

**RIGHT OF USE PERMIT  
FIBER OPTIC CABLE**

This agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Missouri Network Alliance, LLC dba Bluebird Network (hereinafter "Company").

WHEREAS, Company is in the business of constructing, owning, operating and maintaining fiber optic telecommunications facilities; and

WHEREAS, Company desires to construct, own, operate and maintain interexchange and non-switched local exchange telecommunications facilities for its own profit through the City of Columbia, Missouri by locating a fiber optic line within street rights-of-way through residential, commercial and industrial zones; and

WHEREAS, City acquires, owns and maintains public street rights-of-way as an asset and is authorized by law to manage the public rights-of-way; and

WHEREAS, Company understands and agrees that public street rights-of-ways cost millions of dollars to acquire and annually maintain and improve and are a unique and physically limited resource requiring proper management and control to minimize the expense of the use of such rights-of-way and to insure the public welfare; and

WHEREAS, the public street rights-of-way which Company proposes to use is currently already occupied by electric and local telephone poles and lines, underground water, sewer, storm drainage and natural gas lines, all of which provide a benefit to the public and require routine maintenance necessitating access to and use of the rights-of-way.

NOW, THEREFORE, the parties agree as follows:

1. ROUTE:

Company is granted a right to occupy and use the public street rights-of-way of the City for a subterranean fiber optic telecommunications cable and no other purpose along the following alignment:

Starting at a point on the east quadrant of the intersection of MODOT Route B and E. Brown Station Road, going east along the north right-of-way of E. Brown Station Road for 2,301' to the intersection of E. Brown Station Road and Woodard Dr. Cable will then turn due south and go along the east right-of-way of Woodard Dr. for 805'. Then exiting onto private property.

1.1 LIMITATION OF RIGHTS GRANTED

The right to use City street rights-of-way shall not be construed to create or vest in the Company any easement or ownership or property rights in the rights-of-way and is nonexclusive. The City reserves all rights to grant to other persons similar rights, privileges and authority as set out herein. The City may exercise its rights at any time during this

permit. In accepting this permit, the Company understands and agrees that any rights granted herein are subject to the police powers of the City and the Company shall comply with all applicable City ordinances.

2. TERM

The term of this permit shall be for ten years from the date of the execution of this permit agreement. The permit shall automatically renew for one additional five-year period unless it is terminated by one party giving the other notice of its intent to terminate in writing at least six months prior to the expiration of the current term.

2.1 TERMINATION

The Company may terminate the permit agreement at any time upon a ninety-day written notice to the City. The City may terminate the permit upon a six-month written notice to Company that the Company is in violation or default of the terms of the permit and Company fails or refuses to cure the violation or default within thirty days of the notice. If, after termination of this permit, the Company fails to remove its equipment, facilities or system from the rights-of-way within sixty days, it shall be deemed abandoned by the Company and shall become City property.

3. LINEAR FOOT FEE

For its use of the street rights-of-way within the City, the Company shall pay the City \$1.91 per linear foot annually. The linear distance in feet shall be determined by the length of the corridor occupied by the Company as measured by the City. That distance shall be measured by the City from the Company's plans as the Company or its subcontractors build, lay, drill, or route fiber optic lines or conduits through the City. The Company shall pay the linear foot fee to the City for all conduit or line in the City rights-of-way during the term of this agreement regardless of whether the fiber optic lines or conduits are actually used or connected to the Company's system. The City shall notify the Company of the amount due in writing thirty days prior to the date of payment. At any point in the future, should the Company enter into a franchise agreement with the City and/or be required to pay business license taxes based upon gross receipts, the Company shall be entitled to a credit for any amount paid as business license taxes or gross receipts taxes.

3.1. TIME OF PAYMENT

For linear foot fees during the first year of the permit, the Company shall pay the City \$500.00 upon the execution of the permit agreement by the City and the remainder shall be due upon completion of the Company's construction through the City or within nine months of the date of the execution of permit by the City. Thereafter, the company shall pay the linear foot fees annually within a thirty-day written notice by the City. Gross receipts taxes are to be calculated monthly and due within thirty days after the last day of each month.

3.2 LINEAR FOOT FEE INCREASE UPON PERMIT RENEWAL

Upon the renewal of the permit term for an additional five years, the linear foot fee due the City from the Company shall increase by 7.5%.



