

ORDINANCE NO. 1048

AN ORDINANCE GRANTING A 10-YEAR NON-EXCLUSIVE FRANCHISE TO TELEPAK NETWORKS, INC. AND ITS AFFILIATES d/b/a C SPIRE ("Grantee"), ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM NETWORK FOR THE PURPOSE OF TRANSMISSION OF TELECOMMUNICATIONS AND OTHER SERVICES WITHIN ALL INCORPORATED PORTIONS AND LOCATIONS OF THE CITY OF BAY MINETTE, ALABAMA (the "Franchising Authority") AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF FRANCHISING AUTHORITY FOR SUCH PURPOSES.

PREAMBLE

WHEREAS, THIS CONSTRUCTION, RIGHT-OF-WAY USE and FRANCHISE AGREEMENT (this "Agreement") is entered into on this 28th day of August, 2024 (the "Effective Date"), by and between the CITY OF BAY MINETTE, ALABAMA (the "Franchising Authority"), and TELEPAK NETWORKS, INC. AND ITS AFFILIATES d/b/a C Spire ("Grantee"). Franchising Authority and Grantee are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

WHEREAS, the Franchising Authority is the owner of certain Public Ways (as defined below), and the Franchising Authority is authorized to grant corporations the non-exclusive right to construct, operate, and maintain a Telecommunications System within the Service Area (as defined below); and

WHEREAS, Grantee is qualified to do business in the State of Alabama, has been granted a Certificate to provide utility services in the State of Alabama by the Alabama Public Service Commission and desires to provide Telecommunications Services, Video Services and Other Services within the Service Area;

WHEREAS, the Franchising Authority and Grantee desire to enter into this Agreement concerning the installation and maintenance of Telecommunications facilities within the Franchising Authority's Public Ways, and certain other matters more fully contained herein.

NOW THEREFORE, BE IT ORDAINED by the City Council for the City of Bay Minette, Alabama that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

SECTION 1
Definition of Terms

1.1 Definitions. For the purposes of this Agreement, the following terms, phrases, words, and abbreviations shall have the following meanings:

- A. "Basic Video Services Tier" means the Video Services tier which includes the retransmission of local television broadcast signals and which is also the tier to which the largest number of Subscribers are currently subscribing.
- B. "Facilities" means all fiber optic cable, conduit, poles, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, pedestals, towers, dishes, supporting hardware, and related equipment and fixtures necessary and desirable to construct and maintain the Telecommunications System and to provide Services under this Agreement.
- C. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- D. "Franchising Authority" means the City of Bay Minette, Alabama.
- E. "Grantee" means Telepak Networks Inc. and Affiliates, d/b/a C Spire, or the lawful successor, transferee, or assignee thereof.
- G. "Gross Revenues" means any revenue derived by Grantee from the operation of the Telecommunications System to provide Telecommunications Services and/or Video Services to Subscribers within the Franchising Authority. Gross Revenues shall include (i) Video Services fees for any of Grantee's Video Services and (ii) Telecommunications Services fees for Grantee's local telephone and calling plan offering; (iii) recurring charges for Video Services, including late fees; (iv) event based charges for Video Services, including pay-per-view, video-on-demand charges and premium video services; (v) monthly recurring charges for the rental of Video Services Equipment and Video Services accessories; (vi) customer service charges related to the provision of Video Services, including activation, home installation, and repair; (vii) advertising revenue and home shopping commissions; and (viii) administrative charges related to the provision of Video Services, including service order and service termination charges, and (ix) any other fees charged due to the operation of Video Services and Telecommunication Services. Gross Revenues shall not include (i) any taxes on Services furnished by Grantee or franchise fees imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit; (ii) amounts passed back to the Subscribers through retail discounts, refunds, rebates or other direct promotions; (iii) non-collectible amounts due Grantee from its customers after commercially reasonable efforts are made to collect; (iv) non-operating revenues such as interest income or gain from the sale of an asset; (v) site acquisition, construction management or supervision fees related to or incurred in support of the installation of the Facilities; (vi) contributions of capital by any third party to reimburse Franchisee in whole or in part for the installation of the Facilities; (vii) revenues from the sale or lease of customer premises equipment and/or accessories unrelated to Video Services; (ix) charges for Other Services that are aggregated and bundled with amounts billed to Subscribers; and/or (x) other charges unrelated to Video Services or Telecommunication Services that are aggregated or bundled with amounts billed to Subscribers.

