



1 local intrastate wireline telecommunications services and/or video services provided by the  
2 Grantee and billed to its end user customers, in both respects, within the corporate limits of  
3 the City and from operation of the Company's Network installed pursuant to this Agreement.  
4 Notwithstanding the foregoing definition, the term Gross Revenues shall not include the  
5 following: (1) those revenues that the Grantee has received or will receive from another  
6 telecommunications service provider and upon which the other telecommunications provider  
7 has paid or will pay a franchise fee; and (2) revenues that the Grantee has received from its  
8 corporate parent, subsidiary, or an affiliate.

9 (e) "Public Improvement" - means any existing or contemplated facility, building, or Capital  
10 Improvement Project, owned, occupied or used by the City, including without limitation  
11 streets, alleys, sidewalks, sewer, water, drainage, Rights-of-Way improvements, and Public  
12 Projects.

13 (f) "Public Project" - means any project, or that portion thereof, planned, undertaken or financed  
14 through the City or any governmental entity for construction, reconstruction, maintenance, or  
15 repair of Public Improvements, or for any other purpose of a public nature or in the public  
16 interest. In designating a project as a Public Project, the City shall use reasonable discretion.

17 (g) "Public Right-of-Way" - means all City real property, including air rights, as well as any area  
18 of real property in which the City has a dedicated or acquired right-of-way interest in the real  
19 property. It shall include the area on, below or above the present and future streets, alleys,  
20 avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The  
21 term does not include the airwaves above a right-of-way with regard to wireless  
22 telecommunications or other non-wire telecommunications or broadcast service, easements  
23 obtained by utilities or private easements in platted subdivisions or tracts.

24 (h) "Private Development Project" - means a project, or that portion thereof, planned, undertaken  
25 or financed by a non-governmental third-party that is primarily for the benefit and use of the  
26 third party. As used herein, the term Private Development Project does not include any  
27 project or portion that is a Public Project.

28 (i) "Telecommunication Services" - means providing the means of transmission, between or  
29 among points specified by the user, of information of the user's choosing, without change in  
30 the form or content of the information as sent and received.

31 **Section 3. Basic Grant of Franchise.**

32 (a) There is hereby granted to Grantee a nonexclusive license to construct, maintain, extend and  
33 operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of  
34 supplying Telecommunication Services to the consumers or recipients of such service located within

1 the corporate boundaries of the City, for the term of this Agreement, subject to the terms and  
2 conditions of this Agreement.

3 (b) The grant of this Agreement by the City shall not convey title, equitable or legal, in the Public  
4 Right-of-way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and  
5 for the period stated in this Agreement. This Agreement does not:

6 (1) Grant the right to use Facilities or any other property, telecommunications related or  
7 otherwise, owned or controlled by the City or a third-party, without the consent of such party;

8 (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on  
9 property owned by the City outside of the Public Right-of-Way, specifically including, but  
10 not limited to, parkland property, City Hall property or public works facility property; or

11 (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating  
12 its Facilities on the Facilities owned or controlled by the City or a third-party; or,

13 (4) Negate any provision of the City's utility relocation policy.

14 (c) As a condition of this grant, Grantee is required to obtain and is responsible for any necessary  
15 permit, license, certification, grant, registration or any other authorization required by any appropriate  
16 governmental entity. Grantee shall also comply with all applicable laws, statutes and/or City  
17 regulations (including, but not limited to those relating to the construction and use of the Public  
18 Right-of-Way or other public property).

19 (d) This authority to occupy the Public Right-of-Way shall be granted in a competitively neutral  
20 and nondiscriminatory basis and not in conflict with State or Federal Law.

21 **Section 4. Use of Public Right-of-Way.**

22 (a) Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon  
23 and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained as not to  
24 obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other  
25 utilities.

26 (b) Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the  
27 reasonable public health, safety and welfare requirements and regulations of the City. The City may  
28 exercise its powers in its administration and regulation related to the management of the Public Right-of-  
29 Way. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies,  
30 resolutions and ordinances adopted by the City, relating to the construction and use of the Public Right-  
31 of-Way.

