



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk
From: John F. Spirk, Jr., Esq., City Solicitor
Re: Right-of-Way Access Agreement
Grantee: Greenlight Networks PA, LLC
Date: February 11, 2026

Attached is a proposed Resolution and associated Right-of-Way Access Agreement for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.

John F. Spirk, Jr.
John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor
Michael Alkhal, Director of Public Works
Gregory Cryder, City Electrician

RESOLUTION NO. 2026-_____

Authorization For Right-of-Way Access Agreement

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Right-of-Way Access Agreement with Greenlight Networks PA, LLC, and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, for the non-exclusive use of the City's rights-of-way to install fibers for the purpose of data transmission, according to the terms and conditions indicated therein and made a part hereof.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 2026.

President of Council

ATTEST:

City Clerk

RIGHT OF WAY ACCESS AGREEMENT BETWEEN

CITY OF BETHLEHEM, PA

AND

GREENLIGHT NETWORKS PA, LLC

RIGHT OF WAY ACCESS AGREEMENT

This Right of Way Access Agreement (hereinafter referred to as the “Agreement”) is by and between the City of Bethlehem, a municipality located in Northampton and Lehigh Counties, Pennsylvania (hereinafter referred to as the “City”) and Greenlight Networks PA, LLC, a Delaware limited liability company headquartered in Rochester, New York (hereinafter referred to as “Grantee”).

WHEREAS, Grantee has requested that the City grant Grantee the right to construct, operate and maintain its Fixed Line System over, under and along the Public Rights-of-Way within the City’s jurisdiction for use by the City’s residents; and

WHEREAS, the aforesaid Public Rights-of-Way used by Grantee are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Fixed Line System, establish certain reporting requirements, provide legal protections for the City, and meet the current and future fiber optic cable-related needs of its residents; and

WHEREAS, the City has determined that Grantee has the financial, legal and technical ability to provide Telecommunications Services to Subscribers located in the City; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Grantee agree as follows:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SECTION 1

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) **Affiliated Entity** - Any persons(s) or entity(ies) who own or control, are owned or controlled by or are under common ownership or control with Grantee but does not include Affiliated Entities that are not involved with the use, management, operation, construction, repair and/or maintenance of Grantee's Fixed Line Systems.

(b) **Emergency** - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Fixed Line System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(c) **FCC** - Federal Communications Commission.

(d) **Fixed Line System or System** - Any facility or group of facilities which, in whole or in part, transmits or distributes data over a fixed line or fiber to the premises network to subscribing members of the public or to selected customers, as herein contemplated.

(e) **Force Majeure** - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; public health emergencies; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment; extraordinary make ready costs; partial or entire failure of utilities or other event that is reasonably beyond Grantee's ability to anticipate or control.

(f) **Normal Business Hours** - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(g) **Public Rights-of-Way** - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways, utility easements, and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(h) **ROW License or License** - The authorization granted by the City to construct, operate and maintain a Fixed Line System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(i) **Subscriber** - A person or entity who contracts with Grantee for, and lawfully receives Telecommunications Services distributed by the Fixed Line System.

(j) **Telecommunications Service or Service** - The provision of high-speed internet service and related telecommunications services by means of a Fixed Line System.

SECTION 2
GRANT OF ROW
LICENSE

2.1 GRANT OF AUTHORITY

Pursuant to the regulations of the FCC and Pennsylvania law, the City hereby grants a non-exclusive and revocable ROW License to Grantee. Subject to the terms and conditions contained herein, the City hereby grants to Grantee the authority to construct, extend, install, operate, maintain, upgrade and rebuild a Fixed Line System, including such fiber, ducts, conduits, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Fixed Line System in the Public Rights-of-Way.

2.2 TERM OF LICENSE

The term of this Agreement shall be for a period of ten (10) years (the “Initial Term”) commencing on the date when fully executed by both parties (the “Effective Date”), unless the License is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 REPRESENTATIONS AND WARRANTIES

- (a) Grantee represents, warrants and acknowledges that, as of the Effective Date:
- (1) Grantee is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;
 - (2) Grantee has the requisite approval from the applicable federal and state agencies; and

- (3) There is no action or proceeding pending or threatened against Grantee which would interfere with its performance or its ability to perform the requirements of this Agreement.

2.4 NON-EXCLUSIVITY

This License granted to Grantee shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Licenses to construct, operate or maintain a Fixed Line System.