“Other Services” means services lawfully provided by Grantee within the Franchising Authority in addition to Telecommunications Services including, without limitation, broadband services internet access services, private network services, voice mail, call waiting, call forwarding, and distance learning services.

H. “Person” means an individual, firm, partnership, association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area, which shall entitle the Grantee to the use thereof for installing, operating, repairing, and maintaining the Telecommunications System.

J. “Services” collectively refers to Other Services and Telecommunications Services.

K. “Service Area” means the present municipal boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means.

L. “Subscriber” means a Person who lawfully receives Services with the Company’s express permission within the Service Area.

M. “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

N. “Telecommunications Services” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

O. “Telecommunications System” means Grantee’s Facilities, consisting of a set of closed transmission fiber optic paths and associated signal generation, reception, and control equipment or other communication equipment that is designed to provide Services to Subscribers.

P. “Video Services” means the one-way transmission to Subscribers within the Franchising Authority of video programming (programming provided by, or generally considered comparable to programming provided by, a television broadcast station) or other programming services typically provided by a Multi-Channel Video Programming Distributor (“MVPD”) and made available to all Subscribers within the Service Area generally, but not to include over-the-top services such as Hulu, Netflix or Sling.

SECTION 2
Grant of Franchise

2.1 **Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Telecommunications System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Telecommunications System for the transmission and distribution of Services, data services, information and other communications services or for any other lawful purposes subject to compliance with the terms of this Franchise and all applicable state and federal laws and other ordinances of the Franchising Authority as set forth in Sections 2.2 and 2.6 below.

2.2 **Compliance and Conflict of Laws.** Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance of the Franchising Authority that is not inconsistent with the terms and conditions of this Franchise, and to comply with applicable state and federal law and regulations. Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority, and any generally applicable ordinances adopted by the Franchising Authority in compliance with such authority, provided that any generally applicable ordinances of the Franchising Authority do not require Grantee to violate any federal law or regulation and are not inconsistent with the terms and conditions of this Franchise Agreement.

2.3 **Term.** The license granted under this Agreement shall be for an initial term of ten (10) years from the Effective Date of the Franchise as set forth in Section 8.1, unless otherwise lawfully terminated (the "Initial Term").

2.4 **Non-Discriminatory Service.** Construction and operation of the Telecommunications System will be performed by Grantee in such a manner as to ensure that no individual or group of potential residential Subscribers is denied access to services because of the income level of the residents of the local area in which such group resides.

2.5 **No Right of Property.** Anything contained herein to the contrary notwithstanding, the award of this Franchise shall not impart to Grantee any right of ownership of Public Ways or The Franchising Authority-owned property.

2.6 **Compliance with Laws, Rules, and Regulations.** Grantee, at its expense, shall comply with all federal and state laws, orders and regulations applicable to the provision of Services in the Service Area. Further, Grantee shall comply with any reasonable direction of any public officer or officers of the Franchising Authority who shall legally impose any regulations, orders, or duties upon Grantee pursuant to this Franchise that are not inconsistent with the terms and conditions of this Franchise.

2.7 **Franchise Binding.** The Franchise granted hereunder shall be binding upon the Grantee, its successors, lessees or assignees, and the Franchising Authority. This Franchise shall

inure to the benefit of any entity which is controlled by, or under common control with, the Grantee.

SECTION 3
Conditions for Use of Public Way

3.1 **Installation and Conditions of Occupancy.** Grantee shall not install any new Facilities or services in any Public Way without having received a permit from the Franchising Authority. Grantee agrees to the following conditions, limitations, and restrictions related to the installation of its Facilities in, on or through any portion of the Public Ways:

- A. Grantee agrees that the installation of its Facilities shall be located to cause a minimum of interference with the proper use of Public Ways, public utilities, and with the rights and reasonable convenience of the Franchising Authority and property owners who own property that adjoins any of such Public Ways.
- B. Grantee agrees to comply with all applicable codes and ordinances of the Franchising Authority with respect to construction within a Public Way that are not inconsistent with the terms and conditions of this Franchise and shall obtain all necessary permits and licenses required by federal, state, and Franchising Authority law, ordinances and rules as required of other like users of the Public Ways, before commencing construction in the Service Area. Grantee shall at all times comply with all laws applicable to its provision of Telecommunications Services in the Service Area. Notwithstanding the foregoing, the Franchise Fees paid pursuant to this Agreement shall replace and be paid in lieu of any business license fees normally assessed to Grantee pursuant to Alabama law.
- C. Grantee shall hold a pre-construction meeting with Franchising Authority at least ten (10) days prior to beginning any construction to advise Franchising Authority of its planned activities and to consult with the Franchising Authority in order to determine whether Grantee has obtained all necessary permits and licenses.
- D. Grantee agrees to supply the Franchising Authority with digital drawings of construction plans ten (10) days prior to construction and upon request, digital as-built drawings within six (6) months of the completion of any construction. Final drawings will be supplied in Autocad 2000 using NAO 83 coordinates, GIS format, or such other digital formats as are reasonably acceptable to the Parties.
- E. Grantee agrees to "white-line" its locates for planned construction for the day of construction.
- F. Grantee lines, where possible, shall have at least a forty-eight (48) inch separation vertically and, where feasible at least thirty (30) inch separation horizontally from all Franchising Authority utility lines, including gas lines, water lines and sewer lines. In those areas of the Service Area where all the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are

