

**COMMERCIAL FIBER UTILITY  
SERVICE AGREEMENT**

The City of Houston, Missouri  
601 South Grand Avenue  
Houston, Missouri 65483  
417-967-3348

Last Revision – 09/05/2023

The City of Houston acknowledges and agrees to provide community-owned broadband/fiber utility services (hereafter “Services”) to Commercial Customer (hereafter “Customer) for their use. Customer acknowledges and agrees to be bound by all terms and conditions herein:

1. In consideration of the service requested by the Customer and provided by the City, the Customer shall promptly pay for all services at rates established by the City .The City will issue a billing statement on a monthly basis for services and any applicable equipment charges. Any billing statement shall be deemed a final and accurate account statement as provided by the City, or otherwise, upon the mailing of the next following statement unless the Customer during the intervening period notifies the City of error or irregularities.
2. In the event the Customer selects and is approved for automatic credit card or debit card payment, the Customer expressly authorizes the City to charge the Customer’s credit card or debit card account for outstanding account balances and any future monthly recurring charges that accrue. This authorization remains valid until the Customer provides notice to the City terminating services or terminating the City’s charge authorization. The City may terminate services for declined credit or debit card or any other non-payment to the Customer’s account. The Customer electing the automatic payment option is required to provide the City with updated and current credit or debit card account information at all times during the term of this agreement.
3. If Customer does not keep their service for at least thirty (30) days after exterior and/or interior install takes place, the City reserves the right to recover from Customer all costs associated with the cancellation of Services and a minimum of one month of monthly recurring service fees.
4. All equipment installed by the City is considered property of the City. All equipment installed by the City shall be returned to the City or left in place, undamaged, upon the termination of this agreement.
5. The Customer shall protect the City’s property on the premises served by the account from unnecessary damage and shall allow access to such property by duly authorized personnel during all reasonable hours. The Customer agrees to provide to the City the full replacement cost (market value) of such equipment, if (a) the Customer is requested to and fails to return such equipment at the end of the term of this agreement or (b) the equipment is not in the condition as initially provided to the Customer, reasonable wear and tear excepted. The Customer has the sole responsibility to reasonably protect the equipment against power surges

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and such other potential damage and harm, exclusive of customary wear and tear associated with its customary and assigned use. Any and all such damage to the equipment shall be the Customer's sole responsibility. Failure to pay for damaged items will result in a disconnection of service and/or a permanent ban on internet services provided by the City.

6. The City grants Customer a non-transferable, non-exclusive, and terminable right and license to use the applications and software necessary for the delivery and receipt of services, if any, provided that Customer or any third party on behalf of the Customer does not copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the applications or any part thereof or otherwise attempt to discover any source code, or sell, assign, sublicense, grant a security interest in or otherwise transfer any right in or to the applications. The Customer agrees not to modify the applications in any manner or form.
7. Delinquent bill collection costs will be assessed to the Customer. All monthly fees are due and payable on the 10th day of the month. **A late fee of 10% will be assessed after the 20<sup>th</sup> and disconnections will occur on the 25<sup>th</sup> of the month at 10:00 am if not paid in full.**
8. The City may cancel the service in the event of Customer's nonpayment or violation of this agreement.
9. The Customer understands that its tax identification number, as well as the owner's social security number and/or driver's license information may be used for collection purposes. Customer is required to provide the City with updated and current phone numbers, email address and other contact information at all times during the term of this agreement.
10. Customer agrees to assume all costs and expenses incurred by the City in connection with collecting unpaid amounts due, including, but not limited to, reasonable attorney's fees incurred in the course of such collection.
11. Services terminated for non-payment will be restored upon the following conditions:
  - (a) Customer provides payment in full via credit card or electronic funds transfer; and
  - (b) Reconnection of service must be authorized by City of Houston.
  - (c) If a business customer account is suspended for nonpayment, or service is temporarily paused at the request of a business customer, a reconnection fee (or restoral) fee of \$25.00 will be assessed and collected, along with any unpaid account balance, prior to reactivation of broadband internet service to such customer.
12. Customer acknowledges that the City, in its sole discretion, may change, modify, add, or remove portions of this Agreement, and Customer agrees to be bound by any such modifications as a consequence of Customer's continued use of Services.

