Ordinance No. 2555

ORDINANCE OF THE CITY OF BILOXI, MISSISSIPPI GRANTING A NON-EXCLUSIVE FRANCHISE TO UNITI FIBER GULFCO, LLC TO LAY, CONSTRUCT, MAINTAIN, REPLACE, REPAIR, AND OPERATE FIBER OPTIC CABLE AND APPURTENANT TELECOMMUNICATIONS FACILITIES IN, UNDER, OVER, ACROSS AND ALONG ALL STREETS, AVENUES, ALLEYS HIGHWAYS, ROADS, BRIDGES, VIADUCTS AND PUBLIC PLACES IN THE CITY OF BILOXI, MISSISSIPPI

WHEREAS, Uniti Fiber GulfCo, LLC ("Uniti Fiber"), is a Mississippi Limited liability company which is licensed to do business in Mississippi, organized, among other things for the purpose of constructing fiber and furnishing internet, broadband, and communication services, including telecommunication services, in the State of Mississippi, and which has been authorized by statute to provide such services in Mississippi;

WHEREAS, Uniti Fiber is in the process of constructing certain facilities as authorized by statute, a portion of which such facilities will be located within the city limits of Biloxi, Mississippi;

WHEREAS, Section 77-17-1 et. seq. of the Mississippi Code of 1972, as amended, grants companies such as Uniti Fiber the authority to construct facilities along and across public highways and streets, but not in a manner so as to be dangerous to persons or property or to unreasonably interfere with the common use of such highways and streets; and

WHEREAS, Sections 21-27-1, 21-13-3, and 77-9-713 of the Mississippi Code of 1972, as amended, authorizes the City of Biloxi, Mississippi (the "City") the authority to regulate the manner in which such facilities shall be constructed and maintained along and within the rights-of-way of the municipality's streets.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI AS FOLLOWS:

Ord. No. 2555

SECTION ONE: The City of Biloxi does hereby find and adjudicate that entry into the Broadband and Telecommunications Franchise Agreement, incorporated as Exhibit "A," for the operation of broadband and telecommunications facilities by Uniti Fiber GulfCo, LLC, a Mississippi limited liability company, in Biloxi, Mississippi is in the best interest of the citizens of the City of Biloxi and that the following Franchise Agreement is reasonable and in the best interests of the City.

SECTION TWO: The City of Biloxi is authorized under the provisions of Sections 21-27-1, 21-13-3, and 77-9-713 of the Mississippi Code of 1972, and hereby grants a non-exclusive franchise to Uniti Fiber GulfCo, LLC, a Mississippi limited liability company, under the terms and conditions of the Broadband and Telecommunications Franchise Agreement, incorporated as Exhibit "A."

SECTION THREE: Upon unanimous vote of the members of the City Council, this ordinance shall be in full force and effect from and after passage, because it serves the public peace, health and safety of the citizens of Biloxi, and good cause exists for same. If not a unanimous vote this Ordinance shall become effective as soon thereafter as is signed, certified, and as is otherwise provided by law.

The foregoing Ordinance having first been reduced to writing, was read by the Clerk and moved by Councilmember Lawrence, seconded by Councilmember Glavan, and was adopted by the following vote:

YEAS:	Lawrence Gines	Tisdale Shoemaker	NAYS:	None
ABSENT:	Newman Glavan			

Ord. No. 2555

The Vice-President then declared the Ordinance adopted this the 2nd day of July, 2024.

STATE OF MISSISSIPPI CITY OF BILOXI HARRISON COUNTY

ATTEST: APPROVED:

CLERK OF THE COUNCIL VICE-PRESIDENT OF THE COUNCIL

Submitted to and approved by the Mayor, this the 12th day of July, 2024.

APPROVED:

MAYOR

Exhibit "A"

BROADBAND AND TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS BROADBAND AND TELECOMMUNICATIONS FRANCHISE AGREEMENT (the "Agreement") is made and entered into this the 12th day of July, 2024 (the "Agreement Date"), by and between the City of Biloxi (the "City") and Uniti Fiber GulfCo, LLC, a Delaware limited liability company. The City and Uniti Fiber are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Uniti Fiber has applied for a franchise from the City for the purposes of laying, constructing, maintaining, replacing, repairing, and operating a telecommunications system which may be used to provide telecommunications services, video services, and/or other services to customers located in the City as determined by Uniti Fiber;