underground, including but not limited to rights-of-way, the Grantee shall construct, operate, and maintain its services underground.

G. Grantee agrees, where possible, to stay three (3) feet away, measured horizontally, from power poles unless it is utilizing such poles pursuant to a pole attachment arrangement.

H. Grantee or Grantee's contractor will request locates, and Franchising Authority shall provide locates of its facilities, under Alabama's 811 law and regulations. Grantee will not locate Franchising Authority's utility lines or those of any third party physically or on maps or drawings. Grantee's hand hole and clean-up crews will set hand holes and complete clean-up for each section within 2-3 work days after placement of conduit, weather permitting.

I. Grantee shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of Grantee's construction activities and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by Grantee's activities encroaches upon the street, Grantee shall take immediate corrective action to remove the same.

J. If during the Grantee's construction, operation, or maintenance of the Telecommunications System, streets and other Public Ways are disturbed and/or damaged by Grantee, its employees, agents or contractors, Grantee shall, at Grantee's expense, promptly repair and restore such streets or Public Ways to the same or better condition than such streets or Public Ways were in prior to such damage, and to the reasonable satisfaction of the Franchising Authority.

K. At all times during and after the installation of fiber optic lines, Grantee shall respond to all emergency locates to locate its fiber optic lines as required by Alabama's 811 law and regulations.

L. At all times, Grantee shall be responsible for safety at, about and around its work and shall, at its sole expense, provide safe and adequate traffic control when necessary and at its own expense provide full and complete warnings to safeguard the public and to prevent injury or damage, including, but not limited to, any and all signage, cones, markings, lighting and otherwise deemed, in the sole discretion of Grantee, to be adequate; and Grantee shall assume all liability for any injury or damage in any way related directly, or indirectly to the provision or non-provision or inadequate provision of such controls, warnings, etc., and shall, at its sole expense, defend the Franchising Authority from any and all actions in any way related to any injury or damage claimed to be the result of inadequacies in traffic control, warnings, or otherwise.

M. Grantee shall have the authority to trim trees and natural growth on the Public Ways which may affect its Telecommunications System in the Service Area to prevent interference with Grantee's Facilities in accordance with the Franchising Authority ordinance regarding tree cutting and removal, except that, at the request of the Franchising

Authority, such trimming may be done by the Franchising Authority or under its supervision and direction at the expense of Grantee, provided that Grantee has been furnished in advance with the scope of work and the cost of such work, and Grantee approves such scope and cost. Notwithstanding the foregoing, Grantee shall reasonably compensate the Franchise Authority, for any damages, in such amounts as determined by the Franchise Authority caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Grantee to the satisfaction of the Franchise Authority

N. The decision of when and where to construct its Facilities is within the discretion of Grantee, subject to the terms of this Agreement, as is the determination of what Services to provide and where to provide them within the Franchising Authority during the Term, so long as such determinations are made in a nondiscriminatory manner and in compliance with all applicable laws and regulations. Grantee agrees to provide Services, as requested by Franchising Authority, to all Franchising Authority's public buildings, with the cost of such Service at standard municipal rates to be deducted from payments owed to Franchising Authority hereunder, if Grantee is providing services in the Service Area in which a Franchising Authority building is located.

O. Throughout the Term of this Agreement, provided Grantee complies with the foregoing requirements, Grantee shall be entitled to expand and upgrade its Telecommunications System as it deems reasonably necessary. All expansions and upgrades shall comply with the terms of this Agreement.

3.2 **Relocation of Facilities.** Whenever the Franchising Authority shall grade, regrade, or change the line of any street or Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order Grantee to relocate or protect its Facilities located in said street or Public Way, Grantee shall relocate or protect its Facilities at its own expense; provided, however, if the Franchising Authority compensates any Person for similar work then Grantee shall be similarly compensated.