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13. City may also modify the services at any time, including but not limited to upgrades and downgrades.
14. The Customer agrees that the City's network and its services shall only be used for lawful purposes. The Customer shall abide by and comply with the City's Code of Ordinances, as well as all federal and state laws. Prohibited activities include, but are not limited to, transmission, distribution or storing material (a) in violation of any applicable law, (b) in a manner that will infringe the copyright, trademark, trade secret or other intellectual property rights of others or the privacy, publicity or other personal rights of others, (c) that is obscene, threatening, abusive or hateful, (d) that contains a virus, worm, Trojan horse, or other harmful component; (e) that contains fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive or misleading statements, claims or representations; (f) interference in any way with, impairment of or adversely affecting the facilities used by the City to provide the Service; (g) expose the City to any claim, lien, encumbrance or legal process; (h) connecting the City's equipment to any computer outside of the Customer's premises; (i) impede others' ability to use, send, or retrieve information; or (j) restrict, inhibit, interfere with or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any City host, server, backbone network, node or service, or otherwise cause a performance degradation to any of the City's facilities used to deliver the Service.
15. By requesting utilities which includes fiber utility services, the Customer is stating that they are an authorized occupant of the address that is to be serviced.
16. All Commercial Customers shall pay a one-time installation fee of **one hundred dollars (\$100.00)** to set up Service at the requested location, along with a monthly equipment rental fee of five **dollars (\$5.00) per month**. The installation fee must be paid in full before an additional subsequent account can be activated by that business.
17. **Customers who do not have unique IP needs will be assigned a standard private DHCP assigned address. IP blocks are available in a /30 (4 IP addresses) - \$12.00, /29 (8 IP addresses) - \$24.00, and a /28 (16 IP addresses) - \$48.00. Due to the exhaustion of public IPV4 addresses, the City reserves the right to conserve IP addresses where it is feasible. The City may not be able to accommodate all requests as IP block needs vary depending on the organization's networking needs.**
18. Customers are provided at no additional cost access to the City's technical support which provides problem resolution response on a first-come, first-served, best-effort basis, and does not provide for service guarantees.

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19. The Customer agrees that the City shall not be liable if, during the order and installation process, it is determined that service cannot be provided to Customer or that it is commercially impracticable to do so. In addition, in the event the City incurs additional cost over and above the usual and customary charges to provide service to the Customer, which may include but is not limited to extended wiring charges, alternative business hour service installation charges, or emergency service repair charges, the Customer shall be responsible for any and all such charges.
20. Customer acknowledges and agrees that the City has the right to engage in the collection and storing of certain personal and business data concerning the Customer. This data (i) will be used by the City and/or its service delivery partners and/or contractors to provide services, (ii) will remain confidential, and (iii) will not be used other than in the normal course of City business. However, the City may release Customer data to third parties outside the normal course of City business only to comply with valid legal requirements. City shall not be responsible for any actions taken by the service delivery partners and/or contractors providing such Services.
21. Customer agrees that renting, selling, or otherwise transferring the Service for the benefit of a third party is strictly prohibited by this agreement and violates applicable law.
22. The term of this agreement begins upon activation of the services ("Activation Date") and expires after the cancellation notice from the Customer is received.
23. This agreement represents the entire agreement between the Customer and the City with respect to the services provided, superseding all previous communications or agreements regarding such subject matter. This agreement is subject to revision by the City in its sole discretion. Notices of modification may be provided through an update of the City's website, and the Customer's continued use of the services following the date of revision shall be considered the Customer's acceptance of the change(s).
24. Customer understands and agrees that the City is not liable for any indirect, incidental, special, punitive, or consequential damages; lost profits, loss of data, loss of hardware or software, loss or liability resulting from computer viruses, service defects, or security insufficiency arising out of or related to this agreement, the performance or breach thereof; the services provided or failure to be provided; or any delay, non-delivery, wrong delivery, or service interruption whether or not caused by the negligence of the City or its agents, employees, or any party, even if the party has been advised of the possibility thereof.
25. The Customer's correspondence or business dealings with, or participation in promotions of, content providers, advertisers, or sellers of goods and services found on or through the services provided, including payment and delivery of related goods or services, and any other terms,

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conditions, warranties, or representations associated with such dealings, are solely between the Customer and such other entity. The Customer agrees that the City shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers, content providers, or sellers in connection with the services.