2.5 LICENSE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This License is subject to and shall be governed by all lawful and applicable provisions of federal, state and generally applicable local laws and regulations. This License is further subject to all generally applicable ordinances and resolutions of the City. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City ordinance existing as of the Effective Date, this Agreement shall control.

2.6 COMPETITIVE EQUITY

(a) Grantee acknowledges and agrees that the City reserves the right to grant one or more additional Licenses to construct, operate, and maintain a Fixed Line System within the City.

(b) The License granted to Grantee is non-exclusive; however, if the City grants a subsequent license or other authorization to provide similar Fixed Line Services, that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent provider than this Agreement is to Grantee, then Grantee may request an amendment to this Agreement to provide Grantee with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent license is more favorable or less burdensome, then the City and Grantee shall enter into good faith negotiations in order to modify this Agreement to the mutual satisfaction of both parties to provide Grantee with such competitive equity.

2.7 RENEWAL

The term of this Franchise shall be automatically extended for successive five (5) year terms beyond the initial term unless Grantee terminates it at the end of the then current term by giving the City written notice of its intent to terminate at least ninety (90) months prior to the end of the then current term.

SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) Grantee shall operate, maintain, construct and extend the Fixed Line System so as

to offer high quality and reliable delivery of Telecommunications Services to Subscribers. The Telecommunications Service provided by the Fixed Line System shall be delivered in accordance with applicable FCC standards. The Fixed Line System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the generally applicable laws, ordinances and construction standards of the City.

3.2 AREA TO BE SERVED

The City has the right to require Grantee to place fiber and/or equipment of its Fixed Line System underground, provided that the City imposes such requirement on all similarly situated entities. All installations of fixed lines and/or equipment by Grantee shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground.

3.3 FIXED LINE SYSTEM SPECIFICATIONS

(a) Grantee reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Fixed Line System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Fixed Line System shall have the effect of reducing the technical capabilities of the Fixed Line System as set forth in Section 3.1.

3.4 SYSTEM TESTS

Upon thirty (30) days' written request to Grantee, the City may inspect the Fixed Line System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Fixed Line System is constructed and maintained in a safe condition. The City reserves the right, upon at least thirty (30) days' written notice to Grantee, to conduct a technical audit of the Fixed Line System.

3.5 RESERVED.

3.6 SERVICES FOR SUBSCRIBERS WITH DISABILITIES

Grantee shall comply with all applicable federal regulations, including the Communications Act of 1934, as amended, that ensure the provision of Telecommunications Services and related equipment are accessible to and usable by Subscribers with disabilities.

3.7 RESERVED.

3.8 CONDITIONS OF STREET OCCUPANCY

3.8(a) PERMITS AND GENERAL OBLIGATIONS

Grantee shall be responsible for obtaining all generally applicable permits, licenses,

or other forms of approval or authorization prior to the commencement of any activity that disturbs the surface of any street, curb, sidewalk, or other public improvements in Public Rights-of-Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld or delayed. Construction, installation, and maintenance of the Fixed Line System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All transmission and distribution structures, other lines, and equipment installed by the Grantee for use in the Fixed Line System in accordance with the terms and conditions of this Agreement shall be located so as to minimize the interference with the proper use of the Public Rights-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Public Rights-of-Way.

3.8(b) NEW GRADES OR LINES

If the grades or lines of any Public Rights-of-Way within the City are lawfully changed at any time during the term of this Agreement, then Grantee shall, upon reasonable advance notice from the City (which shall be not less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Fixed Line System, or any part thereof, so as to conform with any such new grades or lines. Grantee shall be entitled to reimbursement of its relocation and construction costs from public or private funds raised for the project and made available to other users of the Public Rights-of-Way to the extent permitted by applicable law. In the event that public and/or private funds are not made available as described herein, Grantee reserves the right to pass its cost through to Subscribers in accordance with applicable law.

3.8(c) REPAIRS AND RESTORATION

(a) Whenever Grantee or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as reasonably good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Grantee to comply within the time specified and the City having notified Grantee in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made, and the expense of such work shall be paid by Grantee upon demand by the City.

(b) Whenever Grantee or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, fiber, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, fiber, or wires. Grantee shall promptly repair and restore any public property that is damaged as a result of construction, installation, repair or maintenance of the Fixed Line System within ten (10) business days, weather permitting.

