

## ORDINANCE NO. 3113

STATE OF ILLINOIS  
CITY OF COLUMBIA  
FILED FOR RECORD

### AN ORDINANCE ENTERING INTO AN AGREEMENT WITH HARRISONVILLE TELEPHONE COMPANY FOR FIBER CONNECTION SERVICE FOR THE CITY OF COLUMBIA, ILLINOIS FOR A FIVE (5) YEAR TERM.

JUL 21 2014

  
City Clerk

WHEREAS, the City of Columbia, Illinois (the "City") desires to improve and upgrade its network service for the providing of City services and City operations; and

WHEREAS, after accepting written proposals and evaluating those written proposals it has been determined Harrisonville Telephone Company (the "HTC") will provide said fiber network service at the lowest and best cost; and,

WHEREAS, it is necessary and appropriate that the City make and enter into the Agreement with HTC to provide fiber network service aforesaid.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

**Section 2.** The Mayor is hereby authorized and directed to make and enter into the Agreement dated July 21, 2014 for HTC to provide fiber network service described above (which is more particularly described in the Agreement), in the form attached hereto, in at least three (3) counterparts.

**Section 3.** The City Engineer, Ronald J. Williams, P.E., is directed to deliver to HTC HTC's copy of the Agreement for execution and to proceed with the establishment and deployment of the fiber network service.

**Section 4.** This Ordinance shall be in full force and effect, from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Holtkamp, and the roll call vote was as follows:

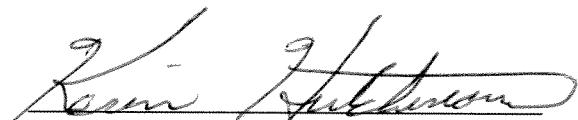
YEAS: Aldermen Ebersohl, Agne, Roessler, Mathews, Reis and Holtkamp.

NAYS: None.

ABSENT: Aldermen Niemietz and Huch.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 21<sup>st</sup> day of July, 2014.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



WESLEY J. HOEFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF MONROE )

**CERTIFICATE OF TRUE COPY**

I, Wesley J. Hoeffken, hereby certify that I am the duly appointed City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 3113, entitled:

**"AN ORDINANCE ENTERING INTO AN AGREEMENT  
WITH HARRISONVILLE TELEPHONE COMPANY FOR  
FIBER CONNECTION SERVICE FOR THE CITY OF  
COLUMBIA, ILLINOIS FOR A FIVE (5) YEAR TERM"**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois City Council held on the 21<sup>st</sup> day of July, 2014.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 21<sup>st</sup> day of July, 2014.

WESLEY J. HOEFFKEN, City Clerk

(SEAL)

## **Harrisonville Telephone Company Fiber Connection Service**

Before you begin to access the Fiber Connection Service through HARRISONVILLE TELEPHONE COMPANY ("HTC"), you ("you", "your" and "yourself") must review the following terms and conditions of the HTC Fiber Connection Service (the "Connection Service"). These terms and conditions explain HTC's obligations to you, and explain your obligations to HTC when you use the Connection Service and will constitute a binding contract between you and HTC (the "Agreement"). HTC is providing you with the Connection Service in consideration of your agreement to abide by these terms and conditions.

### **I. Terms of Fiber Connection Service**

- 1. Service Charges.** Current service charges, including billing methods, rates, and surcharges for using the Connection Service, may be found in HTC's Online Policies or may be obtained by calling HTC Customer Service at 618-939-1600.
- 2. Revisions.** You agree that HTC may: (a) upon notice as provided below, revise the terms and conditions of this Agreement; (b) revise its billing rates and service surcharges, excluding billing rates under a term service commitment from the beginning of the date of this Agreement, but which HTC agrees to adjust from (time to time) to the lowest rate offered (on a non-promotional basis) to any business using a similar Connection Service speed as that being used by you. Any such revisions and modifications shall be binding upon mutual consent and effective immediately on posting the revised Agreement on HTC home page at <http://www.htc.net/terms/>, or on notification to you by email or United States mail.
- 3. Termination.** You agree to review the Agreement periodically to be aware of any such revisions. If any revision to this Agreement is unacceptable to you, you may terminate this Agreement at any time by providing HTC with written notice by United States mail, or by contacting HTC customer service via phone or email. Notice of your termination will be effective on receipt by HTC and no termination or cancellation fees will apply.
- 4. Acceptance of Revisions.** You agree that, by continuing to use the Connection Service following sixty (60) days written notice to you of any revision to the Agreement, you accept any such revisions and agree to abide by any such revisions.
- 5. Informative E-mails.** HTC reserves the right to distribute informative e-mails to its subscribers on an ad hoc basis that HTC feels is pertinent to the quality of its service. These announcements may include information about revisions to this Agreement and/or modifications to the services provided under this Agreement or other information about HTC's services.