WHEREAS, Uniti Fiber has provided the Mayor and City Council with a franchise proposal, which the City, its representatives and Uniti Fiber have discussed and adjusted in accordance with the needs and interests of the City and its citizens, taking into account the costs; and

WHEREAS, the City Council, after evaluating Uniti Fiber's proposal in the form of this Agreement, and after hearing the comments of interested parties, has determined that Uniti Fiber has the financial, legal and technical ability to fulfill the obligations under this Agreement. The City has further determined that it will serve the public interest to grant Uniti Fiber a franchise on the terms and conditions of this Agreement. Based on the above understanding, the Parties enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and Uniti Fiber do hereby mutually covenant and agree as follows:

Section 1: **Defined Terms.** For purposes of this Agreement, the following terms, words, and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 "City" means the City of Biloxi, Mississippi.

1.2 "Governing Body" or "City Council" means the City Council of the City of Biloxi, Mississippi.

1.3 "Gross Revenues" means any revenue derived by Uniti Fiber from the operation of the Telecommunications System to provide Telecommunications Services and Video Services to subscribers within the City's municipal limits, adjusted for non-payment. Gross Revenues shall include (i) Video Services fees for any of Uniti Fiber's Video Services or Video Services Tiers, including those Video Services included in a bundle of services; and (ii) Telecommunications Services fees for Uniti Fiber's calling plan offering. Gross Revenues shall also include (i) recurring charges for Telecommunications Services, and 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 Telecommunications Services, and Video Services equipment and Telecommunications Services, 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 (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 Uniti Fiber or franchise fees imposed by any municipality, state, or other governmental unit and collected by Uniti Fiber for such governmental unit; (ii) amounts passed back to the subscribers through retail discounts, refunds, rebates or other 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, unless such fees are charged to the customer; (vi) contributions of capital by any third party to reimburse Franchisee in whole or in part for the installation of the facilities; and/or (vii) any payments, reimbursements or pass-through from the third party to Franchisee (1) for utility charges, taxes and other pass-through expenses, or (2) in connection with maintenance work performed or equipment installed by Franchisee or its contractors or agents.

1.4 "Internet Protocol-Enabled Services" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

1.5 "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.6 "Rights-of-way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or located within the City.

1.7 "System" shall mean a system of conduit, pipes, cables, transmission lines, meters, equipment, and all other facilities associated with the operation of a fiber-optic transmission line by Uniti Fiber as shown on Exhibit "A," noting existing and proposed locations of Uniti Fiber's Fiber Routes located in the city limits of Biloxi, Mississippi and in accordance with the terms and conditions contained in this Agreement.

1.8 "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.

1.9 "Telecommunications Service" 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 the facilities used. "Telecommunications Service" shall not include sales of standalone fiber or broadband internet packages.

1.10 "Video Services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming generally considered comparable to programming provided by a television broadcast station or others. "Video Services" shall not include sales of standalone fiber or broadband internet packages.

Section 2: **Grant of Authority.** The City hereby grants to Uniti Fiber the non-exclusive and limited authority to construct, install and maintain fiber-optic transmission lines in and along the Rights-of-way in the City of Biloxi, Mississippi, as noted in Exhibit "A," outlining existing and proposed Uniti Fiber lines of Uniti Fiber or for use by another public utility authorized by the Public Service Commission of the State of Mississippi to operate as a public utility in the City of Biloxi. The purpose of the installation of the System is to operate fiber-optic transmission lines within the corporate limits of the City, which may include a Small Cell System and/or DAS. The DAS System may include individual nodes, each of which shall be identified by number and each of which shall consist of space on a decorative street sign, pole, street sign, or other pole approved by the City, mounted thereon, together with all necessary equipment. Any further expansion of fiber routes not shown in Exhibit "A" shall require approval by the City Council to Amend the existing Agreement by approving the revised Exhibit "A" indicating new fiber lines and or changes to existing lines within the City of Biloxi. The City will not grant a franchise to another company providing services similar to that provided by Uniti Fiber or amend the franchise existing on the date hereof, if such franchise or amendment contains material terms that, when taken in their entirety, are more favorable or less burdensome than the material terms set forth in this Agreement.

Section 3: **Compensation.**

3.1 Uniti Fiber shall pay the City all permitting fees required by the City, which are fees intended to offset the administrative cost of processing the permit and inspection of completion of the work proposed to be performed by Uniti Fiber in the City.

