving written notice of such change to the other Party. Upon any change of address or assignment or transfer of this Agreement, LICENSEE shall notify CITY of the address change, assignment or transfer and shall provide CITY with the names and addresses of all parties and individuals who shall receive notice from CITY as may be required by this Agreement. Failure to provide CITY with such information shall be a breach of this Agreement.

10. ACCOMMODATION

LICENSEE understands and agrees that CITY owns, uses and maintains the Fiber Optic System for CITY purposes. LICENSEE agrees that this Agreement under which CITY may allow LICENSEE to use any 2-strand ring or radial strand forming a part of CITY's Fiber Optic System is done as an accommodation to LICENSEE and is not an agreement by CITY to create a transferable business

interest in CITY property for the benefit of LICENSEE or to subordinate CITY's use of the Fiber Optic System to LICENSEE.

11. CITY'S USE OF FIBER OPTIC SYSTEM

LICENSEE's use of any part of CITY's Fiber Optic System shall not interfere with CITY's use of the Fiber Optic System. In the event LICENSEE's use does interfere with CITY's use of the Fiber Optic System, CITY shall give LICENSEE notice of the interference. LICENSEE shall have thirty (30) days from the date of such notice to end such interference. CITY's obligation to give LICENSEE notice of such interference and an opportunity to end the interference shall not preclude CITY from taking those steps it deems necessary to protect its operations from such interference. Failure of LICENSEE to end the interference within thirty (30) days after the CITY's notice of interference may be considered by CITY as breach of this Agreement by LICENSEE.

12. ASSIGNMENT

LICENSEE shall not assign or transfer this Agreement without prior written consent of CITY. In considering whether to give its permission to an assignment, CITY may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this Agreement and whether such an assignment would be in the best interest of CITY. No consent shall be required for an assignment or transfer to a parent, subsidiary of or an entity controlled by LICENSEE, under common control with LICENSEE, controlling LICENSEE or merged or consolidated with LICENSEE.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties. No modification, amendment or waiver of any provision of this Agreement or any of the rights or obligations arising hereunder shall be valid unless in writing and executed by both parties.

14. GOVERNING LAW/JURISDICTION

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Boone County, Missouri, or the United States Western District of Missouri. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

15. NO WAIVER OF IMMUNITIES.

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY  
CITY OF COLUMBIA, MISSOURI

By: \_\_\_\_\_  
De'Carlou Seewood City Manager *DS*

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

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor/ek

CERTIFICATION: I hereby certify that no City funds shall be expended pursuant to this Agreement, except for already existing maintenance obligations of City.

By: \_\_\_\_\_  
Matthew Lue, Director of Finance

LICENSEE

FIBERPATH TECHNOLOGIES, L.L.C.  
By Central Electric Power Cooperative, its Managing Member:  
By: \_\_\_\_\_  
CEO/General Manager of Central Electric Power Cooperative

Title: Managing Member

Date: 4/16/24

ATTEST:

By: Nancy A. Seikh

Date: 4/16/24