

AGREEMENT WITH SOVERNET FIBER CORP.
TO ACCESS & USE EXISTING CONDUIT ON THE WINOOSKI BRIDGE

This Agreement is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter “City”) and Sovernet Fiber Corp., a foreign corporation authorized to do business in the State of Vermont with its principal offices in Bellows Falls, Vermont (hereinafter “Sovernet”).

WHEREAS, one of three existing ducts attached to the Winooski River bridge is used by the City’s telecommunications department (“BT”), the second duct is used by a non-municipal telecommunications common carrier company, and the third duct is presently vacant and available for use; and

WHEREAS, Sovernet seeks to install, connect, operate, inspect, maintain, repair, replace and use equipment and fiber optic cable over, across and through the City’s right of way and conduit system attached to the Winooski Bridge for the benefit of a network in the greater Burlington area intended to expand broadband access and adoption being constructed with the support from the U.S. Department of Commerce’s Broadband Technology Opportunities Program; and

WHEREAS, such activity involves the installation, connection, inspection, operation, maintenance, repair, and replacement of fiber optic cable through the City’s conduit system attached to the Winooski River bridge, as depicted and shown on a two drawing plan set the first drawing entitled “**Winooski Bridge Profile Detail**” and the second drawing entitled “**Existing Duct Route over Winooski Bridge**”, prepared by Sovernet, dated 11/27/12 (“**Plan**”) and adopted by reference into and attached to this Agreement and placed on file in the Department of Public Works; and

WHEREAS, the occupation of space in the City’s right of ways requires approval of the Burlington City Council;

W I T N E S S E T H: NOW, THEREFORE, in consideration of the above and the following mutual

covenants the City and Sovernet enter into the following Agreement:

1. **INSTALLATION, CONNECTION, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT & USE**

Sovernet may install, connect, inspect, maintain, repair, replace and use equipment and fiber optic cable through the City's existing conduit system attached to the Winooski Bridge for the benefit of a network in the greater Burlington area intended to expand broadband access and adoption being constructed with the support from the U.S. Department of Commerce's Broadband Technology Opportunities Program, subject to the terms and conditions set forth in this Agreement.

Such activity shall be done in conformance with the ("Plan") as represented in the two drawing plan set first drawing entitled "**Winooski Bridge Profile Detail**" and the second drawing entitled "**Existing Duct Route over Winooski Bridge**", prepared by Sovernet, both drawings dated 11/27/12 ("Plan"), which is adopted by reference into this Agreement and placed on file in the Department of Public Works.

Any and all installation, connection, operation, inspection, maintenance, repair, replacement or use shall be subject to and done pursuant to and in compliance with all applicable governmental requirements, approvals and permits required for such work.

Any applicable fee required for such work shall be in addition to the fee set forth in § 9 of this Agreement. Furthermore, this agreement does not in any way obligate any department or office of the City to approve any permit required for the work done pursuant to this Agreement. The City shall act in good faith and utilize reasonable engineering standards on making its permitting decisions.

The conduit system attached to the Winooski Bridge is offered and accepted "AS IS, WHERE AS" and "WITH ALL FAULTS;" and neither the City nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied (and the City shall not have any liability whatsoever) as to the value, uses, habitability, condition, design, operation, financial condition or prospects, or fitness for a particular purpose or use of the conduit or the right of way or the City's land adjacent or abutting thereto, or any part thereof, or any other guarantee, representation or warranty whatsoever, express or implied, with respect to the conduit, right of way or any part thereof or the City's land adjacent or abutting thereto, or information supplied to Sovernet with respect thereto. Further, the City shall have no liability for any latent, hidden, or patent defect as to the conduit, right of way or the City's land adjacent or abutting thereto.