A. In addition, Uniti Fiber shall pay the City a franchise fee equal to two percent (2%) of the Gross Revenues from sales of local Telecommunications Services to subscribers located with the City limits. Additionally, if and when Uniti Fiber provides Video Services to residents

of the City, Uniti Fiber shall pay to the City a franchise fee equal to five percent (5%) of the Gross Revenues from sales of Video Services to subscribers within the City (collectively, the "Franchise Fees"). Such payments shall be made quarterly during each calendar year, within fifteen (15) days of the close of each quarter. A twelve and one-half (12 1/2 %) percent late fee shall be assessed on all payments received after their due date. An annual financial statement shall be furnished to the City by Uniti Fiber on or before April 1st of each year, or at any time upon request of the City after thirty (30) days written notice, such report to show Gross Revenues received by Uniti Fiber from its operations within the City for the previous year. However, at any time, upon request by the City and after sixty (60) days written notice, an annual certified audit report shall be furnished to the City by Uniti Fiber, showing Gross Revenues received by Uniti Fiber from its operations within the City for the previous year. In addition, at any time, upon request by the City and upon reasonable notice to Uniti Fiber, Uniti Fiber shall provide a report certified by Uniti Fiber as being true and accurate showing year-to-date (from the last audited report provided to the date of receipt of the notice) Gross Revenues received by Uniti Fiber from its operations within the City. In addition, the City shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to Uniti Fiber under the circumstances, all documents and records that pertain to Uniti Fiber's direct obligations under this Agreement.

B. Acceptance of any fee payment shall not be deemed a waiver or release of any claims the City may have for additional sums, nor construed as an accord or agreement that the amount paid is correct.

Section 4. **Duration and Term**. The franchise granted hereunder shall be for an initial term of ten (10) years (the "Initial Term") commencing on the effective date of the Ordinance approving or ratifying this Agreement, unless otherwise lawfully renewed, revoked, or terminated as herein provided. Upon the expiration of the Initial Term, Uniti Fiber or the City shall have the option to renew this Agreement for one additional term of ten (10) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party's intent to renew this Agreement for the additional term. It is the position of the City of Biloxi that upon each new Council Term, the Council may lawfully at their discretion renew, revoke, amend and or terminate this Agreement.

Section 5. **Grant of Non-Exclusive Authority.** The right to use and occupy the Rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions, and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement. Uniti Fiber acknowledges that the primary municipal purpose of the public roads subject to the Agreement is for the City to provide safe means of transportation for public vehicular and pedestrian traffic and to accommodate the City's own public utility lines.

Section 6. **Reservation of Regulatory and Police Powers.** The City, by the granting of this franchise and approving this Agreement, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which are now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Mississippi, to regulate the use of its Rights-of-way by Uniti Fiber or any person or to charge reasonable compensation for such use, and Uniti Fiber, by its acceptance of this franchise and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. Uniti Fiber is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

Section 7. **Standards of Service.**

7.1 **Conditions of Street Occupancy**. All portions of the System and all associated equipment installed or erected by Uniti Fiber pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights- of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way, and only according to plans and specification approved by the City prior to construction pursuant to Section 10 of this Agreement.

7.2 **Restoration of Rights-of-way and City Utilities.** If during the course of Uniti Fiber's construction, operation, or maintenance of the System there occurs a disturbance of any Rights-of-way by Uniti Fiber or the City's drainage, water or sewer lines, it shall, at its expense, replace and restore such Rights-of-way and drainage, water or sewer lines to a condition comparable to the condition of the Rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Agreement, and the restoration of Rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. Uniti Fiber shall perform the work according to the standards and with the materials specified or approved by the City's Director of Engineering. The City may, in its sole and absolute discretion, perform any repair work to its water and sewer system caused by Uniti Fiber, and Uniti Fiber agrees to pay the reasonable amount invoiced it by the City for that work.

7.3 **Relocation at Request of the City.** Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, Uniti Fiber shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the Rights-of-way, any property of Uniti Fiber when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water

pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should Uniti Fiber refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to Uniti Fiber.

7.4 **Trimming of Trees and Shrubbery**. The Uniti Fiber may only perform trimming, cutting, or removal of trees or shrubbery in the City's right of way after obtaining a permit from the City's Building Department to do so after giving that official ten (10) days written notice of its request to perform such work. Any work so performed shall be limited to the work specified in Uniti Fiber's permit application. Uniti Fiber shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting, or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by Uniti Fiber to the satisfaction of the City.