3.3 NO ACCORD AND SATISFACTION

All payments due under this permit shall be paid in full by the date due. Acceptance by the City of any amounts tendered shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance be construed as a release of any claim the City may have for additional sums payable under the permit or any other provision of the City's ordinances.

4. CONDITIONS OF CONSTRUCTION IN THE RIGHT-OF-WAY

The Company agrees that its system shall be designed in accordance with standardized good engineering practices and shall conform when applicable with the National Electric Safety Code and all other applicable federal, state and local laws or regulations. The construction of the systems shall be completed in a workmanlike manner and shall be subject at all times to inspection by the City.

4.1 PLANS

Prior to beginning any drilling, trenching, construction or installation work of any kind within the City rights-of-way, the Company shall provide the City Community Development, Public Works and Water and Light Departments with detailed route maps and engineering or construction plans. No work shall begin until the plans are approved and the work is scheduled with the Community Development Department, Building and Site Development Division. All work shall be done in substantial conformity with the plans as approved and shall at all times comply with applicable ordinances and building codes.

4.2 BUILDING PERMITS AND COSTS

No work shall be performed until all required building or construction permits are obtained and the required fees paid. Actual permit fees may not be assessed at the time the permits are taken out. If such is the case, the Company shall agree to pay the required permit fees after assessment and within thirty days written notice by the City.

The Company shall be solely responsible for all costs associated with the construction within the rights-of-way including the cost of all City permits required for such construction. The parties understand and agree that the various City permits are intended to reimburse the City's costs in undertaking permit related review and inspections.

4.3 UTILITY LOCATES

No excavation, drilling or trenching shall occur within the rights-of-way until utility locates for all utilities have been performed. The Company shall request locates at least 72 hours in advance of all underground work.

4.4 OBSTRUCTION OF THE RIGHT-OF-WAY

The Company shall not obstruct or block any City street, road, alley or rights-of-way during the construction without first obtaining permission from the City.

4.5 PROTECTION OF STRUCTURES, REPAIR OF THE RIGHT-OF-WAY

The Company shall, at its own cost or expense, protect any and all existing surface or underground structures, fixtures, drainage facilities, sewers, conduits or pipes belonging to the City or any utility previously located within the rights-of-way during construction or maintenance of the Company's system, conduit or fiber optic lines.

Any rights-of-way, streets, roads, surface or underground structures, fixtures, drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or damaged by the Company's work, either during initial construction or future maintenance replacement or relocation of the Company's fiber optic lines or any conduit or system, shall be promptly repaired or restored to the City's standards or the standards of the utility owning the disturbed or damaged facilities at the Company's expense. All right-of-way restoration work shall be guaranteed by the Company for a period for four (4) years.

4.6 SAFETY

The Company shall, at its own expense, take all necessary steps to mark its vehicles and equipment so as to prevent accidents in the rights-of-way. Work sites shall be protected by safety cones, barriers, fences, safety lights or other suitable devices. Employees and subcontractors shall wear appropriate safety equipment. No holes, trenches or excavations shall be left unprotected or open to the public. The Company and its contractors shall observe all applicable and appropriate safety codes or regulations.

4.7 DISTANCE FROM GAS, WATER AND SEWER LINES

No fiber optic lines, conduits, or facilities shall be located closer than two feet clear in any direction from any natural gas, water, sanitary sewer or storm sewer line, conduit, pipeline or structure.

4.8 AS BUILT DIAGRAMS

Upon the end of work on the Company's fiber optic line or conduit within the City, the Company shall deliver to the Public Works and Water and Light Departments as built diagrams, drawings or maps of Company's fiber optic lines or conduits locating such lines or conduits in plan and profile views with accurate dimension.

5. CONDITIONS OF CONTINUING USE AND OCCUPANCY

During the term of this permit and any renewal thereof, the Company shall, at its own expense, maintain its lines, conduits and system in a safe condition and so as not to interfere with any other utility or facility in the rights-of-way.

5.1 STREET CUTS

The permit does not grant the Company or any of its employees or contractors the right to cut, break, excavate or damage the streets, sidewalks or railroad of the City without the written consent of the City. The Company shall give the City such notice of the need to make cuts, breaks or excavations in the streets or sidewalks as it requires of any person desiring to do such work, and obtain permits and permission to do such work as required by City Code or regulation. All streets, sidewalks or rights-of-way in any way disturbed by the Company shall be replaced or restored to City Standards.