### **II. Connection Service**

- 1. Provided Services.** HTC Connection Service will provide you with:
  - (a) Multipoint connectivity via the HTC Fiber Network;
  - (b) No cancellation fees, unless you have agreed to a commitment in excess of month to month, such as receiving free installation or reduced monthly rates for the Connection Service in exchange for a one, three or five year service commitment;
  - (c) The Connection Service on a month to month basis upon completion of the Service Commitment.
- 2. Usage.** You agree that use of the Connection Service is limited to your business use. Business use means active use by you or by another person who is either under your direct supervision or is using the Connection Service with your joint participation.
- 3. Termination for Violations.** You agree that HTC retains the right, but not the obligation, to restrict or terminate your Connection Service upon notice if HTC, in its sole discretion, determines that you are in violation of this Agreement. You agree that, if HTC determines that you are in violation of this Agreement, and the violations not resolved within thirty (30) days after receiving notice, HTC may restrict or terminate your Connection Service. You agree that HTC will have no liability to you for any restriction or termination of your Connection Service pursuant to such violation.
- 4. Termination Forfeitures.** YOU AGREE THAT IF HTC TERMINATES YOUR SERVICE AS A RESULT OF YOUR VIOLATION OF THIS AGREEMENT, YOU FORFEIT ANY RIGHT TO A REFUND OF ANY PREPAID SERVICE CHARGES, SUCH FORFEITURE BEING AGREED TO BY YOU AND HTC AS LIQUIDATED DAMAGES AND NOT AS A PENALTY.
- 5. Communication Equipment.** You are responsible for obtaining and maintaining any communications equipment necessary to complete the Connection Service. You are responsible for ensuring that such equipment or service is compatible with HTC's requirements. In addition, you are responsible for maintaining the security passwords, files, network, and any information you disseminate through HTC services and for all use of the service with or without your knowledge or consent, including, without limitation, any use of your service by minors.
- 6. No Liability.** By using the Connection Service you agree that neither HTC nor its affiliates shall be held responsible or liable, directly or indirectly, for any loss, liability or damage of any nature caused, or alleged to have been caused, by your use of, or reliance on, any content, goods, or services available on or through the Connection Service.

### **III. NO WARRANTIES**

- 1. No Warranty.** THE CONNECTION SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. HTC DOES NOT WARRANT THAT THE CONNECTION SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. HTC MAKES NO EXPRESS WARRANTIES AND WAIVES ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH HTC. NO ADVICE OR INFORMATION GIVEN BY HTC OR ITS

REPRESENTATIVES SHALL CREATE A WARRANTY. HTC AND ITS EMPLOYEES ARE NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THE CONNECTION SERVICE INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ANY EVENT, HTC'S CUMULATIVE LIABILITY TO ANY SUBSCRIBER FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE CONNECTION SERVICE SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID DURING A ONE YEAR PERIOD.

**2. Limitation of Liability.** EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE EXPRESSLY PROHIBITED BY LAW, HTC DISCLAIMS ANY AND ALL LOSS, DAMAGE OR LIABILITY ARISING OUT OF OR RELATING TO YOUR USE OF THE CONNECTION SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY LOSS, DAMAGE OR LIABILITY RELATING TO: (A) LOSS OR CORRUPTION OF DATA; (B) LOSS OF OR DAMAGE TO SOFTWARE OR HARDWARE; (C) SERVICE DELAYS OR SERVICE INTERRUPTIONS; (D) COMPUTER VIRUSES; (E) NON-DELIVERY OR MIS-DELIVERY OF DATA; (F) ANY DEFECTS, FAILURES, ERRORS, OMISSIONS, OR MISSTATEMENTS IN ANY AND ALL INFORMATION, GOODS, OR SERVICES OBTAINED ON OR THROUGH THE CONNECTION SERVICE, AND; (G) LOSS OR LIABILITY RESULTING FROM ACTS BEYOND HTC'S CONTROL.

**3. No Reliance.** You may not rely on oral or written information or advice given by HTC's officers, directors, employees, agents, authorized representatives, subcontractors or affiliates and/or their officers, directors, employees, agents, authorized representatives, or subcontractors or affiliates to create a warranty or increase the scope of warranty already established in these terms and conditions. Your rights and HTC's responsibilities are limited to the warranties that are expressed in these written terms and conditions that have been established by HTC to govern the use of the Connection Service.