32 (c) Further, Grantee shall comply with the following:

33 (1) Grantee's use of the Public Right-of-Way shall in all matters be subordinate to the City's use  
34 or occupation of the Public Right-of-Way. Without limitation of its rights, the City expressly

1 reserves the right to exercise its governmental powers now and hereafter vested or granted in  
2 the City. Grantee shall coordinate the installation of its Facilities in the Public Right-of-Way  
3 in a manner which minimizes adverse impact on Public Improvements, as reasonably  
4 determined by the City. Where installation is not otherwise regulated, the Facilities shall be  
5 placed with adequate clearance from such Public Improvements so as not to impact or be  
6 impacted by such Public Improvement as defined in the City's Engineering Design Standards  
7 and Construction Specifications.

8 (2) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or  
9 improvements of any kind located within the Public Right-of-Way damaged or removed by  
10 Grantee in its activities under this Agreement shall be fully repaired or replaced promptly by  
11 Grantee without cost to the City to the reasonable satisfaction of the City; however, when  
12 such activity is a joint project of utilities or franchise holders, the expenses thereof shall be  
13 prorated among the participants, and to the reasonable satisfaction of the City in accordance  
14 with the ordinances and regulations of the City pertaining thereto. Nothing in this Agreement  
15 shall require Grantee to repair or replace any materials, trees, flowers, shrubs, landscaping or  
16 structures that interfere with Grantee's access to any of its Facilities located in a utility  
17 easement. Any excavation, back filling, repair and restoration, and all other work performed  
18 in the rights-of-way shall be done in conformance with the City's engineering design  
19 standards and construction specifications, as promulgated by the City. The City has the  
20 authority to inspect the repair or replacement of the damage, and if necessary, to require  
21 Grantee to do the additional necessary work. At the time of any inspection, the City Engineer  
22 may order the immediate cessation of any work, which poses a serious threat to the life,  
23 health, safety, or wellbeing of the public. Notice of the unsatisfactory restoration and the  
24 deficiencies found will be provided to Grantee and a reasonable time not to exceed thirty (30)  
25 days will be provided to allow for the deficiencies to be corrected.

26 (3) Except in the event of an emergency, as reasonably determined by Grantor, Grantee shall  
27 comply with all laws, rules, regulations, policies, resolutions, or ordinances now or  
28 hereinafter adopted or promulgated by the City relating to any construction, reconstruction,  
29 repair, or relocation of Facilities which would require any street closure which reduces traffic  
30 flow. Notwithstanding the foregoing exception all work, including emergency work  
31 performed in the traveled way or which in any way impacts vehicular or pedestrian traffic  
32 shall be properly signed, barricaded and otherwise protected.

33 (4) Grantee shall maintain and file with the City updated maps, in such form as may be required  
34 providing the location and sufficient detail of all existing and new facilities in the Public

1 Right-of-Way, and such other related information as may be reasonably required by the City.  
2 Such maps shall be updated and kept current with the City.

3 (5) Grantee shall be responsible for its costs that are directly associated with its installation,  
4 maintenance, repair, operation, use, and replacement of its Facilities within the Public Right-  
5 of-Way.

6 (6) Grantee shall be responsible for its own costs incurred removing or relocating its Facilities  
7 when required by the City for purposes, as part of a Public Project consistent with the City  
8 utility relocation policy in effect at the time. If Grantee wishes to challenge that a project is a  
9 Public Project, it shall relocate its facilities pursuant to this subsection immediately upon  
10 written request, and shall resolve any questions as to whether the project is a Public Project at  
11 a later time. FAILURE TO DO SO CAN RESULT IN THE TERMINATION OF THIS  
12 FRANCHISE AND AN ORDER TO REMOVE ALL FACILITIES AT GRANTEE'S  
13 EXPENSE WITHOUT RESCOURSE AGAINST THE CITY.

14 (7) Grantee shall take adequate measures to protect and defend its Facilities in the Public Right-  
15 of-Way from harm or damage. If Grantee fails to accurately locate Facilities when requested,  
16 it shall have no claim for costs or damages against the City.

17 (8) At a minimum, and without limitation, Grantee shall comply with all building and zoning  
18 codes currently or hereafter in force in the City.