7.5 **Safety and Permit Requirements.** All new construction of fiber optic cables and appurtenant telecommunication facilities of the System shall be submitted prior to any work being performed to the City's Engineering Department for review and permitting approval. Additionally, all planned repairs and or maintenance work shall be coordinated with the City's Director of Engineering to discuss the extent of scope of work to be performed, if such work may require permitting approval and to notify on request of all ongoing construction and maintenance work. On all work deemed an emergency, the City shall be notified of said emergency by contacting the City's Director of Engineering and or calling the City's After Hour number (228) 392-0641, unless the City notifies Uniti Fiber first. All work shall be done so in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules, and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area The Uniti Fiber agrees to abide by the terms and conditions of Mississippi's One Call statute, (Miss. Code Annotated Sections 77-13-1 through 77-13-21, as now in force or as hereinafter amended). Additionally, contractor performing work shall submit at the time of permitting, a Traffic Control Plan ("TCP") addressing how they plan to provide for the safe and efficient movement of traffic, protection of employees and the public while performing said work for approval. The TCP shall be in compliance with the Manual on Uniform Traffic Control ("MUTCD") Current Edition. For all other work not requiring permitting approval by the Director of Engineering, Contractor performing said work shall provide for the safe and efficient movement of traffic, protection of employees and the public in compliance with the MUTCD.

7.6 **Minimum Standards.** All of the construction by Uniti Fiber shall conform, at a minimum, to the minimum standards of the Codes of the City in force and effect at the time of such construction. In the event there is a conflict between the standards

adopted by Uniti Fiber and any applicable federal, state, or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7 **Obstructions of Rights-of-Way.** Except in the case of an emergency, or with the approval of the City's Director of Engineering, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work. Approval of the City's Director of Engineering shall be obtained prior to any work causing any such obstructions or excavations, except in the event of an emergency; and in the event of an emergency the City's Director of Engineering must be notified immediately of the work being performed. Uniti Fiber shall not so obstruct the Rights-of-way so as to interfere with the natural, free, and clear passage of water through the gutters, drains, ditches, or other waterways. Upon making an opening in any public way, street, sidewalk, or road, as authorized by this Agreement for the purpose of laying, constructing, repairing, and/or maintaining its System, Uniti Fiber shall, without unnecessary delay, replace and restore same to its former condition as nearly as possible and in full compliance with the provision of the City's street cut policy and other provision for the Code of Ordinances of the City of Biloxi and the laws of the State of Mississippi. Uniti Fiber shall re-sod disturbed grassed areas and replace all excavated areas to their former condition in order to minimize the disruption, and to prevent erosion, of public property and the property of adjoining private landowners. Uniti Fiber shall provide safe passageway for pedestrians and vehicles through, in and around the worksite areas. Work shall be performed at such reasonable times as determined by the City so as not to impede regular business traffic nor to unreasonably affect adjoining property owners. Uniti Fiber shall meet all City and State requirements for traffic control and notify the City at least forty-eight (48) hours, exclusive of Saturdays, Sundays, and municipal holidays, prior to the commencement of work or accessing of the City conduit, except in cases of emergency, whereby notice shall be provided to the City as soon as reasonably possible.

7.8 **Safety Requirements.**

A. Uniti Fiber shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. Uniti Fiber shall install and maintain the System in accordance with the requirements of all applicable federal, state, and municipal regulations, including but not limited to those of the FCC and the Corps of Engineers, as now in effect or hereinafter amended, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment, and connections in, over, under and upon the Rights-of-way, wherever situated or located, shall at all times be

kept and maintained in a safe and suitable condition and in good order and repair.

D. Uniti Fiber shall maintain a force of employees at all times sufficient to provide safe, adequate, and prompt service for the System.

7.9 Least Disruptive Technology. Uniti Fiber is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the Rights-of-ways. Uniti Fiber will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City's Director of Engineering may require trenchless technology in other locations where circumstances prevent or make open-cut methods impractical. Uniti Fiber may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

7.10 Vacation of Right-of-Way by City. If at any time during any term of this Agreement, the City shall lawfully elect to vacate, relocate, abandon, alter, reconstruct, or change the grade of any street, sidewalk, alley, or other public way, to include drainage and utility areas, Uniti Fiber, upon reasonable notice by the City, shall remove, re-lay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense. Should Uniti Fiber refuse or fail to remove its equipment or plant as provided for herein within forty- five (45) days after written notification, the City shall have the right to do such work, or cause it to be done, and the full cost thereof shall be chargeable to Uniti Fiber, or, in the alternative, to consider such failure by Uniti Fiber to remove its equipment or plant as an abandonment of all ownership rights in said property. Uniti Fiber shall furnish assistance, if reasonably requested by the City, to locate or to protect franchise wires, cables, and other facilities, as deemed necessary by the City in the maintenance and service of its streets, alleys, and public ways in an effort to provide services to the public.