3.3 **Relocation for the Franchising Authority.**

Whenever the City shall grade, regrade, or change the line of any street or Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order C Spire to relocate or protect its Facilities located in said street or Public Way, C Spire shall relocate or protect its Facilities at its own expense; provided, however, if the City compensates any Person for similar work then C Spire shall be similarly compensated. Further, where the City has determined that the location of C Spire's Facilities is unsafe, interferes with traffic control devices, or otherwise may be harmful to the public health, safety, and welfare as determined in the reasonable judgment of the City, C Spire shall move such Facilities to an alternate location as directed by the City. The City shall give C Spire reasonable notice of plans to grade or change the line of any street or Public Way or to construct or reconstruct any sewer or water system therein or of any demand that the Facilities be relocated for the reasons set forth herein. C Spire may also be required to relocate its Facilities where public utilities or other users of the Public Way require access; provided, however, that nothing herein shall be construed as a waiver of C Spire's rights under applicable law. Any such movement shall be at the expense of the

third party. With respect to location of its existing public utility lines, the City agrees that during the period of C Spire's installation of fiber optic lines pursuant to this Agreement, the City will locate all City public utility lines as required by Alabama's 811 laws. It shall be the duty of C Spire or its contractor(s) to request the City to locate the public utility lines.

3.5 **Damage to Existing Utilities.** Grantee hereby agrees that (a) during the installation process, and (b) at any time after such installation, Grantee will immediately notify the appropriate utility provider in the event that Grantee, or any of its related entities, employees, agents or contractors damages a utility line, including private service lines. Provided that the party owning the lines has complied with Alabama's 811 law and regulations then any repairs to such utility lines and private service lines must be made immediately, and at Grantee's sole expense, and shall only be made by appropriately licensed and bonded contractors.

3.6 **Safety Requirements and Compliance with Codes.** All Construction, operation, and maintenance of the Telecommunications System or of any Facilities employed in connection therewith shall be performed in an orderly and workmanlike manner. To that end, all construction, installation, maintenance, and operation of the Telecommunications System and Services or of any Facilities employed in connection therewith shall comply with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by other federal or state regulatory agencies in relation thereto, and local zoning regulations. Grantee shall comply with ordinances, rules, and regulations established by the Franchising Authority pursuant to the lawful exercise of its police powers and generally applicable to all users of the Public Way, provided that such ordinances, rules or regulations are not inconsistent with the terms of this Franchise. Franchising Authority reserves the right to lawfully exercise its police powers in a manner that does not violate this Franchise Agreement.

3.7 **Underground Construction.** In those areas of the Service Area where all the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Telecommunications System and Services underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8 **Least Disruptive Technology.** The Grantee is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Grantee will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the Franchise Authority. The Franchise Authority may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Grantee may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

SECTION 4 **Regulation by The Franchising Authority**

4.1 Franchise Fee. When and if Grantee provides local Telecommunications Services to Subscribers within the Franchising Authority, Grantee shall pay the Franchising Authority a franchise fee equal to (i) five percent (5%) of the Gross Revenue from sales of local Telecommunications Services to Subscribers located within the Franchising Authority, and (ii) when and if Grantee provides Video Services to Subscribers located within the Franchising Authority, a video services franchise fee equal to the lesser of: (A) five percent (5%) of Gross Revenues received by Grantee from sale of the Video Services to Subscribers within the Franchising Authority; and (B) the lowest percentage payable by a third party provider of Video Services to Subscribers within the Franchising Authority (collectively, the "Franchise Fee"). The payment of the Franchise Fee shall be made on a quarterly basis and shall be due and payable no later than forty-five (45) days after the last day of each March, June, September and December throughout the Term of this Agreement. Each Franchise Fee payment shall be accompanied by a certified report from a representative of Grantee, which shows the basis for the computation of all Gross Revenues from providing local Telecommunications Services and Gross Revenues received by Grantee from sale of the Video Services to Subscribers located within the Franchising Authority limits during the period for which such Franchise Fee payment is made. If the Franchise Fee payment is not actually received by the Franchising Authority on or before the applicable due date set forth in this Section, interest shall accrue on the outstanding amount at the lesser of one percent (1%) per month or the highest rate allowed under Alabama law for the period of delinquency.