(c) Grantee's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Fixed Line System

shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Grantee shall install and maintain its fiber, fixtures, and other equipment in such a manner as to not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Grantee personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Grantee or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Grantee shall adhere to any additional undergrounding requirements which the Commonwealth may establish in the future. Grantee shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

3.8(d) SAFETY REQUIREMENTS

Grantee shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries, or nuisances. All work undertaken on the Fixed Line System shall be performed in substantial accordance with applicable FCC or other federal or state regulations.

3.9 SERVICE AREA MAPS

Upon thirty (30) days' written request, Grantee shall permit the City to view a complete set of Grantee service area strand maps of the City on which shall be shown those areas in which facilities exist and the location of streets. The strand maps shall also designate where the wires and other equipment are aerial and where they are underground. Such viewing by City officials shall be at a mutually agreed time and location. Should the City wish to obtain such strand maps of the City for its exclusive use, Grantee shall provide such maps within thirty (30) days of a written request, but no more than once annually and only after the City and Grantee have executed a non-disclosure agreement as such maps are confidential and proprietary pursuant to Section 5.1 of this Agreement.

3.10 DISCONNECTION AND RELOCATION

(a) Grantee shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the

construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring Grantee to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Grantee the same as, and require no more of Grantee than, any other similarly situated entity utilizing the Public Rights of Way, including with respect to potential reimbursement of costs.

3.10.1. RELOCATION AT REQUEST OF THIRD PARTY

Grantee shall, upon reasonable prior written notice of any person holding a permit issued by City to move any structure, temporarily move its fiber to permit the moving of such structure; provided: (i) Grantee may impose a reasonable charge on any person for the movement of its fiber, and such charges may be required to be paid in advance of the movement of its fiber; and (ii) Grantee is given not less than sixty (60) business days advance written notice to arrange for such temporary relocation.

3.11 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the fiber or equipment of the Fixed Line System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Grantee notice and the ability to relocate fiber or other equipment.

(b) In cutting or moving any of the fiber or equipment of the Fixed Line System in the event of fire or other disaster, the City shall treat Grantee the same as, and require no more of Grantee than, any other similarly situated entity.

3.12 TREE TRIMMING

(a) Grantee, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the fiber or other equipment of Grantee. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Grantee or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(b), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

3.13 RESERVED.

3.14 RESERVED.

3.15 RESERVED.

3.16 **RESERVED.**

SECTION 4
SUBSCRIBER SERVICE STANDARDS

4.1 **RESERVED.**

4.2 **RESERVED.**

4.3 **RESERVED.**

4.4 **RESERVED.**

4.5 **RESERVED.**

4.6 **RESERVED.**

4.7 **RESERVED.**

4.8 **RESERVED.**

SECTION 5
REGULATION BY THE CITY

5.1 RIGHT TO INSPECT AND PROTECTION OF PROPRIETARY INFORMATION

(a) The City shall have the option, upon thirty (30) business days' written notice and during Normal Business Hours, to inspect at the notice location for Grantee specified in Section 9.3, all documents, records and other pertinent information maintained by Grantee which relate to the terms and conditions of this Agreement for the purpose of verifying compliance with the terms and conditions of this Agreement and applicable law.

(b) **RESERVED.**

(c) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Grantee as proprietary or confidential in nature and furnished to the City or its designated representatives shall be treated as confidential by the City so long as it is permitted to do so under applicable law. Representatives and/or agents of the City may be requested to execute a non-disclosure agreement prior to the provision by Grantee of certain confidential information, provided such representatives and/or agents are permitted to do so under applicable law. Information and documentation marked by Grantee as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality subject to review by the City. The City and its officially designated representatives agree in advance to treat any such information or records which Grantee reasonably deems would provide an unfair advantage for Grantee's competitors (e.g. system design maps, engineering plans, etc.) as confidential so long as permitted to do so under applicable law and only to disclose it to City employees, agents, or

representatives who have a need to know or in order to enforce the provisions of this Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the City acting in their official capacity for information related to the ROW License and marked by Grantee as confidential and/or proprietary, the City shall timely notify Grantee of such request and shall cooperate with Grantee in protecting its proprietary and confidential information to the extent permitted by applicable law.