5.2 EMERGENCY WORK

In the event the Company must make emergency repairs to its lines, the Company shall, as soon as possible, but in not case later than 72 hours, obtain the required permissions or permits as set out herein. All cuts, breaks, and excavations in City streets, sidewalks, or rights-of-way shall be protected by safety cones, fences or barriers adequate to prevent injury to the public.

5.3 RIGHT-OF-WAY SUBLEASE

Nothing in this permit agreement shall be construed to give the Company the right to sublease or subdivide its right to use the City's rights-of-way and Company shall have no authority or power to do so or to use the rights-of-way for any purpose other than the operation and maintenance of fiber optic lines, conduits or systems. This section shall not be construed so as to prohibit the Company from leasing or subleasing service over its lines within the City's rights-of-way.

5.4 EMINENT DOMAIN

In the event the City, through its City Council, determines that it is necessary to take Company's property or property interests in this permit for a public purpose, it may acquire that property through eminent domain.

5.5 CITY'S EMERGENCY AUTHORITY

The City may at any time, in case of disaster or other emergency, as determined by the City Manager, or the City Manager's designee in their discretion, excavate, cut or move any of Company's wires, fiber optic lines or facilities without liability to the Company. The City shall give as much notice of such emergency to the Company as it reasonably can under the circumstances of the emergency.

5.6 NEW LINES

If during the term of this permit, Company desires to relocate part or all of the fiber optic lines allowed by this permit, the Company, at its own cost and expense, shall submit new plans and obtain new construction permits and submit itself to the City's review process and be governed by all restrictions on construction set out elsewhere in this permit or set out in City Code ordinance or regulation. The City shall recalculate the annual fee of this permit taking into account the new or additional alignment of Company's lines or conduit.

5.7 REALIGNMENT OF LINES AT GOVERNMENTAL REQUEST

If during the term of this permit, Company is requested or directed by any governmental agency to relocate or realign its lines, conduits or facilities, it shall do so at its own cost and expense and under the same conditions as if it were realigning said lines, conduits or facilities for its own benefit. If such realignment or relocation reduces the total linear footage in City rights-of-way, the annual rent under this permit shall be adjusted accordingly. If realignment or relocation at governmental request or directive increases the total linear footage in City rights-of-way, the rental under this permit shall not be increased by the additional footage required by the realignment or relocation.

- 5.8 The Company's fiber optic lines, conduit or cable shall have a "tone line" or similar technology so as to accurately locate the Company's facilities. The Company agrees to join the Missouri "One Call" system and, upon request by the City or any utility, locate its facilities within 48 hours of the request.

6. INSURANCE

During the term of this permit, Company shall obtain and maintain and shall require all of its permitted contractors or subcontractors to obtain and maintain not less than the following insurance:

6.1 COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial general liability insurance including coverage for operations, independent contractors, products-completed operations, property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, broad form property damage on an "occurrence" basis insuring Company and any other interests, including, but not limited to, any associated or subsidiary companies involved in the operation. The liability insurance shall include contractual liability insurance applicable to Company's obligations under this permit.

The liability insurance shall name the City as an additional insured.

The limits of liability shall be no less than \$2,000,000 for injury or death to any one person and no less than \$10,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than \$2,000,000 for property damage as a result of one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than \$10,000,000. The liability insurance shall include contractual liability insurance applicable to Company's obligations hereunder.

6.2 COMPENSATION INSURANCE

The Company shall take out and maintain during the life of this contract, Employee's Liability and Workers' Compensation Insurance for all of their employees employed at the site of the work, and Company shall require all subcontractors similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Company. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under Missouri's Workers' Compensation Statute, the Company shall provide and shall cause each subcontractor to provide Employee's Liability Insurance for the protection of their employees not otherwise protected.

6.3 AUTOMOBILE PUBLIC LIABILITY AND PROPERTY

The Company shall maintain during the life of this permit, automobile public liability insurance in the amount of not less than \$2,000,000.00 combined single limit for any one occurrence and not less than \$150,000.00 per individual, covering bodily injury, including accidental death, and property damage, to protect themselves from any and all claims



arising from the use of the Company's own automobiles, teams and trucks; hired automobiles both on and off the site of the work.

6.4 PROOF OF INSURANCE

The Company shall furnish the City with certificates of insurance which name the City as additional insured in the amounts required by the permit and which require a thirty day mandatory cancellation notice to the City.