19 (9) Grantee shall comply with all technical and zoning standards governing construction,  
20 reconstruction, installation, operation, testing, use, maintenance, and dismantling of the  
21 Facilities in the Public Right-of-Way, as required by present and future Federal, State, and  
22 City Laws and Regulations.

23 (10) Permission is hereby granted to the Grantee to trim trees upon and overhanging the Right-of-  
24 Way if such trimming is necessary to prevent imminent damage to the Facilities. For routine  
25 trimming operations, customers shall be contacted at least one (1)-week in advance by either  
26 personal contact or by informational door hanger.

27 (11) The Company shall pay to the City franchise fees beginning with the calendar year  
28 immediately following its generation of Gross Revenues, an amount equal to 5% of Gross  
29 Revenues as defined in this Agreement. The rate shall be 5% unless or until agreed otherwise  
30 between the parties or otherwise changed by law, and shall be ratified annually by the City as  
31 appropriate. In addition, the Grantee will provide the City with four (4) dark pairs of fiber for  
32 the City's use for public purposes, provided that this obligation applies only to fiber placed  
33 by Grantee and does not apply where Grantee has leased fiber space in the facilities of  
34 another entity with which the City has a franchise. Grantee, at the City's cost, shall perform

1 all splicing, maintenance, and repairs to the City Fibers. Cost to the City shall be the  
2 actual invoice cost for such splicing, maintenance, and repairs plus ten percent (10%).  
3 Grantee shall provide actual documentation for splicing, maintenance, and repair which  
4 shall be included with the invoice to the City.

5 **Section 5. Indemnity and Hold Harmless Requirements.**

6 (a) Grantee shall indemnify, defend and hold harmless (the “Indemnifying Party”) the City, its  
7 directors, officers, employees, representatives, members, partners, trustees and affiliates (collectively the  
8 “Indemnified Party”) from and against any and all costs, liabilities, losses and expenses (including, but  
9 not limited, reasonable attorneys’ fees) resulting from any claim, demand, suit, action, judgment, loss or  
10 proceeding brought against the Indemnified Party for:

- 11 (1) personal injury including death;
- 12 (2) the damage to any personal or real property;
- 13 (3) any unauthorized use of the facilities of the Indemnified Party; or
- 14 (4) a violation of any United States intellectual property right including patents, copyrights,  
15 trademarks, or service marks all of which must be established under United States Law,  
16 arising directly or indirectly from the negligence or intentional acts or omissions of the  
17 Indemnifying Party or its directors, officers, employees, contractors, representatives or  
18 agents. If Grantee and the City are found jointly liable by a court of competent jurisdiction,  
19 liability shall be apportioned comparatively in accordance with the laws of the state of  
20 Arkansas without, however, waiving any governmental immunity available to the City under  
21 State Law and without waiving any defenses of the parties under State or Federal Law.

22 (b) During any construction phase, Grantee shall have in place commercial, general liability, and  
23 automobile liability insurance in amounts acceptable to the City.

24 **Section 6. Reservation of Rights.**

25 (a) The City specifically reserves its right and authority as a customer of Grantee and as a public  
26 entity with responsibilities towards its citizens, to participate to the full extent allowed by law in  
27 proceedings concerning Grantee’s rates and services to ensure the rendering of efficient  
28 Telecommunications Service and any other services at reasonable rates, and the maintenance of Grantee’s  
29 property in good repair.

30 (b) In entering into this Agreement, neither the City’s nor Grantee’s present or future legal rights,  
31 positions, claims, assertions or arguments before any administrative agency or court of law are in any way  
32 prejudiced or waived. By entering into this Agreement, neither the City nor Grantee waive any rights, but  
33 instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law  
34 or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness

1 of any present or future laws, non-franchise ordinances and/or rulings.

2 **Section 7. Failure to Enforce.** The failure of either the City or the Grantee to insist in any one or  
3 more instances upon the strict performance of any one or more of the terms or provisions of this  
4 Agreement shall not be construed as a waiver or relinquishment for the future of any such term or  
5 provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be  
6 deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing  
7 and signed by both the City and the Grantee. This provision does not apply to Grantee's requirements  
8 under Section 4 (c) (4) above, nor shall it preclude the City from declaring that the franchise is abandoned  
9 should Grantee declare bankruptcy, enter into receivership, or have any action occur which leads to its  
10 continued failure to meet all of the terms of this franchise for a period of three (3) consecutive months.

