**ORDINANCE NO. 2023-165**

**ORDINANCE TO GRANT ACCESS TO RIGHT OF WAY**

**TO YELLOWHAMMER NETWORKS, LLC**

**WHEREAS**, Yellowhammer Networks, LLC (“Yellowhammer”) is a company focused on enabling affordable fiber-based high speed internet services and desires to construct, maintain and operate a fiber optic network to provide internet and related services over its network to residential and business subscribers within the City of \_\_\_\_\_\_\_\_, Alabama (the “City”);

**WHEREAS**, Yellowhammer will cover the costs associated with the construction and installation of the network, and provides that the City has no financial obligations to guarantee the debt of Yellowhammer in connection with the project;

**WHEREAS**, the City finds a public purpose through the provision of affordable fiber-based high speed internet within its corporate limits for its residents and businesses and desires to grant non-exclusive access to the rights-of-way owned and/or controlled by the City for the purpose of building fiber-based high speed internet access to the benefit of its residents and businesses.

**BE IT ORDAINED** by the Mayor and the City Council of the City, in regular meeting duly assembled, a quorum present, as follows:

1. ***Access to Right of Way Granted*.** There is hereby granted to Yellowhammer the non-exclusive and limited authority to construct, maintain, and operate a fiber-based communications system in, over, under, across, and through the public rights-of-way in the City and any future additions or annexations thereto, as provided in the [Right of Way Access Agreement / Master Development Agreement][[1]](#footnote-1) attached as Exhibit A.
2. ***Term.*** This right-of-way access is granted to Yellowhammer for an initial term of twenty (20) years and will automatically renew thereafter for succeeding terms of up to twenty (20) years each unless Yellowhammer or the City gives written notice to the other at least three hundred and sixty-five (365) days prior to the expiration of any term of its intention not to renew a term.
3. ***Limitations of Right-of-Way Access*.**  Nothing in this Ordinance shall be construed as granting to Yellowhammer an exclusive right-of-way access for the purpose set forth in this Ordinance. Identical or similar right-of-way access may be granted by the City to more than one person or entity, within all or any portion of the City.
4. ***Subject to exercise of the City’s police power and prior lawful occupancy of the streets*.** Yellowhammer shall, at all times during the life of the right-of-way access, be subject to the lawful exercise of the City’s police power, and adhere to the City’s laws, ordinances and such reasonable regulations as the City Council may subsequently promulgate thereunder. The City reserves the right to make reasonable rules, regulations and restrictions for the protection of persons using the streets, avenues, alleys and/or other public places in the City from injury. Any privileges prescribed by this Ordinance shall be subordinate to any prior lawful occupancy of the City’s rights-of-way.
5. ***City-wide Access Conferred.*** This Ordinance grants access to the rights of way within the corporate limits of the City as may be amended from time to time, and the Mayor or his/her designee is authorized to execute the [Right of Way Access Agreement / Master Development Agreement][[2]](#footnote-2) with Yellowhammer, substantially in the form as attached in Exhibit A.
6. ***Severability*.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clauses and phrases thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional. Any provision found herein to be in direct contravention with state law or federal law either presently existing or enacted after the date of passage of this Ordinance shall be superseded by such law and rendered unenforceable without effect to those provisions found herein that are no in contravention with state and/or federal law.
7. ***Effective Date/Publication and Costs Therefor*.** This Ordinance will become effective upon publication. This Ordinance shall be published by the City in accordance with the applicable provisions of Section 11-45-8 of the *Code of Alabama* (1975). All costs of publication shall be paid by Yellowhammer.

ADOPTED this the \_\_\_ day of \_\_\_\_\_\_\_, 2023.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, President of Council

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, City Clerk

**CERTIFICATION**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, City Clerk of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Alabama, hereby certify that the above to be a true and correct copy of an ordinance adopted by the City Council of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ at its regular meeting held on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2023, as same appears in the minutes of record of said meeting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City Clerk

Exhibit A

[To be inserted]

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)