

ORDINANCE NO. 1709

AN ORDINANCE AUTHORIZING AND GRANTING TO TELEPAK NETWORKS, INC. AND ITS AFFILIATES d/b/a C SPIRE ("C SPIRE") THE RIGHT TO USE THE RIGHTS-OF-WAY OF THE CITY OF FAIRHOPE, ALABAMA (THE "CITY") TO PROVIDE TELECOMMUNICATIONS SERVICES AND VIDEO SERVICES TO THE CITIZENS OF THE CITY UNDER THE TERMS OF A CONSTRUCTION, RIGHT-OF-WAY USE & FRANCHISE AGREEMENT

WHEREAS, Alabama Code § 11-43-62 authorizes and empowers the City to regulate the use of the streets for the erection of all systems of wires and conduits and generally to control and regulate the use of the streets for any and all purposes, and to grant franchises for such as the City deems advisable; and

WHEREAS, C Spire now desires to enter into a Construction, Right-of-way Use & Franchise Agreement with the City; and

WHEREAS, the Construction, Right-of-way Use & Franchise Agreement attached hereto and incorporated herein by this reference (hereinafter the "Agreement") sets forth the terms and conditions pursuant to which C Spire shall operate its Telecommunications Services and Video Services, including the fees that shall be paid to the City with respect to same.

NOW THEREFORE, BE IT ORDAINED by the City Council (the "Council") of the City of Fairhope, Alabama as follows:

The Mayor is hereby authorized to execute the Agreement for and on behalf of the City. A copy of the Construction, Right-of-way Use & Franchise Agreement is on file in the office of the City Clerk.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance (including the Construction, Right-of-way Use & Franchise Agreement attached hereto) is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. If any of the terms or provisions set forth in the Agreement are inconsistent or otherwise in conflict with any of the terms or provisions in Ordinance Number 1284 (Cable Television), then the terms and provisions set forth in the Agreement shall prevail with respect to the Agreement.

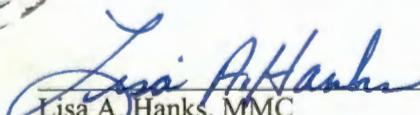
This Ordinance shall take effect immediately upon its due adoption and publication as required by law.

APPROVED AND ADOPTED by the Council this 26th day of April, 2021



WITNESSETH:


Jack Burrell, Council President


Lisa A. Hanks, MMC
City Clerk

CONSTRUCTION, RIGHT-OF-WAY USE & FRANCHISE AGREEMENT

THIS CONSTRUCTION, RIGHT-OF-WAY USE and FRANCHISE AGREEMENT (this "Agreement") is entered into on this 26th day of April, 2021 (the "Effective Date"), by and between the CITY OF FAIRHOPE, ALABAMA (the "City"), and TELEPAK NETWORKS, INC. AND ITS AFFILIATES d/b/a C Spire ("C Spire"). City and C Spire are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

WHEREAS, the City is the owner of certain rights-of-way located along streets maintained by and under the control of the City (the "Rights-of-Way"), and the City is authorized to grant corporations the non-exclusive right to construct, operate, and maintain a telecommunications system within the City; and

WHEREAS, C Spire 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 and Video Services within the City;

WHEREAS, the City and C Spire desire to enter into this Agreement concerning the installation and maintenance of telecommunications facilities within the City's Rights-of-Way, and certain other matters more fully contained herein.

NOW THEREFORE, 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:

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

(a) "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.

(b) "Other Services" means services lawfully provided by C Spire within the City in addition to Telecommunications Services and Video Services including, without limitation, broadband services, and internet access services.

(c) "Person" shall mean any person, firm, partnership, association, corporation, limited liability company, or organization of any kind.

(d) “Public Ways” 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

(e) “Services” collectively refers to Other Services and Telecommunications Services.

(f) “Subscriber” means a Person who lawfully receives Services with C Spire’s express permission within the City.