7.11 Additional Inspections. If additional inspections are required beyond the normal course of action, the City may assess an additional inspection fee.

Section 8. Enforcement and Termination of Agreement.

8.1 Notice of Violation. In the event Uniti Fiber has not complied with the terms of this Agreement, the City shall notify Uniti Fiber in writing of the nature of the alleged noncompliance.

8.2 Right to Cure or Respond. Uniti Fiber shall have thirty (30) days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance; (b) to cure such default; or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of Uniti Fiber, be cured within the thirty (30) day period, initiate reasonable steps to remedy such

default and notify the City of the steps being taken and the projected date that they will be completed.

8.3 Enforcement. In the event the City determines that Uniti Fiber is in default of any provision of this Agreement, in addition to any right or remedy the City may have at law or in equity, the City may pursue any or all of the following remedies:

A. Seek specific performance of any provision which reasonably lends itself to such a remedy;

B. Make a claim against any surety or performance bond which may be required to be posted;

C. Restrain by injunction the default or reasonably anticipated default by Uniti Fiber of any provision of this Agreement;

D. Seek any other available remedy permitted by law or in equity.

8.4 Impossibility of Performance. Uniti Fiber shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

8.5 Removal of System after Termination. At the expiration of the term for which this Agreement is granted plus any extension thereof, or upon its termination or cancellation for any other reason, the City shall have the right to require Uniti Fiber to remove, at its own expense, all portions of its System from the City of Biloxi.

Section 9. Default. In addition to any other act or omission determined by the City to be a material breach, each of the following shall constitute a material default by Uniti Fiber for which the City reserves the right, in addition to all other rights and remedies it may have at law or in equity, to terminate and cancel this Agreement and all rights and privileges of Uniti Fiber hereunder:

A. Failure to make any payments to the City required to be made as set forth in this Agreement;

B. Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to Uniti Fiber;

C. Failure to provide or furnish any information required under this Agreement to the City that is not cured within ten (10) days following written notice to Uniti Fiber;

D. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

E. The occurrence of any event relating to the financial status of Uniti Fiber which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of Uniti Fiber;

F. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

G. If: (i) Uniti Fiber shall make an assignment without prior written approval of the City, or make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (ii) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of Uniti Fiber's property or assets; (iii) any creditor of Uniti Fiber petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for Uniti Fiber or for any material parts of the property or assets of Uniti Fiber under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against Uniti Fiber decreeing the voluntary or involuntary dissolution of Uniti Fiber.

Section 10. Approval of Construction Plans. All plans and specifications for construction, excavation, or installation of any portion of the System shall be submitted for approval to the City's Engineering Department for review and approval. Those plans and specifications shall include true and correct maps or plats of all proposed installations and the types of equipment and facilities, property identified and described by appropriate symbols and marks, and which shall include annotations of all public ways, streets, road, and conduits where the work is to be undertaken. Maps shall be drawn in a scale which shall allow proper review and interpretation and will be filed no less than ten (10) working days before any installation of said cable, equipment, of facilities. Uniti Fiber shall only perform work pursuant to permits, including but not limited to "street-cut permits," from the City as required by this Agreement and all applicable city, state, and federal rules and regulations, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-ways due to Uniti Fiber's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City. Within sixty (60) days of the completion of each segment of Uniti Fiber's System, Uniti Fiber shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Uniti Fiber shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings showing each modification to the Director of Engineering within sixty (60) days thereof. In addition to the "as built" requirement, Uniti Fiber shall provide the City with a videoed tape of its gravity sewer and drainage pipe where the completed work intersected each to

ensure the integrity of each line was not compromised as part of construction for all new and maintained lines.

Section 11. Insurance and Bonds.