26. The Customer shall indemnify, defend, and hold the City harmless from any and all claims resulting or alleged to result from (a) Customer's use of the network or services provided by the City or any third party provider or contractor; (b) fault, negligence or failure of the Customer to perform the Customer's responsibilities hereunder; (c) claims against the Customer by any other party; (d) any act or omission of any party furnishing services and/or products; or (e) the installation and/or removal of any and all equipment supplied by any person, including, but not limited to the City.
27. The City has sole discretion for determining the final location of the overhead and/or buried fiber optic service line to and within the premise and may at times require scheduled access to this property for the purpose of maintenance and service. Installation of the City service may involve modifications to a property. While these modifications are often minor, standard professional installation may include drilling holes to run fiber optic cable and attach equipment securely to the premise. **The tenant attests that these required modifications are authorized by the landlord, or its authorized representative. The City is released from any liability related to damages your landlord may claim as a violation of your lease/rental agreement.**
28. In some instances, the City may use a temporary drop connection to provide Service to the Customer. Customer agrees to the use of a temporary connection and approves the City or its contractor to place a temporary fiber cable drop at ground level across its property. Customer understands that it is solely responsible for all person's safety, health and welfare, including others who access the property, to avoid the potential hazards (known or unknown) related to the fiber cable drop location, until such time as the fiber cable drop may be buried underground. Customer understands that a return trip(s) will be necessary to remove the ground level temporary fiber cable drop and install a permanent underground fiber cable drop and further understands that there will be a temporary loss of Service during this process.
29. Upon reasonable notice, and without any notice in the event of an emergency, nothing in this agreement shall prevent the City or any contracted third party from taking such actions as are necessary to repair and maintain the facilities by which the Service is provided hereunder, but in either event, the City shall not incur any liability as a result thereof even though, for example, the actions may render the Service unusable for a period of time. Notwithstanding the

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foregoing, and except for emergencies, the City shall attempt to perform routine repair and maintenance at such times that will have minimum disruptive impact on the continuity or performance of the Service.

30. If the City determines that the reason for repair and maintenance is due to Customer-provided facilities or Customer's actions or omissions, or the facilities, acts or omissions of any party with whom Customer has a relationship, (i.e. a customer of Customer), Customer shall compensate the City for the reasonable costs and expenses thereof.
31. The City shall not be liable to the Customer under this agreement for any failure or delay in performance that is due to causes beyond its reasonable control and without its fault or negligence including, but not limited to, acts of nature, acts of civil or military authority, governmental actions, fires, civil disturbances, epidemic, pandemic, or interruptions of power. The City shall also not be liable for any delay or performance failure caused by the Customer's failure to perform any of its obligations under this agreement.
32. This agreement shall be governed under the laws of the State of Missouri and, to the extent applicable federal law, without regard to choice of law principles. The Customer and City hereby agree that the state or federal courts of the State of Missouri shall determine any dispute relating to or arising out of this Agreement.
33. THE CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE CITY IS NOT LIABLE FOR ANY DAMAGES RESULTING FROM ANY FAILURE OR DELAY DURING INSTALLATION AND PROVIDING SERVICES. THE CITY MAKES NO GUARANTEES OR PROMISES WITH REGARD TO THE EXACT DATE OF THE COMPLETE INSTALLATION AND OPERATIONAL STATUS OF THE CUSTOMER.
34. SERVICES PROVIDED BY THE CITY ARE "AS IS." THE CITY MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTY REGARDING THE RELIABILITY OR SUITABILITY FOR A PARTICULAR PURPOSE OF ITS SERVICES. THE CITY ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THEIR SERVICES AND DOCUMENTS ASSOCIATED WITH SERVICES BY REFERENCE OR LINKS. REFERENCES TO THIRD PARTIES, THEIR SERVICES, AND THEIR PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THE CITY'S DOCUMENTS ASSOCIATED WITH THE SERVICES PROVIDED COULD INCLUDE TECHNICAL OR OTHER INACCURACIES OR TYPOGRAPHICAL ERRORS.

**I certify that all information is accurate to the best of my knowledge, and I agree to all terms and conditions.**

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**Warning: Any false information in this agreement may constitute a class D felony, pursuant to 570.095, RSMo., which is punishable by fine up to \$10,000.00 or by imprisonment up to seven (7) years.**

**Customer Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_