A. Discounted Rates. If Subscribers are offered what is, in effect, a discount for "bundled" services (i.e. Subscribers obtain Video Services and some other non-video goods or service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to Video and non-Video goods and services, in accordance with the following example:

Assume a Subscriber's charge for a given month of Video Service alone would be \$40, for local telephone service alone would be \$30, and for high speed internet service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service if purchased individually (i.e. \$80 per month for all three (3) services). The discount (here, \$20) for Gross Revenue computation purposes would be applied pro rata so that the Gross Revenue for Video Service are deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20 discount on telephone service on the condition that he or she also subscribes to Video Service at standard rates.

In no event shall Grantee be permitted to evade or reduce applicable Franchise Fee payments required to be made to Franchising Authority due to discounted bundled services.

B. Audit. During the Term of this Agreement, once every twelve (12) months and upon reasonable prior written notice, during normal business hours, the Franchising Authority shall have the right to inspect Grantee's financial records used to calculate the Franchising Authority's Franchise Fee, and the right to audit and to re-compute any amounts determined to be payable under this Section at Franchising Authority's expense;

provided, however, that any such audit shall take place within two (2) years from the date Franchising Authority received such payment, after which period any such payment shall be considered final. If Franchising Authority believes it is owed any additional compensation from Grantee it will give Grantee notice of same along with a calculation of the additional amount. The Parties shall work together in good faith to resolve the matter. Any additional amounts due to either Party shall be promptly paid within thirty (30) days following resolution of the payment dispute.

C. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be two (2) years from the date on which payment by the Grantee is due to the Franchising Authority.

4.2 Public, Education and Government Access Channel.

A. PEG Access Channel. At any time after Grantee begins to offer Video Services on a commercial basis to Subscribers within the Franchising Authority, the Franchising Authority may request Grantee to provide the Franchising Authority one (1) video channel for noncommercial PEG Access use. Grantee shall provide the PEG Access channel within ninety (90) days of Franchising Authority's request.

B. Regulation of PEG Access Channel. The Franchising Authority shall establish reasonable regulations governing use by the public of the PEG Access channel and the content broadcast over the channel. Grantee shall have the right to prohibit the broadcast of inappropriate or illegal programming over the channel in its sole reasonable discretion and in accordance with applicable law. The Franchising Authority shall be solely responsible for all costs, expenses, and equipment necessary for and related to producing or transmitting content over the PEG Access channel. Grantee shall have no obligation, financial or otherwise, other than the obligation to provide access to one video channel for noncommercial PEG Access use.

C. Return of PEG Access Capacity to Grantee. In the event that unused capacity exists on the PEG Access channel, Grantee may request the Franchising Authority to return that capacity to Grantee for Grantee's use. The Franchising Authority shall not unreasonably deny such request.

4.3 Transfer of Franchise. The franchise granted by this ordinance is a privilege which is personal to the original Franchisee. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned or disposed of, in whole or in part, either by sale, merger, consolidation, or otherwise, without prior consent of the City Council expressed by resolution. Any such transfer or assignment shall be made only by an instrument in writing which shall include an acceptance of all terms and conditions of the franchise by transferee, a duly executed copy of which shall be filed with the City Clerk of the Franchising Authority within thirty (30) days after such transfer or assignment. The transfer of Ownership or Control pursuant to this section shall not be deemed to waive any rights of Franchising Authority to subsequently enforce noncompliance issues relating to this Agreement even if such issues predated the transaction, whether known or unknown to Franchising Authority.

D. The consent of the City Council to any proposed transfer shall not be granted until it has examined the proposed assignee's, legal, financial, technical, character and other qualifications to construct, operate and maintain a Telecommunications System in the Service Area and has afforded all interested parties notice of an opportunity to be heard on the question.

E. The consent of the City Council shall not be arbitrarily refused; provided, that the proposed assignee possesses the requisite qualifications and agrees in writing to comply with all provisions of the franchise in this ordinance.

F. No such consent shall be required for a transfer:

- (1) As security for indebtedness, of system assets by mortgage or by other hypothecation, to secure an indebtedness;
- (2) To a wholly-owned subsidiary of Franchisee.

4.4 **Books and Financial Records.** Throughout the Term of this Agreement, Grantee agrees to keep such books and records regarding the operation of the Telecommunications System and the provision of Telecommunications Services in the City as are reasonably necessary to ensure Grantee's compliance with the terms and conditions of this Agreement. Such books and records shall include, without limitation, any records required to be kept in a public inspection file by Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters, which may be the subject of an audit by the Franchising Authority shall be retained by Grantee for a minimum period of three (3) years; provided it is understood that Grantee only retains call records for eighteen (18) months.