6.5. SELF-INSURANCE

During the term of the permit and any renewal, the Company may self-insure any or all of the insurance required herein after furnishing documentation satisfactory to the City that the Company has \$25,000,000.00 in net assets and does not violate or default the terms of the permit. Any insurance coverage required over its self-insured retention amount shall be maintained through an excess liability carrier satisfactory to the City which must carry an A-6 or better rating as listed in the A.M. Best or equivalent guide.

7. INDEMINIFICATION AND RESPONSIBILITY

The Company understands and agrees that this permit and agreement to use the rights-of-way is between the City and Company and no other parties. The Company is responsible for all its employees, agents, officers, contractors and subcontractors and in the event of damage or injury arising out of Company's use or presence in the rights-of-way, the City is entitled to look to the Company for restitution and compensation and the Company shall not assert that the City must look to any Company employee, officer, agent or any of the Company's contractors, subcontractors or insurers for such payment, restitution or compensation.

7.1 DAMAGE TO CITY OR OTHER UTILITIES

The Company understands and agrees that the right-of-way route proposed by the Company for the Company's use is currently through a developed City and contains various combinations of water, electric, natural gas, telephone, sanitary sewer, storm sewer and other utilities. The Company agrees that should the Company's construction, excavation, drilling or work in the rights-of-way result in damage or injury of any kind to the property or facilities of any of the above listed utilities or any other utility, service or company located in the rights-of-way, the Company shall repair or replace, or have repaired or replaced, the damaged or injured portion of the utility property at its own cost or expense.

7.2 CITY PLAN REVIEW, USE OF CITY MAPS, UTILITY LOCATES

The Company understands and agrees that while the City has existing maps and diagrams of the rights-of-way which may be used by the Company, those maps or diagrams which exist may not be accurate or complete and the City does not guarantee that the maps or diagrams will be adequate for Company's purposes. The use of City maps or diagrams does not release the Company from responsibility for damage or injury to facilities within the rights-of-way nor transfer any responsibility to the City for such damage or injury. Further, the Company agrees and understands that City utilities and facilities within the rights-of-way may have been in place for many years and completely accurate maps and diagrams



may not exist for all of these facilities and some lines, pipes, conduits may not be accurately located by existing location means. The fact that the Company may damage or injure an existing utility while relying upon a City locate shall not relieve the Company from fixing or replacing the damaged utility facility at the Company's cost or expense.

7.3 CITY PLAN APPROVAL, INSPECTION OR GENERAL SUPERVISION

The Company understands and agrees that submission of plans and maps to the city prior to construction, excavation or drilling, the approval of those plans, routing City inspections and City oversight or general supervision of Company's work does not make the City responsible or relieve the Company from responsibility for any damage or injury Company's construction, excavation or drilling may cause to its own property or any utility or facility within the rights-of-way.

7.4 UTILITY WORK WITHIN THE RIGHTS-OF-WAY

The Company understands and agrees that utilities currently within the rights-of-way need maintenance from time to time requiring excavation of the rights-of-way. Further, Company understands and agrees that its fiber optic lines, conduits and facilities will overlay or intermingle with existing utility facilities and will not be segregated or restricted to armored or protected space within the rights-of-way greatly enhancing the risk that any excavation within the rights-of-way will break, damage or injure the Company's property. The Company agrees that if its fiber optic lines, conduits or facilities are broken, damaged or injured in the normal course of business or during an emergency by utility work within the rights-of-way, it will repair or replace the same at its cost and expense and that it will not seek restitution or compensation from the same from the City or any utility.

7.5 INDEMINIFICATION BY THE COMPANY

Company, its successors or assigns, shall indemnify, defend and hold harmless to the City, its officers, employees from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several expenses of any nature (including reasonable attorney, accountant, and expert fees), judgments, fines, settlements and other amounts ("Claim"), provided that the Claim is caused in whole or in part by any negligent act or omission of the Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, and regardless of whether or not the Claim is caused in part by a party indemnified hereunder, and the Claim is relating to or arising from:

- a. Any acts, errors, or omissions of Company, its agents, contractors or employees or any negligence or intentional misconduct thereby in the installation, maintenance or operation of the Company's fiber optic lines, conduits or facilities, or any breach of any obligation or covenant under this permit, or
- b. Any personal injury or death of any person or persons, including, without limitation, agents or employees of the City, and any loss, damage, defacement or destruction of property of the City or its licensees, arising out of the incident to the activities, operations or actions of the Company, its agents, contractors or employees.



7.6 SURVIVAL OF INDEMNIFICATION

The provisions of all the paragraphs in section 7 shall survive the termination of the permit.