(g) “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.

(h) “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.

(i) “Telecommunications System” means C Spire’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.

(j) “Video Services” means the one-way transmission to Subscribers within the City 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 City generally, but not to include over-the-top services such as Hulu, Netflix or Sling.

(k) “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 purchasing.

(l) “Gross Revenues” means any revenue derived by C Spire from the operation of the Telecommunications System to provide Telecommunications Services and/or Video Services to Subscribers within the City, adjusted for non-payment. Gross Revenues shall include (i) Video Services fees for any of C Spire’s Video Services or Video Services Tier and (ii) Telecommunications Services fees for C Spire’s local calling plan offering. Gross Revenues shall also include (i) recurring charges for Video Services, including late fees; (ii) event based charges for Video Services, including pay-per-view and video-on-demand charges; (iii) monthly recurring charges for the rental of Video Services Equipment and Video Services accessories; (iv) customer service charges related to the provision of Video Services, including activation, home installation, and repair; (v) advertising revenue and home shopping commissions and (vi) administrative charges related to the provision of Video

Services, including service order and service termination charges. Gross Revenues shall not include (i) any taxes on Services furnished by C Spire by any municipality, state, or other governmental unit and collected by C Spire 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 Franchisee or 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 premise equipment and/or accessories unrelated to Video Services; and/or (ix) other charges unrelated to Video Services or Telecommunications Services that are aggregated or bundled with amounts billed to Subscribers.

(M) **“Service Area”** means the areas of the City where Subscribers are reasonably accessible from the distribution network of the Telecommunications System.

2. **Grant.** City grants C Spire the non-exclusive right and license to construct and operate a Telecommunications System in the Rights-of-Way and a non-exclusive franchise to provide Services to Subscribers located within the City. Subject to the terms of this Agreement and applicable law, C Spire may erect, install, construct, operate, maintain, repair, replace, expand, and reconstruct its Telecommunications System in any Rights-of-Way.

3. **Term.** The license granted under this Agreement shall be for an initial term of ten (10) years from the Effective Date, unless otherwise lawfully terminated (the “Term”). Any renewal of this Franchise shall be performed in accordance with Applicable Laws.

4. **Installation of Facilities.** C Spire shall not install any new Facilities in any Public Way without having received a permit from the City. C Spire shall install all Facilities so as to minimize interference with the proper use of Public Ways, public utilities, and with the rights and reasonable convenience of the City and property owners whose property adjoins any Public Ways. C Spire agrees to the following conditions, limitations, and restrictions related to the installation of its Facilities in, on or through any portion of the Rights-of-Way:

(a) C Spire shall hold a pre-construction meeting with City at least ten (10) days prior to beginning any construction to advise City of its planned activities.

(b) C Spire agrees to supply the City with digital drawings of construction plans ten (10) days prior to construction and digital as-built drawings within six (6) months of the completion of any construction. Final drawings will be supplied in Autocad 2000 using NAD 83 coordinates, GIS format, or such other digital formats as are reasonably acceptable to the Parties.

(c) C Spire agrees to “white-line” its locates.

(d) C Spire lines, where feasible, shall have at least a 12” separation vertically and where feasible at least 24” separation horizontally from all City utility lines, including gas lines, water lines and sewer lines.

(e) C Spire agrees, where feasible, to stay three (3) feet away, measured horizontally, from power poles unless it is utilizing such poles pursuant to a pole attachment arrangement.

(f) C Spire or C Spire's contractor will request locates and City shall provide locates of its facilities as required by Alabama's 811 law and regulations. C Spire will not locate City's utility lines or those of any third party physically or on maps or drawings. C Spire hand hole and clean-up crews will set hand holes and complete clean-up for each section within 2-3 workdays after placement of conduit, weather permitting.

(g) C Spire shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of C Spire'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 C Spire's activities encroaches upon the street, C Spire shall take immediate corrective action to remove the same.