5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW

Not more than once every two (2) years during the term of this Agreement, the City or its representatives may conduct a full compliance review with respect to whether Grantee has complied with the material terms and conditions of this Agreement so long as it provides Grantee with forty-five (45) days' written notice in advance of the commencement of any such review. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Grantee may organize the necessary records and documents for appropriate review by the City. Within thirty (30) days of a written request, Grantee shall provide the City with copies of records and documents related to the compliance review. The period for any such review shall be for not more than the sixty (60) months immediately previous to the notice. The City shall promptly inform Grantee in accordance with Section 8.1 of any alleged non-compliance issues that result from the compliance review.

5.3 RESERVED AUTHORITY

Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

5.4 POLICE POWERS

Grantee's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement. If the City's exercise of the police power results in a material alteration of the terms and conditions of this Agreement, then the parties shall negotiate amendments in good faith to this Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on Grantee of the material alteration.

5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability.

5.6 PERMITS

(a) Grantee shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Grantee shall not be required to obtain permits for routine maintenance and repairs that does not disturb surface grade

or impact vehicular traffic. Grantee shall pay any and all required permit fees prior to installation of any Fixed Line System in the Public Rights-of-Way. The City may reject an application by Grantee to install a Fixed Line System in a Public Right-of-Way for one or more of the following reasons, which must be specified with reasonable detail in the rejection: (i) concerns about structural capacity, safety, reliability, or generally applicable engineering practices; (ii) the application is incomplete; (iii) the application exceeds the parameters for the Fixed Line System as set forth in this Agreement; or (iv) the design documents attached to the application do not comply with this Agreement.

(b) Grantee shall pay any annual fees, if adopted by the City through ordinance or resolution, associated with Grantee’s use of the Public Rights-of-Way for its Fixed Line System during the License term and any extension thereof. Any such annual fee shall be based upon an approximation of the reasonable costs incurred by the City, including, without limitation, time spent by City staff, to exercise or enforce the City’s rights under this Agreement. Any annual fees charged to Grantee shall not exceed other such annual fees charged to other similarly situated entities utilizing the Public Rights-of-Way.

5.7 REPORTING

In addition to the other reporting requirements contained in this Agreement, upon written request, Grantee shall provide the following reports to the City:

(a) **Government Reports**

Grantee shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Grantee has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Grantee’s Fixed Line System within the City. Grantee shall provide copies of such documents no later than thirty (30) days after their request.

**SECTION 6
COMPENSATION TO THE CITY**

6.1 RESERVED.

6.2 RESERVED.

6.3 RESERVED.

6.4 RESERVED.

6.5 RESERVED.

**SECTION 7
SERVICES TO THE COMMUNITY**

7.1 RESERVED.

7.2 RESERVED.

**SECTION 8
ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that Grantee violated any material provision of this Agreement, it shall notify Grantee in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Grantee of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law. The person providing such notice shall do so pursuant to the requisite authority of the City.

(b) Grantee shall have forty-five (45) days to cure such violation after written notice is received by taking reasonable steps to comply with the terms of this Agreement. If the nature of the violation is such that, it cannot reasonably be fully cured within forty-five (45) days, the period of time in which Grantee must cure the violation may be extended by the City in writing for such additional time necessary to complete the cure, provided that Grantee shall have promptly commenced to cure and is taking reasonable steps to complete the cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time period allowed under Section 8.1(b) and, in the City's judgment, Grantee has not taken reasonable steps to cure the violation, then the City may deem that Grantee is liable for liquidated damages and/or any other right or remedy in accordance with this Section 8.

8.2 LIQUIDATED DAMAGES

(a) Because Grantee's failure to comply with the material terms of this Agreement may result in harm to the City and because it will be difficult to measure the extent of such harm, the City may assess liquidated damages against Grantee in the amount of Three Hundred Fifty Dollars (\$350.00) per day for each day the violation continues, provided Grantee has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be exclusive and shall not prevent the exercise of other remedies by the City.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages.

(c) In no event shall either the City or Grantee be liable to the other party for any indirect, special, consequential, incidental, exemplary, or punitive damages (including, without limitation, damages for loss of profits or revenue) arising out of or in connection with this Agreement,

regardless of whether any such party knows or should know of the possibility of such damages.

