

**RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF COMMERCE
AND THE GATEWAY CITIES COUNCIL OF GOVERNMENTS
FOR THE GATEWAY CITIES REGIONAL FIBER OPTIC NETWORK**

This Right-of-Way Use Agreement ("Agreement") is made by and between the City of Commerce ("City") and the Gateway Cities Council of Governments ("GCCOG"). City and GCCOG are each a "Party" and collectively known as the "Parties."

RECITALS

A. GCCOG has entered into a Joint Build Agreement with the California Department of Technology ("CDT") and has been awarded a grant by the California Public Utilities Commission ("CPUC") to design and construct the Gateway Cities Regional Fiber Optic Network ("GCRFON"), for the purpose of furthering digital equity and expanding connectivity, competition, affordability, and access for its participating member cities.

B. City desires to participate in the GCRFON project and grant GCCOG the right to use certain portions of its public rights-of-way ("ROW") for the purpose of installing, maintaining, and operating the GCRFON, as more fully set forth herein.

C. The City Council determines that participating in the GCRFON project serves the public interest, is beneficial for the broadband connectivity of City facilities, and creates an opportunity for greater broadband connectivity for its residents and businesses.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, the Parties agree as follows:

1. GCCOG AUTHORIZATION TO ENCROACH UPON CITY PUBLIC RIGHTS-OF-WAY

A. **Authorization.** City hereby grants GCCOG a license to encroach under, on, and along its ROW for the purpose of the installation, maintenance, and operation of the GCRFON upon various portions of City ROW, as more specifically depicted in Exhibit A attached hereto and incorporated herein, as may be modified or changed in the final design. GCCOG shall not be required to pay any fees or to obtain any other license or permit from City for the purpose of installing, maintaining, and/or operating the GCRFON.

B. **Term.** This license is granted in perpetuity.

C. **City's Use of the GCRFON.** City shall have the right to utilize two (2) strands of dark fiber, for non-commercial purposes, along the path preliminarily identified in Exhibit B attached hereto and incorporated herein, as may be modified or changed in the final design ("City Strands"). No rent or license fee shall be payable to GCCOG from City for City's use of the City Strands. GCCOG, at no cost to City, shall maintain the City Strands for the useful life of the asset, and City shall provide at City's cost, all electronics,

connections, and other improvements and equipment needed to utilize the City Strands. City shall not have the right to transfer or assign the use of the City Strands.

2. GCCOG'S RESPONSIBILITIES

A. Construction. GCCOG shall communicate and coordinate with City staff regarding the design and construction of the GCRFON. GCCOG shall provide to City staff completed engineering plans, traffic control plans, dates and schedules for construction activities, and other construction details as may arise. GCCOG shall provide City with as-built maps within sixty (60) days of completion of construction and final inspections.

B. Damage to Property. GCCOG shall assume all responsibility for all damage to property (including the GCRFON) that may arise from or be caused by GCCOG's performance under this Agreement or by the performance of any other party which GCCOG directly or indirectly employs to perform under this Agreement. Any damage to any property or public right-of-way resulting from the installation, maintenance, and operation of the GCRFON by GCCOG shall be caused to be repaired by GCCOG at no expense to City and to the reasonable satisfaction of City.

C. Relocation. GCCOG shall remove or relocate, at City's cost and/or expense, the GCRFON, or any part of it, if and when made necessary by either the installation, abandonment, change of grade, alignment or width of any street, sidewalk or other public facility or the construction, maintenance or operation of any City or other public agency underground or aboveground facilities (including, by way of example and not limitation, any sewer, storm drain, conduits, gas, water, electric or other utility systems or pipes), provided that City or other public agency is acting in its governmental capacity. In the event all or any portion of any ROW occupied by GCRFON is needed by City or other public agency for a governmental purpose or in the event the existence of GCRFON or any part of it shall be considered detrimental to the public health, safety, welfare, or convenience or to governmental activities including, but not limited to, interference with City or other public agency construction projects, or is in conflict vertically and/or horizontally with any proposed City or other public agency installation, GCCOG shall remove and relocate GCCOG Fiber Network or the involved part of it, at City's or other public agency's cost and/or expense, to such other location or locations in the public rights-of-way as may be designated by City or other public agency. City or other public agency must provide written notice to GCCOG at least one hundred eighty (180) days in advance of the need for such removal or relocation.

D. Dig Alerts. GCCOG shall become a member of the Underground Service Alert of Southern California ("DigAlert") and agrees to maintain and keep current its membership in DigAlert throughout the term of this Agreement, and to comply with applicable noticing and other requirements.