(h) If streets and other Public Ways are damaged by C Spire, its employees, agents or contractors in installation or subsequent maintenance and repair of its Facilities, C Spire, upon written notice from the City and at C Spire's sole expense, shall 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 City.

(i) C Spire shall contact affected property owners to discuss any repairs, dress-up or clean-up of such owners' property necessitated by the installation of C Spire's fiber optic cable, and shall perform any necessary repair, dress-up or clean-up to such property at C Spire's sole expense.

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

(k) At all times, C Spire 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 C Spire, to be adequate and C Spire 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 City 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.

(l) C Spire shall have the authority to trim trees and natural growth on the Rights-of-Way which may affect its Telecommunications System in the Service Area to prevent interference with C Spire's Facilities in accordance with the City ordinance regarding tree cutting and removal.

(n) C Spire shall, on the request of any Person holding a permit to move a building temporarily raise or lower its Facilities, if any, to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of such aerial Facilities shall be paid by the Person requesting the same, and C Spire shall have the authority to require such payment in advance. C Spire shall be given at least sixty (60) days' advance notice to arrange such temporary aerial Facility alterations.

(o) The decision of when and the type of Services provided within the City is solely within the discretion of C Spire during the Term.

Throughout the Term of this Agreement, provided C Spire complies with the foregoing requirements, C Spire shall be entitled to expand and upgrade its Telecommunications System as it deems reasonably necessary.

5. **Relocation of Facilities.** 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.

6. **Damage to Existing Utilities.** C Spire hereby agrees that (a) during the installation process, and (b) at any time after such installation, C Spire will immediately notify the appropriate utility provider in the event that C Spire, 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 C Spire's sole expense, and shall only be made by appropriately licensed and bonded contractors.

7. **Compliance with Codes.** All construction, installation, maintenance, and operation of the Telecommunications System 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, locally adopted codes and ordinances, and local zoning regulations. C Spire shall comply with ordinances, rules, and regulations established by the City pursuant to the lawful exercise of its police powers and generally applicable to all users of the Public Way. To the extent that local ordinances, rules, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this

Agreement shall prevail. City reserves the right to lawfully exercise its police powers. C Spire 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). The City acknowledges that due to the nature of the equipment and underground fiber installation practices of C Spire which differ substantially from this of traditional cable television service providers, compliance with 47 C.F.R. 76.309©(2)(i) is not practicable or required.

8. **Indemnity to City.** At all times both during and after installation, so long as C Spire's Telecommunications System is located upon any portion of the City's Rights-of-Way, C Spire covenants, warrants and agrees to indemnify and hold harmless the City, 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 C Spire's Telecommunications System within the City; (b) provided that the City has complied with Alabama's 811 law and regulations, any injury, loss or damage to the City's utility lines arising from or related to the installation, operation, repair or maintenance of C Spire'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 C Spire's Telecommunications System. Without the intent of limiting any of the foregoing, it is agreed that C Spire shall indemnify and hold harmless, the City, 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 C Spire or its officers, employees, agents, or contractors in connection with the subject of this Agreement, which indemnity shall be at the sole expense of C Spire, including the obligation to pay any and all sums required, including any settlement, judgment, attorney fees, court costs, or otherwise. In the event 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 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 City without City's prior written consent

9. **Franchise Fee.**

(a) As consideration for use of the City's Public Ways as set forth in this Agreement, C Spire agrees to pay to the City upon execution of this Agreement a one-time license fee of Five Thousand Dollars (\$5,000).