2. **RELOCATION**

The Parties acknowledge and agree that the City's use, repair, inspection, improvement and maintenance of the Winooski Bridge and the rights of way leading to it, including the adjacent or abutting sidewalks, street, and combined sewer/storm water and storm water system have first priority to, within, on, or about the bridge and rights of way. This Agreement conveys no property interest or vested right in the bridge or said public streets or rights of way and the Parties acknowledge and agree that the City reserves the right to use the bridge and the adjacent or abutting public streets for its own governmental purposes and the rights given by this Agreement cannot interfere with the use, repair, improvement inspection and maintenance of the bridge and said other rights of way or the public conveniences in traveling on or using such rights of way. This Agreement does not diminish or negate any of Sovernet's existing rights as a property owner of its cables and equipment under common law or statute, or any of the City's existing rights as a municipality under common law or statute. The Parties

acknowledge and agree that the City Engineer or his/her designee may at his or her sole discretion at a future date determine in good faith that it is necessary to relocate utilities, including Sovernet's, within and/or upon the Winooski Bridge and the adjacent or abutting rights of way for the proper maintenance and improvement of the bridge and the rights of way, including the maintenance and improvement of the streets, sidewalks, and storm water and/or combined sewer/storm water system located upon and within the rights of way.

In the event of such a determination and upon reasonable written notice of no less than six (6) calendar months, Sovernet shall relocate at its sole expense said cable and equipment pursuant to and in compliance with all applicable governmental requirements, approvals and permits required for such work, which permits and approvals shall not be unreasonably denied or delayed.

If Sovernet has reason to believe that the decision of the City Engineer is made in bad faith, Sovernet has the right, as a property owner, to seek legal and/or equitable relief, including temporary and permanent injunctive relief.

3. PERFORMANCE OF WORK & MAINTENANCE OF BRIDGE, CONDUIT, AND RIGHTS OF WAY.

Sovernet shall have the right to access the Winooski Bridge conduit to install, connect, inspect, maintain, replace, repair, relocate or use its equipment and fiber optic cable. During installation, connection, inspection, maintenance, replacement, repair, relocation, or use, Sovernet shall maintain the Winooski Bridge conduit and will jointly with other occupying utilities maintain the hanger bracket structure attached to the bridge in a manner that does not impair the public rights of way, including the protection of utilities, pedestrians and vehicles traveling upon the public right-of-ways within and adjacent to the property occupied by the conduit. **Sovernet shall also assume responsibility for a pro-rata share of reasonable costs incurred to repair the hanger bracket structure that supports the conduit.**

Sovernet shall be solely responsible for all costs and expenses of installation, connection, inspection, maintenance, replacement, repair or relocation of its improvements, including all equipment and fiber optic cable located over, across and through the conduit attached to the Winooski Bridge. Such costs include but are not limited to the cost attributable to ensuring public safety on or about the bridge and rights of way, including traffic safety and police services. Sovernet shall maintain and keep in good order and condition and repair said improvements.

Sovernet shall further maintain the Winooski Bridge conduit and their pro rata share of the hanger bracket structure in a manner that does not impair the waters of the State of Vermont, specifically the Winooski River.

Sovernet may enter onto the City's Winooski Bridge and adjacent or abutting rights of way to take such actions as may be necessary or appropriate as required from time to time to ensure the structural integrity of the Winooski Bridge conduit or its equipment or fiber optic cable, pursuant to and in compliance with all applicable governmental requirements, approvals and permits required for such work.

Sovernet shall maintain the Winooski Bridge conduit in a manner that protects the right of way and all utilities, existing or future, located within the right of way or adjacent to the rights-of-ways. Sovernet agrees that any and all expenses assumed by a utility to repair damages caused to a utility by the installation, connection, inspection, maintenance, replacement, repair, relocation or use of the cable and equipment running through the Winooski Bridge conduit allowed by this Agreement shall be reimbursed by Sovernet. Utilities currently located in the right of way and within the Winooski Bridge conduit are depicted in the Plan and are incorporated herein by

reference. Prior to the commencement of any future work by Sovernet on the right of way pursuant to this Agreement, a then current drawing(s) of utilities located in and adjacent to the relevant portions of the right of way shall be prepared by Sovernet and submitted to the City.

Sovernet agrees to protect vehicles and pedestrians traveling upon the Winooski Bridge and the adjacent or abutting rights of way from damage caused by its or its officers', representatives', agents', employees', or contractors' in connection with the installation, connection, maintenance, repair, relocation, or use of the Winooski Bridge conduit and rights of way.

In the exercise of its rights and responsibilities under this Agreement, Sovernet will perform all work in the right of way in a good and workmanlike manner, in conformance to the requirements of any and all permits and permit requirements required for such activity by the City. Sovernet shall perform all work so as to cause no unnecessary damage or disturbance to the City's lands or the utilities located therein or the public's rights in the right of way. In each and every instance, Sovernet shall restore each portion of the conduit or right of way disturbed by Sovernet's entry to the same and as good a state and condition as they were immediately prior to Sovernet's entry unless otherwise required by a permit or permit condition issued by the City concerning said work.