SECTION 5 Customer Practices

5.1 Grantee will comply with the Federal Communications Commission customer service standards set forth under 47 C.F.R. 76.309(c)(1), (2)(ii)-(v), (3)-(4). Franchising Authority acknowledges that due to the nature of the equipment and underground fiber installation practices of Grantee which differ substantially from that of traditional cable television service providers, compliance with 47 C.F.R. 76.309(c)(2)(i) is not practicable or required.

SECTION 6 Insurance and Indemnification

6.1 Insurance

A. **General Liability.** Grantee shall maintain, through the term of this Agreement, adequate proof of self-insurance or Commercial General Liability Insurance using carriers authorized in the State of Alabama and maintaining a Best rating of at least A-IV. Such

insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, and shall include as an Additional Insureds the Franchising Authority, and its officers, boards, Commissions, City Council, elected and appointed officials, agents and employees. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If Grantee employs independent contractors, Grantee shall insure that these contractors maintain appropriate levels of insurance and that the Franchising Authority is named as an additional insured under each liability policy.

B. Automobile Liability. Grantee shall maintain during the term of this Agreement Comprehensive Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury, including death, and property damage covering owned, non-owned and hired automobiles used in conjunction with its operations under this Agreement.

C. Workers' Compensation. In the event Grantee has five (5) or more employees, Grantee shall maintain, during this Agreement, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than One Million Dollars (\$1,000,000) per accident, \$1 million per disease, per employee and \$1 million per disease, aggregate.

D. Evidence of Insurance. On or prior to the Effective Date of this Agreement, Grantee shall furnish to the Franchising Authority Certificates of Insurance upon each policy renewal evidencing all the types and limits of insurance to be in effect.

E. Self-Insurance. Grantee maintains the option, at the Effective Date of this Agreement and at any time throughout the term of this Agreement, to self-insure any or all the types and/or limits of insurance coverage described in this Section and shall provide the Franchising Authority with a statement certifying such self-insurance, which self-insurance must be approved by the Franchising Authority.

F. Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by Grantee through the term of this Agreement. Each policy of insurance shall provide that it not be cancelled without thirty (30) days written notice to the Franchising Authority.

G. No Limit of Liability. The legal liability of Grantee to the Franchising Authority and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

H. Certificate of Insurance. Grantee shall furnish or have its insurer furnish to the Franchising Authority Certificates of Insurance for all the coverage described above, from companies acceptable to the Franchising Authority, properly executed by an authorized representative of the insurer authorized to do business in the State of Alabama. Such

Certificate shall include the Franchising Authority as an additional insured, and all policies shall waive rights of subrogation in favor of the Franchising Authority and contain a provision that coverage afforded under the policies will not be cancelled, unless insurers have provided at least thirty (30) days prior written notice has been given to the Franchising Authority. All notices or certificates shall be delivered to the City Clerk of the City of Bay Minette at 301 D'Olive Street, Bay Minette, Alabama 36507. All deductibles under said policy shall be the sole responsibility of the provider.

6.2 **Indemnification.** At all times both during and after installation, so long as Grantee's Telecommunications System is located upon any portion of the Franchising Authority's Public Ways, Grantee covenants, warrants and agrees to indemnify and hold harmless the Franchising Authority, its officers, employees, agents and contractors, of and from any and all suits, damages, claims, liabilities, losses and expenses, including reasonable attorney's fees, directly or indirectly arising from or related to: (a) the installation, operation, repair or maintenance by any Person of Grantee's Telecommunications System within the Service Area; (b) provided that the Franchising Authority has complied with Alabama's 811 law and regulations, any injury, loss or damage to the Franchising Authority's utility lines arising from or related to the installation, operation, repair or maintenance of Grantee's Telecommunications System; and (c) provided that the private service line owner has complied with Alabama's 811 law and regulations, any injury, loss or damage to private service lines arising from or related to the installation, operation, repair or maintenance of Grantee's Telecommunications System. Without the intent of limiting any of the foregoing, it is agreed that Grantee shall indemnify and hold harmless, the Franchising Authority, its officers, officials, employees, agents and contractors of and from any and all claims for personal injury, wrongful death, property damage, or otherwise alleged to be directly or indirectly attributable, in whole or in part, to the acts or omissions of Grantee or its officers, employees, agents, or contractors in connection with the subject of this Agreement, which indemnity shall be at the sole expense of Grantee, including the obligation to pay any and all sums required, including any settlement, judgment, attorney fees, court costs, or otherwise. In the event the City believes it has a claim subject to indemnification it must promptly give C Spire written notice of such claim. Within sixty (60) days of its receipt of written notice of the City's claim, C Spire shall notify the City in writing whether it will defend such claim. If C Spire assumes the defense of such claim, it shall be entitled to defend the claim in any manner it sees fit including settlement, provided no settlement imposes liability on the City without the City's prior written consent.