(b) **Franchise Fee.** C Spire shall pay the City a franchise fee equal to (i) five percent (5%) of the monthly service charge revenue from sales of local Telecommunications Services and Other Services to Subscribers located within the City, and (ii) a franchise fee of five percent (5%) of the Gross Revenues received by C Spire from the sale of Video Services to Subscribers within the City. 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 C Spire, which shows the basis for the computation of all monthly service charge revenue from providing local Telecommunications Services and Gross Revenues received by C Spire from sale of the Video Services and Other Services to Subscribers located within the City limits during the period for which such Franchise Fee

payment is made. If the Franchise Fee payment is not actually received by the City on or before the applicable due date set forth in this Section, interest shall accrue on the outstanding amount at the state legal interest rate of 6% annually (Alabama Code § 8.8.1).

(c.) Discounted Rates. If C Spire 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 C Spire be permitted to evade or reduce applicable Franchise Fee payments required to be made to City due to discounted bundled services.

(d.) Audit. During the Term of this Agreement, once every twelve (12) months and upon reasonable prior written notice, during normal business hours, the City shall have the right to inspect C Spire’s financial records used to calculate the City’s Franchise Fee, and the right to audit and to re-compute any amounts determined to be payable under this Section at City’s expense; provided, however, that any such audit shall take place within six(6) years from the date City received such payment, after which period any such payment shall be considered final. If City believes it is owed any additional compensation from C Spire it will give C Spire 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.

10. **Public, Education and Government Access Channel.**

(a) PEG Access Channel. At any time after C Spire begins to offer Video Services on a commercial basis to Subscribers within the City, the City may request C Spire to provide the City one (1) video channel for noncommercial PEG Access use. C Spire shall provide the PEG Access channel within one hundred and eighty (180) days of City’s request.

(b) Regulation of PEG Access Channel. The City shall establish reasonable regulations governing use by the public of the PEG Access channel and the content broadcast over the channel. C Spire 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 City shall be solely responsible for all costs, expenses, and equipment necessary for and related to producing or transmitting content over the PEG Access channel. C Spire 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 C Spire. In the event that unused capacity exists on the PEG Access channel, C Spire may request the City to return that capacity to C Spire for C Spire's use. The City shall not unreasonably deny such request.

11. Liability Insurance. At all times, C Spire shall maintain, at its own cost and expense, a general liability policy in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate limit for bodily injury and property damage. Such policy or policies shall designate the City as an additional insured and shall be non-cancellable except upon thirty (30) days' prior written notice to the City. The City shall be provided with a certificate of such coverage. C Spire also currently maintains umbrella liability policies of at least \$10,000,000 in aggregate. In addition, C Spire shall secure any and all other insurance as C Spire, in its sole discretion deems appropriate. Nothing in this paragraph is intended to be a waiver of the City's immunity under State-agent immunity.

12. Books and Records. Throughout the Term of this Agreement, C Spire 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 the C Spire'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 C Spire 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 City shall be retained by C Spire for a minimum period of six (6) years; provided it is understood that C Spire only retains call records for eighteen (18) months.

13. Transfer of Ownership or Control

(a) C Spire shall not transfer this Agreement or any of C Spire's rights or obligations in or regarding the Agreement without the prior written consent of the City, which shall not be unreasonably withheld. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of C Spire in the Agreement or in the System in order to secure indebtedness, (ii) a transfer to any Person controlling, controlled by or under the same common control as C Spire.

(b) C Spire shall give City prior written notice of any impending transfer of Control of C Spire or its assets under Sections 12 (a)(ii) or(iii). Furthermore, C Spire shall ensure that the Person to whom Control of C Spire or its assets is transferred is authorized by the applicable state or federal authority to occupy the Public Ways pursuant to this Agreement and assumes in writing all of the obligations of C Spire under this Agreement effective as of the date of the transfer of Control or sale. C Spire shall provide City with a copy of such assignment instrument upon request. The transfer of Ownership or Control pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Agreement even if such issues predated the transaction, whether known or unknown to City.

(c) For purposes of this Section 13 "Control" means ownership of a majority interest or the actual working control and day to day management of C Spire.

14. **Compliance with Applicable Law.** C Spire shall at all times comply with all laws applicable to its provision of Telecommunications and Video Services in the City. 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 Telepak pursuant to Alabama law.