4. RIGHT OF PROTECTION

Upon reasonable notice to the City, Sovernet shall have the right to enter upon the Winooski Bridge and adjacent or abutting rights of way from time to time for the purposes of the protection of its equipment and fiber optic cable. Such right shall include the Winooski Bridge cable and equipments, including but not limited to conducting inspections, surveys, preparing appraisals, conducting tests or engineering studies, and obtaining other information about the condition of the cable and equipment.

Sovernet's entry onto the right of way for the purposes set forth herein and its activities on the right of way as permitted herein shall occur at the sole risk of Sovernet. Sovernet shall indemnify, hold the City harmless and defend the City from and against any and all claims, liens, damages, losses and causes of action which may be asserted by Sovernet or Sovernet's employees and agents or any third party as a result of any such entry, including reasonable attorney's fees. Sovernet's entry onto or testing of the right of way shall be conducted in a manner that minimizes any disturbance to the bridge and rights of way and to the use and enjoyment of the bridge and rights of way by the City or the public. Subsequent to completing said inspections, surveys and tests, Sovernet shall, at its sole expense, return the right of way as nearly as is practicable to the same and as good a state and condition as they were immediately prior to Sovernet's entry unless otherwise required by a permit or permit condition issued by the City concerning said work.

5. PERMITS

Sovernet is subject to any and all applicable permits, applicable permit fees, and permit conditions required for the above stated activity by the City, including but not limited to applicable permits for land use, excavation, obstructions, storm water and building construction. Prior to the commencement of work, Sovernet must pay all permit fees and obtain all requisite governmental approvals and permits necessary to install, connect, inspect, repair, relocate, maintain and use the Winooski Bridge conduit and work in the adjacent or abutting rights of way and any improvements benefiting from the conduit described herein. All work done and improvements made in connection with the use of the Winooski Bridge conduit and rights of way granted herein shall be completed in accordance with the governmental approvals and permits issued to Sovernet and shall be made at

Sovernet's sole cost and expense. Grantee shall restore the Winooski Bridge and rights of way, if disturbed, following any disturbance in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Sovernet's sole cost and expense.

6. PAYMENT FOR FAILURE TO PERFORM

Except as otherwise provided in this section, if Sovernet fails to perform its obligations hereunder as and when called for, then, after thirty (30) days written notice by the City, Sovernet shall make payment to the City of reasonable compensation for the failure to perform. After such thirty (30) days written notice to Sovernet and failure to timely cure by Sovernet, City also shall have the right, in its sole discretion, to recover all amounts expended by the City in furtherance of purposes and terms of this Agreement, and to pursue any further legal or equitable remedies provided by law, including specific performance, damages, and attorneys fees. In the event of a dispute between the parties under this Agreement, the prevailing party shall be entitled to collect all costs of suit, including reasonable attorney's fees.

Sovernet shall not have the right to an additional 30 days written notice for the failure to relocate or obtain required permits, as required in Section 2.

7. INSURANCE

Sovernet shall maintain in effect throughout the term of this Agreement comprehensive general liability insurance with an A-rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 each occurrence and \$3,000,000 general aggregate. The City shall be named as an additional insured on such insurance policy.

Prior to execution of this Agreement, Sovernet shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement.

It is the responsibility of Sovernet to ensure that a current certificate of insurance are on file with the City at all times.

8. INDEMNIFICATION

Sovernet agrees to indemnify, defend and hold the City harmless and free from any and all liability, demands, claims, causes of action, suits, actions, costs and expenses (including attorney's fees and disbursements), losses, injuries, death, or damages, judgments or executions, of whatever kind or nature, including reasonable attorneys fees, arising out of Sovernet's use of the Winooski Bridge conduit or rights of way pursuant to this Agreement. This includes any claims arising out of any indemnity and third party claims. Sovernet agrees to make no claim against the City or any of its officers, employees, agents or representatives for any loss or damage caused by the City's use or maintenance of its rights of way, unless caused by the gross negligence or an intentional act of a City employee, contractor or agent.

