

## **Amendment to Conduit Occupancy License Agreement**

This Amendment to Conduit Occupancy License Agreement (the "Amendment") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Effective Date") between The City of Milwaukee, a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, WI 53202 (herein called "Licensor") and Midwest Fiber Networks, L.L.C., with its principal place of business located at 720 West Virginia Street, Milwaukee, WI 53204 (herein called "Licensee").

### **RECITATIONS**

A. Licensor approved that certain Conduit Occupancy License Agreement (the "License") with Licensee dated as of the \_\_\_\_ day of July, 2002 whereby Licensor agreed to make portions of its Conduit System available to Licensee for the placement, operation and maintenance of Licensee's Facilities.

B. Licensor and Licensee now desire to amend certain terms of the License as more specifically set forth in this Amendment with all other terms and conditions of the License to remain unchanged and incorporated herein by reference. To the extent there is any conflict or inconsistency between the License and this Amendment, this Amendment shall control.

C. Licensor's Common Council has approved this Amendment via Common Council Resolution File No. \_\_\_\_ adopted on \_\_\_\_\_ 2002.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitations and the mutual promises hereinafter set forth in this Amendment and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), it is agreed as follows:

1.0 **Term.** The License shall become effective on the Effective Date of this Amendment and shall continue in effect for an initial term of four (4) years unless otherwise terminated as provided herein or by operation of law. At its option, Licensee may extend this License for up to four additional four (4) year terms upon the terms and conditions herein, except for the License Fee and liability insurance requirements which shall be adjusted upon each such extension in accordance with Section 98-13 of the Milwaukee Code of Ordinances to ensure an equitable assessment of fees throughout the initial and extended terms of the License.

2.0 **Reservation for Licensor's Use.** During the term of this Agreement, Licensee shall reserve for Licensor four (4) dark fiber strands located within each of Licensee's cables installed in the Licensor's Conduit System. Licensor's right to use and access the dark fiber strands shall be subject to the terms and conditions of Licensee's standard form Indefeasible Right of Use (IRU) Agreement to be entered into prior to Licensor's use or access to the strands. Licensee shall charge Licensor a rate equal to the lowest rate it charges its other customers accessing Licensee's Facilities in the Licensor's Conduit System.

3.0 **Discussion Period upon Default.** If Licensee defaults and abandons its Facilities per Section I.3 of the License, Licenser agrees to temporarily suspend the exercise of its remedies under the License for a period of one hundred and eighty (180) days from the time of abandonment to entertain good faith discussions with any interested parties holding a contractual or legal interest in the Facilities (in whole or in part). It is the intent of these discussions that Licenser and interested parties will explore reasonable alternatives for the continued operation and maintenance of the Facilities for the remaining term consistent with the spirit and intent of the License. Licensee agrees to notify the Commissioner of Public Works of any parties holding a contractual or legal interest in the facilities within 60 days of such interests granted by Licensee.

4.0 **Permitted Use.** Subject to the limitations of use set forth in Section M.4 of the License, the parties acknowledge that Licensee may make its Facilities available for use by third parties (whether public or private) for various communications applications consistent with its certification as a Competitive Local Exchange Carrier by the Wisconsin Public Service Commission.

5.0 **Placement & Maintenance.** Pursuant to Section D.2 of the License, the Licenser authorizes Licensee's designee CableCom, LLC to operate and maintain Licensee's Facilities in the Conduit System subject to any customary requirements established by the Commissioner of Public Works from time to time. At the discretion of the Commissioner of Public Works, Licensee or their designee CableCom, LLC may be authorized to install and place Licensee's facilities in the City Underground Conduit System.

6.0 **Remaining Provisions.** Except as modified by this Amendment, all remaining terms and conditions of the License remain unaltered and in full force and effect.

7.0 **Definitions & Recitations.** Any capitalized terms not defined in this Amendment shall have the meaning prescribed to them in the License. The Recitations are acknowledged as true and are incorporated herein as binding provisions of this Amendment.

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be properly executed, intending that it shall be legally binding as of the Effective Date specified above.

**Midwest Fiber Networks, LLC**

By: \_\_\_\_\_  
Donna Raffaelli-Meyer,  
Authorized Member

**City of Milwaukee**

By: \_\_\_\_\_  
City Engineer

By: \_\_\_\_\_  
Commissioner of Public Works

By: \_\_\_\_\_  
Comptroller