15. **Enforcement and Termination.**

(a) **Breach.** In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement and all rights and privileges of C Spire hereunder in the event of a material breach of its terms and conditions.

(b) **Notice of Violation.** In the event the City believes C Spire has not complied with the provisions of this Agreement, the City shall make a written demand that C Spire comply with any such provision, rule, order, or determination under or pursuant to this Agreement. If the violation by C Spire continues for a period of thirty (30) days following C Spire's receipt of such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the Agreement before the City Council. The City shall cause to be served upon C Spire, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination, the provisions of this Agreement, under which termination is sought, and the time and place of the meeting. Public notice shall be given of the meeting and issues that the Council is to consider pursuant to the requirements of Alabama law.

(c) **Consideration of Breach.** The City Council shall hear and consider the issue and shall hear any Person interested therein and shall determine whether or not any substantial breach by the C Spire has occurred.

(d) **Declaration of Forfeiture.** If the City Council shall determine the violation by the C Spire was the fault of C Spire and within its control, the Council may, by resolution (i) seek specific performance of any provisions which reasonably lends itself to such remedy, as an alternative to damages; or (ii) commence or action at law for monetary damages; or (iii) declare a substantial breach and declare that this Agreement shall be terminated unless there is compliance within such period as the Council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(d) **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.

16. **Miscellaneous.**

(a) **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, without regard to principles of conflict of laws.

(b) **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.

(c) **Inurement.** This Agreement shall be binding upon, and shall inure to the benefit of, the respective Parties, their successors and assigns, including any and all subsequent owners of the fiber optic lines installed pursuant to this Agreement.

(d) **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.

(e) **No rights to private property.** Nothing in this Agreement shall be construed expressly or impliedly to grant to C Spire any rights with respect to any private property.

(f) **C Spire repair, inspection, etc.** All of the obligations imposed by this Agreement upon C Spire with regard to construction shall be equally applicable in the event that C Spire or its agents, employees or contractors, repair, inspect, or otherwise, deal with the Rights-of-Way. All obligations, duties and responsibilities imposed upon C Spire by this Agreement shall be continuing and not limited solely to the construction period.

(g) **Independent contractor.** The Parties stipulate and agree that C Spire 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.

(h) **No guaranty, etc. by City.** It is hereby agreed that neither the City nor any of its officers, officials, employees, agents or contractors have made any guaranty, representation, promise or assurance to C Spire or its officers, officials, employees or contractors, other than as expressly contained in writing in this Agreement and C Spire 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.

(i) **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 City: ATTN: Mayor U. S. Mail - ATTN: Mayor
 City of Fairhope City of Fairhope
 161 North Section St. P. O. Drawer 429
 Fairhope, AL 36532 Fairhope, AL 36533

If to C Spire: Telepak Networks, Inc.
 Alan Jones, 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, Suite 700
 Ridgeland, Mississippi 39157

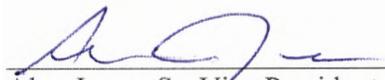
The City and C Spire may designate such other address or addresses from time to time by giving notice to the other as provided in this section.

(j) Severability. If the legislature or a court or regulatory agency of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unconstitutional, all other terms of this Agreement will remain in full force and effect for the Term of the Agreement and any renewal.

(k) Change of Law. In the event that any effective legislative, regulatory, judicial, or legal action materially affects any material terms of this Agreement, or the ability of City or C Spire to perform any material terms of this Agreement, the Parties agree to amend this Agreement as necessary to comply with the changes in law within thirty (30) days of receipt of written notice of such change in law.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers effective as of the Effective Date.

TELEPAK NETWORKS, INC.



Alan Jones, Sr. Vice President

THE CITY OF FAIRHOPE, ALABAMA

By: 

Name: Jack Burrell

Title: Council President