#### **IV. Indemnification**

**1. Indemnity.** You agree to defend, release, indemnify, and hold HTC, its affiliated companies and licensors, and its and their respective officers, directors, employees, agents, authorized representatives, and subcontractors harmless from all liabilities, claims and expenses, including without limitation reasonable attorney's fees, arising from breach of the Agreement by use of, or in connection with the posting or transmission of any Content or other material by or through the Connection Service if the breach of the Agreement is due to the intentional wrongful acts, negligent acts and/or omission of the City of Columbia or its agents.

**2. Defense Assumption.** You agree that HTC has the right, but not the obligation, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you pursuant to Paragraph 1 of this section. In such event, you shall have no further obligations pursuant to Paragraph 1 of this section.

#### **V. Termination**

**1. Termination.** You agree that, notwithstanding anything herein to the contrary, you or HTC may terminate this Agreement for any reason at any time.

**2. Dissatisfaction.** You agree that your only rights with respect to any dissatisfaction with (a) any agreement term, policy, or practice of HTC in operating the Connection Service, or (b) amount or type of fees or billing methods, or change therein, is to terminate this Agreement as set forth in Paragraph 1 of this section.

**3. Performance.** You agree that your only right with respect to HTC's failure to deliver requested Connection Service or resolve service performance issues within 90 calendar days of notice to HTC by you, is to terminate this Agreement as set forth in Paragraph 1 of this section without any cancellation or termination fees.

**4. Cancellation Fee / Termination Fee.** If you have subscribed to a Connection Service and have committed to a term of one, three, or five years and you have terminated the service before the fulfillment of the term commitment you may be subject to a termination fee. The termination fee is calculated by charging one-hundred percent of the total undiscounted monthly rates for the service, less any amounts previously paid for the service, for the minimum service period. The minimum service period is twelve months. Additionally, a termination fee of fifteen (15%) of the total undiscounted monthly charge for the service will apply to the remaining portion of the service term.

#### **VI. Miscellaneous**

**1. Arbitration.** Except with respect to equitable remedies which may be obtained in a court of competent jurisdiction, any dispute arising under or relating to this Agreement which the parties cannot resolve between themselves within sixty (60) days shall be resolved with mediation and/or arbitration. The parties agree to mediate said dispute prior to any arbitration proceeding being instituted using a mutually agreed upon experienced attorney. In the event the mediation is unsuccessful, the arbitration shall be conducted by an experienced attorney. Said arbitrator shall be mutually selected by HTC and the City of Columbia within fifteen (15) days following the failure of the parties to resolve the dispute. Judgment upon any arbitration award may be entered in any court having jurisdiction. The parties agree that venue and jurisdiction for entry of any judgment or award related hereto shall lie in Monroe County, State of Illinois. Any costs incurred in the enforcement of the arbitration award shall be paid by the party against whom enforcement is sought.

**2. Choice of Law.** The Agreement will be governed by the laws of the State of Illinois, excluding its conflicts of law rules. You and HTC each submit to the exclusive subject matter jurisdiction, personal jurisdiction, and venue of the courts of the State of Illinois and the federal courts located in the State of Illinois.

**3. Entire Agreement.** You agree that this Agreement comprises the entire understanding between HTC and you, and supersedes any prior agreements or correspondence between you and HTC and/or any postings or other notices from HTC with respect to the subject matter of this Agreement.

**4. Amendment to Agreement.** Except as provided in Section I, this agreement may only be amended by written mutual agreement between the parties.

**5. Force Majeure.** You agree that HTC is not responsible for delays, damages or failures in performance due to causes beyond HTC's reasonable control, including but not limited to acts of a governmental body; acts of God; acts of third parties; fires; floods; strikes or other labor-related disputes; or an inability to obtain necessary equipment or services.

**6. Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

**7. Service Interruptions.** HTC agrees to provide 24/7 support to deliver continuous priority service to you. You understand and agree that temporary interruptions may occur as normal events in the provision of service. Under no circumstances shall HTC be held liable for any financial or other damages due to such service interruptions.

**8. Severability.** You agree that, if any portion of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining portions will remain in full force and effect.

**9. Non-Waiver.** You agree that HTC's failure at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder, or at law or equity, or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this Agreement. The exercise by HTC of any rights, remedies or options provided hereunder, or at law or equity, shall not preclude or prejudice HTC from exercising thereafter the same or other rights, remedies or option.

Company: City of Columbia

Location #1: City Hall; 208 S. Rapp St., Columbia, IL 62236

Location #2: Public Works; 110 W. Sand Bank Rd., Columbia, IL 62236

Location #3: Police Department; 1020 N. Main St., Columbia, IL 62236

Print Name: \_\_\_\_\_ Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

Term Commitment: \_\_\_\_\_ (in months) Fiber Connection Fee: \_\_\_\_\_