SECTION 7

Enforcement and Termination of Franchise

7.1 **Compliance with Applicable Law.** Grantee shall at all times comply with all laws applicable to its provision of Services in the Service Area.

7.2 **Enforcement and Termination.**

A. Breach. In addition to all other rights and powers retained by the Franchising Authority under this Agreement or otherwise, the Franchising Authority reserves the right to terminate this Agreement and all rights and privileges of Grantee hereunder in the event of a material breach of its terms and conditions which is not cured by the Grantee as provided hereinbelow.

B. Notice of Violation. If the Franchising Authority believes that Grantee has not complied with the any material term of the Franchise, the Franchising Authority may informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify Grantee in writing of the exact nature of such alleged noncompliance.

C. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.2B: (i) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (ii) to cure such default, or (iii) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

D. Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.2B pursuant to the procedures set forth in subsection 7.2C, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2C(iii) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing to hear and consider the issue and determine whether or not any substantial breach by Grantee has occurred. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard. The written notice should also include whether the City intends to request termination, and, if termination is to be requested, shall cite the provisions of the Agreement under which termination is sought.

E. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.2D, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:

- (i). Commence an action at law for monetary damages or seek other equitable relief; or
- (ii). In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, declare that the Franchise is revoked and terminated unless there is compliance within such period as the City Council may fix, such period not to be less than sixty (60) days, provided no additional opportunity for compliance need be granted for fraud or misrepresentation.

SECTION 8
Franchise Effective Date

8.1 **Effective Date of Franchise.** The Franchise granted hereunder together with the rights, privileges, and authority granted thereby, shall take effect and be in force immediately upon its passage, approval, publication, and subject to Grantee's acceptance or as otherwise required by state law. Grantee shall accept this Franchise grant by countersigning where indicated below. Such acceptances shall be duly executed and acknowledged to, by or on behalf of Grantee, before a Notary Public or other officer authorized by law to administer oaths.

8.2 **Inducements Not Offered.** Grantee, by acceptance of this Franchise awarded hereunder, acknowledges that it has not been induced to accept this Franchise by an understanding or promise or other statement, whether verbal or written, by or on behalf of the Franchising Authority concerning any term or condition of said Franchise that is not included in this Franchise.

8.3 **Grantee Accepts Terms of Franchise.** Grantee, by acceptance of the Franchise awarded hereunder, acknowledges hereunder that it has thoroughly examined and is familiar with the terms and conditions of this Franchise.

SECTION 9
Miscellaneous Provisions

9.1 **Applicable Law.** This Agreement will be deemed to be a contract made under the laws of the State of Alabama and for all purposes will be governed by and interpreted in accordance with the laws prevailing in the State of Alabama and applicable federal law.

9.2 **Entire Agreement.** The terms and provisions of this Agreement constitute the entire agreement between the Parties, and there are no collateral agreements or representations or warranties other than as expressly set forth or referred to in this Agreement.

9.3 **No Forfeiture of Legal Rights or Remedies.** Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either Party may have concerning or arising out of this Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Agreement. Acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all its rights under applicable Federal and State Constitutions and laws.

9.4 **Fees and Costs.** In the event of any disputes or controversies arising from the Agreement or its interpretation, each Party will bear its own attorneys' fees and costs incurred in connection with same.

9.5 **No rights to private property.** Nothing in this Agreement shall be construed expressly or impliedly to grant to Grantee any rights with respect to any private property.

9.6 **Grantee repair, inspection, etc.** All of the obligations imposed by this Agreement upon Grantee with regard to construction shall be equally applicable in the event that Grantee or its agents, employees or contractors, repair, inspect, or otherwise, deal with the Public Ways. All obligations, duties and responsibilities imposed upon Grantee by this Agreement shall be continuing and not limited solely to the construction period.

9.7 **Independent contractor.** The Parties stipulate and agree that Grantee is an independent contractor and neither Party shall take any action or make any statement that could, in any way, suggest a different relationship between the Parties. It is specifically agreed that the Parties hereto are not partners or joint venturers and do not occupy any similar relationship.