3. CITY RESPONSIBILITIES

To facilitate GCCOG's buildout of the GCRFON with minimal disruption to the general

public, City agrees, to the best of its ability during the construction period, to cooperate with GCCOG to coordinate the design and construction of the GCRFON, including, but not limited to, traffic management and notices to residents and businesses. City shall designate a point-of-contact for communications with GCCOG for GCRFON-related activities. The City Manager or designee shall have the authority to issue any needed approvals on behalf of City regarding the GCRFON.

4. OTHER TERMS

A. Responsibility for Costs. Except as specified otherwise herein, each Party will be responsible for and bear its own costs and expenses incurred at any time in connection with the performance of its responsibilities under this Agreement.

B. Dispute Resolution.

i. If a dispute arises between the parties relating to this Agreement, the Parties agree to use the following procedure prior to resorting to judicial relief by a court of competent jurisdiction: A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation in accordance with and pursuant to the rules of Judicial Arbitration and Mediation Services ("JAMS"), as amended or as augmented in this Agreement. Each Party shall pay their own costs of mediation. The Parties shall jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the JAMS if they have been unable to agree upon such appointment within twenty (20) days from the conclusion of the negotiation period. The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days.

ii. If the Parties are not successful in resolving the dispute through mediation as described above, the Parties may pursue any remedy at law or in equity by a court of competent jurisdiction.

iii. Notwithstanding the provisions of this subsection, either Party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement or to enjoin the other Party from an asserted breach thereof on a showing that the moving Party would otherwise suffer irreparable harm.

C. Indemnity and Defense.

i. GCCOG shall defend, indemnify, and hold City, its elected officials, officers, agents, employees, and volunteers, harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of GCCOG, its

officers, agents, or employees.

ii. City shall defend, indemnify and hold GCCOG, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City, its officers, agents, employees.

D. Notices. All notices required or provided for under this Agreement shall be in writing, delivered in person or by certified mail, return receipt requested, addressed to the parties as indicated, below. Any notice so delivered shall be effective on the date of its delivery. Any party may change its address for notice by giving ten (10) days' notice of such change in the manner provided for in this paragraph. Notices may be served as follows:

To City: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attention: City Manager

To GCCOG: Gateway Cities Council of Governments
16401 Paramount Blvd
Paramount, CA 90723
Attention: Executive Director

E. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of California. Any dispute or controversy arising under or related in any way to this Agreement shall be adjudicated by a state court of competent jurisdiction located in Los Angeles County, California.

F. Prevailing Party. If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing Party shall be entitled to receive from the losing party reasonable costs and expenses in such amount as the court or arbitrator may adjudge to be reasonable attorney's fees and costs incurred by the prevailing Party in such action or proceeding.

G. Assignment. GCCOG may sell, assign, transfer or lease any interest in those portions of the GCCOG Fiber Network within the City or assign or transfer any of its rights or obligations in this Agreement with prior written notice to City.

H. No Waiver. A waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained in this agreement, whether of the same or different character.

I. **Severability.** If any part of this Agreement is held invalid, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or otherwise frustrate the purposes of this Agreement.

J. **Independent Contractor.** The Parties are independent entities and are not to be, and shall not be, construed as joint venturers, partners, employer/employee, or agents one of the other, and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

K. **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

L. **Captions.** The captions herein are for convenience and references only and are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

M. **Entire Agreement.** This Agreement, including Exhibits A and B attached hereto, constitutes the entire agreement between the Parties and supersedes any previous oral or written agreements with respect to the subject of this Agreement. No amendment or modification to the Agreement shall be valid and binding unless in writing and signed by authorized representatives of the Parties.

N. **Authority to Execute this Agreement.** Each person executing this Agreement on behalf of a Party warrants and represents that they have the authority to execute this Agreement on behalf of that Party and the authority to bind that Party to the provisions of this Agreement.

O. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the authorized representatives of the Parties have caused this Agreement to be executed as of the date of the last signature below.