8.3 REVOCAATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this License if:

(1) It is demonstrated that Grantee practiced any fraud or deceit upon the City in the operation of its Fixed Line System or any other activities pursuant to this Agreement;

(2) Grantee repeatedly fails, after notice and opportunity to cure, to maintain its network in accordance with the standards set by the FCC or the technical requirements set forth in Section 3.1;

(3) Grantee fails to indemnify the City as set forth in this Section 8; or

(4) Grantee repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Grantee shall not be excused from the performance of any of its obligations under this License by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) Should the City seek to revoke this License, it shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. Grantee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Grantee, it may then seek revocation of the License at a public hearing before City Council. The City shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Agreement.

(d) At the designated public hearing, Grantee shall be provided a fair opportunity for full participation, due process and full opportunity to be heard, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to request the relevant testimony of the officials, agents, or employees of City, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses, and to respond to any notice of grounds to terminate in accordance with the Pennsylvania Local Agency Law. A complete verbatim record and transcript shall be made of such public hearing.

(e) Following the public hearing, City Council may revoke the License by resolution if City Council determines, by clear and convincing evidence, that Grantee is in material breach of Grantee's obligations under this Agreement. If the City Council determines that it will revoke the License, it shall promptly provide Grantee with a written decision in accordance with the Pennsylvania Local Agency Law setting forth the City Council's reasoning for such revocation within sixty (60) days of the close of the hearing. Grantee shall have the right to appeal any adverse

decision of City Council to the Court of Common Pleas of Northampton County, Pennsylvania within the time period provided by law for appeals of decisions of local agencies.

8.4 RESERVED.

8.5 INSURANCE

(a) Grantee shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, including any renewals thereof, the following minimum insurance coverages identified below. All policies must be on an “occurrence” basis and not on a “claims made” basis.

(b) Grantee’s insurance policies shall apply on a primary and non-contributory basis to insurance available to the City as an additional insured with respect only to losses for which Grantee is responsible hereunder. Grantee shall maintain Commercial General Liability Insurance not less than One Million Dollars (\$1,000,000) per occurrence and not less than One Million Dollars (\$1,000,000) in the aggregate for property damage and bodily injury (including death). Such insurance shall cover Grantee’s insurable liabilities for the construction, operation, and maintenance of the Fixed Line System, and the conduct of Grantee’s Telecommunications Service business in the City. Grantee shall maintain Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of one million dollars (\$1,000,000) each accident for bodily injury and property damage. Grantee shall maintain Workers’ Compensation Insurance meeting all legal requirements of the Commonwealth of Pennsylvania.

(c) The insurance limits identified above may be satisfied through a combination of primary and excess coverage.

(d) Grantee shall cause “The City of Bethlehem, 10 E. Church Street, Bethlehem, PA 18018, and its Officials and Employees” to be included as additional insureds on the policies providing the insurance coverages identified above, except with respect to the Workers’ Compensation Insurance Coverage.

(e) Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section and without submitting insurance certificates to the City verifying that Grantee has obtained such alternative insurance. Grantee shall provide the City with prior written notice in the event there is a cancellation or material change in an insurance policy that would cause Grantee to no longer comply with the requirements hereunder.

(f) Each of the required insurance policies shall be with insurance companies authorized to conduct business in the Commonwealth of Pennsylvania, with an A.M. Best rating (or equivalent) no less than “A minus – VII.”

(g) Grantee shall deliver to the City, no later than thirty (30) days of the Effective Date of the Agreement, Certificates of Insurance showing evidence of the insurance coverages required by this Agreement and, upon request of the City, any applicable endorsements to such insurance policies evidencing compliance with this Agreement including, but not limited to, additional insured endorsements; provided, however, Grantee may redact such information that it deems confidential or proprietary.

(h) Grantee shall not commence nor allow any contractors or subcontractors to commence any work in constructing or installing the Fixed Line System unless and until the City's Legal Bureau has approved the Certificates of Insurance provided by Grantee to the City pursuant to this Agreement, which such approval shall not be unreasonably withheld, delayed, or conditioned. The review and approval of Grantee's Certificates of Insurance by the City shall not relieve Grantee of any of its obligations with respect to insurance contained in this Section 8.

(i) Grantee shall cause each contractor or subcontractor performing Grantee's obligations under this Agreement to maintain insurance coverage reasonably appropriate to the scope of each such contractor or subcontractors' work.