11.1 General Liability Insurance. Uniti Fiber shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of One Million Dollars ($1,000,000.00) for bodily injury and property damage per person and Three Million Dollars ($3,000,000.00) as to each occurrence, satisfactory to the City with one or more responsible insurance companies duly authorized to do business in the State of Mississippi. The City shall be named as an additional insured on the policy, and Uniti Fiber shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City. In addition, Uniti Fiber shall require its contractors and subcontractors to keep and maintain in connection with all construction, installation, and maintenance work to be performed within the City of Biloxi's city limits general liability insurance coverage with one or more responsible insurance companies duly authorized to transact business in the State of Mississippi with insurance limits of the same amount as Uniti Fiber.

11.2 Worker's Compensation Insurance. In addition, Uniti Fiber and its contractors and subcontractors shall obtain worker's compensation coverage as required by the laws of the State of Mississippi with one or more responsible insurance companies duly authorized to do business in the State of Mississippi.

11.3 Comprehensive Automobile Liability Insurance. Uniti Fiber and its contractor's subcontractors shall maintain in full force and effect, at its own cost and expense, a comprehensive automobile liability insurance policy in the amount of One Million Dollars ($1,000,000.00) for bodily injury and property damage per person and Three Million Dollars ($3,000,000.00) as to each occurrence, satisfactory to the City with one or more responsible insurance companies duly authorized to do business in the State of Mississippi.

11.4 Intended Beneficiary. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the City, and the City shall be primarily covered for all losses covered by the policies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessment, being that all are negotiated at the sole risk of Uniti Fiber.

11.5 Construction and Reclamation Bond. The entity which installs Uniti Fiber's cable and related equipment into the public ways of the City shall obtain and maintain, at its sole cost and expense, throughout the construction or installation period, and shall file with the City Clerk, a Construction and Reclamation Bond with a bonding company authorized to business in the State of Mississippi, and found acceptable by the City, in the amount of One Hundred Thousand Dollars

($100,000.00) in order to safeguard the City from damage done as a result of the installation of any portion or aspect of Uniti Fiber's System. The City reserves the right, subject to the dollar value of the proposed project to request a higher dollar value bond for said project. Additionally, the Contractor and its subcontractors for work exceeding Fifty Thousand Dollars ($50,000.00) shall be a Mississippi Licensed Contractors registered with the Mississippi State Board of Contractors, certified within the assigned classification to perform said work, and provide their Certificate of Responsibility number on the permit drawings. Uniti Fiber shall provide certification of this Construction and Reclamation Bond to the City at least ten (10) days prior to the commencement of the installation of any portion or aspect of the System into the public ways of the City. The bond shall not expire until the construction and installation of the cable and related equipment is completed. The Construction and Reclamation Bond shall provide, but not be limited to, the following condition:

> There shall be recoverable by the City of Biloxi, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Biloxi resulting from the construction or installation of cable and related equipment in the City of Biloxi, Mississippi.

The rights reserved to the City with respect to the Construction and Reclamation Bond are in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, no action, proceeding, or exercise of a right with respect to such Construction and Reclamation Bond shall affect any other right the City may have.

11.6 Performance Bond. Within one (l) month of the effective date of this Agreement, Uniti Fiber shall obtain and maintain, at its sole cost and expense, and file with the City, a Performance Bond with a bonding company authorized to do business in the State of Mississippi and found acceptable by the City, the approval of which shall not be unreasonably withheld, in the amount of Fifty Thousand Dollars ($50,000.00), in order to secure Uniti Fiber's performance of its obligations and faithful adherence to all requirements of this Agreement. The Performance Bond shall provide, but not be limited to, the following condition:

> There shall be recoverable by the City of Biloxi, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Biloxi resulting from the failure of Uniti Fiber to: (i) keep the System in good repair; or (ii) remove its cables or related equipment from the public ways of the City of Biloxi, upon the City's request for their removal, either at the time of the expiration of the franchise, upon Uniti Fiber's abandonment of said cable and related equipment, or for any other reason contemplated by this Agreement.

The Performance Bond shall also contain the following endorsement:

It is hereby understood and agreed that this instrument may not be cancelled nor any intention not to renew by exercised until sixty (60) days after receipt by the City of Biloxi by registered mail of written notice of said intent.