[SIGNATURE PAGE FOLLOWS]

CITY OF COMMERCE

By: _____
Ivan Altamirano, Mayor

Date: _____

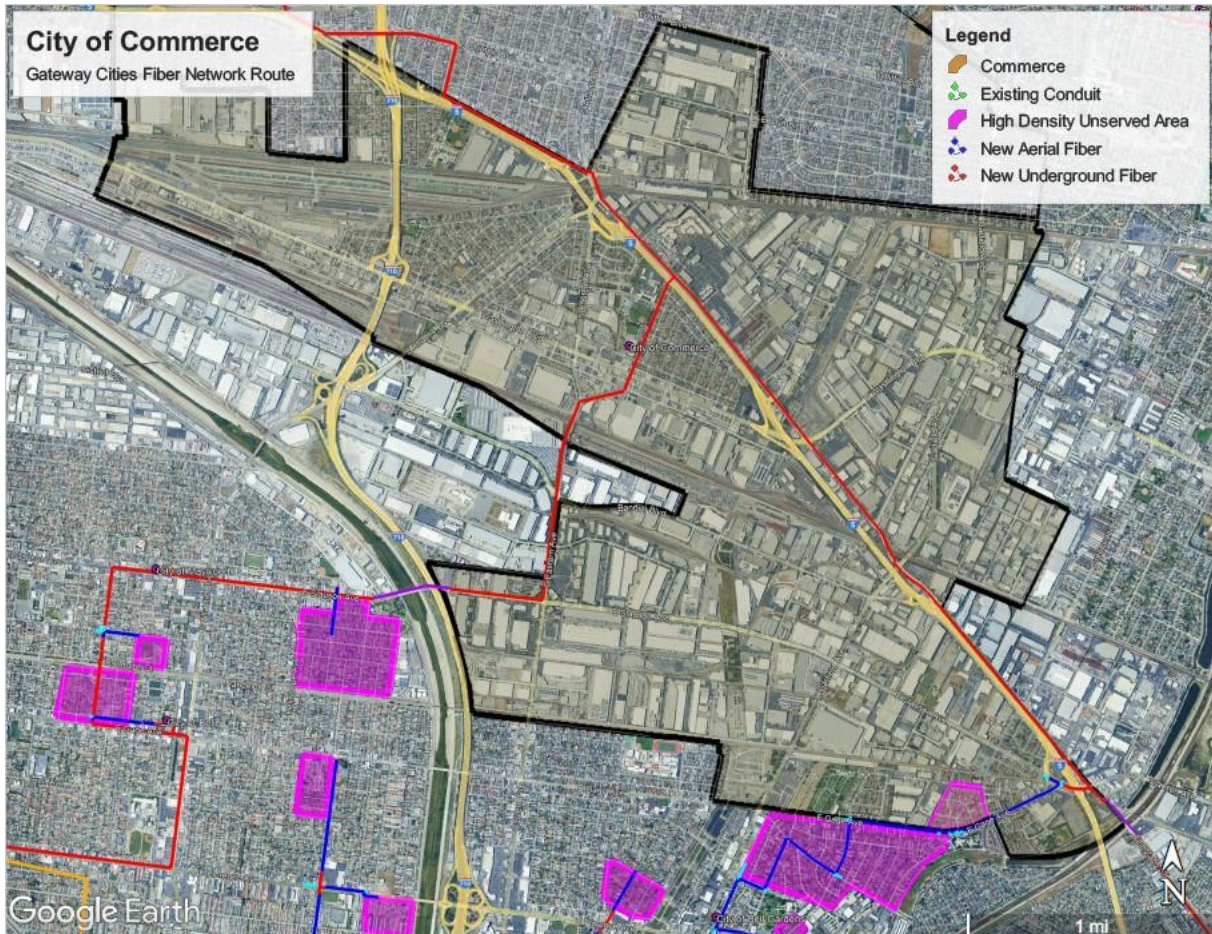
GATEWAY CITIES COUNCIL OF GOVERNMENTS

By: _____
Hector De La Torre,
Executive Director

Date: _____

EXHIBIT A

City Route Design



Route Description Based on Current Design

Underground starts on E Slauson Avenue and runs East .42 miles crossing S Eastern Avenue. It continues 1.52 miles North, following S Eastern Avenue, then cuts East .12 miles under the Santa Ana Freeway until reaching the corner of Camfield Avenue. Underground stays along Telegraph Road running West 1.33 miles, crossing S Atlantic Boulevard, before reaching the city boundary.

At the Camfield intersection, underground runs East on Telegraph Road for 1.52 miles then crosses diagonally .02 miles across Telegraph Road, continuing .09 miles before crossing .02 miles diagonally back over. Underground continues along Telegraph Road .36 miles before exiting city borders.

Aerial picks up at the E Gage Avenue and Greenwood Avenue intersection, running East for .30 miles before switching to underground. For .13 miles, underground runs under E Slauson Avenue and the Santa Ana Freeway.

Along Jillson Street, aerial runs .61 miles East then .02 miles South along Fidelia Avenue. Underground crosses .02 miles under Jillson Street then .03 miles South. Underground continues .37 miles East along E Washington Boulevard, until connecting back at Telegraph Road.

EXHIBIT B

Gateway Cities Regional Fiber Optic Network Design