11 **Section 8. Term and Termination Date.**

12 (a) This Agreement shall be effective for a term of ten (10) years from the effective date of this  
13 Agreement. Thereafter, this Agreement will renew for additional five (5)-year terms, unless either party  
14 notifies the other party of its intent to terminate or renegotiate the Agreement at least 180 days before the  
15 termination of the then current term. The additional term shall be deemed a continuation of this  
16 Agreement and not as a new franchise or amendment.

17 (b) Upon written request of either the City or Grantee, this Agreement shall be renegotiated at any  
18 time in accordance with the requirements of State Law upon any of the following events: changes in  
19 Federal, State, or local laws, regulations, or orders that materially affect any rights or obligations of either  
20 the City or Grantee.

21 (c) In the event the parties are actively negotiating in good faith a new agreement or an amendment to  
22 this Agreement upon the termination date of this Agreement, the parties by written mutual agreement may  
23 extend the termination date of this Agreement to allow for further negotiations.  
24 Such extension period shall be deemed a continuation of this Agreement and not as a new franchise  
25 license or amendment.

26 (d) This Agreement shall be subject to any changes in local, state, or federal law or regulation, or any  
27 modifications of the City utility relocation policy.

28 **Section 9. Point of Contact and Notices.** Grantee shall at all times maintain with the City a local  
29 point of contact who shall be available at all times to act on behalf of Grantee in the event of an  
30 emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax  
31 number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the  
32 City Clerk or the Public Works Department Director. All other notices between the parties shall be in  
33 writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail,  
34 return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt

1 requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail  
2 unless otherwise provided. Any notice given by facsimile is deemed received by the next business day.  
3 “Business day” for purposes of this section shall mean Monday through Friday, City and/or Grantee  
4 observed holidays excepted.

5 If to City:

6 Office of the City Manager  
7 500 West Markham Street, 2nd Floor  
8 Little Rock, Arkansas 72201  
9 (501) 371-4510

10 If to Ritter Communications:

11 Ritter Communications Holdings, Inc.  
12 Attn: John D. Strode  
13 2400 Ritter Drive  
14 Jonesboro, AR 72401  
15 (870) 336-2345

16 **Section 10. Transfer and Assignment.** This Agreement is granted solely to the Grantee and shall not  
17 be transferred or assigned without the prior written approval of the City which shall be in accordance with  
18 applicable law; provided that such transfer or assignment may occur without written consent of the City to  
19 a wholly owned parent or subsidiary, between wholly owned subsidiaries, or to an entity acquiring all or  
20 substantially all of Grantee’s assets, upon notice to the City.

21 **Section 11.** Acceptance of Terms. Grantee shall have sixty (60) days after the final passage and  
22 approval of this Agreement to file with the City Clerk its acceptance in writing of the provisions, terms  
23 and conditions of this Agreement, which acceptance shall be duly acknowledged before some officer  
24 authorized by law to administer oaths; and when so accepted, this Agreement and acceptance shall  
25 constitute a contract between the City and Grantee subject to the provisions of the laws of the State of  
26 Arkansas, and such contract shall be deemed effective on the date Grantee files acceptance with the City.

27 **Section 12.** Force Majeure. Each and every provision hereof shall be reasonably subject to acts of  
28 God, fires, strikes, riots, floods, war and other disasters beyond Grantee’s or the City’s control.

29 **Section. 13. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase or  
30 word of this ordinance is declared or adjudged to be invalid or unconstitutional such declaration or  
31 adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and  
32 effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the  
33 ordinance.

34 **Section 14. Repealer.** All laws, ordinances, resolutions, and parts of the same that are inconsistent



1 with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

2 **PASSED: March 15, 2016**

3 **ATTEST:**

**APPROVED:**

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6 \_\_\_\_\_  
Susan Langley, City Clerk

\_\_\_\_\_ **Mark Stodola, Mayor**

7 **APPROVED AS TO LEGAL FORM:**

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Thomas M. Carpenter, City Attorney

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