8.6 INDEMNIFICATION

Grantee shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from any and all claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Grantee, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Fixed Line System or any other equipment or facilities by or for Grantee or any Affiliated Entity. The City shall notify Grantee in writing of its obligation to indemnify and defend the City within twenty-one (21) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any damages or losses resulting from the conduct of Grantee. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, reasonable attorneys' fees and costs. Grantee shall not indemnify the City for any claims solely resulting from acts of willful misconduct or negligence on the part of the City.

SECTION 9 MISCELLANEOUS

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Grantee is unable in whole or in part to carry out its obligations hereunder, Grantee shall not be deemed in violation of this Agreement during the continuance of such inability. Upon written (including electronic) request by the City, Grantee shall inform the City within thirty (30) days of receipt of the request whether or not Grantee has determined that a condition of Force Majeure exists.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement, Grantee shall remove the Fixed Line System and its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall reasonably restore the areas to their original condition. If such removal is not completed within six

(6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Grantee's cost.

(b) During the term of the Agreement, if Grantee decides to abandon or no longer use all or part of its Fixed Line System, it shall give the City written notice of its intent at least ninety (90) days prior to such abandonment or disuse, which notice shall describe the property and its location. Upon Grantee's abandonment or disuse of the Fixed Line System, the City shall have the right to either require Grantee to remove the property, remove the property itself and charge Grantee with the reasonable costs related thereto.

9.3 NOTICES

Every notice or payment to be served upon or made to the City shall be either by hand delivery or first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service or electronic mail and addressed to:

City of Bethlehem
10 East Church Street
Bethlehem, PA 18018
Attention: Legal Bureau

The City may specify any change of address in writing to Grantee. Every notice to be served upon or made to Grantee shall be either by hand delivery or first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service or electronic mail and addressed to:

Greenlight Networks PA, LLC
1777 E. Henrietta Rd., Suite 120
Rochester, NY 14623
Attention: Legal Department

Grantee may specify any changes of address in writing to the City. Each delivery to Grantee or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Grantee is an equal opportunity employer and shall comply with all applicable federal, state, and City laws and regulations regarding equal opportunity employment.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its principles on conflict of laws. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, Counties of Northampton and Lehigh, or in the United States District Court for the Eastern District of Pennsylvania.

9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither Grantee nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Fixed Line System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Grantee nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Fixed Line System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Grantee nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release fifty-one percent (51%) or more of its direct ownership in the Fixed Line System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No consent under this Section 9.7 shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Grantee in the License or in the Fixed Line System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Grantee, under common control with Grantee, or which owns Grantee.

(e) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

9.8 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Grantee. This Agreement supersedes all prior agreements or ordinances, or parts of agreements or ordinances, agreements, representations or understandings, whether written or oral, of the parties regarding the subject matter hereof that are in conflict with the provisions herein.

9.9 SEPARABILITY

If any section, provision or clause of this Agreement is held by a court of competent

jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be separable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.10 NO WAIVER OF RIGHTS

No course of dealing between the City and Grantee, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of Grantee in contravention of such rights, except to the extent expressly waived by the City.

No course of dealing between Grantee and the City, nor any delay on the part of Grantee in exercising any rights hereunder, shall operate as a waiver of any such rights of Grantee or acquiescence in the actions of the City in contravention of such rights, except to the extent expressly waived by Grantee.

9.11 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Fixed Line System or to this Agreement, the City or Grantee may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Grantee shall amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Grantee.

9.12 COMPLIANCE WITH LAWS

Grantee shall comply with all federal, state and generally applicable local laws and regulations.

9.13 NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.14 APPLICABILITY OF AGREEMENT

All the provisions in this Agreement shall bind Grantee, the City and their respective successors and assigns. This Agreement shall become effective when executed by an authorized representative of Grantee and the Mayor and Controller of the City, upon a resolution approving such execution adopted by City Council (the "Effective Date").

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGE TO RIGHT OF WAY ACCESS AGREEMENT BETWEEN
CITY OF BETHLEHEM, PA AND GREENLIGHT NETWORKS PA, LLC]**

WITNESS our hands and official seals to this Right of Way Access Agreement.

CITY OF BETHLEHEM

By: _____

Name: J. William Reynolds

Title: Mayor

Date: _____

By: _____

Name: George H. Yasso

Title: Controller

Date: _____

GREENLIGHT NETWORKS PA, LLC

By: _____

Name: Richard Newcomb

Title: Chief Operating Officer

Date: _____