9. FEE

There shall be an annual fee paid by Sovernet for the rights provided by this Agreement in the amount of

- A Transactional Fee of \$3,000 will be paid to the City by Sovernet upon execution of this agreement. The fee is intended as a one-time fee needed to compensate the City for staff time required to prepare this agreement.
- In addition the City will be compensated by Sovernet \$1,000.00 annually, for annual payments #1-#9, with the first annual payment due July 1, 2013.
- For annual payment #10, due July 1, 2022, the annual payment will be calculated according to a cumulative COLA adjustment for the period of July 1, 2013-July 1, 2022, using CPI-U from the United States Department of Labor, Bureau of Labor and Statistics.
- For subsequent annual payments #11-#20, an annual COLA adjustment, using CPI-U from the United States Department of Labor, Bureau of Labor and Statistics will be used to calculate and determine the annual fee due for each year until the date of termination of this contract.
- The Transactional Fee of \$3,000 shall be paid to the Burlington City Clerk-Treasurer's Office prior to any work being performed pursuant to this agreement. All other fees will be due as described within the fee schedule described above. This fee shall be in addition to any other applicable City fees required by the City for the activities associated with this Agreement.

10. REVOCATION

This Agreement is immediately revoked in the event Sovernet discontinues the use of the Winooski Bridge conduit or rights of way. Upon revocation, Sovernet must remove at its own expense the cables and equipment and appurtenances thereto. If Sovernet refuses to promptly remove the cables and equipment and appurtenances thereto, they may be removed by the City and Sovernet shall be liable for all reasonable expenses of such removal.

11. NUISANCES PROHIBITED

Sovernet shall not, during the effectiveness of this Agreement, maintain its cables and equipment in and through the Winooski Bridge conduit in a manner which creates a nuisance or violation of any applicable City of Burlington ordinance, State or Federal statute, or controlling bylaw, regulation, or condition imposed, whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement. Such prohibition of nuisances or violations of law shall include permitting the creation of a nuisance or violation of law.

12. ASSIGNMENT OF RIGHTS

Sovernet shall not sell or assign its rights pursuant to this Agreement or permit the use of the premises or any part thereof by any other entity without the express prior written consent of the City, which shall not be unreasonably withheld. In the event of a change of control of Sovernet or the sale of substantially all of its assets which includes the sale of the equipment and rights subject to this agreement to another entity, the City's consent for sale or assignment of rights shall not be required, provided Sovernet notifies the City of such transaction not more than 45 days after its occurred. Any unauthorized action in violation of this provision shall be void, and shall, after sixty (60) days written notice to Sovernet, terminate Sovernet rights pursuant to this Agreement.

13. LIMITATION OF RIGHTS

Sovernet acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement, and by entering into this Agreement, neither Sovernet nor the City shall be deemed to have waived or relinquished any of its common law or statutory rights as a property owner. If Sovernet alleges that it has or will be irreparably harmed by a bad faith action of the City under this Agreement, nothing contained herein shall prohibit Sovernet from pursuing any legal or equitable remedies provided by law, including specific performance, damages and attorney's fees.

14. DURATION OF AGREEMENT

The term of this agreement will be 20 years from the date of its execution.

15. NOTICES

All notices shall be in writing and shall be sent by Certified Mail, Return Receipt Requested or overnight delivery service. Notices shall be effective when the certified mail or overnight delivery is received. Copies of notices shall, in addition, be sent electronically.

All notices shall be sent as follows (subject to change by either party through written notice):

Sovernet:

Sovernet Fiber Corp.

5 Canal Street

Bellows Falls, VT 05101-0495

Attn: Director of Finance

802-463-2111

Email: regulatory@sover.net

City of Burlington, Vermont:

City of Burlington, VT

c/o Department of Public Works

645A Pine St., Burlington, VT 05401

Attn. Assistant Dir. For Technical Services

802-863-9094

802-863-0466

And

City of Burlington, VT

c/o Clerk/Treasurer's Office

City Hall, 149 Church St., Burlington, VT 05401

Attn. Assistant Chief Administrative Officer for Finance

802-865-7000

802-865-7014

DATED at Burlington, Vermont this _____ day of _____,

CITY OF BURLINGTON

_____ By: _____
Witness Mayor, Duly Authorized Agent

SOVERNET FIBER CORP.

_____ By: _____
Witness Duly Authorized Agent