9.8 **No guaranty, etc. by Franchising Authority.** It is hereby agreed that neither the Franchising Authority nor any of its officers, officials, employees, agents or contractors have made any guaranty, representation, promise or assurance to Grantee or its officers, officials, employees or contractors, other than as expressly contained in writing in this Agreement; and Grantee stipulates and agrees that it is not relying upon any promise, representation, guaranty or assurance, other than as is contained in writing in this Agreement.

9.9 **Notice.** Any notice or response required under this Agreement shall be in writing and shall be deemed given upon receipt: (i) when hand delivered; (ii) when delivered by commercial courier; or (iii) after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, return receipt requested. The addresses of the Parties for notice are as follows:

If to Franchising Authority: City of Bay Minette, Alabama
301 D'Olive Street
Bay Minette, Alabama 36507

With a Copy to: R. Scott Lewis, Esquire
Attorney for the City of Bay Minette
126 Courthouse Square
Bay Minette, Alabama 36507

If to Grantee: Telepak Networks, Inc.
Jake Cowen, Sr. Vice President
1018 Highland Colony Parkway, Suite 400
Ridgeland, Mississippi 39157

With copy to: Charles L. McBride, Jr.
SVP-Legal & General Counsel
1018 Highland Colony Parkway 39157
Ridgeland, Mississippi, 39157


The Franchising Authority and Grantee may designate such other address or addresses from time to time by giving notice to the other as provided in this Section.

9.10 **Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

9.11 **Amendment of the Agreement and Change of Law.** This Agreement may be amended or modified only by a written instrument executed by both Parties or as otherwise provided by law or the occurrence of any condition stated herein. The Parties agree to consult in the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either the Franchising Authority or Grantee, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the ruling, provides written notice to the other Party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate this Agreement on the provision of thirty (30) days' written notice.

9.12 **Publication.** This Franchise shall be published in accordance with the requirements of Franchising Authority and State law. Grantee shall assume any cost of publication of this Franchise as such publication may be required by law, and such cost is payable upon Grantee's filing of its written acceptance of this Franchise as provided in Section 8.1 of this Franchise.

ADOPTED and APPROVED this 19 day of August, 2024.



Robert A. Wills, Mayor
City of Bay Minette, Alabama

ATTEST:



Rita Diedrich, City Clerk

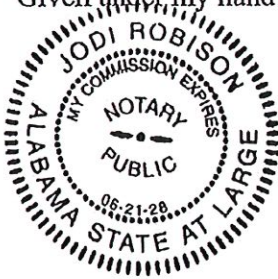
STATE OF ALABAMA



COUNTY OF BALDWIN

I, Jodi Robison, a Notary Public, in and for said County in said State, hereby certify that Robert A. Wills and Rita Diedtrich, whose names as Mayor and City Clerk, respectively, of the City of Bay Minette, Alabama, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this 20th day of August 2024.



Jodi Robison
Notary Public
My Commission Expires: 6.21.28

ACCEPTED and AGREED TO by Telepak Networks, Inc ("Grantee") on this 22nd day of August, 2024.

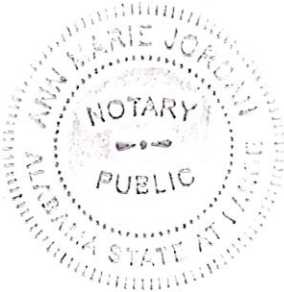
TELEPAK NETWORKS, INC.

Jacob Cowen
BY: JACOB COWEN
ITS: Sr. Vice President

STATE OF Alabama
COUNTY OF Pike

I, Ann Marie Jordan, a Notary Public, in and for said County in said State, hereby certify that JACOB OWEN whose name as Sr. Vice President of Telepak Networks, Inc, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 22 day of August 2024.



Ann Marie Jordan
Notary Public
My Commission Expires: 10/28/25


CERTIFICATE AS TO PUBLICATION

I, the undersigned City Clerk of the City of Bay Minette, Alabama, hereby certify that the foregoing Ordinance was published by me by posting thereof on August 22, 2024 in not less than four public places within the corporate limits of the City of Bay Minette, to wit:

North Baldwin Chamber of Commerce, North Baldwin Utilities, Bay Minette Public Library, and the Mayor's Office, and each of said copies remained continuously so posted for a period of not less than five consecutive days.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official corporate seal of the City of Bay Minette, Alabama.





Rita Diedrich/Clerk
4887-6179-1187, v. 1