

INTERGOVERNMENTAL COMMUNICATIONS RESOURCE LICENSE AGREEMENT

Between
STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
and
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

THIS LICENSE AGREEMENT is entered into _____, 20__, by and between the STATE OF TENNESSEE, acting by and through its DEPARTMENT OF TRANSPORTATION ("TDOT"), and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. ("Metro").

RECITALS

1. The Commissioner of TDOT is empowered by Tennessee Code Annotated § 4-3-2303 to enter into this License Agreement.
2. Metro is empowered to enter into this License Agreement and has authorized the undersigned to execute this License Agreement on behalf of Metro.
3. TDOT has developed an Intelligent Transportation System that lies within the limits of the Metropolitan Government area and contains a fiber optic communications backbone network ("State Fiber Optic Network").
4. Metro has previously constructed a fiber optic communication backbone network that covers extensive portions of the Metropolitan Government area for the purpose of a Metro operated fiber optic communications backbone network ("Metro's Fiber Optic Network").
5. TDOT and Metro both currently control existing surplus dark fibers and conduit space contained within their own respective fiber optic communication networks, and both parties desire access to additional fiber circuits along alternative paths, or alternative paths for fiber installation from their existing facilities to improve each party's network reliability. A mutual licensing of access to and use of existing surplus facilities in lieu of independent facility construction is in the economic best interest of both parties.
6. TDOT wishes to gain access to and use existing surplus dark fibers or conduit space within the City Fiber Optic Network, and Metro wishes to gain access to and use existing surplus dark fibers or conduit space within the State Fiber Optic Network in order to improve network reliability for both Metro and TDOT.

THEREFORE, in consideration of these premises and the mutual promises contained herein, the parties hereto agree as follows:

I. LICENSES

1. For the purpose of allowing TDOT to improve network reliability in the State Fiber Optic Network, Metro hereby gives a no cost a license to TDOT, revocable and terminable as provided herein, to have access to and use dark fiber optic strands within Metro's Fiber Optic Network, where available, subject to the approval of the Director of ITS.

2. For the purpose of allowing Metro to improve network reliability in Metro's Fiber Optic Network, TDOT hereby gives at no cost a license to Metro, revocable and terminable as provided herein, to have access to and use dark fiber optic strands within the State Fiber Optic Network, where available, subject to the approval of the Traffic Operations Division Director.

II. PARTY RESPONSIBILITIES

4. To achieve the purposes of this License Agreement, TDOT will:
- a. Construct demarcation cabinets at locations where the Licensed State Network Routes intersect with Metro's Fiber Optic Network. These demarcation cabinets will provide Metro with the point of entry to Licensed State Network Routes, and TDOT hereby permits authorized representatives of Metro to have reasonable access to these demarcation cabinets for the purposes described in this License Agreement. Metro will not have access to the State Fiber Optic Network facilities beyond these demarcation cabinets, apart from the licensed use of surplus dark fibers along the Licensed State Network Routes as provided herein, and the same restriction shall apply to TDOT regarding access to Metro's Fiber Optic Network facilities.
 - b. Provide Metro with the use of dark fiber optic strands along and within the Licensed State Network Routes in exchange for the use of comparable dark fiber optic strands along Metro's Network Routes. The fiber optic strands provided under this License Agreement will accommodate a power loss budget of no greater than 0.5 decibel (db) per mile.
 - c. Provide the necessary electronic means of lighting all dark fiber optic strands provided to TDOT by Metro under this License Agreement.
 - d. Maintain the fiber optic strands made available for Metro's use under this License Agreement. Upon notification from an authorized representative of Metro regarding the loss of service, TDOT will use its best efforts to respond with maintenance personnel within four (4) hours of notification. The goal will be to restore service within four (4) hours of response. If special circumstances prevent service restoration within eight (8) hours of notification, TDOT will notify Metro of the reason and estimated time to restore.
5. To achieve the purposes of this License Agreement, Metro will:
- a. Populate TDOT demarcation cabinets at locations where Metro's Network Routes intersect with the State Fiber Optic Network. These demarcation cabinets will provide TDOT with the point of entry to Metro's Network Routes, and Metro hereby permits authorized representatives of TDOT to have reasonable access to these demarcation cabinets for the purposes described in this License Agreement. TDOT will not have access to Metro's Fiber Optic Network facilities beyond these demarcation cabinets, apart from the licensed use of surplus dark fibers along the Licensed Metro Network Routes as provided herein, and the same restriction shall apply to Metro regarding access to the State's Fiber Optic Network facilities.
 - b. Provide TDOT with the use of dark fiber optic strands along and within Metro's Network Routes in exchange for the use of comparable dark fiber optic strands along the Licensed State Network Routes. The fiber optic strands provided under this License Agreement will accommodate a power loss budget of no greater than 0.5 db per mile.
 - c. Provide the necessary electronic means of lighting all dark fiber optic strands provided to Metro by TDOT under this License Agreement.

- d. Maintain the fiber optic strands made available for TDOT's use under this License Agreement. Upon notification from an authorized representative of TDOT regarding the loss of service, Metro will use its best efforts to respond with maintenance personnel within four (4) hours of notification. The goal will be to restore service within four (4) hours of response. If special circumstances prevent service restoration within eight (8) hours of response, Metro will notify TDOT of the reason and estimated time to restore.

III. MISCELLANEOUS PROVISIONS

6. The parties recognize that it is in their mutual interest for their respective fiber optic networks to be operated as efficiently as possible in accordance with the requirements set forth in this License Agreement. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this License Agreement. Should either party believe that the other is not acting timely or reasonably in responding to a request for action under this License Agreement, that party shall notify the appropriate person or agent.
7. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties; and neither party is authorized to, nor shall either party act toward third persons or the public, in any manner which would indicate any such relationship with the other.
8. This License Agreement, with the attachment hereto as incorporated herein, represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, superseding all prior oral negotiations between the parties. This License Agreement may be amended, supplemented, modified, or changed only by a written amendment executed by the parties hereto.
9. All notices or demands upon any party to this License Agreement shall be in writing and shall be hand delivered, emailed, or mailed to the following persons, or to such other persons as either party may hereafter identify in writing:

<p>Tennessee Department of Transportation Traffic Operations Division 505 Deaderick Street, Suite 1200 James K. Polk Building Nashville, TN 37243 Phone (615) 741-5017</p>	<p>Attn: Mr. Lee J. Smith; PE Interim Director, Traffic Operations Division Lee.J.Smith@tn.gov</p>
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10. The licenses granted under this License Agreement shall not be transferred or assigned to any other party without the prior written approval of the parties hereto.
11. Neither party shall hold the other responsible for any loss of service that may arise from any loss of communication connectivity in the surplus fibers licensed from the other party.
12. Either party may terminate this License Agreement at will upon giving written notice thereof to the other party at least twelve (12) months in advance of the effective date of termination.

13. This License Agreement shall be subject to applicable Federal, State or local laws. If any section, subsection, sentence, clause, phrase, or portion of this agreement 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 the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY, TENNESSEE**

STATE OF TENNESSEE
Department of Transportation

By _____
John Cooper, Metropolitan Mayor

By Howard H. Eley
Howard H. Eley, Commissioner, TDOT

Approved as to Availability of Funds:

Kelly Flannery
Kelly Flannery, Director of Finance

Approved as to Form and Legality:

John Reinbold
John Reinbold (Jul 25, 2022 16:30 CDT)
John Reinbold, General Counsel, TDOT

Approved as to Form and Legality:

Tara M. Ladd
Metropolitan Attorney

ATTEST:

Austin Kyle, Metropolitan Clerk

DATE: _____