8. MISCELLANEOUS

8.1 TAXES

The Company shall be responsible for payment of all personal property and other taxes assessed upon and arising from its presence in or use of City's rights-of-way. The Company's payment of the permit fee required here shall not be construed as a payment in lieu of any tax.

8.2 ASSIGNMENT

The Company will not assign or transfer this agreement without the prior written consent of the City. In considering whether to give its permission to an assignment, the City may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this agreement and whether such an assignment would be injurious to the rights-of-way or be in the best interest of the City. No consent shall be required for an assignment, sublease or other transfer to a parent, subsidiary or to an entity controlled by the Company, under common control with the Company, or controlling the Company. A proposed assignment to any entity which purchases from the Company the equipment shall be subject to the prior consent of the City with the same conditions set out above.

8.3 DESCRIPTION OF SERVICES

Upon execution of this agreement, the Company shall provide the City with a description of all services offered by the Company within the City. The Company shall describe each separate type of service offered. Any bundled service or item for which the Company has a separate charge shall be considered a separate service. Annually thereafter, the Company shall provide the City with a description of any new service offered by the Company within the City during the preceding year or anticipated to be offered within the coming year.

8.4 RIGHT OF INSPECTION

The City, or its designated representative, shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, all of Company's documents, records or other information that pertains to the compliance of the terms of this Agreement.

8.5 CONTINUING OBLIGATION AND HOLDOVER

In the event the Company continues to operate all or any part of the system after the revocation of the permit or notice to cease operations from the City, the Company shall continue to comply with all applicable provisions of the permit, including, without limitation, all compensation and other payment provisions of the permit, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a waiver, renewal, granting or other extension of the permit, nor as a limitation on the remedies, if any, available to City as a result of such continued operation of the Term, including, but not limited to, damages and restitution.

8.6 WAIVER

Failure of the City to require performance of any term of this permit or to take steps to enforce the terms of this permit at any time shall not be construed a waiver of the City's right to insist upon full performance of the permit or affect the right of the City to enforce the permit. The actual waiver by the City of any breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision of the permit.

8.7 NOTICE

All notices, requests, demands and other communications required under this permit shall be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law:

For the Company:

Missouri Network Alliance, LLC dba  
Bluebird Network  
Jack Coles, Director of OSP Engineering  
800 NW Chipman Road, Suite 5750  
Lee's Summit, MO 64063

For the City:

City of Columbia, Missouri  
Mike Matthes, City Manager  
701 East Broadway, 2<sup>nd</sup> Floor  
P.O. Box 6015  
Columbia, MO 65205-6015

8.8 SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this permit 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 of this permit.

8.9 ENTIRE AGREEMENT

The permit agreement constitutes the entire agreement and understanding of the parties. Any amendments to the permit agreement must be in writing and executed by both parties. If, however, the City in the future by legislative action adopts a comprehensive right-of-way ordinance, the terms of that ordinance shall apply to and modify this agreement to the extent any provision of that comprehensive right-of-way ordinance shall conflict with this permit agreement.

8.10 AGREEMENT FOR THE BENEFIT OF THE PARTIES

This permit agreement is entered into for the benefit of the parties thereto. Nothing in this permit agreement shall be construed to be for the personal or private benefit of any third party.



8.11 GOVERNING LAW

This permit agreement shall be construed in accordance with the laws of Missouri.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF COLUMBIA, MISSOURI

By:

\_\_\_\_\_  
Mike Matthes, City Manager

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
, City Counselor

STATE OF MISSOURI                    )  
  ) ss  
COUNTY OF BOONE                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me appeared Mike Matthes, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first written above.

\_\_\_\_\_  
Notary Public

My Commission expires:



COMPANY:

By: 

Title: Chief Operating Officer

ATTEST: (if corporation)

\_\_\_\_\_  
Secretary

STATE OF Missouri )  
 ) ss  
COUNTY OF Cass )

On this 22nd day of February, 20 17 before me, a notary public of the State of Missouri appeared Stephen M. Crane, the C.O.O. of said MoNetwork Alliance dba Bluebird Network and known to be the person who executed the within agreement on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

  
Notary Public

My commission expires: 6/21/2020

ROSEMARY F. HUFFMAN  
Notary Public - Notary Seal  
State of Missouri  
County of Cass  
My Commission Expires June 21, 2020  
Commission #12412090

Exhibit A