Section 12. **Indemnity and Hold Harmless.** Uniti Fiber agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligent or willful acts or omissions of Uniti Fiber, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair, or removal of Facilities, or any other activity related to the Companies performance of its rights and obligations under this Agreement, except for the proportion of those claims, costs, losses, expenses, demands, actions, or causes of action which arise from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against Uniti Fiber which it may have by reason of this indemnification, or because of the acceptance by, or Uniti Fiber's deposit with, the City of any of the insurance policies described in this Agreement. The indemnification by Uniti Fiber shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

Section 13. **Disclaimer of Warranties.** The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon Uniti Fiber. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

Section 14. **Warranties and Representations.** Uniti Fiber hereby agrees, represents, and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules, and regulations. Furthermore, Uniti Fiber further agrees, represents, and warrants that this Agreement is legal, valid, and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation, or maintenance of the System.

Section 15. **Other Obligations.** Obtaining a franchise pursuant to this Agreement does not relieve Uniti Fiber of its duty to obtain all other necessary permits, licenses, authority, and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and Uniti Fiber is responsible for all work done in the Rights-of-way pursuant to this Agreement, regardless of who performs the work.

Section 16. **Payment of Costs.** Uniti Fiber shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (i) the costs to repair the Rights-of-way due to the installation, repair, and maintenance of the System, and (ii) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

Section 17. **Priority of Use.** This Agreement does not establish any priority for the use of the Rights-of-way by Uniti Fiber or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Mississippi and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Mississippi.

Section 18. **Notice.** Uniti Fiber shall provide the City with notices of all petitions, applications, communications and/or reports relating to matters affecting Uniti Fiber's use of the City's public ways. Upon written request from the City, Uniti Fiber shall prove the City with copies of all such documentation. Every notice or response required by this Agreement to be served upon the City or Uniti Fiber shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

To the City at:

CITY OF BILOXI
Attn: Mayor A. M. Gilich, Jr. City Hall
140 Lameuse Street
Biloxi, Mississippi 39530

To Uniti Fiber at:

UNITI FIBER GULFCO, LLC
Attn: _____
_____
_____

The City and Uniti Fiber may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

Section 19. **Application.** The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Agreement.

Section 20. **Acceptance.** Uniti Fiber's acceptance of this Agreement shall be in writing in a form approved by the City's Chief Administrative Officer and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

Section 21. **Assignment.** Uniti Fiber's interest in this Agreement shall not be sold, transferred, assigned, or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council; provided, however, that Uniti

Fiber may, without the consent of the City, (i) assign any or all of its rights or obligations under this Agreement to any parent, subsidiary or other affiliate of Uniti Fiber, or (ii) assign any or all of its rights or obligations under this Agreement in connection with the sale or transfer of all or substantially all of its assets, and Uniti Fiber shall provide written notice of such assignment under subsections (i) or (ii) herein to the City within thirty (30) days following assignment. The City reserves the right to be reimbursed by Uniti Fiber for costs incurred by it in reviewing the request for a non-affiliate transfer of ownership.

Section 22. Miscellaneous.

22.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the meanings and provisions of this Agreement.

22.2 Uniti Fiber is requested by the City to employ, contract with vendors, subcontractors, or joint venture projects with citizens and businesses in the City of Biloxi, Mississippi.

22.3 Uniti Fiber shall comply with all applicable laws, regulations, policies, and procedures of the United States, the State of Mississippi, and the City of Biloxi that may apply to this Agreement. Uniti Fiber shall not discriminate against any employee, contractor, or subcontractor, nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, nation origin, or disability.

Section 23. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or exhibits thereto,

Section 24. Governing Law. This Agreement shall be deemed to have been made in the State of Mississippi, and the validity of the same, its construction, interpretation, enforcement, and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Mississippi, without giving effect to any choice of law provisions arising thereunder. Venue and jurisdiction for any dispute between the parties to this Agreement shall be in the appropriate state court located in the Second Judicial District of Harrison County, Mississippi.

Section 25. Severability Clause. If any part, section, or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

IN WITNESS WHEREOF, the parties by their duly authorized officers have caused these

presents to be subscribed on the day and year first above written.

UNITI FIBER:

UNITI FIBER GULFCO, LLC, a Delaware limited liability company

By: _____
Name: Kelly A. McGriff
Title: Vice President and Deputy General Counsel

CITY:

CITY OF BILOXI, MISSISSIPPI, a Mississippi municipal corporation

By: _____
Name: A. M. Gilich, Jr.
Title: Mayor

ATTESTED BY:

_____
Stacy Thacker, Municipal Clerk

STATE OF MISSISSIPPI
CITY OF BILOXI
HARRISON COUNTY